

Sunterrace Homeowners Association, Inc.

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(Above Space for Recorder's Use)

**FIRST RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SUNTERRACE HOMEOWNERS ASSOCIATION, INC.**

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. 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.

TABLE OF CONTENTS

PAGE

RECITALS	1
ARTICLE 1 DEFINITIONS	2
Section 1.1. Architectural Control Committee	2
Section 1.2. Architectural Control Committee Guidelines	2
Section 1.3. Articles	2
Section 1.4. Assessment	2
Section 1.5. Association	2
Section 1.6. Association Rules or Rules and Regulations	2
Section 1.7. Beneficiary	2
Section 1.8. Board of Directors	2
Section 1.9. Bylaws	2
Section 1.10. City	2
Section 1.11. Common Area	2
Section 1.12. Common Expense	3
Section 1.13. Common Facilities	3
Section 1.14. County	3
Section 1.15. Declaration	3
Section 1.16. Deed of Trust or Trust Deed	3
Section 1.17. Development	3
Section 1.18. Governing Documents	4
Section 1.19. Lot	4
Section 1.20. Member	4
Section 1.21. Mortgage	4
Section 1.22. Owner	4
Section 1.23. Regular Assessment	4
Section 1.24. Reimbursement Assessment	4
Section 1.25. Residence	4
Section 1.26. Special Assessment	4
ARTICLE 2 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION	5
Section 2.1. Membership	5
Section 2.2. One Class of Membership	5
Section 2.3. Voting	5
Section 2.4. Transfer	5
Section 2.5. Joint Owner Disputes	5
ARTICLE 3 PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS	6
Section 3.1. Owners' Nonexclusive Easements of Enjoyment	6
Section 3.2. Persons Subject to Governing Documents	6

TABLE OF CONTENTS

PAGE

Section 3.3.	Waiver of Use	7
Section 3.4.	Obligations of Owners	7
Section 3.5.	Delegation of Use	8
Section 3.6.	Owner's Obligation for Taxes	8
Section 3.7.	Utility and Drainage Easements	8
Section 3.8.	Easement for Maintenance of the Common Area	8
Section 3.9.	Easement Over Sidewalks	8
ARTICLE 4	POWER AND DUTIES OF THE ASSOCIATION	9
Section 4.1.	Management and Control	9
Section 4.2.	Powers and Responsibilities of the Board	10
Section 4.3.	Right of Entry	11
Section 4.4.	Limitation of Liability	11
ARTICLE 5	COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION	12
Section 5.1.	Assessments Generally	12
Section 5.2.	Creation of Lien and Personal Obligation for Assessments	12
Section 5.3.	Regular Assessments	13
Section 5.4.	Special Assessments	13
Section 5.5.	Reimbursement Assessments	14
Section 5.6.	Notice/Certificate of Status	15
Section 5.7.	Exemption of Certain of the Properties From Assessments	15
Section 5.8.	Remedies of the Association for Non-Payment of Assessments	15
Section 5.9.	Effect of Non-Payment of Assessments	16
Section 5.10.	Assignment of Rents	16
Section 5.11.	Foreclosure of Assessment Lien	17
Section 5.12.	Subordination of Lien	17
Section 5.13.	Waiver of Exemptions	17
Section 5.14.	Uniform Rate of Assessments	17
ARTICLE 6	USE RESTRICTIONS	17
Section 6.1.	Occupancy	17
Section 6.2.	Subdivision of Lots and Structures	18
Section 6.3.	Pets	18
Section 6.4.	Signs, Flags and Banners	19
Section 6.5.	Antennas and Similar Devices	19
Section 6.6.	Vehicles and Parking	19
Section 6.7.	Garages	20
Section 6.8.	Impairment of Lots and Easements	21

TABLE OF CONTENTS

PAGE

Section 6.9.	Rubbish, Trash and Garbage	21
Section 6.10.	Nuisance	21
Section 6.11.	Unsightly or Unkempt Conditions	21
Section 6.12.	Dangerous Use of Lots	21
Section 6.13.	Responsibility for Damage to the Common Area	22
Section 6.14.	Alterations of Residences	22
Section 6.15.	Use of Common Area	22
Section 6.16.	Window Covers	23
Section 6.17.	Rules of Association	23
Section 6.18.	No Exterior Clotheslines	23
Section 6.19.	Machinery and Equipment	23
Section 6.20.	Diseases and Pests	23
Section 6.21.	Oil Drilling/Water Wells	23
Section 6.22.	No Interference with Established Drainage Patterns	23
ARTICLE 7	ARCHITECTURAL CONTROL	24
Section 7.1.	Architectural Control Committee	24
Section 7.2.	Duties of the Committee	24
Section 7.3.	Architectural Committee Approval of Improvements	24
Section 7.4.	Meetings	25
Section 7.5.	Architectural Control Committee Guidelines	25
Section 7.6.	Variances	26
Section 7.7.	Waiver	26
Section 7.8.	Liability	26
Section 7.9.	Appeal	26
Section 7.10.	No Approval by Single Committee Member	27
Section 7.11.	Completion of Improvements	27
Section 7.12.	Inspection	27
ARTICLE 8	LEASING OF LOTS	27
Section 8.1.	Definition	27
Section 8.2.	Leasing Provision	27
ARTICLE 9	PROHIBITION OF TIMESHARES	28
Section 9.1.	Timeshare Prohibition	28
Section 9.2.	Multiple Ownership Restrictions	29
ARTICLE 10	MAINTENANCE RESPONSIBILITIES	29
Section 10.1.	Association Maintenance Responsibilities	29

TABLE OF CONTENTS

PAGE

Section 10.2.	Owner Maintenance Responsibilities	30
Section 10.3.	Party Walls/Fences	30
Section 10.4.	Failure of Owner to Carry Out Maintenance Responsibilities	32
Section 10.5.	Liability for Damage	33
Section 10.6.	Cooperative Maintenance Obligations	33
ARTICLE 11	PARTITION	33
Section 11.1.	Partition	33
Section 11.2.	Power of Attorney	33
ARTICLE 12	AMENDMENTS	34
Section 12.1.	General	34
Section 12.2.	Amendments Requiring Approval of Eligible First Mortgagees	34
ARTICLE 13	DESTRUCTION OF IMPROVEMENTS	35
Section 13.1.	Insurance Proceeds Sufficient	35
Section 13.2.	Insurance Proceeds Insufficient	35
Section 13.3.	Assessments	35
Section 13.4.	Failure to Rebuild	35
Section 13.5.	Contract Re: Rebuilding	36
ARTICLE 14	DESTRUCTION OF LOT IMPROVEMENTS	36
Section 14.1.	Destruction	36
Section 14.2.	Variation	36
ARTICLE 15	INSURANCE	36
Section 15.1.	Types of Insurance Coverage	36
Section 15.2.	Premiums, Proceeds and Settlement	38
Section 15.3.	Owner's Liability Insurance	38
Section 15.4.	Insurance Policy Deductibles	39
ARTICLE 16	CONDEMNATION	39
Section 16.1.	Taking of a Lot	39
Section 16.2.	Taking of Common Area	39
Section 16.3.	Disbursement of Any Award	40
Section 16.4.	Priority of Mortgagee Rights	40

TABLE OF CONTENTS

PAGE

ARTICLE 17	RIGHTS OF LENDERS	40
Section 17.1.	Subordination of Lein and Foreclosure	40
Section 17.2.	Mortgages are not Required to Cure Certain Breaches	41
Section 17.3.	Effect of Breach of Declaration	41
Section 17.4.	Exemption from Right of First Refusal	41
Section 17.5.	Restrictions on Certain Chages	41
Section 17.6.	Inspection of Association Books and Records	42
Section 17.7.	Condemnation Awards and Insurance Proceeds	42
Section 17.8.	Mortgagee's Right to Attend Meetings	43
Section 17.9.	Payments by Mortgagee	43
Section 17.10.	Loss Payable Endorsement	43
Section 17.11.	Notices to Mortgagees	43
Section 17.12.	Governmental Financing Programs	44
ARTICLE 18	ENFORCEMENT	44
Section 18.1.	Enforcement	44
Section 18.2.	Nuisance	46
Section 18.3.	Violation of Law	46
Section 18.4.	No Waiver	46
Section 18.5.	Attorneys' Fees	46
Section 18.6.	Cumulative Remedies	46
ARTICLE 19	GENERAL PROVISIONS	46
Section 19.1.	General Duties and Powers	46
Section 19.2.	Notices	46
Section 19.3.	Extension of Declaration	47
Section 19.4.	Limitation of Liability	47
Section 19.5.	Liberal Interpretation of Declaration	47
Section 19.6.	Indemnification	47
Section 19.7.	Severability	47
Section 19.8.	Number; Gender	47
Section 19.9.	Successors and Assigns	47
Section 19.10.	Joint and Several Liability	47
Section 19.11.	Encroachment Easements	48
Section 19.12.	Conflicts	48
CERTIFICATE OF AMENDMENT		49
CERTIFICATE OF AMENDMENT		50

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**FIRST RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SUNTERRACE HOMEOWNERS ASSOCIATION, INC.**

The Declaration of Covenants, Conditions, Restrictions, and Easements of SUNTERRACE HOMEOWNERS ASSOCIATION, INC., recorded on July 14, 1992, as Instrument No. 260658, of the Official Records of Riverside County, California ("Original Declaration"), and all amendments thereto, which affect all of the Development described and commonly known as Sunterrace is hereby amended and restated in its entirety to read as follows:

RECITALS

(A) The Original Declaration established SUNTERRACE HOMEOWNERS ASSOCIATION, INC. ("Association") to oversee, manage, maintain and operate the real property ("Development") subject to the Original Declaration, plus all annexations to the Development. The Development subject to this Declaration is legally described in Exhibit "A" to this First Restated Declaration.

(B) The Development was originally conveyed, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development and all of which shall run with the Development and be binding on all parties having or acquiring any right, title or interest in the Development, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

(C) The Development consists of a "Planned Unit Development," as defined in California *Civil Code* Section 1351(k) and the Lots sold and conveyed to the Owners, are subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes as set forth in this Declaration.

(D) The Association now desires to amend and restate the Original Declaration and replace it in its entirety with this First Restated Declaration, and that upon recordation of same, the Development shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein.

ARTICLE 1

DEFINITIONS

Section 1.1. “Architectural Control Committee” [Article I, pg. I-1] means the Committee created in accordance with Article 7 of this Declaration.

Section 1.2. “Architectural Control Committee Guidelines” means the rules, regulations and/or guidelines which have been or shall be adopted by the Architectural Committee and amended from time to time.

Section 1.3. “Articles” [Article I, pg. I-1] means the Articles of Incorporation of SUNTERRACE HOMEOWNERS ASSOCIATION, INC., which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.4. “Assessment” means any Regular, Special or Reimbursement Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article 5 of this Declaration.

Section 1.5. “Association” [Article I, pg. I-1] means the SUNTERRACE HOMEOWNERS ASSOCIATION, INC., a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an “Association” as defined in California *Civil Code* Section 1351(a).

Section 1.6. “Association Rules” or “Rules and Regulations” [Article I, pg. I-3] means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Article 4, Section 4.1 of this Declaration, as the same may be in effect from time to time.

Section 1.7. “Beneficiary” [Article I, pg. I-2] means a mortgagee under a mortgage or, as the case may be, the beneficiary of or holder of a note secured by a Deed of Trust, and/or the assignees of such mortgagee, beneficiary or holder.

Section 1.8. “Board of Directors,” “Board” or “Directors” [Article I, pg. I-1] means the Board of Directors of the Association.

Section 1.9. “Bylaws” [Article I, pg. I-1] means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.10. “City” means the City of Palm Desert and its various departments, divisions, employees and representatives.

Section 1.11. “Common Area” [Article I, pg. I-1] means all the real property owned by the Association for the common use and enjoyment of the Owners. Unless the context clearly indicates a contrary intention, any reference herein to the “Common Areas” shall also include any Common Facilities located thereon. “Common Area” shall also mean the entire Development, except the separate interests therein.

