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SHADOW CREST HOMEOWNERS ASSOCIATION, INC.

AND WHEN RECORDED MAIL TO:

Shadow Crest Homeowners Association, Inc.
c/o Desert Management
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P. O. Box 799
Rancho Mirage, CA 92270-0799

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RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHADOW CREST HOMEOWNERS ASSOCIATION, INC.

A Planned Residential Development

[Cover Page]

RESTATED DECLARATION OF COVENANTS, CONDITIONS

AND RESTRICTIONS

FOR SHADOW CREST HOMEOWNERS ASSOCIATION, INC.

A Planned Residential Development

August 2004

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.

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RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SHADOW CREST HOMEOWNERS ASSOCIATION, INC.

A Planned Residential Development

THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made on the day and year hereinafter written, by SHADOW CREST HOMEOWNERS ASSOCIATION, INC., *a California Nonprofit Mutual Benefit Corporation* ("Declarant"), with reference to the following Recitals.

RECITALS

A. Declarant is a homeowners association whose Members are the Owners of all the Residential Lots within that certain real property in the City of Cathedral City, County of Riverside, State of California, more particularly described as:

> Lots 1 to 42, inclusive, and Lots A, B, C, and D of Tract No. 14407, as shown by Map recorded in Book 164, pages 34 through 37, of Official Records of Riverside County, California

(hereinafter "Property").

B. The Property was developed as a Planned Residential Development, as defined in Section 1351(k) of the California *Civil Code*, and consists of 42 Residential Lots and related Common Areas. The Owners of each Residential Lot shall have an undivided fractional subleasehold interest in and to the Common Area, subject to any exclusive easements and other separate Ownership Interests therein, and this Restated Declaration.

C. Ownership of the Property is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the Declaration of Covenants, Conditions, and Restrictions for Shadow Crest Homeowners Association, recorded on August 21, 1987, as Instrument No. 243868, Official Records of the County Recorder of Riverside County (hereinafter "Declaration").

D. Declarant now desires to amend and restate the Declaration and replace it in its entirety with this Restated Declaration. Declarant further desires that, upon recordation of this Restated Declaration, the Property shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein, and that this Restated Declaration take the place of and relate back in time to the recording of the original Declaration.

E. Article XVI, Section 16.05, of the Declaration provides that it may be amended by the affirmative vote or written consent of seventy-five percent (75%) of the entire membership. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

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

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ARTICLE 1 - DEFINITIONS

1.1 **"Association"** and **"Declarant"** means Shadow Crest Homeowners Association, Inc., *a California Nonprofit Mutual Benefit Corporation*, consisting of all Owners of Residential Lots in the project, created for the purpose of managing a common interest development.

1.2 **"Board"** means the Board of Directors of the Association.

1.3 **"Bylaws"** means the existing Bylaws of the Association or, if adopted by the membership, the Restated Bylaws of the Association, as well as any duly adopted amendments thereto, which are incorporated herein by reference.

1.4 **"Common Area"** means the entire Property except all Residential Lots.

1.5 **"Dwelling Unit"** means any home designed and intended for use and occupancy as a residence by a single family, including all appurtenances and improvements thereto.

1.6 **"Eligible Mortgagee"** means a holder, insurer or guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or guarantor and the lot number, and requesting notice to which such Eligible Mortgagee is due under the Governing Documents.

1.7 **"Exclusive Use Common Area"** means those portions of the Common Area designated herein for the exclusive use of one or more, but fewer than all, of the Owners of the separate interests and which is appurtenant to a Residential Lot. "Exclusive Use Common Areas" and "Restricted Common Areas" shall have the same meaning and shall consist of all utility lines, pipes, conduits and wiring designed to serve four Residential Lots or less but located outside the boundaries of the Residential Lot.

1.8 **"Governing Documents"** means this Restated Declaration and any other documents such as the Articles, Bylaws, Architectural Guidelines, Landscape Guidelines, or Rules and Regulations which govern the operation of the Association.

