



REAL ESTATE TRANSFER DISCLOSURE STATEMENT
(CALIFORNIA CIVIL CODE §1102, ET SEQ.)
(C.A.R. Form TDS, Revised 6/24)

☐ This property is a duplex, triplex or fourplex. A TDS is required for all units. This TDS is for ALL units (or ☐ only unit(s) ____).
THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF Palm Desert, **COUNTY OF** Riverside, **STATE OF** CALIFORNIA,
DESCRIBED AS 78 Sedona Ct, Palm Desert, CA, 92211.

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH § 1102 OF THE CIVIL CODE AS OF (DATE) 08/17/2026. **IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.**

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to § 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- ☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.
☒ Additional inspection reports or disclosures: _____
Seller may have obtained a limited number of third-party inspections that will be supplied to Buyer at buyers request if available.
☐ No substituted disclosures for this transfer.

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ **is** ☒ **is not** occupying the property.

A. The subject property has the items checked below:*

- | | | |
|--|--|--|
| ☒ Range | ☐ Wall/Window Air Conditioning | ☒ Pool: |
| ☒ Oven | ☒ Sprinklers | ☐ Child Resistant Barrier |
| ☒ Microwave | ☒ Public Sewer System | ☒ Pool/Spa Heater: |
| ☐ Dishwasher | ☐ Septic Tank | ☐ Gas ☐ Solar ☐ Electric |
| ☐ Trash Compactor | ☐ Sump Pump | ☒ Water Heater: |
| ☐ Garbage Disposal | ☐ Water Softener | ☐ Gas ☐ Solar ☒ Electric |
| ☒ Washer/Dryer Hookups | ☒ Patio/Decking | ☒ Water Supply: |
| ☐ Rain Gutters | ☐ Built-in Barbecue | ☒ City ☐ Well |
| ☐ Burglar Alarms | ☐ Gazebo | ☐ Private Utility or |
| ☐ Carbon Monoxide Device(s) | ☐ Security Gate(s) | Other <u>Coachella Valley Water District</u> |
| ☐ Smoke Detector(s) | ☒ Garage: | ☒ Gas Supply: |
| ☐ Fire Alarm | ☒ Attached ☐ Not Attached | ☒ Utility ☐ Bottled (Tank) |
| ☐ TV Antenna | ☐ Carport | ☐ Window Screens |
| ☐ Satellite Dish | ☐ Automatic Garage Door Opener(s) | ☐ Window Security Bars |
| ☐ Intercom | ☒ Number Remote Controls _____ | ☐ Quick Release Mechanism on |
| ☒ Central Heating | ☐ Sauna | Bedroom Windows |
| ☒ Central Air Conditioning | ☒ Hot Tub/Spa: | ☐ Water-Conserving Plumbing Fixtures |
| ☐ Evaporator Cooler(s) | ☐ Locking Safety Cover | |
- Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in gas _____
☒ Gas Starter _____ ☒ Roof(s): Type: Tile Age: _____ (approx.)
☐ Other: _____

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ☐ Yes/☒ No. If yes, then describe. (Attach additional sheets if necessary): _____
List of items in the home may not be complete. Any items remaining in home at time of sale will be left.
Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property.
(*see note on page 2)

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Seller's Initials BB / _____

Buyer's Initials _____ / _____



REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 1 OF 3)

Opendoor Brokerage, Inc. | Opendoor Brokerage, LLC, 410. N Scottsdale Rd, Ste. #1600 Tempe AZ 85281
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Phone: _____ Fax: _____
www.lwolf.com

New Forms

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ☐ Yes ☒ No. If yes, check appropriate space(s) below.

☐ Interior Walls ☐ Ceilings ☐ Floors ☐ Exterior Walls ☐ Insulation ☐ Roof(s) ☐ Windows ☐ Doors ☐ Foundation ☐ Slab(s)
☐ Driveways ☐ Sidewalks ☐ Walls/Fences ☐ Electrical Systems ☐ Plumbing/Sewers/Septics ☐ Other Structural Components
 (Describe: _____)

If any of the above is checked, explain. (Attach additional sheets if necessary.): _____

*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with § 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with § 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with § 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. § 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with § 1101.4 of the Civil Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property ☐ Yes ☒ No
 2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ☐ Yes ☒ No
 3. Any encroachments, easements or similar matters that may affect your interest in the subject property ☐ Yes ☒ No
 4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. ☐ Yes ☒ No
 5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ☐ Yes ☒ No
- (Note to C4 and C5: If transferor acquired the property within 18 months of accepting an offer to sell it, transferor shall make additional disclosures regarding the room additions, structural modifications, or other alterations or repairs on a Seller Property Questionnaire (C.A.R. Form SPQ).)
6. Fill (compacted or otherwise) on the property or any portion thereof ☐ Yes ☒ No
 7. Any settling from any cause, or slippage, sliding, or other soil problems ☐ Yes ☒ No
 8. Flooding, drainage or grading problems ☐ Yes ☒ No
 9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ☐ Yes ☒ No
 10. Any zoning violations, nonconforming uses, violations of "setback" requirements ☐ Yes ☒ No
 11. Neighborhood noise problems or other nuisances ☐ Yes ☒ No
 12. CC&R's or other deed restrictions or obligations ☒ Yes ☐ No
 13. Homeowners' Association which has any authority over the subject property ☒ Yes ☐ No
 14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) ☒ Yes ☐ No
 15. Any notices of abatement or citations against the property ☐ Yes ☒ No
 16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to § 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to § 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to § 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to § 910 or 914 alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) ☐ Yes ☒ No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

12. See Add'l Property Info: S-C-HOA. Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property.

- D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.
2. The Seller certifies that the property, as of the close of escrow, will be in compliance with § 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller Brad Bonney Authorized Signer on Behalf of Opendoor Property Trust I Date 08/17/2026

Seller _____ Date _____



III. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

- ☒ See attached Agent Visual Inspection Disclosure (AVID Form)
- ☐ Agent notes no items for disclosure.
- ☐ Agent notes the following items: _____

Agent (Broker Representing Seller) Opendoor Brokerage Inc.
(Please Print)By Lisa Soltez
(Associate Licensee or Broker Signature)Date 08/17/2026**IV. AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

- ☐ See attached Agent Visual Inspection Disclosure (AVID Form)
- ☐ Agent notes no items for disclosure.
- ☐ Agent notes the following items: _____

Agent (Broker Obtaining the Offer) _____
(Please Print)By _____
(Associate Licensee or Broker Signature)

Date _____

V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.**Seller Brad Bonney Date 08/17/2026 Buyer _____ Date _____

Authorized Signer on Behalf of

Seller _____ Opendoor Property Trust Date _____ Buyer _____ Date _____

Agent (Broker Representing Seller) Opendoor Brokerage Inc.
(Please Print)By Lisa Soltez
(Associate Licensee or Broker Signature)Date 08/17/2026Agent (Broker Obtaining the Offer) _____
(Please Print)By _____
(Associate Licensee or Broker Signature)

Date _____

§ 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.**A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.**

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New Forms





SELLER PROPERTY QUESTIONNAIRE

(C.A.R. Form SPQ, Revised 6/26)

This form is not a substitute for the Real Estate Transfer Disclosure Statement (TDS). It is used by the Seller to provide additional information when a TDS is completed. If Seller is exempt from completing a TDS, Seller should either complete an Exempt Seller Disclosure (C.A.R. Form ESD) or use this SPQ form instead:

NOTE TO SELLER: YOU ARE STRONGLY ADVISED TO CAREFULLY REVIEW THE DISCLOSURE INFORMATION ADVISORY (C.A.R. Form DIA) BEFORE YOU COMPLETE THIS SELLER PROPERTY QUESTIONNAIRE. ALL SELLERS OF CALIFORNIA REAL PROPERTY ARE REQUIRED TO PROVIDE VARIOUS DISCLOSURES, WHETHER BY CONTRACT, STATUTE, OR CASE LAW. MANY DISCLOSURES MUST BE MADE WITHIN CERTAIN TIME LIMITS. TIMELY AND THOROUGH DISCLOSURES HELP TO REDUCE DISPUTES AND FACILITATE A SMOOTH SALES TRANSACTION.

Seller makes the following disclosures with regard to the real property or manufactured home described as 78 Sedona Ct, Palm Desert, CA, 92211, Assessor's Parcel No. 637-330-072, situated in Palm Desert, County of Riverside California ("Property").

☐ This property is a duplex, triplex, fourplex, or otherwise has additional dwelling units. A SPQ is required for all units. This SPQ is for ALL units (or ☐ only unit(s) _____).

1. **Disclosure Limitation:** The following are representations made by the Seller and are not the representations of the Agent(s), if any. This disclosure statement is not a warranty of any kind by the Seller or any agents(s) and is not a substitute for any inspections or warranties the principal(s) may wish to obtain. This disclosure is not intended to be part of the contract between Buyer and Seller. Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker, has not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desires legal advice, they should consult an attorney.

2. **Note to Seller, PURPOSE:** To tell the Buyer about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.

- Answer based on actual knowledge and recollection at this time.
- Something that you do not consider material or significant may be perceived differently by a Buyer.
- Think about what you would want to know if you were buying the Property today.
- Read the questions carefully and take your time.
- If you do not understand how to answer a question, or what to disclose or how to make a disclosure in response to a question, whether on this form or a TDS, you should consult a real estate attorney in California of your choosing. A broker cannot answer the questions for you or advise you on the legal sufficiency of any answers or disclosures you provide.

3. **Note to Buyer, PURPOSE:** To give you more information about known material or significant items affecting the value or desirability of the Property and help to eliminate misunderstandings about the condition of the Property.

- Something that may be material or significant to you may not be perceived the same way by the Seller.
- If something is important to you, be sure to put your concerns and questions in writing (C.A.R. Form BMI).
- Sellers can only disclose what they actually know. Seller may not know about all material or significant items.
- Seller's disclosures are not a substitute for your own investigations, personal judgments, or common sense.

4. **SELLER AWARENESS:** For each statement below, answer the question "Are you (Seller) aware..." by checking either "Yes" or "No."

- A "Yes" answer is appropriate no matter how long ago the item being asked about happened or was documented unless otherwise specified.
- Explain any "Yes" answers in the space provided or attach additional comments and check **paragraph 19B** is checked and attach additional comments.

5. **DOCUMENTS:** Documents include any reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys, or other documents that pertain to:

- (i) the condition or repair of the Property;
- (ii) any improvement on this Property;
- (iii) easements, encroachments, or boundary disputes affecting the Property.

These documents include, but are not limited to, any document:

- (i) prepared in the past or present;
- (ii) provided during any previous transaction or from a previous owner;
- (iii) indicating the condition or proposing recommendations, whether or not Seller acted upon them; and
- (iv) whether or not it was provided to the Seller.

- A. Are you (Seller) aware of any Documents regarding the Property that were prepared before your ownership, whether in your possession or in the possession of others? ☒ Yes ☐ No
- B. Are you (Seller) aware of any Documents regarding the Property that were prepared for you during your ownership, whether in your possession or in the possession of others? ☒ Yes ☐ No
- C. Are you (Seller) aware of any Documents regarding the Property that were provided by others during your ownership (such as Documents obtained by potential buyers)? ☒ Yes ☐ No

Note: If yes to any, provide any such documents in your possession to Buyer. Receipt for Reports (C.A.R. Form RFR) may be used to list such documents and explanation can be given to provide context.

If Yes to any, provide explanation: Seller is a corporate entity. Documents in Seller's possession during ownership include work orders, inspection reports, renovation scopes, and third-party assessments. Seller will provide available details upon request.