Section 1.12. “Common Expense” [Article I, pg. I-1] means any use of Association funds authorized by Article 5 hereof and includes, without limitation:

(A) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities or any portion of any Lot that the Association is obligated to maintain or repair;

(B) All expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors;

(C) Any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities or any portion of any Lot that the Association is obligated to maintain or replace, and for nonpayment of any Assessments; and

(D) The use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 1.13. “Common Facilities” [Article I, pg. I-1] means, without limitation, the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, retention basins, pipes, lines, lighting fixtures, gates, walls, streets, entry gates, keypad, card reader, monument signs, curbs, and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

Section 1.14. “County” means the County of Riverside, State of California, and its various departments, divisions, employees and representatives.

Section 1.15. “Declaration” [Article I, pg. I-1] means this instrument, including all of the Exhibits referred to herein (all of which shall be deemed incorporated herein by reference), as the same may be amended from time to time. The “Amended and Restated Declaration” means and refers to the document referenced in the Recitals to this Declaration, together with all amendments and annexations thereto, adopted prior to adoption and recordation of this Declaration.

Section 1.16. “Deed of Trust” or “Trust Deed” [Article I, pg. I-2] means a first Mortgage or a first Deed of Trust, as the case may be.

Section 1.17. “Development” [Article I, pg. I-2] means all parcels of real property (Common Area and Lots described and identified in Recital “A” hereof, together with all buildings, structures, utilities, Common Facilities, and all other Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

Section 1.18. “**Governing Documents**”[Article I, pg. I-2] is a collective term that includes, but is not limited to, to this Declaration and to the Articles, the Bylaws, the Association Rules, and the Architectural Control Committee Guidelines.

Section 1.19. “**Lot**” [Article I, pg. I-2] means any parcel of real property designated by a number on the Subdivision Map for any portion of the Development, excluding the Common Area. When appropriate within the context of the Governing Documents, the term “Lot” shall also include the Residence and other Improvements constructed or to be constructed on a Lot. For purposes of the Governing Documents, “Lot” does not exclude the parcel on which the tax assessment is based.

Section 1.20. “**Member**” [Article I, pg. I-2] means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article 3, Section 3.1 hereof.

Section 1.21. “**Mortgage**” [Article I, pg. I-2] means any security device encumbering all or any portion of the Development, including any Deed of Trust. “First Mortgagee” shall refer to the beneficiary of, or the holder of a Note secured by a first Deed of Trust (Trust Deed) or, as the case may be, the mortgagee under a first mortgage, and/or the assignee of such beneficiary, holder or mortgagee. “Eligible Mortgage Holder” shall mean a holder of a first Mortgage on a Lot who has requested notice from the Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

Section 1.22. “**Owner**” [Article I, pg. I-2] means any person, firm, corporation or other entity which owns a fee simple interest in a Lot. The term “Owner” shall include, except where the context otherwise requires, the family, guests, tenants and invitees of an Owner. The term Owner shall not include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation or as a contract purchaser. The terms “Owner of Record” and “Member of the Association” includes an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

Section 1.23. “**Regular Assessment**” commonly referred to as “**Dues,**” means an Assessment levied against an Owner and his or her Lot in accordance with Article 5, Section 5.3, hereof.

Section 1.24. “**Reimbursement Assessment**” means an Assessment levied on an Owner and his or her Lot in accordance with Article 5, Section 5.5 hereof.

Section 1.25. “**Residence**” means a private, single family dwelling constructed on a Lot.

Section 1.26. “**Special Assessment**” means an Assessment levied on an Owner and his or her Lot in accordance with Article 5, Section 5.4 hereof.

ARTICLE 2

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 2.1. Membership. [Article IV, Section 4.02] Owners, by virtue of their ownership of a Lot shall be a Member of the Association and shall be entitled to vote on all matters upon which Members of the Association are entitled to vote pursuant to the Governing Documents. Ownership of a Lot or interest therein shall be the sole qualification for and entitlement to membership in the Association. Each Owner shall remain a Member of the Association until such time as his or her ownership or ownership interest in all Lots in the Development ceases for any reason, at which time his or her membership in the Association shall automatically cease. A Member is not intended to include persons or entities who hold an interest in a Lot merely as security for performance of an obligation; nor is a Member intended to include contract purchasers.

Section 2.2. One Class of Membership. [Article IV, Section 4.05] The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 2.3. Voting. [Article IV, Section 4.04] Subject to the provisions of the Governing Documents, each Owner shall be entitled to one (1) vote for each Lot in which he or she holds the interest required for membership and each Lot is allocated a vote equal to each other Lot's vote. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Governing Documents.

Section 2.4. Transfer. [Article IV, Section 4.03] Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then only to the purchaser. The transfer of title to a Lot or the sale of a Lot and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Lot to the transferee. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his or her name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association.

Section 2.5. Joint Owner Disputes. [Article IV, Section 4.04] The vote for each Lot shall be cast as a single vote, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or they were acting with the authority and consent of all other Owners of the same Lot.

ARTICLE 3

PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

Section 3.1. Owners' Nonexclusive Easements of Enjoyment. [Article II, Section 2.02] Every Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas within the Development. Such right shall be appurtenant to and shall pass with the ownership of a Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in the Governing Documents, including, without limitation, the following provisions:

- (A) The right of the Association to limit the number of guests of Owners.
- (B) The right of the Association to establish reasonable Rules and Regulations pertaining to the use of the Common Area.
- (C) The right of the Association to temporarily suspend the voting rights of an Owner for any period during which any Assessments remain unpaid. In addition, the Association may suspend an Owner's voting rights for any infraction of the Governing Documents by that Owner, his or her lessees, or guests. Any action to suspend an Owner's right shall only be valid after a hearing by the Board, in accordance with the provisions of the Bylaws and Section 1363(h) of the California *Civil Code*.
- (D) Subject to the limitations set forth in Article 8, Section 8.4, of the Bylaws, the right of the Association to grant easements on, over and under the Common Area to public utilities or governmental entities or agencies; provided that such easement shall not unreasonably interfere with the right of any Owner to the use and enjoy of his or her Lot and the Common Area.
- (E) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure.
- (F) Subject to the limitations set forth in the Association's Bylaws, the right of the Association to borrow money for the purpose of improving the Development or any other purpose reasonably related to fulfill the Association's obligations under the Governing Documents.

Section 3.2. Persons Subject to Governing Documents. All present and future Owners, tenants and occupants of Residences within the Development shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Residence shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of the Governing Documents, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

Section 3.3. Waiver of Use. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him or her from the liens, charges and other provisions of the Governing Documents, by waiver of the use and enjoyment of the Common Area or the abandonment of his or her Lot.

Section 3.4. Obligations of Owners. Owners of Lots within the Development shall be subject to the following:

(A) **Owner's Duty to Notify Association of Tenants and Contract Purchasers.** Each Owner shall notify the Secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant of the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Development and the relationship that each such person bears to the Owner, contract purchaser or tenant.

(B) **Contract Purchaser.** A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(C) **Payment of Assessments and Compliance With Rules.** Each Owner shall pay when due each Regular, Special and Reimbursement Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(D) **Discharge of Assessment Liens.** Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(E) **Joint Ownership of Lots.** In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph shall apply to all obligations, duties and responsibilities of Owners as set forth in the Governing Documents, including, without limitation, the payment of all Assessments.

(F) **Prohibition on Avoidance of Obligations.** No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

(G) **Termination of Obligations.** Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments due after the

date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

Section 3.5. Delegation of Use. [Article II, Section 2.04 Any Owner may delegate his or her rights of enjoyment in the Development, including the Common Area, to the members of his or her family, his or her guests, and invitees, and to such other persons subject to the terms and conditions set forth in the Association's Governing Documents. Neither an Owner of a Lot who has sold same to a contract purchaser thereof or has leased or rented same, nor members of his/her family, his/her guests and invitees shall be entitled to use and enjoy the Common Area while such Owner's Lot is occupied by such contract purchaser, lessee or renter. Each Owner shall notify the Association of the names of any contract purchasers, lessees or renters of such Owner's Lot. Any rights of enjoyment delegated pursuant hereto are subject to suspension to the same extent that rights of the Owners are subject thereto.

Section 3.6. Owner's Obligation for Taxes. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor of said County against his or her Lot and against his or her personal property.

Section 3.7. Utility and Drainage Easements. [Article VIII, Section 8.01] Each Owner has the following rights and duties regarding drainage facilities, sewer, water, electricity, gas, telephone, cable television and other utility lines and facilities ("Systems"):

(A) Easement for Systems that lie on Lots or Common Area(s) is granted to the full extent necessary for utility companies and the Association to install, maintain and repair the Systems;

(B) If a System serves more than one (1) Lot, each Owner served is entitled to reasonable use and enjoyment of all necessary portions of the System;

(C) System easements may not interfere with an Owner's use and enjoyment of any of the buildings originally constructed on the Lots.

Section 3.8. Easement for Maintenance of the Common Area. [Article VIII, Section 8.10] The Association has a nonexclusive easement for ingress, egress and access to all portions of the Development to perform its maintenance obligations set forth in this Declaration.

Section 3.9. Easements Over Sidewalks. [Article VIII, Section 8.12] Each Owner and his or her tenants, invitees, guests, family members, have nonexclusive reciprocal easement rights over any sidewalks for pedestrian access, use and enjoyment.

ARTICLE 4

POWER AND DUTIES OF THE ASSOCIATION

Section 4.1. Management and Control [Article V] The Association, through its Board, except as otherwise provided herein, shall have the obligation, sole authority, and duty to manage, make decisions, operate, control, repair, replace or restore all of the Common Area, or any portion thereof, together with the improvements and landscape thereon, all as more fully set forth in the Governing Documents.

(A) In the event the Board shall determine that any portion of the Development required to be maintained by the Association has been damaged or destroyed by any negligent or malicious act or omission of any Owner, his or her guests, tenants, servants, agents or licensees, such Owner shall be responsible for the cost of repairing the damage. In the event that the Owner fails to pay the cost for the repairs, then the Association shall make such repairs or replacements and the cost thereof shall be levied against such Owner as a Reimbursement Assessment.

(B) Subject to the provisions of the Governing Documents and California law, the Board shall have the right to adopt reasonable Rules and Regulations and to amend the same from time to time relating to the use of the Common Area and Lots, and all other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to vehicle parking, outside storage, disposal of waste materials, drying of laundry, control of pets and other activities reasonably contemplated under the Association's Governing Documents. At least thirty (30) days prior to adopting, amending or repealing rules that relate to use of the Common Area, Lots, Owner discipline (including monetary penalties for violation of the Governing Documents), delinquent Assessment payment plans, and procedures regarding resolution of Assessment disputes, the Board shall provide the Members with written notice of the proposed Rule change. This notice shall include the text of the proposed rule change and a description of the purpose and effect of such proposed rule change. The Rules and Regulations may be amended only by the vote of a majority of the entire Board at a duly held meeting after consideration of any comments made by Association Owners. Within fifteen (15) days after making any rule change, the Board shall deliver notice of the rule change to every Member.

The requirement that Members be sent notice of proposed rule changes does not apply to any rule change that the Board determines is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association.

The Rules and Regulations shall be binding upon the Owners and occupants of the Lots, and their guests, and shall be enforceable to the same extent as if they were specifically set forth as provisions in the Governing Documents. A copy of such Rules and Regulations shall be:

(1) Maintained in the office of the Association and be available for inspection at all reasonable times; and

(2) Given to each Owner within a reasonable time after the Association has notice of his or her occupancy of a Lot.

Section 4.2. Powers and Responsibilities of the Board. [Article V]

(A) As more specifically set forth in Article 18 of this Declaration, the Board shall enforce the Governing Documents by the imposition of reasonable monetary fines, Reimbursement Assessments, and suspension of use of Common Facilities and voting privileges. These powers, however, shall not be construed as limiting any other legal means of enforcing the use restrictions or Rules and Regulations of the Association.

(B) The Board may impose and receive deposit or other administrative fees for the use or operation of the Common Area.

(C) Subject to limitations set forth in the Bylaws, the Board may grant permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Development under, through, or over the common elements, as may be reasonably necessary to or desirable for the ongoing development and operation of the Development.