1.9 **"Member"** means every person or entity entitled to membership in the Association as provided in this Restated Declaration.

1.10 **"Mortgage"** means a mortgage or deed of trust encumbering a Residential Lot or any other portion of the Project. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Residential Lot or other portions of the Project.

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

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

1.13 **"Owner"** means the record owner(s) of a fee simple interest in a Residential Lot in the Project, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Residential Lot merely as security for performance of an obligation.

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1.14. **"Person"** means an individual, a corporation, or any other entity with the legal right to hold title to real property.

1.15 **"Project"** means the common interest development which is a planned residential development, including all improvements thereon, located within the Property.

1.16 **"Property"** means the real property described in Recital A above, which is subject to this Restated Declaration.

1.17 **"Residential Lot"** means any one of Lots 1 to 42, inclusive, within the subdivision. The term *Residential Lot* shall also mean and include the Residential Unit located thereon. For purposes of this Declaration, the term *Residential Unit/Lot* may also be used, but shall have the same meaning as *Residential Lot.*

1.18 **"Residential Unit"** means all structures located on the Residential Lot.

1.19 **"Restated Declaration"** means this Restated Declaration of Restrictions and any amendments thereto.

1.20 **"Rules and Regulations"** means any Rules and Regulations for the Association regulating the use of the Residential Lots, Exclusive Use Common Areas, Common Areas, the Project and any facilities located thereon adopted by the Board pursuant to Subsection 3.5.2 herein.

ARTICLE 2 - THE PROPERTY

2.1 **Project Subject to Restated Declaration.** The entire Project and Property shall be subject to this Restated Declaration.

2.2 **Description of Land and Improvements; Ownership of Common Area.** The Property consists of all real property described in Recital A herein. The Common Area is owned by the Association. The Owners of Residential Lots shall have a nonexclusive easement over the Common Area. Such nonexclusive easements shall be subordinate to any separate Ownership interests and any exclusive easements and/or Exclusive Use Common Area appurtenant to an Owner's Residential Lot.

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

2.4 **Prohibition Against Partition.** There shall be no judicial partition of the Project or any part of it, nor shall Declarant or any person acquiring an interest in the Project or any part of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of Section 1359 of the California *Civil Code.*

2.5 **Presumption Regarding Boundaries of Residential Units.** In interpreting deeds, declarations and plans, the existing physical boundaries of a Residential Unit shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Final Tract Map, or this Restated Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown on the Final Tract Map or described in the deed and those of the building as constructed or reconstructed.

2.6 **Prohibition Against Severance of Elements.** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Residential Lot shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's membership interest in the Association, as provided in Article 3 herein. Any transfer that attempts to sever those component interests shall be void.

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ARTICLE 3 - ASSOCIATION

3.1 **Organization of the Association.** The Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Project and is charged with the duties and granted the powers prescribed by law and set forth in the Governing Documents.

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

3.3 **Membership Class Voting Rights.** The Association shall have one voting class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. Each Member shall be entitled to cast one (1) vote for each Residential Lot owned, subject to the provisions set forth in the Bylaws.

3.4 **Membership Meetings.** Meeting of Members shall be held in accordance with Article 2 of the Bylaws.

3.5 **General Powers and Authority.** The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. In the event of any inconsistency between the provisions of this Restated Declaration, the Bylaws and/or the Articles of the Association, the Restated Declaration shall prevail. In the event of any inconsistency between the provisions of the Bylaws and the Articles, the Articles shall prevail. The Association may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

3.5.1 The power to establish, fix, levy, collect, and enforce the payment of Assessments against the Owners in accordance with the procedures set forth in this Restated Declaration.