6. **STATUTORILY OR CONTRACTUALLY REQUIRED OR RELATED:** **ARE YOU (SELLER) AWARE OF...**

- A. Within the last 3 years, the death of an occupant of the Property upon the Property ☐ Yes ☒ No
(Note to Seller: The manner of death may be a material fact to the Buyer, and should be disclosed, except for a death by HIV/AIDS.)
- B. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.) ☐ Yes ☒ No



Property Address: 78 Sedona Ct, Palm Desert, CA, 92211

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # _____.

- C. The release of an illegal controlled substance on or beneath the Property ☐ Yes ☒ No
- D. Whether the Property is located in, or adjacent to, an "industrial use" zone ☐ Yes ☒ No
(In general, a zone or district allowing manufacturing, commercial or airport uses.)
- E. Whether the Property is affected by a nuisance created by an "industrial use" zone ☐ Yes ☒ No
- F. Whether the Property is located within 1 mile of a former federal or state ordnance location (In general, an area once used for military training purposes that may contain potentially explosive munitions.) ☐ Yes ☒ No
- G. Whether the Property is (i) a condominium or (ii) located in a planned unit development or (iii) other common interest subdivision (see **paragraph 14** for more disclosures)..... ☒ Yes ☐ No
- H. Insurance claims affecting the Property within the past 5 years ☐ Yes ☒ No
- I. Matters affecting title of the Property ☐ Yes ☒ No
- J. Plumbing fixtures on the Property that are non-compliant plumbing fixtures as defined by Civil Code § 1101.3 ☐ Yes ☒ No
- K. Any inspection reports on any exterior balconies, stairways, or other "Elevated Elements" on buildings with 3 or more units on the Property prepared within the last 6 years, or 9 years for condominiums ☐ Yes ☒ No
(See C.A.R. Form WBSA for more information)
- L. Material facts or defects affecting the Property not otherwise disclosed to Buyer ☐ Yes ☒ No

If Yes to any, provide explanation: _____

Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

7. REPAIRS AND ALTERATIONS:

ARE YOU (SELLER) AWARE OF...

- A. Any alterations, modifications, replacements, improvements, remodeling, or material repairs on the Property (including those resulting from Home Warranty claims) ☐ Yes ☒ No
- B. Any alterations, modifications, replacements, improvements, remodeling, or material repairs to the Property done for the purpose of energy or water efficiency improvement or renewable energy? ☐ Yes ☒ No
- C. Ongoing or recurring maintenance on the Property (for example, drain or sewer clean-out, tree or pest control service) ☐ Yes ☒ No
- D. Any part of the Property being painted within the past 12 months ☐ Yes ☒ No
- E. Whether the Property was built before 1978 (if No, leave (1) and (2) blank)..... ☐ Yes ☒ No
(1) If yes, whether any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces started or completed (if No, leave (2) blank) ☐ Yes ☒ No
(2) If yes to (1), whether such renovations were done in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule ☐ Yes ☒ No
- F. Whether you acquired the property within 18 months of accepting an offer to sell it..... ☐ Yes ☒ No
If yes, have any room additions, structural modifications, or other alterations or repairs (collectively "Improvements") been performed by a contractor while you have owned the Property?..... ☐ Yes ☒ No

Note 1: If yes to F(1), Seller shall provide in the Explanation below: (i) a list of such Improvements and (ii) the name and contact information for each contractor who performed services of \$1,000 or more.

Note 2: If yes to F(1), Seller shall provide in the Explanation below (i) a list of those Improvements for which Seller has obtained permits, and Seller shall attach copies of those permits to this SPQ, and (ii) for those Improvements for which Seller does not have a permit, Seller shall include a statement identifying those Improvements stating that Seller was not provided permits by the third party making the Improvement, and providing the contact information for such third parties from whom the Buyer may obtain those permits.

If Yes to any, provide explanation: _____

8. STRUCTURAL, SYSTEMS AND APPLIANCES:

ARE YOU (SELLER) AWARE OF...

- A. Defects in any of the following (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace, foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors, or appliances ☐ Yes ☒ No
- B. The existence of a solar power system (if yes, Seller to provide C.A.R. Form SOLAR)..... ☐ Yes ☒ No
- C. The existence of a septic system, well, or propane tank (if yes, Seller to provide C.A.R. Form SWPI-Q)..... ☐ Yes ☒ No
- D. The leasing of any of the following on or serving the Property: water softener system, water purifier system, or alarm system ☐ Yes ☒ No
- E. Whether any structure on the Property other than the main improvement is used as a dwelling ☐ Yes ☒ No
(1) If Yes to E, whether there are separate utilities and meters for the dwelling..... ☐ Yes ☒ No
(2) If Yes to E, whether the dwelling received a permit or other government approval as an Accessory Dwelling Unit (ADU) ☐ Yes ☒ No

If Yes to any, provide explanation: _____

9. DISASTER RELIEF, INSURANCE OR CIVIL SETTLEMENT:

ARE YOU (SELLER) AWARE OF...

- A. Financial relief or assistance, insurance or settlement, sought or received, from any federal, state, local or private agency, insurer or private party, by past or present owners of the Property, due to any actual or alleged damage to the Property arising from a flood, earthquake, fire, other disaster, or occurrence or defect, whether or not any money received was actually used to make repairs ☐ Yes ☒ No
If yes, was federal flood disaster assistance conditioned upon obtaining and maintaining flood insurance on the Property ☐ Yes ☒ No
(NOTE: If the assistance was conditioned upon maintaining flood insurance, Buyer is informed that federal law, 42 USC 5154a requires Buyer to maintain such insurance on the Property, and if such insurance is not maintained, and the Property is damaged by a flood disaster, Buyer may be required to reimburse the federal government for the disaster relief provided.)

Property Address: 78 Sedona Ct, Palm Desert, CA, 92211

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # _____.

- B.** Receiving domestic water storage tank assistance pursuant to § 13194 of the Water Code or whether the real property ever received such assistance and the real property currently still has the domestic storage tank..... ☐ Yes ☒ No
- If yes, the following disclosure is made: (1) This property has a domestic water storage tank provided by a county, community water system, local public agency, or nonprofit organization, pursuant to § 13194 of the Water Code. (2) The domestic water storage tank was made available to households that had a private water well that had gone dry, or had been destroyed due to drought, wildfire, other natural disasters, or was otherwise nonfunctioning. (3) The domestic water storage tank provided pursuant to § 13194 of the Water Code might not convey with the real property. (4) Due to the water well issues that led to this property obtaining assistance pursuant to § 13194 of the Water Code, the buyer is advised to have an inspection of the water well and to have a professional evaluate the availability of water to the property to ensure it suits the purposes for which the buyer is purchasing the property.

If Yes to any, provide explanation: _____

10. WATER-RELATED AND MOLD ISSUES:

ARE YOU (SELLER) AWARE OF...

- A.** Water intrusion, whether past or present, into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property ☐ Yes ☒ No
- B.** Any problem with or infestation of mold, mildew, fungus, or spores, past or present, on or affecting the Property.. ☐ Yes ☒ No
- C.** Rivers, streams, flood channels, underground springs, high watertable, floods, or tides, on or affecting the Property or neighborhood ☐ Yes ☒ No

If Yes to any, provide explanation: _____

11. PETS, ANIMALS, AND PESTS:

ARE YOU (SELLER) AWARE OF...

- A.** Past or present pets on or in the Property ☐ Yes ☒ No
- B.** Past or present problems with livestock, wildlife, insects, or pests on or in the Property ☐ Yes ☒ No
- C.** Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above ☐ Yes ☒ No
- D.** Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above ☐ Yes ☒ No
- If so, when and by whom _____

If Yes to any, provide explanation: _____

12. BOUNDARIES, ACCESS, AND PROPERTY USE BY OTHERS:

ARE YOU (SELLER) AWARE OF...

- A.** Surveys, easements, encroachments or boundary disputes ☐ Yes ☒ No
- B.** Use or access to the Property, or any part of it, by anyone other than you, with or without permission, for any purpose, including but not limited to, using or maintaining roads, driveways, or other forms of ingress or egress or other travel or drainage..... ☐ Yes ☒ No
- C.** Use of any neighboring property by you ☐ Yes ☒ No

If Yes to any, provide explanation: _____

13. LANDSCAPING, POOL AND SPA:

ARE YOU (SELLER) AWARE OF...

- A.** Diseases or infestations affecting trees, plants, or vegetation on or near the Property ☐ Yes ☒ No
- B.** Operational sprinklers on the Property ☒ Yes ☐ No
- (1) If yes, are they ☐ automatic or ☐ manually operated.
- (2) If yes, are there any areas with trees, plants, or vegetation not covered by the sprinkler system. ☐ Yes ☒ No
- C.** A pool heater on the Property ☐ Yes ☒ No
- If yes, is it operational? ☐ Yes ☒ No
- D.** A spa heater on the Property ☐ Yes ☒ No
- If yes, is it operational? ☐ Yes ☒ No
- E.** Past or present defects, leaks, cracks, repairs, or other problems with the sprinklers, pool, spa, waterfall, pond, stream, drainage, or other water-related decor including any ancillary equipment, including pumps, filters, heaters and cleaning systems, even if repaired ☐ Yes ☒ No

If Yes to any, provide explanation: _____

14. CONDOMINIUMS, COMMON INTEREST DEVELOPMENTS AND OTHER SUBDIVISIONS (AND ANY OTHER PROPERTIES FOR WHICH ANY PARAGRAPH A-F APPLIES): (IF APPLICABLE)

ARE YOU (SELLER) AWARE OF...

- A.** Property being: (i) a condominium; (ii) being located in a planned unit development or; (iii) being located in a common interest subdivision..... ☒ Yes ☐ No
- B.** Any Homeowners' Association (HOA) which has any authority over the subject property..... ☒ Yes ☐ No
- C.** Any "common area" (facilities such as pools, fitness centers, walkways, conference rooms, or other areas co-owned in undivided interest with others) ☐ Yes ☒ No
- D.** CC&R's or other deed restrictions or obligations ☒ Yes ☐ No
- E.** Any pending or proposed dues increases, special assessments, rules changes, insurance availability issues, or litigation by or against or fines or violations issued by a Homeowner Association or Architectural Committee affecting the Property ☒ Yes ☐ No
- F.** CC&R's or other deed restrictions or obligations or any HOA Committee that has authority over improvements made on or to the Property ☒ Yes ☐ No

SPQ REVISED 6/26 (PAGE 3 OF 5)

Buyer's Initials _____ / _____

Seller's Initials BB / _____

SELLER PROPERTY QUESTIONNAIRE (SPQ PAGE 3 OF 5)

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com



Property Address: 78 Sedona Ct, Palm Desert, CA, 92211

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # _____.

- (1) If Yes to F, any improvements made on or to the Property inconsistent with any declaration of restrictions or HOA Committee requirement ☐ Yes ☒ No
- (2) If Yes to F, any improvements made on or to the Property without the required approval of an HOA Committee ☐ Yes ☒ No

If Yes to any, provide explanation: _____

A) Property is in a common interest development with an HOA.

B) Seller has not read the CC&Rs.

C) Seller has not read the CC&Rs.

SPQ-HOA: Seller has never occupied this property. Seller encourages Buyer to have their own inspections performed and verify all information relating to this property where applicable as noted.

15. TITLE, OWNERSHIP, LIENS, AND LEGAL CLAIMS:

ARE YOU (SELLER) AWARE OF...