(D) As more specifically set forth in Article 10 of this Declaration, the Board shall maintain and otherwise manage all of the Common Area and facilities, including all improvements and landscaping thereon, and all property subsequently acquired by the Association. The Board shall also have the right to assign, rent, license or otherwise designate and control the use of the Common Area and/or the improvements thereon.

(E) The Board may pay real or personal property taxes or other charges assessed against the Common Area. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted to the sale or the disposition of any property to satisfy the payment of such taxes.

(F) The Board shall acquire, provide and/or pay for water, sewer, garbage disposal, gas, electrical, refuse and rubbish collection, telephone, cable and gardening service and other necessary utility services for the Common Area, and make these and such other utilities as the Board may determine, available to all Residences if and when the Lots are not separately billed therefor.

(G) Subject to the limitations set forth in the Bylaws, the Board may borrow money for the purposes of improvement or restoration of the Common Area and facilities thereon.

(H) The Board may suspend the voting rights of an Owner who is in default in his or her payment of any Assessment or for any infraction of its published Governing Documents, including published Rules and Regulations, after reasonable written notice and an opportunity for a hearing before the Board, as set forth in California *Civil Code* Section 1363(h).

(I) The Board shall secure and maintain policies of insurance, as provided in Article 15 herein.

(J) The Association acting by and through the Board shall have the authority to delegate its powers, duties and responsibilities to committees or employees, including a professional managing agent (sometimes hereinafter referred to as "manager").

(K) The Association may enter into contracts or arrangements for services or materials for the benefit of or improvement of the Common Area, provided, however, that the term of any such service contract shall not exceed one (1) year. Notwithstanding the foregoing, the above-described limitation on the term of any contract shall not apply to (1) a contract with a public utility company if the rate charged for the materials or services is regulated by the Public Utilities commission so long as the term thereof does not exceed the shortest term for which the supplier will contract at the regulated rate, or (2) a prepaid casualty and/or liability policy of not to exceed three (3) years duration provided such policy permits short rate cancellation by the insured.

(L) **[Article V, Section 5.10(c)]** The Association may sell property owned by it; however, if the property sought to be sold has a value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, no such sale shall take place unless such action is approved by the membership as set forth in the Bylaws.

(M) **[Article V, Section 5.10(b)]** The Association may make capital improvements to the Common Area, provided, however that the aggregate expenditures for capital improvements to the Common Area in any fiscal year shall not exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year without obtaining approval of the membership as set forth in the Bylaws.

(N) The Association may grant licenses or easements to Owners provided, that any license or easement with a value of more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall not be made without approval of the membership as set forth in the Bylaws.

Section 4.3. Right of Entry. **[Article V, Section 5.06]** For the purpose of maintaining the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under the Governing Documents, the Association's officers, agents or employees shall have the right, after reasonable notice to Owner(s), to enter any Lot, or any portion of the Lot at reasonable hours and after reasonable notice to the Owner of the Lot.

In addition to, and not in limitation of all other rights, the Association may enter onto the Lots but not into Residences for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. In an emergency situation, if practicable, prior to entering the Lot, a reasonable attempt will be made to notify the occupant and the Owner of the Lot of the Association's need and intent to enter the Lot.

Section 4.4. Limitation of Liability. In discharging their duties and responsibilities, the Board, Committee members and Officers act on behalf of and as representative of the Association, which acts on behalf of and as representative of the Owners, and no member of the Board of Directors shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in good faith.

ARTICLE 5

COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 5.1. Assessments Generally.

(A) Purpose of Assessment. [Article V, Section 6.01(a)] The Assessments for Common Expenses provided for herein shall be used for the general purpose of the preservation and proper operation of the Development and for promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and/or occupants of Lots in the Development as may be more specifically authorized from time to time by the Board.

(B) No Avoidance of Assessment Obligations. [Article VI, Section 6.10] No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and discharges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon, by abandonment or non-use of his or her Lot or any other portion of the Development, by any alleged failure by the Association to perform services, or for any other reasons.

Section 5.2. Creation of Lien and Personal Obligation for Assessments. [Article VI, Section 6.02] Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay the Association: (a) annual Regular Assessments or charges; (b) Special Assessments, to be established and collected as hereinafter provided; and (c) Reimbursement Assessments against any particular Lot which are established pursuant to the terms of the Association's Governing Documents.

(A) All such Assessments, together with late charges, interest, costs, and all attorney's fees reasonably incurred, as provided in this Declaration and in the maximum amount permitted by the laws of the State of California, whichever is greater, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each Assessment is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. In the event more than one person or entity was the Owner of a Lot, the personal obligation to pay such Assessment, or installment thereof, shall be joint and several.

(B) Assessments shall be paid on a monthly basis on the first day of each month or in such manner and on such dates as may be fixed by the Board.

(C) The personal obligation for delinquent Assessments, or delinquent installments, thereof, and such other sums, shall not pass to an Owner's bona fide and for value successors in title unless expressly assumed by them.

(D) Any Assessment not paid within thirty (30) days after the date due shall bear interest from the date due at the rate provided for in the Association's Governing Documents or California law, whichever is greater.

Section 5.3. Regular Assessments. [Article VI, Section 6.03]

(A) Preparation of Annual Budget: Establishment of Regular Assessments. Not less than 30 nor more than 90 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a budget satisfying the requirements of Article 12 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws.

(B) Establishment of Regular Assessment by Board or Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (A) above, and subparagraph (C) below, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association. For purposes of this section, "quorum" shall constitute a majority of Owners.

Prior to raising Regular Assessments at any time during the fiscal year without membership approval, up to the twenty percent (20%) limitation, the membership shall be given thirty (30) days notice of such increase in Regular Assessments.

(C) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to this Article for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year and the Assessments shall be payable on the regular payment dates established by the Association.

Section 5.4. Special Assessments. [Article VI, Section 6.04] In addition to the Regular Assessments, authorized above, the Board may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any capital improvement to the Common Area or such other purpose as may be determined by the Board; provided, however, that no Special Assessment shall exceed, in the aggregate during any fiscal year of the Association, an amount equal to five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Owners, constituting a quorum, casting a majority of the votes at any meeting or election of the Association. For purposes of this Section, "quorum" shall constitute a majority of Owners. All such Special Assessments shall be levied upon each Lot in the same proportion as Regular Assessments are levied.

(A) Assessments to Address Emergency Situations. [Article VI, Section 6.05] The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment or Special Assessments in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall not apply to Assessment increases necessary to address emergency situations. For purposes of this subparagraph (A), an emergency situation is any of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.
- (3) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 3(A) above, provided that, prior to the imposition or collection of an Assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Owners together with the notice of Assessment.

Section 5.5. Reimbursement Assessments. [Article VI, Section 6.05]

(A) Circumstances Giving Rise to Reimbursement Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4, above, the Board of Directors may impose Reimbursement Assessments against an Owner in any of the circumstances described, without limitation, in subparagraphs (1) through (3) below, provided that no Reimbursement Assessments may be imposed against an Owner pursuant to this Section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to this Article, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Reimbursement Assessments include the following:

- (1) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of the Lot which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment. Reimbursement Assessments imposed under this subsection may be collected in the same manner as Regular and Special Assessments as allowed by California law.

(2) Expenses Incurred in Gaining Membership Compliance. In the event that the Association incurs any costs or expenses, to accomplish (a) the payment of delinquent Assessments, (b) any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (c) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable attorneys fees, title company fees, accounting fees, and court costs) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

(3) Required Maintenance on Lots. As more particularly provided in Article 10, if any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles, or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the reasonable cost of such action through imposition of a Reimbursement Assessment against the offending Owner.

(B) Levy of Reimbursement Assessment and Payment. Once a Reimbursement Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed herein, notice thereof shall be mailed to the affected Owner and the Reimbursement Assessment shall thereafter be due and payable in full to the Association within 30 days after the mailing of notice of the Assessment.

Section 5.6. Notice/Certificate of Status. [Article VI, Section 6.08] Written notice of an Assessment shall be given to every Owner subject thereto. Assessments may be collected on a monthly basis or otherwise as determined by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or other agent of the Association setting forth whether the Assessments of a specified Lot have been paid.

Section 5.7. Exemption of Certain of the Properties From Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempted from the Assessments and the lien thereof provided herein:

- (A) Any portion of the Development dedicated and accepted by a local public authority;
- (B) The Common Area and Common Facilities;
- (C) Any Lot owned by the Association.

Section 5.8. Remedies of the Association for Non-Payment of Assessments.[Article VI, Section 6.09] The Association shall have the power to impose Assessments as provided in these Governing Documents. Such Assessments are the personal obligation of the Owner against whom they are assessed and are a lien against that Lot. The Association shall have the authority to create and enforce a lien with the power of sale on each separate Lot and all Improvements thereon to secure payment of the amount of any Assessment, to the full extent permitted by applicable law. The obligation and the lien for Assessments may also include: a late or delinquency charge in the amount of the greater of ten dollars (\$10.00) or ten percent (10%) of the amount of each Assessment or lump

sum or installment payment of any Special Assessment or Reimbursement Assessment not paid when due, or such higher amount as may be authorized by the laws of the State of California; interest on each Assessment or installment not paid when due and on any delinquency fee or late charge pertaining thereto from the date the charge was first due and payable at the rate of twelve percent (12%) per annum, or such higher rate as may be authorized by the laws of the State of California; the costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees actually incurred; and the fair rental value of the Lot from the time of institution of suit until the sale at foreclosure or other satisfaction of any judgment.

Section 5.9. Effect of Non-Payment of Assessments. [[Article VI, Section 6.09]

(A) As more particularly provided in California *Civil Code* Section 1367 or comparable superseding statute, and the Association has complied with the pre-lien requirements set forth in California Civil Code Section 1367.1 or successor statute, the Association, upon a vote of a majority of the Board made at an open Board meeting, may file for recording in the Office of the Riverside County Recorder a notice of delinquency as to such Lot, which notice shall state all amounts which have become delinquent with respect to such Lot and the costs (including attorney's fees) and interest which have accrued thereon, the amount of any Assessments relating to such Lot which are due and payable, although not delinquent, a description of the Lot with respect to which the delinquent Assessments are owed, and the name of the record or reputed record Owner of such Lot. Such notice shall be signed by the President or other officer of the Board, or by a majority of the members of the Board, or by the Association's attorney.

Immediately upon the recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees), penalties and interest accruing thereon, shall be and become a lien upon the Lot described therein, which lien shall also secure all other payments and/or Assessments which shall become due and payable with respect to said Lot following such recording, and all costs (including attorney's fees), penalties and interest accruing thereon. Said lien shall continue until all amounts secured thereby are fully paid or otherwise satisfied.

(B) In the event the delinquent Assessments and all other Assessments which have become due and payable with respect to the same Lot, together with all costs (including attorney's fees) and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Section 5.10. Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the

Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section shall be subordinate to the rights of any First Mortgagee. Any attempt to collect rents under this Section shall be done after the Owner of the Lot has been at least ten (10) days written notice and an opportunity to be heard by the Board.

Section 5.11. Foreclosure of Assessment Lien. [Article VI, Section 6.09] Each Assessment lien may be foreclosed upon as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to California *Civil Code* Section 2924 and following and Section 1367.4 of the California *Civil Code*, and to that end a power of sale is hereby conferred upon the Association.

Section 5.12. Subordination of Lien. The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage of record made in good faith and for value upon any Lot, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage. Otherwise, sale or transfer of any Lot shall not affect the Assessment lien.

Section 5.13. Waiver of Exemptions. [Article VI, Section 6.12] Each Owner does hereby waive, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment, or installment thereof, becomes delinquent or any lien is imposed pursuant to the terms hereof.

Section 5.14. Uniform Rate of Assessments. [Article VI, Section 6.06] Except as otherwise specifically provided herein, Regular and Special Assessments, other than Reimbursement Assessments, must be fixed at a uniform rate for all Lots.