3.5.2 The power to adopt reasonable rules and regulations and Architectural Rules governing the use of the Residential Units/Lots, the Common Area, (including establishing no parking areas in any portion of the Common Areas) any common facilities and Association owned property, and the conduct at Board and Members' meetings, in accordance with the following:

(a) The rules and regulations may include, but are not limited to reasonable restrictions on use by the Owners and their families, guests, employees, tenants and invitees; rules of conduct; the setting of reasonable administrative rules, fees, deposits; and the setting of reasonable hearing procedures and monetary penalties and fines in the event of a violation of any provisions of the Governing Documents, subject to Article 3.13 of the Bylaws.

(b) Prior to the adoption of a Rule Change, as that term is defined herein, the Board of Directors shall provide Owners with written notice and an opportunity to comment on any such Rule Change. The written notice to the Owners shall include all the following information:

(i) The text of the proposed rule change; and

(ii) A description of the purpose and effect of the proposed Rule Change;

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(iii) The deadline for submission of a comment on the proposed Rule Change;

(iv) For a period of not less than thirty (30) days following delivery of the written notice of the proposed Rule Change, the Board of Directors shall accept written comments from Owners on the proposed Rule Change;

(v) The Board of Directors shall consider any comments received from the Owners and shall make a decision on the proposed Rule Change at a Board meeting open to the membership. A decision by the Board on whether or not to adopt the Rule Change shall not be made until after the comment submission deadline. The Board of Directors shall deliver notice of any Rule Change to every Association Member. The Notice shall set out the text of the Rule Change and state the date the Rule Change takes effect. The date the Rule Change takes effect shall not be less than fifteen (15) days after Notice of the Rule Change is delivered. For purposes of this paragraph, the term *Rule Change* shall mean an adoption, amendment or repeal of the Association's Rules and Regulations and/or Architectural Rules.

Any Rule Change based on an emergency can be approved by the Board of Directors at any Board meeting without compliance with Section 3.5.2.(b).

(c) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be distributed to each Owner in a manner consistent with *Civil Code* §1350.7 or any successor statute.

If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

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

(a) Enforcement of the Governing Documents.

(b) Damage to the Common Area.

(c) Damage to any Residential Units/Lots that the Association is obligated to maintain or repair.

(d) Damage to the Residential Units/Lots that arises out of, or is integrally related to, damage to the Common Area or Residential Units/Lots that the Association is obligated to maintain or repair.

(e) Enforcement of payment of Assessments in accordance with the provisions of Section 4.11 herein.

(f) Any other matter(s) in which the Association is a party, including, but not limited to contract disputes.

3.5.4 The right to discipline Owners for violation of any of the provisions of the Governing Documents by (i) suspending the Member's membership rights, including the Owner's voting rights and the rights and privileges to use the Common Area and/or facilities appurtenant to the Member's Residential Lot, and (ii) by imposing monetary fines, subject to the limitations set forth in Section 3.13 of the Bylaws.

3.5.5 Except for the Residential Unit itself, the right for its agents and employees to enter any Residential Lot when necessary in connection with any emergency, maintenance, landscaping, inspection for compliance with the Governing Documents, and/or construction work for which the Association is

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responsible (provided there shall be no access to the inside of any Residence without a court order or permission of the Owner).

3.5.6 If, for any reason, an Owner fails to maintain or repair an area required to be maintained by him/her, Association, upon providing due process to the Owner in compliance with Section 7.11 of this Restated Declaration, shall have the authority to enter into or upon the Residential Lot for the purpose of maintaining or repairing said area. This section shall not be construed to permit access inside any Residence without a court order or permission of the Owner.

3.5.7 Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the Board shall have the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Residential Lot, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

3.5.8 The Association shall have the power to remove any vehicle within the Project parked in violation of this Restated Declaration or the Rules and Regulations in accordance with the provisions of California *Vehicle Code* Section 22658.2, any other powers granted to an association under California law, and any amendments thereto.

3.5.9 The Association shall have the authority to take such action, whether or not expressly authorized by this Restated Declaration, as may reasonably be necessary to enforce the governing documents of the Association.