- A. Other than the Seller signing this form, any other person or entity with an ownership interest ☐ Yes ☒ No
- B. Leases, options, or claims affecting or relating to title or use of the Property ☐ Yes ☒ No
- C. Past, present, pending or threatened lawsuits, settlements, mediations, arbitrations, tax liens, mechanics' liens, notice of default, bankruptcy or other court filings, or government hearings affecting or relating to the Property, Homeowner Association, or neighborhood ☐ Yes ☒ No
- D. Features of the property shared in common with adjoining landowners, such as walls, fences and driveways, whose use or responsibility for maintenance may have an effect on the subject property ☐ Yes ☒ No
- E. Any encroachments, easements, boundary disputes, or similar matters that may affect your interest in the subject property, whether in writing or not ☐ Yes ☒ No
- F. Any private transfer fees, triggered by a sale of the Property, in favor of private parties, charitable organizations, interest-based groups, or any other person or entity. ☒ Yes ☐ No
- G. Any PACE lien (such as HERO or SCEIP) or other lien on your Property securing a loan to pay for an alteration, modification, replacement, improvement, remodel, or material repair of the Property ☐ Yes ☒ No
- H. The cost of any alteration, modification, replacement, improvement, remodel, or material repair of the Property being paid by an assessment on the Property tax bill ☐ Yes ☒ No

If Yes to any, provide explanation: _____

16. NEIGHBORS/NEIGHBORHOOD:

ARE YOU (SELLER) AWARE OF...

- A. Neighborhood noise, nuisance, or other problems from sources such as, but not limited to, the following: Neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks, freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, underground gas pipelines, cell phone towers, high voltage transmission lines, or wildlife ☐ Yes ☒ No
- B. Any past or present disputes or issues with a neighbor which might impact the use, development and enjoyment of the Property ☐ Yes ☒ No

If Yes to any, provide explanation: _____

17. GOVERNMENTAL:

ARE YOU (SELLER) AWARE OF...

- A. Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that applies to or could affect the Property ☐ Yes ☒ No
- B. Existence or pendency of any rent control, occupancy restrictions, improvement restrictions, or retrofit requirements that apply to or could affect the Property ☐ Yes ☒ No
- C. Existing or contemplated building or use moratoria that apply to or could affect the Property ☐ Yes ☒ No
- D. Any state or local requirements or restrictions relating to the future replacement of existing gas-powered appliances that are being transferred with the property. Gas-powered appliances include, but are not limited to, appliances fueled by natural gas or liquid propane ☐ Yes ☒ No
- E. Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property ☐ Yes ☒ No
- F. Proposed construction, reconfiguration, or closure of nearby Government facilities or amenities such as schools, parks, roadways, and traffic signals ☐ Yes ☒ No
- G. Existing or proposed Government requirements affecting the Property (i) that tall grass, brush or other vegetation be cleared; (ii) that restrict tree (or other landscaping) planting, removal, or cutting or (iii) that flammable materials be removed ☐ Yes ☒ No
- H. Any protected habitat for plants, trees, animals, or insects that apply to or could affect the Property ☐ Yes ☒ No
- I. Whether the Property is historically designated or falls within an existing or proposed Historic District ☐ Yes ☒ No
- J. Any water surcharges or penalties being imposed by a public or private water supplier, agency or utility; or restrictions or prohibitions on wells or other ground water supplies ☐ Yes ☒ No
- K. Any differences between the name of the city in the postal/mailling address and the city which has jurisdiction over the property ☐ Yes ☒ No

If Yes to any, provide explanation: _____

18. OTHER:

ARE YOU (SELLER) AWARE OF...

- A. Any occupant of the Property smoking or vaping any substance on or in the Property, whether past or present ☐ Yes ☒ No
- B. Any residue, which may be indicated by smell or test results, from smoking tobacco or nicotine products, which includes the use of an electronic cigarette or vape device ☐ Yes ☒ No
- C. Any use of the Property for, or any alterations, modifications, improvements, remodeling or material change to the Property due to, cannabis cultivation or growth ☐ Yes ☒ No
- D. Whether the Property was originally constructed as a Manufactured or Mobile home ☐ Yes ☒ No



Property Address: 78 Sedona Ct, Palm Desert, CA, 92211

If this Property is a duplex, triplex, fourplex, or otherwise has additional dwelling units this SPQ is for unit # _____.

- E. Whether the Property is tenant occupied ☐ Yes ☒ No
If Yes, do you have photographs from the beginning of the tenancy (if in your possession, provide along with any other move-in reports created at the beginning of the tenancy)..... ☐ Yes ☒ No
- F. Whether the Property was previously tenant occupied even if vacant now ☐ Yes ☒ No
If yes, disclose if you know the method or manner of how the tenancy ended. _____
If Yes to any, provide explanation: _____

19. MATERIAL FACTS:

- A. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer ☐ Yes ☒ No
- B. ☒ **(IF CHECKED) ADDITIONAL COMMENTS:** The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation.
If Yes to any, provide explanation: _____

Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from Seller's own duty of disclosure.

Seller	<u>Brad Bonney</u>	Authorized Signer on Behalf of	Date <u>08/17/2026</u>
Seller	_____	Opendoor Property Trust I	Date _____

By signing below, Buyer acknowledges that Buyer has read, understands and has received a copy of this Seller Property Questionnaire form.

Buyer	_____	Date	_____
Buyer	_____	Date	_____

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SPQ REVISED 6/26 (PAGE 5 OF 5)

SELLER PROPERTY QUESTIONNAIRE (SPQ PAGE 5 OF 5)

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Additional Property Information

PROPERTY ADDRESS

78 Sedona Ct, Palm Desert, CA, 92211

[S-C-HOA] — Transfer Disclosure Statement, Section C item 12 (CC&Rs / HOA authority over the property):
HOA Name: Tucson Homes Owners Assoc., Phone Number: (833) 462-3627, Main Fee: \$130.00 paid
monthly. HOA Demand and CC&Rs attached.

[SPQ-HOA] — Seller Property Questionnaire, HOA / CC&Rs explanation (items A, B, D, E, F): HOA Name:
Tucson Homes Owners Assoc., Phone Number: (833) 462-3627, Main Fee: \$130 paid monthly. Please see
attached for HOA-related expenses provided to the Seller at the time the Seller purchased this property. Buyer
is encouraged to contact the HOA for current information.

x *Brad Bonney*

Authorized Signer on behalf of Opendoor Property Trust I

Date: 08/17/2026

The seller has made this page available in an effort to make the contents of this disclosure easier to read, as the current format of the seller disclosure itself does not leave adequate space to explain answers provided. The seller never occupied the property. The information being provided is context gleaned from previous seller inputs, visual assessment, work orders, and publicly available information. Some information from the sources noted could be conflicting and the seller encourages the buyer to obtain their own inspection to verify the details noted here.

Completed Work Summary

PROPERTY ADDRESS

78 Sedona Ct, Palm Desert, CA, 92211

****So-Cal Construction**** — socalconstruction13@gmail.com • (951) 557-2497

Aug 10 – Aug 14, 2026

Full interior painting of walls, ceilings, trim and doors with surface preparation, replacement of the exterior gate passage knob, color-matched trim replacement at the laminate flooring, and removal and disposal of debris left at the property.

****S & L Final Clean**** — laurieojeda@live.com • (951) 551-0292

Aug 14 – Aug 15, 2026

Full interior and exterior deep clean, including flooring, windows and tracks, cabinetry, counters, plumbing fixtures, appliances, light fixtures and vents, plus removal of remaining debris and trash.

****Centralized Purchasing**** — No external vendor contact.

Aug 15, 2026

Interior paint materials supplied for the interior painting work.

x *Brad Bonney*

Authorized Signer on behalf of Opendoor Property Trust I

Date: 08/17/2026

The Seller has made this Completed Work Summary available in order to provide transparency regarding work performed at the property. While such work was undertaken at the Seller's direction, it was performed by third-party, independent contractors and vendors, who are solely responsible for the manner, method, and quality of the work performed. The Seller is not a licensed contractor or tradesperson and is not qualified to evaluate, and does not warrant or represent, whether such work was completed in accordance with applicable codes, standards, or workmanship generally accepted in the trade. The Seller never occupied the property. Buyer is encouraged to obtain their own independent inspection to verify the details noted herein.

Statement of Account

Tucson Homes Owners Assoc.

PLEASE REFER TO PAGE 2 FOR COMPLETE ESCROW INSTRUCTIONS AND DETAILS

Statement Date: Jul 07, 2026

Property Address: 78 Sedona Court, Palm Desert, CA 92211

Order Date: 7/7/2026, 11:59:05 AM

Order #: ASFD3

Requested By: SOUSetup

Phone #:

Contact Name:

Contact Phone:

Contact Email:

Escrow #: CA110819

Owner/Seller: Leticia Accosta Carbajal and Michael Joseph Carbaja

Closing Date: 7/28/2026

Buyer's Name: OPENDOOR PROPERTY TRUST I, a Delaware statutory trust

Buyer's Address: 1295 W Washington St Ste 115

City, State Zip: Tempe, AZ 85288

Buyer's Phone #: (480) 485-9099

FEES DUE TO Desert Resort Management

Document Processing Fees	Amount
Core Documents	\$445.00
Add On Documents	\$0.00
Covenants Compliance Inspection (CCI) Report	\$0.00
Priority	\$0.00
Shipping	\$0.00
Convenience Fees	\$17.80
Credits	
Amount Paid	\$462.80
Other Credits	\$0.00
Order Balance Due:	\$0.00
Post Closing Fees	
Transfer Fee	\$325.00
New Home Transfer Fee	\$0.00
Gate Programming Fee	\$0.00
Other 3	\$0.00
Total Due (Order Balance Due plus Post Closing Fees):	\$325.00

Please reference ALL order number(s) from above on all checks you issue.

ALL FEES/AMOUNTS PAYABLE AT CLOSING

Mail all payments to: Desert Resort Management
 42635 Melanie Pl Ste 103
 Palm Desert, CA 92211

PLEASE PROVIDE SEPARATE CHECKS FOR AMOUNTS BELOW:

Please collect \$325.00 payable to Desert Resort Management for above noted fees.

Please collect \$130.00 payable to Tucson Homes Owners Assoc. for Association fees (see page 2 for Comments & Fee Details)

Please provide Desert Resort Management with a copy of the Grant Deed / Assignment of Lease/Deed AND Mortgage, or Agreement of Sale

Statement of Account
 Tucson Homes Owners Assoc.

FEES DUE TO ASSOCIATION	ADDITIONAL COMMENTS/ESCROW INSTRUCTIONS
Regular Assessments Paid Through: 7/31/2026 Current Account Balance: \$0.00 Association Transfer Fees: \$0.00 Working Capital Contribution: \$0.00 Legal Fees: \$0.00 Enhancement: \$0.00 Buyer's Advanced Assessments: \$130.00 Other 1: \$0.00 Other 2: \$0.00 Other 3: \$0.00 Total Due: <u>\$130.00</u>	SELLER HAS A CREDIT BALANCE OF (\$15.00) THRU 7-31-2026. Effective 1/01/2026, the monthly assessment increased to \$130.00 for the 2026 calendar year. 2026 dues will remain at \$130.00 monthly. TRANSFER FEE: MAKE CHECK PAYABLE TO DESERT RESORT MANAGEMENT DUES OWED: MAKE CHECK PAYABLE TO TUCSON HOA. PLEASE DO NOT CO-MINGLE TRANSFER FEE AND DUES INTO ONE CHECK. THANK YOU UPDATED DEMAND: An updated demand is required to be ordered through Community Archives prior to the close of escrow. RECORDED/CONFORMED GRANT DEED: Please include a copy of these documents with the transfer fee to ensure accurate transfer of ownership. LLC REQUIREMENTS: Please complete the attached form if the property is being purchased by an LLC.