ARTICLE 6

USE RESTRICTIONS

Section 6.1. Occupancy. Use restrictions regarding the use of Lots and the Common Areas may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws of the Association, and are as follows:

(A) **Single Families.** [Article III, Section 3.01] The Residences within the Development are restricted exclusively to residential use, and no Residence shall be occupied by more than a single family. "Occupancy," for purposes of the Governing Documents, shall be defined as staying overnight in a Residence for a total of more than thirty (30), either consecutive or non-consecutive days, in any one (1) year.

This single family occupancy restriction shall not apply to require the removal of any person occupying a Residence on the date on which this Declaration is recorded in the Office of the Riverside County Recorder.

(B) Residential Use. [Article III, Section 3.02] Each Residence shall be used for residential purposes only. Trade or business may be conducted in or from a Residence or any part of the Lot, so long as there is no material impact on the Common Area due to the operation or conduction of any trade or business. For purposes of this Section, the term "material impact" shall include, but not be limited to, any increase in traffic or noise affecting the Common Area. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary or generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an on-going basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (1) such activity is engaged in full or part-time; (2) such activity is intended to or does generate a profit; or (3) a license is required therefor.

(C) Lessee/Tenant Bound by Governing Documents. [Article III, Section 3.17] Each Owner shall have the right to lease his or her Lot and interest in the Common Area together, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of the Governing Documents; provided, however, that no such lease shall be for transient or hotel purposes. Any such lease which is either for a period of less than thirty (30) days or pursuant to which the Lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes. See Article 8 herein for the rights and obligations of Owners with respect to leasing of Lots.

(D) No camping, whether temporary or permanent, shall be permitted on any Lot.

Section 6.2. Subdivision of Lots and Structures. No Lot may be subdivided into a smaller Lot, except as approved by the Board, and no Lot Owner shall erect or use any structure(s) of a temporary character, including but not limited to trailer, tent, shack, carport, garage, barn, or other outbuilding on any portion of the Lot at any time, either temporarily or permanently, except as approved by the Board.

Section 6.3. Pets. [Article III, Section 3.20]

(A) No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Development, except that no more than two (2) pets, as determined by the Board, may be kept by their respective owners in their respective Residences, provided that they are not kept, bred, or maintained for any commercial purpose and do not endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof or create a nuisance.

(B) No pet, regardless of size or type, shall be permitted to be kept within any portion of the Development if it makes excessive noise or otherwise constitutes an unreasonable annoyance or danger to other Owners or residents. The Board shall have the power to require an Owner or resident to permanently remove from the Development any pet which is unreasonably noisy, annoying or dangerous.

(C) No pet enclosures shall be erected, placed, or permitted to remain on any property subject to this Declaration, except as approved by the Board.

(D) The keeping of pets and their ingress, egress, and travel upon the Development shall be subject to such Rules and Regulations as may be issued by the Board. If an Owner or occupant fails to abide by the Rules and Regulations and/or covenants applicable to pets, the Board may restrict or bar the pet(s) of the Owner or occupant from use of, or travel upon, the Development.

(E) Dogs must be leashed and under control by a person capable of controlling the dog while outside a Residence or enclosed yard.

(F) Each Owner must immediately clean up after their pet.

Section 6.4. Signs, Flags and Banners. [Article III, Section 3.06]

(A) Commercial Signs. Except as may be required by legal proceedings or authorized by the Association's Rules, no commercial signs, billboards, real estate flags or advertising of any kind shall be maintained or permitted on any portion of the Development without the prior written approval of the Board, except for one "For Sale" or "For Rent" sign per Lot, not larger than 18" by 24". These signs must be brown lettering on a beige sign.

(B) Non-Commercial Signs, Flags, and Banners. Non-commercial signs, flags and banners may be displayed in accordance with the provisions of current California law.

(C) Common Area. No signs shall be erected or displayed on the Common Area, except signs placed by authority of the Board. The Board, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on the Common Areas. Flagpoles are not permitted to be installed in the ground in the Common Areas, unless authorized by the Board.

Section 6.5. Antennas and Similar Devices. [Article III, Section 3.14] No Owner may install a video or television antenna or satellite dish which has a diameter or diagonal measurement of greater than one (1) meter in diameter. Owners may install a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of one (1) meter or less in diameter in accordance with the procedures adopted by the Board of Directors. These procedures may require reasonable screening, establish preferred locations, and impose other restrictions as permitted by applicable federal and state law, provided they do not preclude an acceptable signal or unreasonably increase the cost or cause unreasonable delay in the installation of same. These restrictions are subject to change based on federal and state law.

Section 6.6. Vehicles and Parking. [Article III, Section 3.21] The following parking and vehicle restrictions shall apply within the Development:

(A) [Article III, Section 3.19] All applicable provisions of the California *Vehicle Code* will be enforced on all private streets within the Development.

(B) Vehicles shall be parked in designated areas so as not to obstruct free traffic flow, constitute a nuisance, violate the Rules and Regulations, or otherwise create a safety hazard.

(C) Vehicles shall not park in fire lanes at any time and will be subject to tow at the Owner's expense.

(D) Recreational vehicles, boats, motor homes, trailers, or any other special vehicles are not permitted to be parked on the streets and driveways except for loading and unloading purposes, not to exceed one (1) night.

(E) Commercial vehicles can not be parked overnight on the streets and driveways, except as authorized by the Board. For purposes of this sub-section, "commercial vehicles" includes, but is not limited to, sedans or standard size pickup trucks or sport utility vehicles which are used both for business and personal use, vehicles which contain markings of a commercial nature, or vehicles which contain commercial equipment and supplies.

(F) Motorcycles may only be operated for ingress and egress from the entry gate to the Owner's/resident's Lot.

(G) The Board shall have the authority to tow at the Owner's expense, any vehicle parked or stored in violation of this Section, or the Rules and Regulations. The Board shall post such notices or signs within the Development as may be required by law to effectuate this towing provision.

(H) Owners and their tenants shall only park within the Development as many cars as they have space for in the garage and driveways. Any additional cars must be parked outside of the Development. Owners shall not park in guest parking at any time.

(I) The Board may adopt further reasonable Rules regarding parking.

(J) No Owner shall store or allow to remain within the Development any inoperable or unregistered vehicle.

(K) All Owners shall have and keep in force, at their own expense, property damage insurance on their automobiles.

(L) No Owner nor any member of his or her family, nor any of his or her guests, tenants, agents, licensees or employees, shall park, cause to be parked, left or abandoned, any vehicle in such a manner as to impede or prevent ready ingress, egress or passage to, from, over, across or through any parking space, driveways, sidewalk within the Development.

(M) Guests using parking spaces shall be limited to such periods as the Board may authorize from time to time.

Section 6.7. Garages. [Article III, Section 3.04] No garage doors shall be permitted to remain open except for a temporary purpose. The Board shall have the power to make reasonable rules regarding the use of and storage in garages. For purposes of this Section, "temporary purpose" shall be defined as permitting reasonable work to be performed in the garage during normal daytime/evening hours. The garage portion of the Residence may not be converted or otherwise

remodeled in a manner which would reduce the garage parking area to accommodate less than two (2) vehicles.

Section 6.8. Impairment of Lots and Easements. No Owner or occupant shall perform nor commence any work that will impair the structural soundness or integrity of another Lot, Common Area or impair any easement, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or occupants.

Section 6.9. Rubbish, Trash, and Garbage. [Article III, Section 3.07] All rubbish, trash and garbage shall be removed no less than weekly from the Lot, and shall not be allowed to accumulate outside of any Residence and/or upon any Lot. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development. If a Residence is in the process of construction on any Lot, a dumpster must be placed on the Lot and dumped regularly. Trash containers shall, in any event, only be placed in locations approved by the Architectural Committee. Trash cans and trash shall be stored out of view when it is not trash pick-up day. Rubbish containers may be placed temporarily for pick-up not to exceed twenty-four (24) hours before and after scheduled trash collection hours, except with Board approval.

Section 6.10. Nuisance. [Article III, Section 3.10] No noxious, illegal, or materially offensive activities shall be carried out or conducted upon any Lot or Common Area or in any part of the Development, nor shall anything be done within the Development which shall unreasonably interfere with any other resident's right to quiet enjoyment. No Owner or occupant of a Residence may use or allow the use of the Residence or any portion of the Lot in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or occupants of a portion of the Lot; or in such a way as to constitute, in the sole opinion of the Board, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

Nothing shall be done on any Lot or in any Residence or in, on, or to the Common Area which may impair the structural integrity of any building, or which would structurally change any building located therein. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an architectural committee appointed by the Board.

Section 6.11. Unsightly or Unkempt Conditions. The pursuit of activities, including without limitations, the assembly and/or disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Lot nor on or within any part of the Development.

Section 6.12. Dangerous Use of Lots. Nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or within the Common Area which would cause any improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

Section 6.13. Responsibility for Damage to the Common Area. Each Owner shall be legally liable to the Association for all damages to the personal property owned by the Association and the Common Area or any area in which the Association has the maintenance obligation caused by such Owner, his or her tenant, guest, licensee(s) or any occupant of such Owner's Lot. In the event, after written request by the Board, the Owner fails to pay the Association for the damage caused by the Owner, his or her, tenant, guest, licensee(s) or any occupant of such Owner's Lot as such liability may be determined under California law, the Board, by majority vote, may specially assess the Owner in the same manner and with the same remedies as previously described in these Governing Documents. Each Owner does further, by acceptance of this deed, agree for himself and for the members of his or her family, contract purchasers, tenants, guests or invitees, to indemnify each and every other Owner and the Association, and to hold him or her harmless from, and to defend him or her against, any claim of any person or persons for personal injury or property damage occurring within the Lot of the indemnifying Owner.

Section 6.14. Alterations of Residences. [Article III, Section 3.18] No Owner shall make or cause to be made structural alterations or modifications to his or her Residence or to the exterior of a Residence which is visible from the Common Area and/or another Residence without the prior written consent of the Architectural Committee as provided in Article 7 herein. No building of any kind shall be moved from any other place onto any of said Lots, or from one Lot onto another without the prior written consent of the Architectural Committee as provided in Article 7 herein.

Section 6.15. Use of Common Area. [Article II, Section 2.01] Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(A) Affording vehicular passage and pedestrian movement within the Development, including access to the Lots;

(B) Beautification of the Common Area through landscaping and such other means as the Board shall deem appropriate;

(C) Parking of vehicles in areas provided therefor as may be designated and approved by the Board, upon such terms and conditions as may from time to time be determined by the Board;

(D) No part of the Common Area shall be obstructed so as to interfere with the use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses or for storage of maintenance equipment used exclusively to maintain the Common Area).

(E) No Owner shall make any alteration or improvement to the Common Area, or remove any plants, structure, furnishings or other object therefrom, except with the prior written consent of the Board. The building, construction or placing by any Owner, or by the Board, or by any other person or persons, of any structure, hedge, fence, shrubbery or any obstruction of any kind or character in such position as to encroach on any of such private roads or driveways as presently shown on said map, is prohibited. Each Owner shall be liable to the Association for all damage to the Common Area or to any improvements thereon or thereto, caused by such Owner or any guest or occupant of such Owner's Residence.

Section 6.16. Window Covers. [Article III, Section 3.16] Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil or similar material. The Board shall have the power to make reasonable rules regarding window coverings which are visible from the exterior of the Residence. Each Owner shall promptly repair any broken windows and screens on the Residence.

Section 6.17. Rules of Association. Each Owner and his or her lessee, licensees, residents, occupants or guests of a Residence shall comply with the provisions of the Governing Documents, which may be amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief, or for any other remedy permitted by law or permitted by the terms of the Governing Documents.

Section 6.18. No Exterior Clotheslines. [Article III, Section 3.09] No exterior clotheslines shall be erected or maintained and there shall be no outside drying or laundering of clothes on the property or on the balcony, patio, porch, windows or other areas of any Lot in a manner which is visible from any neighboring property or the Common Area.

Section 6.19. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Development, or the reasonable pursuit of hobbies.

Section 6.20. Diseases and Pests [Article III, Section 3.08] No Owner shall permit any thing or condition to exist on her or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 6.21. Oil Drilling/Water Wells. [Article III, Section 3.12] No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon or in the Development, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of the Development. No derrick or other structures designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted anywhere upon the Development. No well for the production of or from which there is produced water shall be operated on any Lot.