3.6 **Duties of the Association.** In addition to the duties of the Association, its agents and employees set forth elsewhere in the Governing Documents, the Association, acting through the Board of Directors, shall be responsible for the following:

3.6.1 The Association shall provide for the maintenance and preservation of the Common Area and improvements thereon in good order and repair.

3.6.2 The Association shall pay all real property taxes and assessments levied upon any portion of the Common Area not assessed to or paid by the owners.

3.6.3 The Association shall be responsible for the financial management of the Association as provided in the governing documents.

3.6.4 The Association shall operate, maintain, repair, and replace those components described in Section 6.4, or contract for the performance of that work, subject to the provisions of the Governing Documents.

3.6.5 The Association shall use the maintenance fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Project, including, but not limited to:

(a) Water, sewer, refuse, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Residential Lots, provided, however, that the Association, acting through the Board of Directors, shall have the right to enter into agreements with public utilities and/or cable service providers to provide bulk services to the Residential Units/Lots.

(b) The insurance policies described herein.

(c) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area and the Association.

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(d) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Document.

3.6.6 The Association shall maintain such areas adjacent to the Project as the Board of Directors shall determine from time to time to be desirable in order to enhance the appearance of the Project or as may be required from time to time by the City of Cathedral City or other applicable governmental agency.

3.7 **Board of Directors.** The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Article 3 of the Bylaws.

3.8 **Inspection of Accounting Books and Records.** The rights of Owners and Directors to obtain and inspect the accounting books and records of the Association shall be in accordance with Article 6 of the Bylaws, governing the duty of the Association to maintain certain accounting books and records and the rights of Owners and Directors to obtain and inspect those accounting books and records.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 **Covenant to Pay.** Each Owner by acceptance of the deed to the Owner's Residential Lot is deemed to covenant and agree to pay to the Association regular, special, reimbursement, and/or enforcement assessments, and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration. A regular, special, reimbursement, or enforcement assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be a personal debt of the Owner of the Residential Lot at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Residential Lot.

4.2 **Purpose of Assessments.** Except as provided herein, the Association shall levy regular, special, reimbursement, and/or enforcement assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners, and for the operation, replacement, improvement, and maintenance of the Project, and to discharge any other obligations of the Association under this Restated Declaration.

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4.3 **Regular Assessments.** Concurrently with preparation of the financial documents and budget as required in Article 3.11 of the Bylaws, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus or deficit from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be allocated among, assessed against and charged to the Owners on an equal basis and shall be borne by the Owners in equal shares (hereinafter "Regular Assessment"). Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 **Special Assessments.** If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed, subject to any limitations imposed by law or the Governing Documents allocated among, assessed against, and charged to the Owners on an equal basis and shall be borne by the Owners in equal shares (hereinafter "Special Assessments").

4.5 **Reimbursement Assessments.** Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy reimbursement assessments against Owners and Residential Lots in accordance with the following:

4.5.1 The Board may levy a reimbursement assessment whenever the Association (i) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (ii) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner. Such reimbursement assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying such a reimbursement assessment, the Board shall provide the Owner with notice and a hearing in accordance with Section 3.13 of the Bylaws. The notice and hearing regarding the levy of a reimbursement assessment may be combined with the notice and hearing regarding the underlying violation.

4.5.2 Duly levied reimbursement assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Residential Lot. Except as specifically prohibited by law, it is the intent of this Restated Declaration that reimbursement assessments (including without limitation those imposed to recover late payment penalties or to reimburse the Association for the cost of repairing damage to the Common Areas for which the assessed Member is responsible), if not paid prior to delinquency, may be collected either in an action at law or by resort to the lien and foreclosure remedies set forth in section 4.11 below.

4.6 **Enforcement Assessments.** The Board of Directors may levy, subject to the limitations of the Governing Documents, enforcement assessments against an Owner and his/her/its Residential Lot for failure to comply with the Governing Documents. In the event the Board of Directors imposes an enforcement assessment, that enforcement assessment shall be subject to costs, late charges and interest as described in Article 4 for delinquent payment.