ASSOCIATION ASSESSMENTS / ADDITIONAL ASSESSMENT AND FINANCIAL INFORMATION

Amount of Property Assessment is? **\$130.00**

Frequency of Property Assessment? **Monthly**

The amount of the next installment of the regular periodic assessment is: **\$130.00**

The due date of the next installment of the regular periodic assessment is: **8/1/2026**

Assessments are due on this day of the month: **1**

Assessments are past due on this day of the month: **16**

The late fee is fixed (enter the actual amount): **\$10.00**

The late fee is based on the following percentage:

Is there any late fee interest? If so, how is it calculated? **10%**

Amount of other assessment? **\$10.00**

Purpose of other assessment? **Processing fee for late payment.**

Amount of special assessment? **\$0.00**

Purpose of special assessment? **No special assessments at this time.**

Amount of emergency assessment?

Purpose of emergency assessment?

Is there a Community Enhancement Fee?

How is the Community Enhancement Fee calculated (if applicable)?

I hereby certify that the above information is true and correct to the best of my knowledge and belief.

Statement of Account
Tucson Homes Owners Assoc.

I hereby certify that the above information is true and correct to the best of my knowledge and belief.

Completed By: *Sissel Jensen*

Statement Date: Jul 07, 2026

This information is being provided by Desert Resort Management as a courtesy to lenders and other real estate professionals. Although Desert Resort Management believes that the information provided is complete and accurate, the requesting party understands and acknowledges that this information is subject to change without notice and that Desert Resort Management is not responsible for any inaccurate or omitted information.

**The following notice is pursuant to California Government Code
Section 12956.1(b)(1))**

Notice

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office. The “Restrictive Covenant Modification” form can be obtained from the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Restrictive Covenant Modification

Under current state law, including AB1466 effective January 1, 2022, homeowners can request to modify property documents that contain unlawful discriminatory covenants. Government Code Section 12956.2 allows a person who holds an ownership interest of record in property that the person believes is the subject of an unlawfully restrictive covenant to record a Restrictive Covenant Modification document to have the illegal language stricken. Unlawful restrictions include those restrictions based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in Government Code Section 12955 subdivision (p), ancestry, or genetic information.

To Record a Restrictive Covenant Modification, you must:

- Complete a Restrictive Covenant Modification Form; this must be signed in front of a notary public.
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language stricken.
- Submit the completed document to the County Recorder.

This document requires the following:

1. Name(s) of current owner(s)
2. Identification of document page number and language in violation
3. Recording reference of document with unlawful restrictive covenant
4. Copy of referenced document attached complete with unlawful restrictive language stricken out
5. Signature(s) of owner(s)
6. Signature(s) acknowledged
7. Approval by County Counsel provided to County Recorder

Upon receipt, the Recorder's office will submit the document to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded and those that are not, will be returned to the submitter unrecorded.

Please note that the County Recorder is not liable for modification not authorized by law. This is the sole responsibility of the holder of ownership interest who caused the modified recordation per Government Code Section 12956.2 subdivision (f).

Pursuant to the requirements of AB1466, and no later than July 1, 2022, the Assessor-County Clerk-Recorder will post an implementation plan outlining our strategy to identify records with discriminatory restrictions.

Recording Requested By

When recorded mail document to

Above Space for Recorder's Use Only

RESTRICTIVE COVENANT MODIFICATION

I (We) _____ have an ownership interest of record in the property located at _____ that is covered by the document described below.

The following referenced document contains a restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry that violates state and federal fair housing laws and that restriction is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of eliminating that restrictive

covenant as shown on page(s) _____ of the document recorded on _____ (date)

In book _____ and page _____, or Document No. _____ of the Official records of the County of _____, State of California.

The document referenced above was originally indexed in the following manner _____

_____ and this document shall be indexed in like manner pursuant to Section 12956.2 (e).

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

Dated _____



Printed Name(s)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF _____ }

On _____ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Recording Requested By:
Tucson Homes LLC and
when recorded mail to:
Tucson Homes LLC
c/o Michael A. Criste, Esq.
Criste, Pippin & Golds
73-550 Alessandro Drive
Suite 200
Palm Desert, CA 92260

023675



RECEIVED FOR RECORD
AT 8:00AM

JAN 23 1998

Recorded in Official Records
of Riverside County, California

Recorder

Fee \$ 26

126
/40
P

DECLARATION FOR TRACT 28549
(TUCSON HOMES OWNERS' ASSOCIATION .
A PLANNED DEVELOPMENT

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TRACT 28549
(TUCSON HOMES OWNERS' ASSOCIATION)

This Declaration of Covenants, Conditions and Restrictions (this "Declaration") is made on December __, 1997, by Tucson Homes LLC, a California limited liability company ("Declarant").

RECITALS

Whereas, Declarant is the owner of that certain real property located in the City of Palm Desert, County of Riverside, State of California, and more particularly described on Exhibit "A" attached hereto and by this reference made a part of this Declaration (the "Property"); and

Whereas, pursuant to the general plan set forth in this Declaration, Declarant intends to subdivide the Property into 72 Lots and parcels, to improve the Lots and parcels, to create a planned development subject to the provisions of the Davis-Stirling Common Interest Development Act contained in Division II, Part 4, Title 6 of the California Civil Code, and to provide for the annexation of additional real property to the Property. The additional real property is described on Exhibit "B" attached hereto and by this reference made a part of this Declaration (the "Additional Real Property"); and

Whereas, in furtherance of this intent, Declarant hereby declares that all of the Property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Declaration, as this Declaration may be amended from time to time, all of which are declared and agreed to be in furtherance of a general plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Property. All covenants and restrictions set forth in this Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of any Lot in the Development.

Section 1. Definitions.

Section 1.1 Articles. "Articles" means the Articles of Incorporation of Tucson Homes Owners' Association, a California mutual benefit corporation and any amendments to the Articles that are or shall be filed in the Office of the Secretary of State of the State of California.

Section 1.2 Association. "Association" means Tucson Homes Owners' Association, a California nonprofit mutual benefit corporation.

Section 1.3 Board. "Board" means the Board of Directors of the Association.

Section 1.4 Bylaws. "Bylaws" means the Bylaws of the Association and any amendments to the Bylaws that are or shall be adopted by the Board.

Section 1.5 Common Area. "Common Area" means those portions of the Development owned by the Association for the common use and enjoyment of the Owners. This Common Area includes those lots designated as "Common Area" Exhibit "A" and any other parcels designated as "Common Area" in any Supplemental Declaration recorded pursuant to the annexation provisions of Section 11 of this Declaration.

Section 1.6 Declarant. "Declarant" means Tucson Homes LLC and its successors and assigns.

Section 1.7 Declaration. "Declaration" means this Declaration and any amendments thereto.

Section 1.8 Development. "Development" means the Property, any additional real property annexed to the Property pursuant to Section 11 of this Declaration, and all improvements on the Property. Declarant intends to construct upon each Lot in the Development a "single family dwelling."

Section 1.9 Exclusive Use Common Area. "Exclusive Use Common Area" means those portions of the Common Area reserved for the exclusive use of one or more of the Owners pursuant to Section 2.5 of this Declaration.

Section 1.10 Governing Instruments. "Governing Instruments" means this Declaration, the Articles and Bylaws of the Association, and any Rules and Regulations of the Development.

Section 1.11 Lot. "Lot" means any plot of land or parcel in the Development that is not a part of the Common Area, as shown on any recorded Subdivision Map for the Development or any Supplemental Declaration recorded pursuant to Section 11 of this Declaration.

Section 1.12 Manager. "Manager" means any person or entity appointed by the Board to manage the Development.

Section 1.13 Member. "Member" means every person or entity entitled to membership in the Association as provided in this Declaration.

Section 1.14 Mortgage and First Mortgage. "Mortgage" means a mortgage or deed of trust encumbering a Lot or any other portion of the Development. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Lot or other portion of the Development.

Section 1.15 Mortgagee, Institutional Mortgagee, and First Mortgagee. "Mortgagee" means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Mortgagee" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Mortgagee" means a Mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Lot or other portion of the Development. The term "Beneficiary" shall be synonymous with the term "Mortgagee."

Section 1.16 Mortgagor. "Mortgagor" means a Person who mortgages his, her, or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Mortgagor."

Section 1.17 Owner. "Owner" means the record holder or holders of record fee title to a Lot, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation.

Section 1.18 Person. "Person" means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.19 Property. "Property" means the real property described in the Recitals.

Section 1.20 Rules and Regulations. "Rules and Regulations" means any Rules and Regulations for Tucson Homes Owners' Association regulating the use of the Common Area and adopted by the Association pursuant to Section 3.6(b) of this Declaration.

Section 1.21 Subdivision Map. "Subdivision Map" means the recorded map described in Exhibit "A" and any subdivision map recorded in connection with the annexation of additional real property to the Development pursuant to Section 11 of this Declaration.

Section 2 The Property.

Section 2.1 Property Subject to Declaration. All the Property in the Development shall be subject to this Declaration.

Section 2.2 Annexation of Additional Property. Additional property may be annexed to the Development, but only as provided in Section 11 of this Declaration.

Section 2.3 Title to Common Areas. Prior to the final closing of the first sale of a Lot in the Development, Declarant or its successors or assigns shall convey to the Association title and control of the Common Area, free of all liens and encumbrances, except current real property taxes and any reservations, easements, covenants, conditions, and restrictions of record, including those contained in this Declaration.

Section 2.4 Use and Enjoyment of Common Area. The following provisions govern the use and enjoyment of the Common Area:

(a) Subject to the provisions of this Declaration, there is an easement for ingress, egress, and support through the Common Area appurtenant to each Lot. These easements shall pass with title to the Lot.

(b) The Owners' easements over, and rights of use and enjoyment of, the Common Area shall be subject to the restrictions set forth in the Governing Instruments, including the following:

(1) The right of the Association to adopt and enforce Rules and Regulations for the use of the Common Area.

(2) The right of the Association to reasonably limit the number of guests and tenants using the Common Area.

(3) The right of the Association to assign or otherwise control the use of any unassigned parking spaces within the Common Area.

(4) The right of the Association to suspend the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any assessment.

(5) The right of the Association to cause the construction of additional improvements in the Common Area, or to cause the alteration or removal of existing improvements in the Common Area.

(6) The right of the Association to grant, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area.

(7) The right of each Owner to the exclusive use of any Exclusive Use Common Area appurtenant to the Owner's Lot.

(8) The rights of Declarant as described in this Declaration.

(9) The right of the Association to reasonably restrict access to maintenance facilities or areas, landscaped areas, and similar areas of the Development.

(10) The right of the Architectural Control Committee to approve any proposed alteration or modification to the Common Area or any Lot.

(c) Declarant hereby reserves easements for common driveway purposes, for drainage and encroachment purposes, and for ingress to and egress from the Common Area. These easements may be used to complete improvements on the Common Area and to perform necessary repair work and for entry onto adjacent property in connection with the development of additional phases of the overall Development. These easements shall remain in effect for seven (7) years from the date of closing of the first sale of a Lot in the Development.

(d) The Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, and each Owner, in accepting his or her deed to the Lot, expressly consents to these easements. However, no such easement can be granted if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot or any Exclusive Use Common Area appurtenant to the Lot.

(e) A Class A Owner who has sold his or her Lot to a contract purchaser or who has leased or rented the Lot shall be entitled to delegate his or her rights to use and enjoy the Common Area to any contract purchaser, tenant, or subtenant who resides in the Owner's Lot, subject to reasonable regulation by the Board. If the Owner makes such a delegation of rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective.

(f) Each Owner shall be liable to the Association for any damage to the Common Area or to Association owned property, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, tenants, or invitees. In the case of joint

ownership of a Lot, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

Section 2.5 Maintenance by Owners. Each Owner shall maintain his or her Lot and the improvements located on it in a clean, sanitary, and attractive condition. The Owner shall also, at his or her sole expense, maintain and keep in a reasonably good state of repair any Exclusive Use Common Area appurtenant to the Owner's Lot.