Section 6.22. No Interference With Established Drainage Patterns. [Article VIII, Section 8.05] There shall be no interference with the established drainage pattern over any Lot so as to affect any other Residence, unless an adequate alternative provision is made for proper drainage which is first approved in writing by the Architectural Committee. For the purpose of this Section, "established drainage" is defined as the drainage which existed at the time the overall final grading of any Lot was completed or any later grading changes that are shown on plans approved by the Architectural Committee, which may include drainage from the Common Area over any Lot. The Owner of each Lot will be responsible for reasonably maintaining any drainage control facilities located on his or her Lot and shall otherwise be responsible for effecting proper drainage controls on his or her Lot.

ARTICLE 7

ARCHITECTURAL CONTROL

Section 7.1. Architectural Committee. [Article VII, Section 7.04] The Board may appoint an Architectural Committee (the "Committee") which consists of at least three (3) members, none of whom shall be required to meet any particular qualifications, except that members appointed to the Committee by the Board shall be from the membership of the Association. The Board may act as the Committee. The Board of Directors may establish other committees, e.g. a Landscape Committee, to be responsible for specific portions of the Architectural Control Committee's responsibilities as defined herein. These additional committees may be subcommittees of the Architectural Control Committee or independent of the Architectural Control Committee.

Section 7.2. Duties of the Committee. It shall be the duty of the Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to insure that any Improvements constructed on the property conform to plans approved by the Committee, to adopt Architectural Rules, and to perform other duties imposed upon it by the Governing Documents.

Section 7.3. Architectural Committee Approval of Improvements. [Article VII, Section 7.01, 7.02]

(A) Notwithstanding anything contained in the Governing Documents expressly or impliedly to the contrary, no building, fence, wall or other structure or Improvement shall be constructed or maintained upon the Development, nor shall any exterior addition, change or alteration be made in, on or to the Development, or any part thereof, including without limitation painting, repainting and landscaping and all Improvements referred to herein, until the plans and specifications, locating plat and color scheme showing the nature, shape, dimensions, materials and location of the same shall have been submitted to and approved in writing by the Committee. Approval shall be based, among other things, on conformity and harmony of design and location in relation to surrounding Improvements, effect on location and use of Improvements and landscaping on neighboring property, aesthetic beauty, assurance of adequate access to the Association in connection with the performance of its duties and the exercise of its powers under the Governing Documents, and conformity with Rules and Regulations and/or architectural guidelines adopted by the Committee. The Committee shall recommend to the Board whether or not the prevention or removal of any unauthorized and unapproved constructions of Improvements should be undertaken. The Board, on behalf of the Association, may then exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Improvements on the Development property or any portion thereof.

(I) [Article VII, Section 7.02] For purposes of the Governing Documents, the term "Improvement" includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, outbuildings, cages, storage sheds, mailboxes, walkways, sprinkler pipes, irrigation systems, garages, walls, patios, gates, garage doors, skylights, lighting and lighting fixtures, fences, swimming pools, spas, recreation facilities, roads, driveways, alleys, ditches, culverts, bridges; parking areas, screening walls, retaining walls, stairs, decks, landscaping, landscape structures, hedges, windbreaks, plantings, planted trees and shrubs, poles, ornamental

lighting, drainage facilities, utility lines, air conditioners or air conditioning systems, or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the interior of any Residence.

(B) The Committee shall, in writing, approve or disapprove plans (including landscaping plans) submitted to it within thirty (30) days. If a plan is disapproved, the disapproval must include a description of why the plan was disapproved and a description of the procedure for reconsideration of the decision by the Board. In the event the Committee fails to approve the submitted plans within thirty (30) days, the applicant may send written notice, via certified mail, to the Committee advising the Committee that the plans will be deemed approved if not disapproved thirty (30) days from the receipt of said certified letter if said Improvements conform and are in harmony with the overall design and style of the Association.

(C) Once a work of Improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications thereof and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Architectural Committee, in its discretion, may order the Owner, his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

(D) An Owner will obtain the approval of the Committee with respect to such Owner's plans, specifications, plats and schemes pursuant to this paragraph before submitting the same to the City for a building permit or other approval of any kind that may be required. Notwithstanding the foregoing, prior to an Owner submitting plans, specifications, plats and/or schemes to the Committee pursuant to this Article, such Owner shall consult the City's staff to identify and determine all regulations, standards, guidelines and other criteria that will be applicable to such Owner and the approval which such Owner intends to request of the Committee.

Section 7.4. Meetings. The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the Committee members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of the Governing Documents. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Committee shall not receive any compensation for services rendered.

Section 7.5. Architectural Control Committee Guidelines. [Article VII, Section 7.08] The Committee may, from time to time, and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, guidelines, to be known as "Architectural Control Committee Guidelines." The Committee's approval, amendment or repeal of Architectural Control Committee Guidelines shall be made subject to California *Civil Code* Sections 1357.100 et. seq. The Architectural Committee Guidelines shall interpret and implement the Governing Documents by setting forth the standards and procedures for Committee review and the guidelines for design and placement of Improvements and/or alterations. The Architectural Control Committee Guidelines

may not prohibit, or include conditions that have the effect of prohibiting, the use of low water-using plants as a group.

Section 7.6. Variances. [Article VII, Section 7.13] The Architectural Committee shall be entitled to allow reasonable variances with respect to this Article in order to overcome practical difficulties, avoid unnecessary hardships, provided that the following conditions are met:

(A) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under the Governing Documents, the Committee must conduct a hearing on the proposed variance after giving at least 10 days' prior written notice to the Board and to all Owners of Residences within 100 feet of the property for which the variance applies. The Owners receiving notice of the proposed variance shall have 30 days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 30-day comment period has expired.

(B) The Committee must make a good faith determination that:

(1) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Development or from any restriction contained herein or that the proposal allows the objectives of the violated requirements to be substantially achieved despite noncompliance; or

(2) the variance relates to a requirement hereunder, that it is unnecessary or burdensome under the circumstances; or

(3) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Residence, Common Area or Owner within the Development.

Section 7.7. Waiver. [Article VII, Section 7.09] The approval by the Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 7.8. Liability. [Article VII, Section 7.06] Neither the Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; provided that with respect to the liability of a member, such member has acted in good faith on the basis of actual knowledge possessed by him or her.

Section 7.9. Appeal. [Article VII, Section 7.14] In the event plans and specifications submitted to the Architectural Committee are disapproved, then the Owner may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the request for

appeal, the Board shall render its written decision. Failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision in favor of the applicant.

Section 7.10. No Approval by Single Committee Member. There shall be no approval of plans and specifications by any single Committee member. In the event a single Committee member approves architectural plans and specifications, such approval should not be relied upon and shall not be deemed approval by the Architectural Committee.

Section 7.11. Completion of Improvements. Unless expressly extended in writing by the Board or Committee, all Improvements must be completed within six (6) months from the commencement of construction of any approved Improvement upon a Lot.

Section 7.12. Inspection. [Article VII, Section 7.11] Any member or agent of the Committee or Board may, from time to time, at any reasonable hour or hours and upon reasonable notice, enter and inspect any Lot for the purpose of carrying out its duties herein.

ARTICLE 8

LEASING OF LOTS

Section 8.1. Definition. "Leasing," for purposes of the Governing Documents, is defined as regular, exclusive occupancy of a Residence by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service or gratuity.

Section 8.2. Leasing Provision. All leasing at the Development shall be in writing and shall be governed by the following provisions:

(A) **Notice.** Within fourteen (14) days after entering into the lease of a Lot, the Owner shall provide the Board with the name, telephone number and address of the lessee, the name, address and phone number of the Owner, and such other information as the Board may reasonably require.

(B) **Liability for Assessments and Compliance With the Governing Documents.** Any leasing of a Lot shall contain the following language, and if such language is not expressly contained therein, then such language is deemed to be and shall be incorporated into a lease by existence of this covenant on the Lot. Any tenant, by occupancy of a Residence, agrees to the applicability of this covenant and incorporation of the following language and terms into the lease:

(1) **General.** Lots may be leased only in their entirety; no fraction or portion may be leased. There shall be no subleasing of Lots or assignment of leases unless approved in writing by the Board. No transient tenants may be accommodated in a Residence. The Owner must make available to the tenant copies of the Governing Documents. All rentals must be for a term of no less than thirty (30) consecutive days in any one (1) calendar year.

(2) **Liability for Assessments.** Upon written request by the Board, the tenant shall pay to the Association all unpaid Annual and Special Assessments, but not to exceed the lease

payments unpaid at the time of the Association's request. All such payments thus made shall reduce the tenant's obligation to Lessor by like amount. Payment of Assessments shall be deemed necessary for maintenance of the habitability of the Residence.

(3) Compliance with the Governing Documents. Lessee and Lessee's guests, residents, and occupants shall abide by and comply with all provisions of the Governing Documents, as they may be amended from time to time, and the violation of same shall constitute a default under their lease. If a tenant or an occupant violates the Governing Documents for which a fine is imposed, such fine shall be the joint responsibility of the Owner and tenant. The Owners hereby delegate and assign to the Association, acting through the Board, the power and authority of enforcement against the tenant for breaches resulting from the violation of the Governing Documents, including the power and authority to evict the tenant on behalf of and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the tenant, any costs, including attorneys' fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner(s) thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner(s) thereof.

(4) Use of Common Elements. The Owner transfers and assigns to the tenant, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Area.

(C) Existing Leases. Leases existing on the effective date of this Declaration shall be permitted to continue in accordance with the terms of the Governing Documents as it existed prior to the effective date of this Amended and Restated Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Article.

This Article shall not apply to any leasing transaction entered into by the holder of any first mortgage on a Residence who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage.

ARTICLE 9

PROHIBITION OF TIMESHARES

Section 9.1. Timeshare Prohibition. Timeshare projects, Timeshare estates, Timeshare programs and Timeshare uses as defined pursuant to Section 11003.5 of the California *Business and Professions Code* are prohibited and Timeshares and Timeshare Programs as defined in this section are prohibited.

(A) For the purpose of this section, the term "Timeshare Program" shall include and not be limited to any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a Timeshare Interval is created and whereby the use, occupancy or possession of an Accommodation, Lot, Improvement, single-family dwelling, within such use, occupancy or possession circulates among purchasers of the Timeshare Interval according to a fixed or floating

time schedule on a periodic basis occurring annually over any period of time in excess one (1) year in duration.

(B) For the purpose of this section, the term "Timeshare Use" means any contractual right of exclusive occupancy, whether fixed for a specific time period or not, which does not fall within the definition of a "Timeshare Estate," including, without limitation, a vacation license, prepaid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

Section 9.2. Multiple Ownership Restrictions. Ownership of a Lot or Residence as tenants in common, joint tenants or any other form of multiple ownership by more than four (4) persons or entities is prohibited.

ARTICLE 10

MAINTENANCE RESPONSIBILITIES

Section 10.1. Association Maintenance Responsibilities. [Article V, Section 5.02]

(A) **Common Area.** The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area, including, but not limited to the following: private streets; gutters; storm drains; retention basins, curbs; gutters; street lights; sewers. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation form, or plant any tree, shrub, or other vegetation upon the Common Area or the Common Facilities without express written approval of the Board or Architectural Committee.

The Association shall maintain, repair and replace any landscaped slope areas within the Common Area in a neat, orderly and safe condition an in such a manner as to prevent erosion or sliding problems and to facilitate the orderly discharge of water through established drainage facilities and systems. Any natural slope areas within the Common Area shall be maintained in a natural condition and in such a manner as to prevent noxious or dangerous weeds, sagebrush, chaparral or any other brush or weeds from attaining such growth as to become a fire menace or public nuisance.

The Association shall be responsible for the maintenance of all open space lots within the Development.