4.7 **Limitations on Assessments.** Except in emergency situations, the Board may not, without the approval of Owners constituting a quorum of the Owners and casting a majority of the votes through a ballot measure or at a meeting of the Association conducted in accordance with Corporations Code Sections 7510-7527 and 7613, impose a regular assessment per Residential Lot that is more than twenty percent (20%) greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

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4.7.1 Required by a court order.

4.7.2 Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered.

4.7.3 Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

4.8 **Owner Notice of Assessments.** The Association shall provide notice by first class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty (30) nor more than sixty (60) days prior to the increase in the regular assessment or special assessment becoming due.

4.9 **Limitation on Assessment Increases.** Any annual increases in regular assessments for any fiscal year, as authorized by Section 4.7, above, shall not be imposed until the Board has sent out the proforma operating budget in accordance with subdivision (a) of Section 1365 of the California *Civil Code* with respect to that fiscal year, or has obtained 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 Chapter 5 (commencing

with Section 7510) of Part 3 of Division 2 of Title 1 of the California *Corporations Code* and Section 7613 of the California *Corporations Code*. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners of the Association.

4.10 **Costs, Late Charges and Interest.** Late charges may be levied by the Association against an Owner for the delinquent payment of regular, special, reimbursement and enforcement assessments. An assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner.

4.10.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.

4.10.2 A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars ($10.00), whichever is greater, or the maximum amount allowed by law.

4.10.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided in Section 4.11 hereinbelow.

4.11 **Enforcement of Assessments and Late Charges.** Unless California law provides otherwise, a delinquent regular, special, or reimbursement assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), penalties, and interest assessed in accordance with Section 4.7 herein shall become a lien upon the Residential Lot when a Notice of Assessment Lien is duly recorded as provided in Section 1367 of the California *Civil Code* or applicable statute. The Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Restated Declaration, a description of the Residential Lot, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any officer or director of the Association, or any attorney, employee or agent of the Association authorized to do so by the Board.

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Unless the Board considers the immediate (without notice) recording of the Notice of Assessment Lien to be in the best interests of the Association, the Notice of Assessment Lien may not be recorded until thirty (30) calendar days after the Association has mailed a written demand for payment to the delinquent Owner in accordance with California law. If the delinquent assessment or installment and related charges are paid or otherwise satisfied in accordance with the demand for payment, the Association shall not record the Notice of Assessment Lien.

Any lien described herein may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Section 2934(a) of the California *Civil Code*, in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the California *Civil Code*.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or non-judicial foreclosure, the Association shall (i) record a notice of satisfaction and release of lien, and (ii) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.

The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien and said

Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

4.12 **Priority of Assessment Lien.** As set forth hereinbelow, the assessment lien referred to in Section 4.11 shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the assessment lien:

4.12.1 Only the judicial or non-judicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien, and then only as to payments which became due prior to the date of sale, and excluding those assessment liens recorded prior to the recording of the First Mortgage.

4.12.2 Should any person or entity other than a First Mortgagee foreclose on a Residential Lot, the new Owner shall be personally liable for all unpaid assessments whether or not a lien has been recorded if such new Owner expressly assumed such personal liability. In the event the new Owner assumes such liability, the Association may elect to collect such unpaid assessments, including late charges, interest and other costs, from the new Owner, either personally or against the Residential Lot, upon the transfer of title.

4.12.3 Neither the transfer of a Residential Lot pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of Ownership. The personal obligation of any Owner for payment of delinquent assessments and charges may only be satisfied, and therefore discharged, by payment of the entire amount of the delinquent assessments and charges, whether or not such Owner remains in possession of his/her/its Residential Lot.

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4.12.4 No sale or transfer of any Residential Lot shall relieve such Residential Lot or its new Owner from liability for any future assessments which accrue during such Owner's period of Ownership.