Section 2.6 Easements for Maintenance of Encroachments. None of the rights and obligations of the Owners described in this Declaration or created by deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as the encroachments exist. However, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurred due to the willful conduct of the Owner or Owners.

Section 2.7 Prohibition Against Severance of Elements of Lot. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's Membership interest in the Association, as provided in Section 3.2 of this Declaration. Any transfer that attempts to sever those component interests shall be void.

Section 3 Owners' Association.

Section 3.1 Organization of the Association. The Association is or shall be incorporated under the name of Tucson Homes Owners' Association, as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. From the closing of the escrow for the first sale of a Lot, the Association shall be charged with the duties and invested with the powers prescribed by law and set forth in this Declaration, the Articles of Incorporation, and the Bylaws.

Section 3.2 Membership. Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations set forth in the Governing Instruments. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot. All memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant membership to the transferee.

Section 3.3 Classes of Membership. The Association shall have two classes of voting membership, as follows:

- (a) All Owners, other than the Declarant, shall be Class A members. Class A membership entitles the holder to one (1) vote for each Lot owned. When a Lot is owned by more than

one person, only one vote may be cast for the Lot, as provided in Section 3.4(b) of this Declaration.

(b) The Declarant shall be the sole Class B member. The Class B member shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership upon the occurrence of whichever of the following is first in time:

(1) On a prescribed date to be established by the Board, which must not be later than the second (2nd) anniversary of the first conveyance of a Lot following the original issuance of the final subdivision public report for the most recent phase of the Development; or

(2) On a prescribed date to be established by the Board, which must not be later than the fourth (4th) anniversary of the first conveyance of a Lot following the issuance of the final public report for the first phase of the Development.

Section 3.4 Voting Rights. All voting rights of the Owners shall be subject to the following restrictions, limitations, and requirements:

(a) Except as provided in this Section 3, on each matter submitted to a vote of the Owners, each Owner shall be entitled to cast one vote for each Lot owned.

(b) Fractional votes shall not be allowed. When there is more than one record Owner of a Lot ("co-owners"), all of the co-owners shall be Members, but only one of them shall be entitled to cast the single vote attributable to the Lot. Co-owners should designate in writing one of their number to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Lot's vote is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Lot on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.

(c) Except as provided in Section 3.7(c) of this Declaration, governing the enforcement of certain bonded obligations, and Section 3.6 of the Bylaws, governing the removal of directors, as long as two classes of voting memberships exist, any provision of this Declaration, the Articles, or the Bylaws that requires the approval of a specified percentage of the voting power of the Association (rather than simply requiring the vote or written consent of a majority of a quorum) shall require the approval of the specified percentage of the voting power of each class of membership. Except as provided in Section 3.7(c) of this Declaration and Section 3.6 of the Bylaws, when the Class B membership has terminated, any provision of this Declaration, the Articles, or the Bylaws that requires the approval of a specified percentage of the voting power of the Association shall require the vote or written

consent of Owners representing the specified percentage of both the total voting power of the Association and the voting power of the Association residing in Owners other than Declarant.

(d) The Board shall fix, in advance, a record date or dates for the purpose of determining the Owners entitled to notice of and to vote at any meeting of Members. The record date for notice of a meeting shall not be more than 90 or less than 10 days before the date of the meeting. The record date for voting shall not be more than 60 days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix, in advance, a record date for the purpose of determining the Owners entitled to exercise any rights in connection with any other action. Any such date shall not be more than 60 days prior to the action.

(e) Every Owner entitled to vote at any election of the Directors may cumulate the Owner's votes and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which the Owner is entitled, or distribute the Owner's votes on the same principle among as many candidates as the Owner thinks fit. No Owner shall be entitled to cumulate votes for a candidate or candidates unless the candidate's name or candidates' names have been placed in nomination prior to voting and an Owner has given notice at the meeting prior to the voting of the Owner's intention to cumulate votes. If any one Owner has given this notice, all Owners may cumulate their votes for candidates in nomination.

Section 3.5 Membership Meetings.

(a) Place of Meetings. All meetings of the Members shall be held at a place designated by the Board. This meeting place shall be within the Development or as close to it as possible. If no meeting place is designated, the meetings shall be held at the principal office of the Association. No meeting of the Members shall, unless unusual conditions exist, be held outside of Riverside County, California.

(b) Annual Meetings. The first meeting of the Members of the Association shall be held within six (6) months after the closing of the sale of the first Lot within the Development. Thereafter, the annual meeting of the Members shall be held on the second Saturday of May of each succeeding calendar year at the hour of 2:00 P.M. If the day for the annual meeting of the Members is a legal holiday, the meeting shall be held at the same hour on the next day that is not a Saturday, Sunday, or legal holiday.

(c) Special Meetings. Special meetings of the Members may be called for any lawful purpose by a majority of a quorum of the Board, the President of the Association, or by a written request signed by Members representing at least five percent (5%) of the total voting power of the Association. The special meeting shall be held not less than thirty-five (35) nor

more than ninety (90) days after adoption of the resolution or receipt of the request. Only that business stated in the notice of meeting given pursuant to Section 3.5(d) of this Declaration shall be transacted at the special meeting.

(d) Notice of Meetings. The Secretary of the Association shall give written notice of any Members' meeting to each Member of record. Except as provided below, the notice shall be given at least ten (10) but not more than ninety (90) days before the meeting, by first class mail or by personal delivery. If a special meeting is called by Members pursuant to Section 3.5 (c) of this Declaration, the notice shall be given within twenty (20) days after receipt of the request for the meeting. If that twenty (20) day requirement is not satisfied, the Members who called the meeting may give the notice. Any notice of meeting shall be addressed to the Member at the address appearing on the books of the Association, or the address supplied by the Member to the Association for this purpose. If there is no such address, notice shall be given at the principal office of the Association or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. The notice shall state the place, date, and time of the meeting. The notice shall also specify those matters the Board intends to present for action by the Members. In the case of a special meeting, the only matters that may be voted on are those matters that were mentioned in the notice of meeting. In the case of an annual meeting, any proper matter may be presented at the meeting for action. If Directors are to be elected at the meeting, the notice shall include the names of all those who are nominees at the time the notice is given.

(e) Waiver of Notice or Consent of Absentees. The transactions of any meeting of Members, however called and noticed, shall be as valid as though taken at a duly called, noticed, and held meeting, if: (1) a quorum is present either in person or by proxy; and (2) either before or after the meeting, each of the Members not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the Minutes of the meeting. Any such waiver, consent, or approval shall be filed with the corporate records or made a part of the Minutes of the Meeting.

(f) Record Date of Membership. The Board shall fix, in advance, a record date or dates for the purpose of determining the Members entitled to notice of and to vote at any meeting of Members. The record date for notice of a meeting shall not be more than ninety (90) nor less than ten (10) days before the date of the meeting. The record date for voting shall not be more than sixty (60) days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix, in advance, a record date for the purpose of determining the Members entitled to exercise any rights in connection with any other action. Any such date shall not be more than sixty (60) days prior to the action.

(g) Quorum. At any meeting, the presence either in person or by proxy of Members entitled to cast at least fifty-one percent (51%) of the total voting power of the Association shall constitute a quorum for any action except as otherwise provided in the Articles, Bylaws, or

this Declaration. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if the action taken, other than adjournment, is approved by at least a majority of members required to constitute a quorum. If a quorum is not present at any time at a duly called meeting, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the meeting date, but no other business may be transacted. An adjourned meeting may be held without written notice, provided that notice is given by announcement at the original meeting. If no such announcement is made, or if the selected date is changed after adjournment, notice of the time and place shall be given to Members in the manner provided in Section 3.5(d) of this Declaration.

(h) Parliamentary Procedure. All meetings of the Members shall be conducted in accordance with: (1) a recognized system of parliamentary procedure, or (2) any parliamentary procedures adopted by the Association.

(i) Proxies. At any meeting of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of the Member. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise specifically provided in the proxy. The maximum term of any proxy shall be three (3) years from the date of its execution.

(j) Action Taken Without a Meeting. Any action that may be taken at a meeting of the Members, except for the election of Directors, may be taken without a meeting provided the following ballot requirements are satisfied:

(1) The Corporation shall distribute a written ballot to every member entitled to vote on the matter. The ballot shall be solicited in the same manner as provided in Section 3.5(d) of this Declaration for the giving of notice of meetings of Members. If the Association has one hundred (100) or more Members and the ballots are distributed to ten (10) or more Members, the ballot shall comply with the additional requirements set forth in Section 7514 of the California Corporations Code.

(2) The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, provide a reasonable time within which to return the ballot, indicate the number of responses needed to meet the quorum requirement, and state the percentage of approvals necessary to pass the measure submitted.

(3) The proposed action shall be considered approved if:

(i) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(ii) The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) No written ballot shall be revoked.

(k) Approval by Members Required by Statute. Any approval by the Members of the following proposals, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the approved proposal was stated in the notice of meeting or any waiver of notice of meeting:

(1) Removing a director without cause pursuant to Section 7222 of the California Corporations Code;

(2) Filling vacancies on the Board pursuant to Section 7224 of the California Corporations Code;

(3) Entering into or approving a contract or transaction between the Association and one or more of the Directors, or between the Association and any entity in which one or more of the Directors has a material financial interest, pursuant to Section 7233 of the California Corporations Code;

(4) Amending the Articles pursuant to Section 7812 of the California Corporations Code;

(5) Electing to dissolve the Association pursuant to Section 8610 of the California Corporations Code; or

(6) Approving a plan of distribution in connection with the dissolution of the Association pursuant to Section 8719 of the California Corporations Code.

Section 3.6 General Powers and Authority. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in this Declaration or in the Articles and Bylaws of the Association. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other Governing Instruments. Its powers shall include, but are not limited to, the following:

(a) The Association shall have the power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set out in Section 4 of this Declaration.

(b) The Association shall have the power to adopt reasonable Rules and Regulations governing the use of the Common Area and its facilities, and of any other Association property. These Rules and Regulations may include, but are not limited to reasonable restrictions on use by the Owners and their family, guests, employees, tenants, and invitees; rules of conduct; and the setting of reasonable fees for the use of recreational facilities. A copy of the current Rules and Regulations, if any, shall be given to each Owner and shall be posted at conspicuous places in the Common Area. If any provision of the Rules and Regulations conflicts with any provision of this Declaration, the Articles, or the Bylaws, the Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

(c) The Association shall have the right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to the following:

- (1) Enforcement of this Declaration, the Articles, Bylaws, and Rules and Regulations.
- (2) Damage to the Common Area.
- (3) Damage to the Lots that the Association is obligated to maintain or repair.
- (4) Damage to the Lots that arises out of, or is integrally related to damage to the Common Area or Lots that the Association is obligated to maintain or repair.

The Association shall enforce payment of assessments in accordance with the provisions of Section 4 of this Declaration.

(d) In addition to the general power of enforcement described above, the Association may discipline its Owners for violation of any of the provisions of the Governing Instruments or Rules and Regulations by suspending the violator's voting rights and privileges for use of the Common Area, or by imposing monetary penalties, subject to the following limitations:

- (1) The accused Owner shall be given notice and an opportunity to be heard with regard to the alleged violation in accordance with the provisions of Corporations Code Section 7341 and Civil Code Section 1363(b).
- (2) Any suspension of an Owner's association privileges shall not exceed sixty (60) days for each violation.

(3) If the Association imposes a monetary penalty, the Board shall distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations.

(4) Except as provided in Section 4 of this Declaration, relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Lot.