(B) **Landscaping on Lots.** The Association shall be responsible for the landscaping, excluding irrigation, of the landscaped area in front of the block wall on the following Lots: 75795 Nelson Lane; 75985 Nelson Lane; 75825 Sarazan Way; 75975 Sarazan Way; 41577 Hogan Drive; 41810 Vardon Way; 75970 Vardon Way; 75975 Vardon Way; 75935 Gill Court; 75955 Gill Court; 75970 Gill Court; 75975 Gill Court; 41940 Ward Drive; 41955 Ward Drive; 41950 Harrison Drive; 41935 Harrison Drive; 41950 Jones Drive; and 75845 Armour Way.

(C) Hovley Lane Landscaping. [Article V, Section 5.02(I)] The Association shall be responsible to maintain the landscaping on the portion of Lot A (dedicated to the City) adjacent to the Development along Hovley Lane.

Section 10.2. Owner Maintenance Responsibilities. [Article III, Section 3.11]

(A) Lots and Residences. Except as otherwise provided in this Article, each Owner shall be responsible for the cost and performance of maintenance and repair of his or her Residence and Lot and shall maintain the same in a neat, orderly and attractive condition and in such a manner as to enhance its appearance. This obligation shall include, without limitation, the maintenance and repair of the foundation, roof, exterior building surfaces, doors, windows, and all plumbing, electrical, heating, air conditioning and other utility systems serving the Lot, located anywhere upon the Lot.

Notwithstanding the foregoing, each Owner shall plant, keep, maintain, water and replant all slope banks located on his or her Lot, so as to prevent erosion and create an attractive appearance. No structure, planting or other material shall be placed or permitted to remain, and no activities shall be undertaken, on any of the slope banks, which may damage or interfere with established slope banks, create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels. The Architectural Committee shall determine whether the provisions of this Section are complied with; and, each Owner shall promptly perform, or conform to, all directives issued by the Architectural Committee with respect thereto.

Each Owner shall keep his or her Lot free and clear of all weeds and rubbish and do all other things necessary or desirable to keep such Lot neat, in good order and condition, and properly planted and landscaped.

(B) Common Area. Each Owner shall maintain that portion of the Common Area which extends ten feet (10) from the street curb to the boundary line in the front yard of his or her Lot.

Section 10.3. Maintenance of Walls. A listing of the walls within the Development, the routine maintenance, repair and replacement duty for which the Owners and Association are responsible is contained in the "Wall Maintenance Matrix" attached as Exhibit B to this Declaration. Notwithstanding the items contained in the Wall Maintenance Matrix, in interpreting the maintenance responsibility for the walls within the Development, the following provisions apply:

(A) Definitions. For purposes of this Declaration, the following definitions apply:

(1) "Perimeter Walls" are the rear walls of Lots which border Sandcastle, Eldorado Drive and Hovley Lane;

(2) "Common Walls" are the walls placed on the dividing line between a Lot and the Common Area and are located on the following Lots: 41965 Jones Drive, 75775 Armour Way, 75845 Armour Way, 75985 Armour Way, 41950 Hogan Drive, 41570 Hogan Drive. An easement exists appurtenant to any Lot for any Common Walls whether or not the walls are located precisely on the Lot boundary line.

(3) "Party Walls" are the walls placed on the dividing line between two Lots and are not adjacent to the Common Area. An easement exists appurtenant to any Lot for any Party Walls whether or not the walls are located precisely on the Lot boundary line.

(4) "Landscape Walls" are the walls adjacent to the landscaped area maintained by the Association on the following Lots: 75795 Nelson Lane; 75985 Nelson Lane; 75825 Sarazan Way; 75975 Sarazan Way; 41810 Vardon Way; 75970 Vardon Way; 75975 Vardon Way; 75935 Gill Court; 75970 Gill Court; 75955 Gill Court; 75975 Gill Court; 41940 Ward Drive; 41955 Ward Drive; 41950 Harrison Drive; 41935 Harrison Drive; 41950 Jones Drive; 41577 Hogan Drive.

(B) Association Maintenance. The Association shall be responsible for the painting and minor repairs of the exterior surface and caps of the Perimeter Walls and Landscape Walls. The Association and the Owner(s) of Lots containing the Common Walls shall be jointly responsible for the maintenance, repair and replacement of the Common Walls as more specifically set forth in subsection (D) of this Section.

(C) Owner Maintenance. The Owners shall be responsible for the maintenance, repair and replacement of the Perimeter Walls and Landscape Walls, except for the painting and minor repairs of the exterior surface and caps of said walls. The Owners of Lots with Party walls shall be jointly responsible for the maintenance, repair and replacement of the Common Walls as more specifically set forth in subsection (D) of this Section.

(D) Joint Responsibility of Common Walls and Party Walls. [Article III, Section 3.22]

(1) General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the Common Walls and Party Walls.

(2) Right to Use. The Association and Owners with Common Walls and Party Walls have an equal right to use the Common Wall and Party Wall with the following provisions:

(a) Each Owner has the exclusive right to use the interior surface of the Common Wall or Party Wall facing the Residence;

(b) Owners may not drive nails, screws, bolts or other objects more than half-way through any Common Wall or Party Wall;

(c) Owners may not interfere with the Association and/or adjacent's Owner's use and enjoyment of the Common Wall and Party Wall; and

(D) Owners may not threaten or impair the structural integrity of the Common Wall or Party Wall.

(2) Repair and Maintenance.

(a) The cost of reasonable repair and maintenance of a Common Wall shall be shared by the Association and Owner(s) who make use of the wall in proportion to such use.

(b) The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Lot Owners who make use of the wall in proportion to such use.

(3) Destruction by Fire or Other Casualty.

(a) If a Common Wall is destroyed or damaged by fire or other casualty, the Association and Owners thereafter that make use of the wall, shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of the Association and any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(b) If a Party Wall is destroyed or damaged by fire or other casualty, the Owners thereafter that make use of the wall, shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(4) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the Common Wall or Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(5) Right to Contribution Runs With Land. The right of the Association and/or any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(6) Arbitration.

(a) In the event any dispute arises concerning a Common Wall, the Association and the affected Owner shall follow the provisions of Article 18, Section 18.1 (E) and (F) and current California law.

(b) In the event any dispute arises concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators.

Section 10.4. Failure of Owner to Carry Out Maintenance Responsibilities In the event the Owner of a Lot fails to perform his or her maintenance responsibilities, the Board shall have the right, but not the obligation, through itself or its agents, to perform appropriate maintenance and/or repairs at the expense of the Owner. In such event, in addition to other penalties and disciplinary measures imposed by the Board, the Board may levy a Reimbursement Assessment against such

Owner in the amount equal to all direct and indirect costs and expenses incurred by the Board in its performance of such maintenance and/or repairs. Any claim against the Board shall not constitute a defense or offset in any action of the Board for nonpayment of any amounts which may have been assessed hereunder.

Section 10.5. Liability for Damage. Owners shall be responsible to the Association for repairs necessitated by the act(s) and/or negligence of the Owners, their licensees, residents, tenants or guests. The Owner shall be liable for any damage or additional maintenance costs incurred as a result of Owner's unauthorized construction, erection or repair of the Common Area or areas of which the Association has the maintenance responsibility.

At the discretion of the Board, damages incurred under this section may be a Reimbursement Assessment against the Owner's Lot.

Section 10.6. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

ARTICLE 11

PARTITION

Section 11.1. Partition. Each of the Owners of a Lot is prohibited from participating or in any other way severing or separating such Ownership from any of the other Ownerships in the Common Area, except upon a showing that:

(A) More than three (3) years before the filing of the action, the Development was damaged or destroyed so that a material part was rendered unfit for its prior use, and the Development has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or

(B) That three-fourths (3/4) or more of the Development has been destroyed or substantially damaged, and that Owners holding in aggregate more than fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Development, or

(C) That the Development has been in existence in the excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Development; provided, however, that if any Lot shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition by sale as between such co-tenants.

Section 11.2. Power of Attorney. The Association is hereby granted a power of attorney to sell the Development for the benefit of all the Owners thereof when partition of the Owners's interest in said Development may be had pursuant to this Article. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds

(2/3) of the interest in the Common Area by any three (3) members of the Board who are hereby authorized to record a certificate of exercise in the Office of the Riverside County Recorder, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE 12

AMENDMENTS

Section 12.1. General. [Article XIII, Section 13.02] This Declaration may be amended at any time and from time to time by the vote or written consent of a majority of the total voting power of the Association. Any amendments shall be effective upon the recording thereof with the Office of the County Recorder of Riverside County, California.

Section 12.2. Amendments Requiring Approval of Eligible First Mortgagees. [Article IX, Section 9.05(h)] Eligible First Mortgagees are holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents.

At least fifty-one percent (51%) of the votes of Eligible First Mortgagees must give written approval before the Association may amend the Governing Documents concerning:

- (A) Voting rights;
- (B) Rights to use the Common Area(s), and reallocation of interests in the Common Area;
- (C) Reserves and responsibility for maintenance, repair and replacement of the Common Area;
- (D) Lot boundaries;
- (E) Owners' interests in the Common Area;
- (F) Convertibility of Common Area into Lots or Lots into Common Area;
- (G) Lot leasing;
- (H) Establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage;
- (I) Annexation or deannexation of real property;
- (J) Assessments, Assessment liens, or the subordination of such liens;
- (K) Casualty and liability insurance (or other insurance or fidelity bonds);
- (L) Imposition of a right of first refusal or similar restriction of an Owner's right to sell, transfer or otherwise convey the Lot;

(M) Restoration or repair of the Development after hazard damage or partial condemnation;

(N) Action to terminate the legal status of the Development after substantial destruction or condemnation; and

(O) Any provisions that are for the express benefit of first Mortgagees, insurers or governmental guarantors of first Mortgages.

Any amendment sent to an Eligible First Mortgagee pursuant to this provision which is not returned within thirty (30) days, shall be considered a valid consent to the amendment. An addition or amendment to the Declaration shall not be considered "material" if it is for the purpose of correcting technical errors, or for clarification only.

ARTICLE 13

DESTRUCTION OF IMPROVEMENTS

Section 13.1. Insurance Proceeds Sufficient. [Article X, Section 10.01] In the event of damage to or the partial destruction of the improvements in the Development, and if the available proceeds of the insurance are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof, the damaged or destroyed improvements shall be promptly repaired and rebuilt unless, within ninety (90) days from the date of such damage or destruction, at a duly constituted meeting of the Association, Owners representing seventy-five percent (75%) of the total voting power of the Association determine that such repair and reconstruction shall not take place.

Section 13.2. Insurance Proceeds Insufficient.[Article X, Section 10.01] If the available proceeds of such insurance are less than eighty-five percent (85%) of the cost of repair or reconstruction, such repair or reconstruction may nevertheless take place if, within ninety (90) days from the date of such damage or destruction, Owners representing sixty-seven percent (67%) of the total voting power of the Association so elect at a duly constituted meeting of the Association. If the Board is unable to obtain sufficient participation at such meeting, the Board shall have the right to petition the Superior Court of Riverside County to allow it to rebuild without a majority approval of the Membership.

Section 13.3. Assessments. If the Owners determine to rebuild, each Owner shall be obligated to contribute such funds as may be necessary to pay his or her proportionate share of the cost of construction, over and above the insurance proceeds, and the proportionate share of each Owner shall be the same as his or her proportionate share of Regular and Special Assessments. In the event of the failure or refusal of any Owner to make his or her proportionate contribution, the Board may levy a Special Assessment against such Owner, and enforce such Assessment as provided in Article 5.

Section 13.4. Failure to Rebuild. If a majority of the Owners do not agree to the repair or rebuilding of the Common Area, then each Owner (and his or her Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of his or her Lot as compared to the aggregate

decrease in fair market values of all the Lots caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a qualified real estate appraiser selected by the Board and hired by and at the expense of the Association. Should a dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitrations.

Section 13.5. Contract Re Rebuilding. If rebuilding of the Common Area is to take place, the Board or its authorized representative shall obtain bids from at least two (2) reputable contractors, and shall award the repair and reconstruction work to the lowest qualified bidder. The Board shall have the authority to enter into a written contract with said contractor for such repair and reconstruction, and the insurance proceeds held by the trustee or the Association shall be disbursed to said contractor according to the terms of the agreement. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of such repair and reconstruction at the earliest possible date if the same is authorized.