4.13 **Statement of Delinquent Assessment.** The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Residential Lot. Association shall have the right to charge a reasonable fee for such statement.

ARTICLE 5 - USE RESTRICTIONS AND COVENANTS

5.1 **General.** The use and enjoyment of the Project by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in the Governing Documents. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. Unless otherwise stated in the Governing Documents, the Association, through the Board of Directors, shall be responsible for the enforcement of these provisions.

5.2 **Common Area.** The following provisions govern the use and enjoyment of the Common Area:

5.2.1 The Association shall have an easement in, to, and throughout the Common Area and the improvements thereon to perform its duties and exercise its powers.

5.2.2 Except as provided in this Restated Declaration, there shall be no judicial partition of the Common Area, nor shall Declarant or any person acquiring an interest in all or any part of the Project seek any judicial partition.

5.2.3 Subject to the provisions of this Restated Declaration, each Owner has non-exclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to any deed of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use an area and/or any Exclusive Use Common Area appurtenant to a Residential Lot.

5.2.4 The Owner's rights of use and enjoyment of the Common Area and/or any Exclusive Use Common Area shall be subject to the restrictions set forth in the Governing Documents, and the right of the Association, subject to the limitations of any laws or the Governing Documents, to:

(a) Adopt and enforce reasonable rules and regulations for the use of the Common Area, as well as all matters impacting the Project.

(b) Reasonably limit the number of persons using the Common Area.

(c) Assign or otherwise control the use of any unassigned parking spaces within the Common Area.

(d) Remove any vehicle within the Project parked in violation of this Restated Declaration or the Rules and Regulations of the Board in accordance with the provisions of California *Vehicle Code* Section 22658.2, any California law, and any amendments thereto.

(e) Suspend the voting rights of any Owner, and the rights of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any Assessment, fine or monetary penalty, or as otherwise provided in the Governing Documents. Additionally, for violations of the governing documents, the Association has the right to require minor children to be accompanied by an adult whenever they utilize the Association's Common Area recreational amenities for a period not to exceed one year.

(f) Cause the construction of additional improvements in the Common Area, or to cause the alteration or removal of existing improvements on the Common Area.

(g) Reasonably restrict access to common areas, as well as landscaped areas which the Association is obligated to maintain.

(h) Approve any proposed alteration of or modification to the Common Area, or the exterior of any Residential Unit/Lot.

5.2.5 The Association may grant to third parties easements in, on and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or other purposes reasonably related to the operation of the Project, and each Owner, in accepting his/her/its deed to the Residential Lot, expressly consents to these easements. However, no such easement may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his/her/its Residential Unit/Lot.

5.2.6 Notwithstanding the easement rights or other rights contained herein, an Owner who has sold his/her/its Residential Lot to a contract purchaser or who has leased or rented the Residential Unit/Lot shall be deemed to have delegated his/her/its rights to use and enjoy the Common Area to the contract purchaser or tenant who resides in the Owner's Residential Unit/Lot, subject to reasonable regulation by the Board.

5.2.7 The Board shall have the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Residential Lot, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

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

5.3.1 Attempt to further subdivide a Residential Lot without obtaining the prior approval of the Association.

5.3.2 Except as permitted in Section 5.4, occupy or use a Residential Unit, or permit all or any part of a Residential Lot to be occupied or used, without Board approval, for any purpose other than as a private residence.

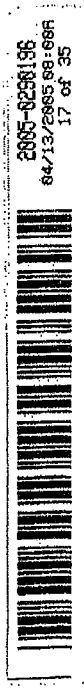
5.3.3 Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.

5.3.4 Perform any act or keep anything on or in any Residential Unit/Lot or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his/her/its Residential Unit or in the Common Area that would result in the cancellation of insurance on any Residential Unit or on any part of the Common Area or that would violate any law.

5.3.5 Disconnect, damage, tamper with or otherwise modify any Common Area protection system, including, but not limited to fire sprinklers, fire alarms and fuse boxes.