(e) The Association, acting through the Board, shall have the power to delegate its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a professional management agent. The Association shall not enter into a management agreement with a manager unless the manager first provides the Board, as soon as practicable during the 90-day period preceding the execution of the agreement, with the written disclosure statement required by Civil Code Section 1363.1. This disclosure requirement shall not apply if the manager will be a full-time employee of the Association or is a regulated financial institution that will be operating within the normal course of its regulated business practice. The term of any agreement with a manager or the Declarant for the furnishing of maintenance, repair, and related services shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Such an agreement shall be terminable by either party: (1) for cause on 30 days written notice; and (2) without cause or the payment of a termination fee on 90 days written notice.

(f) The Association's agents or employees shall have the right to enter any Lot when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable, and the Association shall repair any resulting damage at its own expense.

Section 3.7 Duties of the Association. In addition to the duties delegated to the Association or its agents and employees elsewhere in these Governing Instruments, the Association shall be responsible for the following:

(a) The Association, acting through the Board, shall operate, maintain, repair, and replace the Common Area and its improvements or contract for the performance of that work, subject to the provisions of Section 8 of this Declaration relating to destruction of improvements, Section 9 of this Declaration pertaining to eminent domain and Section 2.4(f) of this Declaration relating to damage caused by Owners. The foregoing areas and improvements shall be kept in a clean, sanitary, and attractive condition. The Association shall not be responsible for maintaining Exclusive Use Common Areas. The Association shall also have the exclusive right and duty to acquire and maintain any equipment for the Common Area that it determines are necessary and proper. As a general rule, maintenance

costs shall be included in the regular assessments. However, if additional work is required for a particular Lot, the expenses of that additional work shall be charged solely to the Owner of the Lot in the month in which the work is performed. If the Owner does not pay for the additional work within thirty (30) calendar days after receiving the bill, the Association shall institute appropriate collection actions and shall recover the reasonable costs of collection, including attorneys' fees and interest from the due date until paid at the rate of ten percent per annum.

(b) The Association shall use the maintenance fund described in Section 4.1 of this Declaration to, among other things, acquire and pay for the following:

- (1) Water, sewer, garbage, electrical and other necessary utility service for the Common Area;
- (2) The insurance policies described in Section 7 of this Declaration;
- (3) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area; and
- (4) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration.

(c) If the Association is obligee under a bond or other arrangement to secure the performance of Declarant as to any Common Area improvements that were not completed prior to the issuance of the final public report on the Development, the following procedures shall govern the initiation of action to enforce the bond:

(1) The Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for the improvement in the Planned Construction Statement appended to the bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the above question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

(2) If the Board votes not to initiate action to enforce the obligations under the bond, or if it fails to consider and vote on the matter as required, a special meeting of the Owners of the Association shall be called for the purpose of overriding the Board's decision or for taking action on the matter, upon receipt of a petition calling for such a meeting signed by Owners representing at least 5 percent of the total voting power of the Association. The meeting shall be held not less than 35 days or more than 45

days after receipt of the petition by the Board. At the special meeting, only the Owners other than Declarant shall be allowed to vote on the matter. A vote by a majority of the voting power of the Association residing in Owners other than Declarant to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

(d) The Association shall prepare a pro forma operating budget for each fiscal year, and shall distribute a copy of the budget to each Owner not less than 45 and not more than 60 days before the beginning of the fiscal year. As an alternative to the foregoing distribution of the budget, the Association may elect to do all of the following in the manner required by statute: distribute a summary of the budget to each Owner, make the budget available for inspection at a designated location, and provide copies of the budget to Owners on request and at the expense of the Association.

The budget shall contain at least the following:

(1) The estimated revenue and expenses on an accrual basis;

(2) A summary (printed in bold type) of the Association's reserves that is based on the most recent review or study conducted pursuant to Civil Code Section 1365.5. This summary shall include the following: (i) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component that the Association is obligated to maintain (hereafter referred to as the "major components"); (ii) the current estimate, as of the end of the fiscal year for which the study is prepared, of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components; (iii) the current amount, as of the end of the fiscal year for which the study is prepared, of accumulated cash reserves actually set aside to repair, replace, restore, or maintain the major components; and (iv) the percentage that the amount described in (iii), above, is of the amount determined for purposes of (ii), above (that is, the percentage obtained by dividing the amount described in (iii), above, by the amount described in (ii), above).

(3) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves for such work.

(4) A general statement addressing the procedures used for the calculation and establishment of reserves to defray the future repair, replacement, or additions to the major components.

(e) Within 120 days after the close of each fiscal year, the Association shall prepare and

distribute to the Owners an annual report consisting of the following:

- (1) A balance sheet as of the end of the fiscal year.
- (2) An operating (income) statement for the fiscal year.
- (3) A statement of changes in financial position for the fiscal year.
- (4) For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared without independent audit or review from the books and records of the Association.

(f) Within 60 days before the beginning of each fiscal year, the Association shall prepare and distribute to the Owners a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments against Owners.

(g) The Association shall prepare a balance sheet, as of an accounting date that is the last day of the month closest in time to six months from the date of closing of the first sale of a Lot in the Development, and an operating statement for the period from the date of the first closing to the foregoing accounting date. The Association shall distribute this statement to the Owners within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the Lot and the name of the Owner assessed.

(h) Each year, the Association must provide the Owners with a summary of the provisions of Civil Code Section 1354. Section 1354 requires that alternative dispute resolution be pursued before a civil action may be filed in connection with certain disputes relating to the enforcement of the Governing Instruments. The summary must include the following: a specific reference to Section 1354; and the statutory language set forth in Subsection (i) of Section 1354. This summary must be provided either: (1) at the time the pro forma operating budget described in Section 3.7(d) of this Declaration is distributed; or (2) in the manner specified in Corporations Code Section 5016.

(i) The Association shall provide any Owner with the following documents within 10 days of the mailing or delivery of a written request therefor:

- (1) A copy of the Governing Instruments.

(2) A copy of the most recent financial statement distributed pursuant to Section 3.7(d) of this Declaration.

(3) A written statement from an authorized representative of the Association specifying: (i) the amount of any assessments levied on the Owner's Lot that are unpaid on the date of the statement; and (ii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Lot pursuant to Section 4.9 of this Declaration. The Association may charge the Owner a reasonable fee to cover its cost to prepare and reproduce those requested items.

(j) The Association shall pay all real and personal property taxes and assessments levied against it, its personal property, the Common Area, and Exclusive Use Common Areas.

Section 3.8 Board of Directors. The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Section 3 of the Bylaws, which is hereby incorporated by reference.

Section 3.9 Inspection of Books and Records. Section 11 of the Bylaws, governing the duty of the Association to maintain certain books and records and the rights of Owners and Directors to obtain and inspect those books and records, is hereby incorporated by reference.

Section 4. Assessments and Collection Procedures.

Section 4.1 Covenant to Pay. The Declarant covenants and agrees, for each Lot owned by it in the Development, and each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agree, to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Section, shall be a debt of the Owner of the Lot at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Lot.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners, for the operation, replacement, improvement, and maintenance of the Property, and to discharge any other obligations of the Association under this Declaration. All assessment payments shall be put into a maintenance fund to be used for the foregoing purposes.

Section 4.3 Assessment Period. The fiscal year for the Association shall be a calendar year. The regular assessment period shall commence on January 1 and terminate on December 31 of each year; provided, however, that the first regular assessment period for all Lots in a phase of

development shall commence on the first day of the month following the conveyance of a Lot in the phase and shall terminate on December 31 of that year.

Section 4.4 Regular Assessments. Within 60 days prior to the beginning of each fiscal year of the Association, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements, with adjustments made for any expected income and surplus from the prior year's fund. The estimated cash requirement shall be assessed to each Owner according to the ratio of the number of Lots owned by the Owner assessed to the total number of Lots in the Development subject to assessment. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment. Declarant shall pay its full share of the regular assessments on any unsold Lots in the first phase of the Development and on any unsold Lots in any phases annexed into the Development pursuant to Section 11 of this Declaration.

Section 4.5 Special Assessments. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed. Special assessments shall be levied and collected in the same manner as regular assessments.

Section 4.6 Limitations on Assessments. The Board shall comply with the following requirements governing the imposition and amounts of assessments:

(a) For any fiscal year, the Board may impose a regular assessment per Lot that is as much as 20 percent greater than the regular assessment for the preceding fiscal year; provided: (1) the Board has distributed the pro forma operating budget described in Section 3.7(d) for the current fiscal year; or (2) the increase is approved by Owners constituting a majority of the votes at a meeting or in an election of the Association conducted in accordance with Corporations Code Sections 7510-7527 and 7613.

(b) The Board may impose, for any fiscal year, a regular assessment per Lot that is more than 20 percent greater than the regular assessment for the preceding fiscal year, or may levy special assessments that in the aggregate exceed five percent of the budgeted gross expenses of the Association for that fiscal year, provided the increase or levy is approved by Owners constituting a majority of the Owners of the Association and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code Sections 7510-7527 and 7613.

(c) The Board may, without complying with the foregoing requirements, make an assessment increase that is necessary for an emergency situation. An emergency situation is an extraordinary expense that is:

(1) Required by a court order.

(2) Necessary to repair or maintain the Development or any part of it for which the Association is responsible when a threat to personal safety in the Development is discovered.

(3) Necessary to repair or maintain the 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 pursuant to Section 3.7(d).

(4) Incurred in making the first payment of the earthquake insurance surcharge pursuant to Insurance Code Section 5003.

Before the Board may impose or collect an assessment in the type of emergency situation described in (3), above, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

(d) The Board shall notify the Owners in writing of any increase in the amount of a regular or special assessment. The Board shall provide this notice by first-class mail not less than 30 or more than 60 days prior to the due date of the increased assessment.

Section 4.7 Late Charges. Late charges may be levied by the Association against an Owner for the delinquent payment of regular or special assessments. An assessment is delinquent 15 days after its due date. If an assessment is delinquent, the Association may recover all of the following from the Owner:

(a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees.

(b) A late charge not exceeding ten percent of the delinquent assessment or \$10, whichever is greater.

(c) Interest on the foregoing sums, at an annual percentage rate of ten percent commencing 30 days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments.

Section 4.8 Enforcement of Assessments and Late Charges. A delinquent regular or special assessment and any related late charges, reasonable costs of collection, and interest assessed in accordance with Section 4.8 of this Declaration, shall become a lien upon the Lot when a notice of delinquent assessment is duly recorded as provided in Section 1367 of the California Civil Code. Any such lien may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted pursuant to Section 2934a of the California Civil Code, in accordance with the provisions of Sections 2924, 2924b, and 2924c of the California Civil Code.

If the sums specified in the notice of delinquent assessment are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall record a notice of satisfaction and release of the lien. Upon receipt of a written request by the Owner, the Association shall also record a notice of rescission of any declaration of default and demand for sale.

Section 4.9 Statement Regarding Assessments. The Association shall provide any Owner, upon written request, with a statement specifying: (1) the amounts of the Association's current regular and special assessments and fees; and (2) the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Lot, as provided in Section 4.8 of this Declaration.

Section 5. Use Restrictions and Covenants.

Section 5.1 General Restrictions on Use. In exercising the right to occupy or use a Lot or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not do any of the following:

- (a) Attempt to further subdivide a Lot without obtaining the prior approval of the Association.
- (b) Occupy or use a Lot, or permit all or any part of a Lot to be occupied or used, for any purpose other than as a private residence. Nothing in this Declaration shall prevent an Owner from leasing or renting out his or her Lot, provided that it is not for transient or hotel purposes, is for a period of at least 60 days, and is subject to the Governing Instruments.
- (c) Permit anything to obstruct the Common Area or store anything in the Common Area without the prior consent of the Board, except as otherwise provided in the Governing Instruments.
- (d) Perform any act or keep anything on or in any Lot or Exclusive Use Common Area or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or

kept in his or her Lot, in any Exclusive Use Common Area appurtenant to the Lot, or in the Common Area that would result in the cancellation of insurance on any Lot or Exclusive Use Common Area or on any part of the Common Area or that would violate any law.