ARTICLE 14

DESTRUCTION OF LOT IMPROVEMENTS

Section 14.1. Destruction. [Article X, Section 10.03] In the event of total or partial destruction of any of the Improvements constructed on any Lot(s), the Owner(s) thereof shall reconstruct the same as soon as reasonably possible and substantially in accordance with the original plans and specifications therefor; provided, however, that said Improvements shall be restored so that the exterior appearance thereof substantially resembles their appearance in form and color immediately prior to such destruction.

Section 14.2. Variation. Notwithstanding the foregoing, the Owner of such damaged Improvements may request permission from the Architectural Committee to reconstruct or repair such Improvements in accordance with any new or changed plans and specifications established by the Architectural Committee and/or the Board of Directors.

ARTICLE 15

INSURANCE

Section 15.1. Types of Insurance Coverage. [Article V, Section 5.05]) The Association shall obtain and continue in effect the following:

(A) **Fire and Casualty Insurance.** A policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area, and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost (excluding foundations and excavation, but without deduction for depreciation) as determined annually by the insurance carrier, all Common Facilities and the personal property of the Association for or against the following:

(1) Loss or damage by fire or other risks covered by the standard coverage endorsement;

(2) Loss or damage from theft, vandalism or malicious mischief;

Loss or damage caused by sprinkler leakage, windstorm, water damage and covering the cost of demolition and debris removal; and

(3) Such other risks, perils or coverage as the Board of Directors may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of Article 13 of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities.

Unless at least two-thirds of the First Mortgagees (based upon one vote for each first Mortgage owned) or Owners have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.

(B) General Liability for Full Extended Coverage. A policy of general liability for full extended coverage, including, but not limited to, vandalism, malicious mischief, public liability with a cross-liability endorsement, such coverage to include protection against water damage, liability for non-owned and hired automobiles and liability for property of others, and such other risks as are customarily covered with respect to similar real estate developments in the Area of the Development and as shall customarily be required by private institutional mortgage investors for projects similar in construction, location and use to the Development. The policy shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners. The limits of such insurance shall not be less than \$3,000,000.00 for death or injury to any one person and \$3,000,000.00 for death or injury to more than one person in any one occurrence, and \$1,000,000.00 for property damage in any one occurrence or any amount greater as determined by the Board from time to time.

(C) Fidelity Bond. A fidelity bond covering against dishonest acts on the part of directors, officers, employees, volunteers, trustees, managers or any other persons who handle the funds of the Association. Such fidelity bond shall name the Association as obligee and shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Development, including reserves in the custody of the Association or a management agent at any given time during the term of the bond. The bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(D) Directors and Officers Insurance. Covering errors and omissions for officers and directors, and if desirable, committee members of the Association in an amount of at least \$1,000,000.00 per occurrence.

(E) **Other Insurance.** The Board may purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction and a decision not to rebuild. The Board shall also purchase and maintain workmen's compensation insurance, to the extent that the same shall be required by law, for all employees of the Development, and officers and directors errors and omissions insurance. The Board may also purchase and maintain insurance on personal property owned by the Association, and such other insurance, including plate-glass insurance as it deems necessary. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for all Residences and Common Area in light of increased construction costs, inflation, practice in the area in which the Development is located or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association and the Owners. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

All insurance obtained by the Association shall be in the name of the Association and shall be maintained at least for the benefit of the Association, the Owners and the Mortgagees as their interests may appear.

As to each of the policies provided for in this Article, which will not be voided or impaired by the requirements of this Section, the Owners hereby waive and release all claims against the Association, the Board and their agents and employees, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent of insurance proceeds received in compensation for such loss.

Section 15.2. Premiums, Proceeds and Settlement. Insurance premiums for any insurance coverage obtained by the Association pursuant to this Article shall be a common expense to be included in the monthly Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim and such signatures shall be binding on the Association and the Owners.

Section 15.3. Owner's Liability Insurance. Each Owner is responsible for maintaining whatever personal liability and property damages liability insurance that he or she desires with respect to his or her Lot and any other item that the Association is not obligated to maintain or repair. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any institutional First Mortgagee. No Owner can separately insure his or her Lot or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under this Article. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of this Section that results from the existence of such other insurance will be chargeable to the Owner who acquired such insurance, and the Owner will be liable to the Association to the extent of any diminution.

Section 15.4. Insurance Policy Deductibles. The Board shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association coverage is used, the responsibility for payment of any deductible shall be as follows:

(A) Owners shall be responsible for the cost of any deductible if the damage or loss occurs to the Owners' real or personal property, or other property for which the Owner is responsible.

(B) The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any item owned by the Association, or for which the Association is responsible.

(C) If the damage or loss occurs to any Lot or Lots and the Common Area, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each parties' cost of repair to the total costs of repair.

(D) The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner, the responsible Owner shall be liable for the cost of the deductible.

ARTICLE 16

CONDEMNATION

Section 16.1. Taking of a Lot. In the event of any taking of a Lot, by condemnation, eminent domain or any proceeding in lieu thereof, the Owner (and his or her Mortgagees as their interest may appear) of the Lot shall be entitled to receive the award for such taking and after acceptance thereof such Owner and his or her Mortgagee shall be divested of all further interests in the Lot property if such Owner shall vacate his or her Lot as a result of such taking. In such event said Owner shall grant his or her interest in the Common Area, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

Section 16.2. Taking of Common Area. [Article XI, Section 11.01] If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners of the Common Area, and their Mortgagees, shall be entitled to receive the award for such taking in proportion to the interest of each in the Common Area; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Article 13 for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Article 13 for determining whether to rebuild or repair following damage or destruction.

Section 16.3. Disbursement of Any Award. If the compensation for a taking affecting all or a portion of the Common Area is not apportioned among the Owners by court judgment or by agreement between the taking entity and the Board, then as soon as practicable after the receipt by the Association of any compensation for a taking, the Board will disburse the same as follows:

(A) First, to contractors, subcontractors, materialmen and others for the costs of the repair or restoration of damage or destruction to the Common Area caused by a taking, or to the Association in reimbursement for such costs; the balance of the award is hereinafter referred to as "Award Balance."

(B) Second, the Award Balance to the Association. In the event the entire Common Area is so appropriated, the Award Balance shall be distributed to the Owners so that each Owner receives one equal share of such Award Balance for each Lot owned by such Owner. In the event that only a part of the Common Area is so appropriated, the Award Balance shall be retained by the Association or disbursed to the Owners in whole or in part as determined by the Board.

Section 16.4. Priority of Mortgagee Rights. In the event there shall be any express or implied conflict between any provision of this Article and any provision of a note or Mortgagee held by a Mortgagee, the provisions of said note or Mortgage shall govern and prevail.

ARTICLE 17

RIGHTS OF LENDERS

Section 17.1. Subordination of Lien and Foreclosure. [Article IX, Section 9.01]

(A) Any lien created or claimed in this Declaration:

(1) Is subject and subordinate to the rights of any first Mortgage that encumbers any part of the Development made for value in good faith; and

(2) May not in any way impair or invalidate the obligation or priority of a first Mortgage unless expressly subordinated in writing by the Mortgagee.

(B) Foreclosure of any Assessment lien created by any provision of this Declaration shall not operate to impair any lien encumbered by a first Mortgage made for value in good faith.

(C) Upon foreclosure of a first Mortgage, the purchaser:

(1) Will take the Lot title free of any Assessment lien accrued up to the time of the foreclosure sale (provided that nothing herein is intended to impair the rights of the Association to receive payment on any Assessment lien in the event the net sale proceeds are in excess of what is owed on all encumbrances prior to the Assessment lien);

(2) Is only obligated to pay Assessments or other Associations charges accruing after the Lot title is acquired; and

(3) Where the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien will not be extinguished,

Section 17.2. Mortgages Are Not Required to Cure Certain Breaches. [Article IX, Section 9.02] A first Mortgagee who acquires title by foreclosure or by a deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

Section 17.3. Effect of Breach of Declaration. [Article IX, Section 9.03]

(A) Breach of this Declaration may not:

- (1) Cause any forfeiture or reversion of title; or
- (2) Bestow any right of reentry.

(B) Breach of this Declaration may be enjoined or abated by court action by the Association or any Lot Owner, and damages may also be awarded provided that:

- (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and
- (2) This Declaration binds any Owner whose title is derived through foreclosure, trustee's sale or otherwise;

Section 17.4. Exemption From Right of First Refusal. [Article IX, Section 9.04]

(A) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Lot, unless a Mortgagee of the Development grants written consent to the Association.

(B) Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other party) may not impair the rights of a first Mortgagee to do any of the following:

- (1) Foreclosure or take title to a Lot, pursuant to the remedies provided in the Mortgage;
- (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or
- (3) Sell or lease a Lot acquired by the Mortgagee.

Section 17.5. Restrictions on Certain Changes. [Article IX, Section 9.05] Eligible First Mortgagees are holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents.

At least sixty-seven (67%) percent of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees must give written approval before the Association may, by act or omission, do any of the following:

- (A) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Common Area (other than granting easements as specified in this Declaration);
- (B) Alter the method of determining Assessments or other charges levied against an Owner;
- (C) Partition or subdivide any Lot;
- (D) Seek to abandon or terminate the Development, (except as provided by statute in case of substantial loss to the Lots or Common Areas;
- (E) Use hazard insurance proceeds for losses to the Development (Lot or Common Area) for other than repair, replacement or reconstruction of the relevant Development (except as provided by statute in case of substantial loss to the Lots or Common Areas);
- (F) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Lots or the Common Area(s).
- (G) Fail to maintain fire and extended coverage on insurable Common Area(s) as specified in this Declaration.
- (H) Change, waive or abandon the provisions of this Declaration (and their enforcement) pertaining to architectural design and control fo the exterior appearance of structures, maintenance of the Common Area(s), walks, fences, driveways, lawns and plantings on the Development.

When Lot Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Development, written approval of approximately sixty-seven percent (67%) of Eligible First Mortgagees must be given.

If an amendment or change is not considered material, an Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within thirty (30) days after it receives notice of the proposed amendment, provided notice was delivered personally or by certified or registered mail, return receipt requested.

Section 17.6. Inspection of Association Books and Records. [Article IX, Section 9.06] Any first Mortgage holder has the right to examine the books and records of the Association.

Section 17.7. Condemnation Awards and Insurance Proceeds. [Article IX, Section 9.07]

- (A) First Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in a case of distribution to Owners of insurance proceeds or condemnation awards

for losses to or taking of Lots of Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.

(B) All applicable fire, physical loss or extended coverage insurance policy must contain loss payable clauses acceptable to the affected first Mortgagee, naming the Mortgagees as their interests may appear.

Section 17.8. Mortgagee's Right to Attend Meetings. [Article IX, Section 9.08] Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote.

Section 17.9. Payments by Mortgagee. [Article IX, Section 9.09]

(A) First Mortgagees may pay the following jointly or severally;

(1) Taxes or other charges in default which may be a charge against any part of the Common Area(s); and

(2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s).

(B) Upon making such payments, the Association:

(1) Owes immediate reimbursement to the first Mortgagees making such payments; and

(2) Must, upon Mortgagee's request, execute an agreement that reflects the first Mortgagees' entitlement to such reimbursement.

Section 17.10. Loss Payable Endorsement. [Article IX, Section 9.10] All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the loss.

Section 17.11. Notices to Mortgagees. [Article IX, Section 9.11]

(A) The holder, insurer or guarantor of the Mortgage on any Lot is entitled to timely written notice of:

(1) Any condemnation or casualty loss that affects either a material portion of the Development or the Lot securing its Mortgage;

(2) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the Mortgage;

(3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgage Holders.

(B) To obtain the information above, the Mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the unit number or address of the Lot it has the Mortgage on.

Section 17.12. Governmental Financing Programs. [Article IX, Section 9.12]

(A) The Development in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot in the Development by the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association or Federal Housing Administration/Department of Veterans Affairs. The Association and each Owner shall promptly take any action and/or shall adopt any resolutions required any Mortgagee to conform this Declaration or the Development to the requirements of any of these entities or agencies.