(e) Store gasoline, kerosene, cleaning solvents, or other flammable liquids in the Common Area or on any Lot; provided, however, that reasonable amounts of these liquids may be placed in metal containers and stored normally.

(f) Display any sign to the public view on or from any Lot or the Common Area without the prior written consent of the Board, except a sign advertising the property for sale, lease, or exchange, or advertising directions to the property, as provided in Section 712 of the California Civil Code.

(g) Raise, breed, or keep animals, livestock, or poultry of any kind on a Lot or in the Common Area, except dogs, cats, or other household pets, which may be kept on Lots, subject to the Rules and Regulations.

(h) Engage in any noxious or offensive activity in any part of the Development.

(i) Alter or modify the exterior of any improvements located on a Lot without first obtaining the written consent of the Architectural Control Committee.

(j) Alter, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.

(k) Park any automobile, recreational vehicle ("RV") or other motor vehicle in the Common Area or in any Exclusive Use Common Area.

(l) Park any automobile, RV or other motor vehicle overnight such that the automobile or other motor vehicle would be visible from any portion of the Common Area or Exclusive Use Common Area.

Section 5.2 Damage Liability. Each Owner shall be liable to the Association for all damage to the Common Area or other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or his or her family, guests, employees, tenants, and invitees.

Section 5.3 Exemption. Declarant shall be exempt from the restrictions of Section 5.1 to the extent necessary to complete any construction work, sales activities, or additions to or affecting the Development. This exemption includes, but is not limited to, maintaining Lots as model homes, placing advertising signs on Development property, and generally using Lots and the Common Area to carry on construction activity.

Section 5.4 Equitable Servitudes. The covenants and restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both or set forth alternative enforcement provision

Section 6. Architectural and Design Control.

Section 6.1 Architectural and Design Approval. No building, addition, wall, fence, or alteration shall be begun, constructed, maintained, or permitted to remain on any Lot, or on the Common Area, until complete plans and specifications of the proposed work have been submitted to and approved by the Architectural Control Committee. The Committee shall review the plans and specifications to determine whether they are compatible with the standards of design, construction, and quality of the Development and, if they are not, shall require that changes be made before approval.

Section 6.2 Architectural Control Committee. The Architectural Control Committee shall consist of five (5) members, formed as follows:

(a) The Declarant shall appoint all of the original members and all replacements until the first anniversary of the issuance of the original final public report for the first phase of the Development. Further, Declarant reserves the power to appoint a majority of the Committee until ninety percent of all Lots have been sold or until the seventh anniversary date of the original issuance of the final public report for the first phase of the Development, whichever occurs first. After one year from the date of the issuance of the final public report for the first phase of the Development, the Board shall have the right to appoint one member to the Committee, until 90 percent of the Lots have been sold or until the seventh anniversary date of the original issuance of the final public report for the first phase of the Development, whichever occurs first. Thereafter, the Board shall have the right to appoint all of the members of the Committee.

(b) Members appointed to the Committee by the Board shall be Members of the Association. Members appointed to the Committee by the Declarant need not be Members of the Association.

(c) The term of the initial appointees shall be one year. Thereafter, members shall serve two year terms unless it becomes necessary to remove members appointed by Declarant in order to comply with Section 6.2(a), in which case the terms of all members shall end at that time, and the Board shall appoint a new Committee. Notwithstanding the foregoing, all members of the Committee shall serve at the will of the party that appointed them, and may be removed by that party at any time with or without cause.

(d) The Committee shall meet as often as it deems necessary to carry out the obligations imposed on it properly, unless otherwise directed by the Board.

Section 6.3 The Board of Directors. All decisions of the Architectural Control Committee are subject to review by the Board of Directors and may be appealed to the Board. The Committee shall notify the Board of all violations of this Section and of any noncompliance with its rulings or with the plans and specifications submitted to and approved by it. Thereafter, the Board shall take any actions it deems necessary, in accordance with the provisions of this Declaration.

Section 6.4 Minimum Standards. All dwellings constructed in the Development shall contain a minimum of 1700 square feet of living area (exclusive of the garage area) and shall not exceed 18 feet in height as measured from the centerline of the street upon which the dwelling is located.

Section 7. Insurance.

Section 7.1 Fire and Casualty Insurance. The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Area. The amount of coverage shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Declaration.

Section 7.2 General Liability and Individual Liability Insurance. The Association shall obtain and maintain one or more policies of insurance that must include coverage for: (1) general liability of the Association; and (2) individual liability of Officers and Directors of the Association for negligent acts or omissions in that capacity. Both of the above types of coverage shall not be less than \$1,000,000 covering all claims for death, personal injury, and property damage arising out of a single occurrence. The limits and coverage shall be reviewed at least annually by the Board and increased in its discretion.

Section 7.3 Other Association Insurance. The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also shall purchase and maintain fidelity bond coverage that names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. This coverage shall be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager at any given time during the term of each bond. However, the aggregate amount of these bonds must not be less than 150 percent of each year's estimated annual operating expenses and reserves.

Section 7.4 Trustee for Policies. The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for any of the purposes specified in Section 8 of this Declaration. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

Section 7.5 Individual Insurance. Each Owner shall provide fire and casualty insurance for the improvements on his or her Lot. An Owner may separately insure his or her personal property, and may obtain and maintain personal liability and property damage liability insurance for his or her Lot, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, Declarant, and the institutional First Mortgagees of the Owner's Lot.

Section 7.6 Insurance Premiums. Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular assessments. That portion of the regular assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

Section 8. Damage or Destruction.

Section 8.1 Duty to Restore and Replace. If any of the improvements in the Common Area are destroyed or damaged, the Association shall restore and replace the improvements, using the proceeds of insurance maintained pursuant to Section 7 of this Declaration, subject to the provisions of this Section 8.

Section 8.2 Proceeds Justifying Automatic Restoration and Repair. If the proceeds of any insurance maintained pursuant to Section 7 of this Declaration for reconstruction or repair of the Property are equal to at least eighty-five percent of the estimated cost of restoration and repair, the Board shall use the insurance proceeds for that purpose, shall levy a special assessment to provide the necessary additional funds, and shall have the improvements promptly rebuilt, unless the Owners by the vote or written consent of not less than seventy-five percent of the total voting power of each class of Owners object to the restoration or repair work within 60 days of the damage or destruction.

Section 8.3 Approval by Owners of Special Assessment for Certain Restorations and Repairs. If the proceeds of any insurance maintained pursuant to Section 7 of this Declaration for reconstruction or repair of the Property are less than eighty-five percent of the estimated cost of restoration and repair, any restoration and repair work must be authorized by the vote or written consent of Owners representing more than fifty percent of the total voting power of each class of Owners and beneficiaries of more than fifty percent of the First Mortgages on Lots in the Development. This authorization must be given within 60 days of the damage or destruction and

must authorize the Board to levy a special assessment to provide the necessary funds over and above the amount of any insurance proceeds available for the work.

Section 8.4 Ordering Reconstruction or Repair. If reconstruction or repair work is to take place pursuant to this Section, the Board shall take the following steps:

(a) Prepare the necessary documents, including an executed and acknowledged certificate stating that damage has occurred, describing it, identifying the improvement suffering the damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, stating (if applicable) that the consent described in Section 8.3 has been obtained, and reciting that the certificate is recorded pursuant to this Section. That declaration shall be recorded with the Recorder of Riverside County within 90 days from the date of the damage or destruction.

(b) Obtain firm bids from two or more responsible contractors to rebuild the damaged Common Area in accordance with its original plans and specifications and, as soon as possible thereafter, call a special meeting of the voting Owners to consider the bids. If the Board fails to do so within 60 days after the casualty occurs, any Owner may obtain the bids and call and conduct the special meeting in the manner required by this paragraph. At the meeting, Owners representing more than seventy-five percent of the total voting power may elect to reject all of the bids and not rebuild. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable. Failure to call the special meeting or to repair the casualty damage within 12 months from the date the damage occurred shall be deemed for all purposes to be a decision not to rebuild.

(c) If a bid is accepted, the Board shall let the contract to the successful bidder and distribute the insurance proceeds to the contractor as required by the contract.

(d) Levy a special assessment to make up any deficiency between the total insurance proceeds and the contract price for the repair or rebuilding, with the assessment and all insurance proceeds, whether or not subject to liens of mortgagees, to be used solely for the rebuilding. This assessment shall be apportioned equally to each Lot for any damage or destruction to the Common Area. If any Owner fails to pay the special assessment within 15 days after it is levied, the Board shall enforce the assessment in the manner described in Section 4.9 of this Declaration.

Section 8.5 Election Not to Rebuild. Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for the Owners, shall execute and record a certificate stating that the Association shall not rebuild. The Board shall also transfer to the Owners fee simple title to the Common Area as tenants-in-common. All insurance proceeds available for restoration or repair shall be distributed to the Owners equally.

Section 8.6 Minor Restoration and Repair Work. The Association shall order restoration or repair work without complying with the other provisions of this Section whenever the estimated cost of the work does not exceed the number of the Lots in the Development times \$1,000.00. If insurance proceeds are unavailable or insufficient, the Association shall levy a special assessment for the cost of the work. The Assessment shall be levied in the manner described in Section 4.5 of this Declaration.

Section 9. Eminent Domain.

Section 9.1 Sale to Condemning Authority. If a governmental agency proposes to condemn all or a portion of the Common Area, the Association may sell all or any portion of the Common Area to the condemning authority if fifty percent of the Owners and fifty percent of all institutional First Mortgagees approve the sale in advance. Any such sale shall be made by the Association in the capacity of attorney-in-fact for the Owners, acting under an irrevocable power of attorney which each Owner grants to the Association by accepting a deed to a Lot. The sales price shall be any amount deemed reasonable by the Board.

Section 9.2 Distribution of Sales Proceeds. The proceeds of a sale conducted pursuant to Section 9.1 shall be distributed equally to the Owners and their Mortgagees, as their interests may appear.

Section 9.3 Taking and Condemnation Awards. If there is a taking by a governmental agency of all or any portion of the Common Areas, the condemnation award shall be distributed to all Owners and their respective Mortgagees in accordance with the court judgment, if any such judgment exists. In all other cases, the proceeds shall be distributed among the Owners and their respective Mortgagees as their interests may appear.

Section 10. Rights of Mortgagees.

Section 10.1 Warranty. Declarant hereby warrants that Mortgagees of Lots in the Development shall be entitled to the rights and guaranties set forth in this Section. No amendment of this Section shall affect the rights of the holder of any First Mortgage recorded prior to the recordation of the amendment who does not join in the execution of the amendment.

Section 10.2 Subordination. Notwithstanding any other provision of this Declaration, liens created under Section 4.9 of this Declaration upon any Lot shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded First Mortgage upon such an interest made in good faith and for value, provided that any transfer of a Lot as the result of a foreclosure or exercise of a power of sale shall not relieve the new Owner from liability for assessments that become due after the transfer. Such a transfer shall extinguish the lien of assessments that were due and payable prior to the transfer of the Lot.

Section 10.3 Notice of Default. A First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by the Mortgagor of any obligation under the Association's Governing Instruments that is not cured within 60 days.

Section 10.4 Unpaid Assessments. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for the Lot's unpaid assessments that accrue prior to the acquisition of title to the Lot by the Mortgagee.

Section 10.5 Mortgagee Approval of Material Amendments. Notwithstanding Section 12 of this Declaration, any amendments governing any of the following shall require the prior written approval of at least 51 percent of the First Mortgagees and at least 67 percent of the total voting power of the Owners:

- (a) Voting;
- (b) Rights to use the Common Area;
- (c) Reserves and responsibility for maintenance, repair, and replacement of the Common Area;
- (d) Boundaries of any Lot;
- (e) Owners' interests in the Common Area;
- (f) Convertibility of Lots into Common Area or Common Area into Lots;
- (g) Leasing of Lots;
- (h) Establishment of self-management by the Association, when professional management has been previously required by any First Mortgagee or any insurer or governmental guarantor of a First Mortgage;
- (i) Annexation, addition, or withdrawal of real property to or from the Development;
- (j) Assessments, assessment liens, or the subordination of these liens;
- (k) Casualty and liability insurance or fidelity bonds; or
- (l) Any provisions expressly benefitting First Mortgagees or insurers or governmental guarantors of First Mortgages.

Notwithstanding the foregoing, any First Mortgagee who receives a written request from the Board to approve a proposed amendment or amendments requiring consent under this Section who does not deliver a negative response to the Board within 30 days of the receipt of the request shall be deemed to have approved the proposed amendment or amendments.

Section 10.6 Mortgagee Approval of Other Actions. Unless at least 67 percent of the First Mortgagees (based upon one vote for each First Mortgage owned), or 67 percent of the Lot Owners other than Declarant, have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate the Development;
- (b) Change the pro rata interest or obligations of any individual Lot for either of the following purposes, unless the change is due to an annexation pursuant to Section 11 of this Declaration:
 - (1) Levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards; or
 - (2) Determining the pro rata share of ownership of each Lot in the Common Area and the improvements thereon.
- (c) Partition or subdivide any Lot;
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area unless due to an annexation pursuant to Section 11 of this Declaration (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause);
- (e) Use hazard insurance proceeds for losses to any Development property (whether to Lots or to the Common Area) for other than the repair, replacement, or reconstruction of that property, except as provided by statute in case of substantial loss to the Lots and/or Common Area of the Development.

Section 10.7 Liens. All taxes, assessments, and charges that may become liens prior to the First Mortgage under local law, shall relate only to the individual Lots and not to the Development as a whole.

Section 10.8 Priority. No provision of the Governing Instruments gives any Owner, or any other party, priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the

case of a distribution to the Lot Owner of insurance proceeds or condemnation awards for losses to, or a taking of, all or a portion of a Lot or Lots and/or the Common Area.

Section 10.9 Reserve Fund. Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. The reserve fund shall be funded by the regular assessments rather than by special assessments.

Section 10.10 Management. Any agreement for professional management of the Development shall not exceed three years and shall provide that either party may terminate the agreement, with or without cause and without the imposition of a termination fee, on 90 days written notice. The approval of holders of at least 75 percent of First Mortgages shall be obtained before the Association terminates a professional management agreement.

Section 10.11 Right to Inspect Books and Records. Institutional First Mortgagees, upon written request, shall have the right to: (1) examine the books and records of the Association during normal business hours; and (2) require the submission of any financial data furnished to the Owners by the Association.

Section 10.12 Payments by Mortgagees. First Mortgagees may, jointly or severally, pay taxes or other charges that are in default and that may or have become a charge against the Common Area, and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy, for the Common Area, and First Mortgagees making these payments shall be entitled to immediate reimbursement from the Association.

Section 10.13 Right to Furnish Mortgage Information. Each Owner hereby authorizes the First Mortgagee of a First Mortgage on the Owner's Lot to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

Section 11. Annexation of Additional Property.

Section 11.1 Additions by Declarant. Declarant shall have the right to add all or any portion of the real property described in Exhibit "B" to the Development, pursuant to a plan of phased development submitted to the California Real Estate Commissioner along with the application for the public report for the first phase of the Development, at any time before the third (3rd) anniversary of the original issuance of the most recently issued final subdivision public report for the most recent phase of the Development. This election shall be made by the recordation of a supplemental declaration ("Supplemental Declaration"). The Supplemental Declaration shall describe the real property to be annexed, and shall state that the property described in it is being annexed to the Development pursuant to Section 11 of this Declaration. The Supplemental Declaration may also set forth any additional covenants, conditions, restrictions, reservations, and easements that Declarant deems appropriate for that phase of development.

Section 11.2 Other Additions. In addition to real property annexed by the Declarant, real property may be annexed to the Development and brought within the general plan and scheme of this Declaration by the approval by vote or written consent of at least 67 percent of the total voting power of the Association; provided, however, that no such annexation may take place after the seventh anniversary of the recordation of this Declaration.

Section 11.3 Rights and Obligations of Owners of Annexed Property. Upon the recordation of the Supplemental Declaration, the real property described in it shall be part of the Development and subject to the provisions of this Declaration in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers, and responsibilities of Owners of Lots within the annexed property shall be the same as if the annexed property were originally covered by this Declaration; provided, however, that their voting rights shall not commence until the date of commencement of the regular assessments for their Lots. The commencement of assessments on the annexed real property shall be governed by Section 4.7 of this Declaration.

Section 11.4 Reciprocal Easements. Declarant hereby reserves, for the benefit of and appurtenant to the Lots located in any phase of development annexed to the first phase of this Development and their respective Owners, reciprocal easements to use the Common Area (other than any buildings or Exclusive Use Common Areas) in the first phase pursuant to and in the manner set forth in this Declaration. Declarant hereby grants, for the benefit of and appurtenant to the Lots in the first phase of this Development and their Owners, a nonexclusive easement to use the Common Area (other than any buildings or Exclusive Use Common Areas) in each phase of development annexed to the first phase, pursuant to and in the manner set forth in this Declaration. These reciprocal easements shall be effective as to any annexed real property upon the first close of escrow for the sale of a Lot in the annexed property.

Section 12. Amendments.

Section 12.1 Amendment or Revocation Before Close of First Sale. At any time before the close of the first sale of a Lot to a purchaser other than Declarant, Declarant and any Mortgagee of record may, by executing an appropriate instrument, amend or revoke this Declaration. Further, before the close of the first sale of a Lot in any subsequent phase of the Project to a purchaser other than Declarant, the Declarant and any Mortgagee of record may, by following the above procedure, amend or revoke any Supplemental Declaration recorded pursuant to Section 11 of this Declaration for that subsequent phase. The executed instrument shall be acknowledged and recorded in the Office of the Recorder of Riverside County.

Section 12.2 Amendments by Owners After Close of First Sale. At any time after the close of the first sale of a Lot to a purchaser other than Declarant, this Declaration may be amended by the vote or written consent of Owners representing not less than fifty-one percent of the voting power of each class of Owners of the Association. If only one class of membership exists at the time an amendment is proposed, then it must be approved by not less than 51 percent of the voting

power of the Association, which shall include at least a majority of the votes residing in Owners other than Declarant. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision. An amendment becomes effective after: (1) the approval of the required percentage of Owners has been given, (2) that fact has been certified in a writing executed and acknowledged by the President of the Association, and (3) that writing has been recorded in Riverside County.

Section 12.3 Amendments Pursuant to Court Order. If this Declaration requires a proposed amendment to be approved by the affirmative vote of a specified percentage (exceeding 50 percent) of the votes in the Association or of Owners having a specified percentage (exceeding 50 percent) of the votes in more than one class (a "supermajority"), and more than 50 percent but less than the required supermajority of the votes approve the amendment, the Association or any Owner may petition the Superior Court of Riverside County, subject to the requirements, limitations, and exceptions set forth in Civil Code Section 1356, for an order reducing the percentage of the affirmative votes necessary for the amendment or approving the amendment. If such an order is issued, the amendment shall be acknowledged by the President of the Association, and that person shall have the amendment and the court order recorded in Riverside County. Upon recordation, the amended provision or provisions of this Declaration shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by this Declaration and the other governing documents. Within a reasonable time after recordation, the Association shall mail a copy of the amendment and a statement regarding the amendment to each Owner.

Section 12.4 Deletion of Construction or Marketing Provisions. Notwithstanding any other provision of this Declaration, the Board may, under the circumstances described in this Section, adopt an amendment deleting from this Declaration any provision that was unequivocally designed and intended, or that by its nature could only have been designed or intended, to facilitate Declarant in completing the construction or marketing of the Development. To be subject to this amendment procedure, the provision must provide for access by Declarant over or across the Common Area for the purposes of (1) completion of construction of the Development and (2) the erection, construction, or maintenance of structures or other facilities designed to facilitate the completion of construction or marketing of Lots or improvements on them. Such an amendment may be adopted only after Declarant has completed construction of the Development, has terminated construction activities, and has terminated its marketing activities for the sale of the Lots. In the case of a provision relating to a particular construction or marketing phase of the Development, the provision may not be deleted until that construction or marketing phase has been completed. At least 30 days prior to taking action to adopt such an amendment, the Board must mail to all Owners, by first-class mail, the following: a copy of the proposed amendment; and a notice of the time, date, and place of the meeting at which the Board will consider adoption of the amendment. All deliberations of the Board on the proposed amendment must be conducted at that meeting. The meeting must be open to all Owners, and the Owners must be given an opportunity at the meeting to comment on the proposed amendment. The Board may not adopt the amendment unless (1) a quorum is present at the meeting,

(2) the meeting is conducted in accordance with certain provisions (identified in Civil Code Section 1355.5) of the Nonprofit Mutual Benefit Corporation Law, and (3) Owners casting a majority of the votes at the meeting approve the amendment. For these purposes, "quorum" means more than 50 percent of the Owners who own no more than two Lots in the Development.

Section 12.5 Prior Approval of Commissioner. When required under Business and Professions Code Section 11018.7, the written consent of the Real Estate Commissioner shall be obtained prior to submitting a proposed amendment to this Declaration to the vote of the Owners.

Section 13. General Provisions.

Section 13.1 Term. The provisions of this Declaration shall continue in effect for a term of twenty-five years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten years, until the membership of the Association decides to terminate it.

Section 13.2 Nonwaiver of Remedies. Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

Section 13.3 Attorneys' Fees. In any action to enforce this Declaration, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 13.4 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

Section 13.5 Binding. This Declaration, as well as any amendment to it and any valid action or directive made pursuant to it, shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.

Section 13.6 Interpretation. The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a planned development. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Declaration.

Section 13.7 Limitation of Liability. The liability of any Owner for performance of any of the provisions of this Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Lot with respect to obligations arising from and after the date of the divestment.

Section 13.8 Fair Housing. Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, religion, ancestry, or national origin.

Section 13.9 Number and Headings. As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Declaration, and shall not affect the interpretation of any provision.

Executed on Dec 12, 1997 at Palm Desert, Riverside County, California.

Declarant: Tucson Homes LLC, a California
Limited Liability Company

By: Lance Alacano
Lance Alacano, Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 9807

State of California
 County of Riverside
 On 12/12/97 before me, Lisa C. Feiting, Notary
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"
 personally appeared LANCE ALACANO
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lisa C. Feiting
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☐ CORPORATE OFFICER
Manager
TITLE(S)

☐ PARTNER(S) ☒ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

CC & Rs
TITLE OR TYPE OF DOCUMENT

33
NUMBER OF PAGES

12/12/97
DATE OF DOCUMENT

NONE
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

Lots 1-4, inclusive and Lots 59-72, inclusive and Lots A, E, F, G, and J of Tract No. 28549, as shown by Map on file in Book 267 of Maps, Pages 30-33, records of Riverside County, State of California.

EXHIBIT "B"

Lots 5-58, inclusive and Lots B, C, D, H, I, K, and L of Tract No. 28549 as shown by Map in Book 267 of Maps, Pages 30-33, records of Riverside County, State of California.