(B) These steps include the requirement that, when available, the Association must maintain certain types of insurance coverage issued by carriers who meet the requirements of the relevant governmental financing program.

(C) Hazard insurance policies required by this Section must contain (or attach) the standard Mortgagee clause commonly accepted by private institutional Mortgage investors for similar properties in the locale (except when a separate policy covering the Common Area(s) is maintained).

(D) If there are any such loans, the Association will give written notice to FHLMC (or its designated representative) of the following:

(1) Any loss to the Common Area in excess of Ten Thousand Dollars (\$10,000.00); or

(2) Damage to a Lot covered by a first Mortgage purchased (in whole or in part) by the FHLMC in excess of One Thousand Dollars (\$1,000.00).

ARTICLE 18

ENFORCEMENT

Section 18.1. Enforcement. [Article XIII, Section 13.03] Each Owner, lessee, licensee, guest, resident and occupant of a Lot shall comply with the provisions of the Governing Documents and decisions and resolutions of the Association or its duly authorized representative. Failure to comply with any such provisions, decisions or resolutions shall be grounds for enforcement action which may include but not be limited to the following, in addition to other remedies afforded by law:

(A) Suspension of Rights. The Association may temporarily suspend the voting rights and right to use the Common Area facilities by an Owner for any period during which any Assessments remain unpaid. Additionally, the Association may suspend the voting rights and right to use the Common Area facilities for up to thirty (30) days due to a violation of the Governing Documents by any Owner, or his or her guests, tenants, or family members. No suspension shall take place unless the procedures set forth in subsection (D) have been taken.

(B) Fines/Monetary Penalties. The Board may impose fines and/or monetary penalties against an Owner for his or her family members', guests', tenants' or agents' violation of the Governing Documents, after Due Process, as set forth in Subsection (d). Prior to imposing any such penalties, the Board shall adopt and distribute to each Owner, by personal delivery or first- class mail, a schedule of the penalties. The Board shall only be required to distribute additional schedules upon any amendments to such schedule being made.

(C) Reimbursement Assessments. The Board may levy Special Reimbursement Assessments, for damage to the Common Area or to reimburse the Association for costs incurred to bring an Owner into compliance with the Governing Documents, as set forth in Article 5, Section 5.5.

(D) Due Process. Such suspension, fines, or Reimbursement Assessments may occur only after the Member has been given at least ten (10) days notice, and an opportunity to be heard before the Board before the effective date of the action, as set forth in Section 1363(h) of the California *Civil Code*, or successor statute. Within fifteen (15) days after the hearing, the Board shall give the Member written notice of the action taken against the Member, in conformance with California *Civil Code* Section 1363(h).

(E) Alternative Dispute Resolution (ADR). Where required by *Civil Code* Sections 1354, 1369.510 - 1369.590, prior to the Association or any Owner bringing a civil action for declaratory relief or injunctive relief, or for such claims in conjunction with a claim for damages not in excess of \$5,000, related to the enforcement of the Governing Documents, such party shall offer alternative dispute resolution to the other party, as set forth in *Civil Code* Sections 1354, 1369.510 - 1369.590.

(F) Internal Dispute Resolution Procedures. Where there is a dispute between the Association and a Member involving their rights, duties, or liabilities under California law or the Governing Documents, the Association shall provide a fair, reasonable and expeditious procedure for resolving the dispute as set forth in *Civil Code* Sections 1363.810 - 1363.850.

(G) Towing of Vehicles. The Association shall have the power to tow vehicles from the Common Area, including private streets and driveways, which are parked in violation of the Association's Governing Documents or California law, pursuant to *Vehicle Code* Section 22658. The Association may also use booting or other legal methods to enforce parking restrictions and rules.

(H) Right of Entry. [Article V, Section 5.06] The Board shall have the right of entry onto a Lot to remedy violations of the Governing Documents, and where necessary to protect, preserve and maintain the Common Area, as set forth in Article 4, Section 4.3.

(I) Legal Action. The Board shall have the power and duty to enforce the Governing Documents by all legal means available, and bring an action in law or in equity, and to utilize any lawful enforcement remedy.

(J) Lien and Foreclosure. The Association shall have the lien and foreclosure rights as set forth in Article 5 to enforce the obligation to pay Assessments and related charges.

(K) Other Remedies. The Association shall have all other remedies provided by law or otherwise to remedy violations, and to enforce the Governing Documents.

Section 18.2. Nuisance. The results of every act or omission which are a breach as set forth in Section 18.1 above are hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, or the Board.

Section 18.3. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation, pertaining to the ownership, occupation or use of the Development or any part thereof is hereby declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures set forth herein.

Section 18.4. No Waiver. The failure of the Board, or any Owner to enforce any of the provisions contained in the Governing Documents shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability on the Association or the Board.

Section 18.5. Attorneys' Fees. [Article XIII, Section 13.12] In the event the Association, or any Owner, shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in said action shall be entitled to actual attorneys' fees and costs reasonably incurred.

Section 18.6. Cumulative Remedies. Each and all legal or equitable remedies provided for herein shall be deemed to be cumulative.

ARTICLE 19

GENERAL PROVISIONS

Section 19.1. General Duties and Powers. The Association shall have all those duties and powers set forth in the Articles and Bylaws of the Association or permitted pursuant to the provisions of the California *Corporations Code* for nonprofit mutual benefit corporations. All such duties and powers shall be subject to any specific limitations set forth in the Governing Documents. All such duties and powers shall be exercised by the Board unless specifically reserved to the Members.

Section 19.2. Notices. [Article XIII, Section 13.04] Any notice to be given to an Owner or Mortgagee under the provisions of the Governing Documents shall be in writing and may be delivered personally or by first class mail, postage prepaid to the latest recorded address in the business records of the Association. If delivery is made by first class mail, it shall be deemed to have

been delivered upon deposit into the United States mail. Notice may also be given via e-mail, facsimile, or other electronic means, if the recipient has agreed to that method of delivery. If a document is delivered by electronic means, delivery is complete at the time of transmission.

Section 19.3. Extension of Declaration. [Article XIII, Section 13.01] Each and all of these Covenants, Conditions and Restrictions shall terminate on December 31, 2056, after which date they shall automatically be extended for successive periods of ten (10) years unless amended or extinguished by a written instrument executed by at least a majority of the Owners of Lots in the Development and such written instrument is recorded with the Riverside County Recorder.

Section 19.4. Limitation of Liability. In discharging its duties and responsibilities, the Board acts on behalf of and as representative of the Association which acts on behalf of and as representative of the Owners of Lots. No member of the Board shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in good faith.

Section 19.5. Liberal Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Development for the mutual benefit of all Owners.

Section 19.6. Indemnification. Every director and every officer past or present of the Association shall be indemnified by the Association against expenses and liabilities, including reasonable attorney's fees and cost incurred or imposed upon him or her in connection with any proceeding in which such director or officer may be a party, or in which such officer or director may become involved, by reason of his or her being, or having been, a director or an officer of the Association, or any settlement thereof, except in such cases wherein the director or officer is adjudged guilty of gross negligence or malfeasance in the performance of his or her duties. Indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

Section 19.7. Severability. Invalidation or reformation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstance(s) or any other provision(s) which shall remain in full force and effect.

Section 19.8. Number; Gender. [Article XIII, Section 13.10] The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 19.9. Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of all heirs, personal representatives, successors, assigns, personal representatives, grantees, lessees, licensees and renters of Owners.

Section 19.10. Joint and Several Liability. In the case of Joint Ownership of a Lot, the liability of each Owner and the Owners thereof in connection with the liabilities and obligations of the Owners, set forth in or imposed by the Governing Documents, shall be joint and several.

Section 19.11. Encroachment Easements. [Article VIII, Section 8.04]

(A) The Owner of each Lot is hereby granted an easement over all adjoining Lots and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting, provided, however, that in no event shall an easement for encroachment be created in favor of any Owner if said encroachment occurred due to the willful misconduct of an Owner. In the event any portion of a structure on the property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Exclusive Use Areas or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

(B) [Article VIII, Section 8.10] A nonexclusive easement exists appurtenant to each Lot extending on, over and across any adjacent Lot (Residential or Common Area) within the following limitations:

- (1) Not in excess of one foot (1') by and foundations or footings;
- (2) Not in excess of three feet (3') for eaves or other overhangs, wing walls, or chimneys (reconstructed or altered in accordance with this Declaration); and
- (3) Encroachments must be measured at the point of encroachment along a plane perpendicular to the common property line between the relevant Lots.

Section 19.12. Conflicts. If there are conflicts or inconsistencies between the provisions of California law, this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations, the provisions of California laws, the Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations (in that order) shall prevail.

CERTIFICATE OF AMENDMENT

I, the undersigned, declare:

1. I am the duly elected and acting Secretary of SUNTERRACE HOMEOWNERS ASSOCIATION, INC., a California Nonprofit Mutual Benefit Corporation; and

2. The foregoing FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUNTERRACE HOMEOWNERS ASSOCIATION, INC., comprising ____ pages, constitutes the Declaration of Restrictions of the Association duly adopted by a vote of at least sixty-seven percent (67%) of the voting power of the Association.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this day of , 2007.

**SUNTERRACE HOMEOWNERS
ASSOCIATION, INC.**

By: _____,
_____, Secretary

[illegible]

On _____ before me _____ a Notary Public, personally appeared _____ personally known to me (or proven 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.

Signature _____ (Seal)

I, the undersigned, declare:

1. I am the duly elected and acting President of SUNTERRACE HOMEOWNERS ASSOCIATION, INC., a California Nonprofit Mutual Benefit Corporation; and

2. The foregoing FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUNTERRACE HOMEOWNERS ASSOCIATION, INC., comprising ____ pages, constitutes the Declaration of Restrictions of the Association duly adopted by a vote of at least sixty-seven percent (67%) of the voting power of the Association.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this ____ day of _____, 2007.

SUNTERRACE HOMEOWNERS
ASSOCIATION, INC.

By: _____, President

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss

On _____ before me _____ a Notary Public, personally appeared _____ personally known to me (or proven 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.

Signature _____ (Seal) _____

EXHIBIT "A"

LEGAL DESCRIPTION

PROPERTY

PHASE I

Lots 1 through 10, inclusive, 13 through 23, inclusive, 25 through 30, inclusive, and Lots B through E inclusive of Tract No. 23940-1, as per Map filed in Book 235, Pages 60 through 62, of Maps in the Office of the County Recorder of Riverside County.

PHASE II

Lots 1 through 25, inclusive, and Common Area Lots B and C of Tract No. 23940-2, as per Map filed in Book 250, Pages 41 through 44, of Maps in the Office of the County Recorder of Riverside County.

PHASE III

Lots 2 through 22, inclusive, Lots 26 through 28, inclusive, and Common Area Lots 1, C, D, E, F and G of Tract No. 23940-3, as per Map filed in Book 250, Pages 76 through 78, of Maps in the Office of the County Recorder of Riverside County.

Parcels 1 through 3, inclusive, of Parcel Map 29018 as shown by Map on file in Book 193, Pages 70 through 72, inclusive, of Parcel Maps, Records of Riverside County, California.

PHASE IV (Revised)

Lot 3, and 18 through 28, inclusive, and Common Area Lots D, F and G of Tract No. 23940, as per Map filed in Book 250, Pages 79 through 81, of Maps in the Office of the County Recorder of Riverside County.

PHASE V

Lots 11 through 17, inclusive, Lots 29 through 31, inclusive, and Common Area Lot C of Tract No. 23940, as per Map filed in Book 250, Pages 79 through 81, of Maps in the Office of the County Recorder of Riverside County.

PHASE VI

Lots 1, 2, 4 through 10, inclusive, Lots 32 through 37, inclusive, and Common Area Lot E of Tract No. 23940, as per Map filed in Book 250, Pages 79 through 81, of Maps in the Office of the County Recorder of Riverside County.

COMMON AREA LOT(S)

Lot(s) B through E, inclusive, and Lots 1 and 5 of Tract 23940-1, as per Map filed in Book 235, Pages 60 through 62, of Maps in the Office of the County Recorder of Riverside County.

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