5.3.6 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Residential Unit/Lot, provided, however, that reasonable amounts of these liquids, substances or materials may be placed in appropriate containers and properly stored. All rubbish, trash, and garbage shall be regularly removed from the Residential Unit/Lot and its respective Exclusive Use Common Area, and shall not be allowed to accumulate anywhere within the Project.

5.3.7 Erect or display any sign on or from any Residential Unit/Lot except as allowed by Sections 712 and 713 of the California *Civil Code*. No other signs may be erected or displayed on the Common Area, Residential Unit/Lot, and/or Exclusive Use Common Area, except as permitted in the Rules and Regulations and/or required by California law..



5.3.8 Except as otherwise permitted by federal or state law, erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions which is visible from any street, Residential Unit/Lot, or the Common Area, unless written approval is received from the Board of Directors.

5.3.9 Raise or keep pet(s) or other animal(s) in or on the Project except as permitted by regulations adopted by the Board. Notwithstanding the foregoing, no Owner or other occupant of a Residential Unit/Lot may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Residential Unit/Lot to the peaceful and quiet enjoyment of the Residential Unit/Lot. In the event the Board determines that any such pet(s) or other animal(s) create an unreasonable annoyance or nuisance to any Owner or other occupant of a Residential Unit/Lot, the raising or keeping thereof shall be discontinued within a reasonable time after such determination. No pets or other animals shall be permitted in the Common Area except as specifically permitted by regulations adopted by the Board. No Owners may raise or keep animals for commercial purposes. The Association, its Board, officers, employees and agents shall have no liability to any Owner, his/her/its family members, guests, invitees, tenants and contract purchasers, or any other person on the Project, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, officers, employees and agents.

5.3.10 Engage in any illegal, noxious or offensive activity in any part of the Project, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Project.

5.3.11 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.

5.3.12 Keep or maintain any fixture, personal property or other object upon any courtyard or patio which interferes with the quiet enjoyment of adjacent Residential Lots, courtyards or patios and/or which may be in violation of any Rules duly adopted by the Board.

5.3.13 Shall not conduct, maintain, or permit on any part of the Project any industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational, or otherwise, except for home occupation use in compliance with this Restated Declaration and in particular, Section 5.4.

5.3.14 Permit windows be covered in whole or in part with paper, newspaper, aluminum foil, or other materials not specifically intended for such purpose. Each Owner shall install permanent draperies or other suitable window treatments in all exterior windows of his/her/its Residential Unit within sixty (60) days after initial occupancy of the Residential Unit.

5.3.15 Allow his/her/its Residential Unit/Lot to be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program, or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time-interval ownership arrangement. The term "time-sharing" as used herein shall be deemed to include, but shall not be limited to: any time-share project, time-share estate, and/or time-share use (as those terms are defined under *Business and Professions Code* § 11003.5 or any successor statute thereto); any qualified resort vacation club (as those terms are used under *Business and Professions Code* § 10260, *et seq.*); or any agreement, plan, program or arrangement under which the right to, use, occupy, or possess the Residential Unit in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time; provided, this section shall not be construed to limit the personal use of any Residential Unit in the Project by any Owner or his/her social or familial guests or his tenants under leases created in accordance with this Restated Declaration.

5.3.16 Members, other residents and their respective guest shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other members, residents, guests, occupants, invitees or directed at management, its agents, employees or vendors.

5.4 **Home Occupation.** Owner or his/her/its tenant may operate a business within the Residential Lot (hereinafter "home occupation"), provided that the home occupation is specifically limited to the use of the Residential Unit through the means of telephone, telephone modem and reasonable mail as described below and for no other purpose. Any activity conducted in compliance with Owner's home occupation shall not be visible from the exterior of the Residential Unit, through any modification to the Residential Unit, or through the operation of any business activity. Conduct of the home occupation shall require approval by the City of Cathedral City.

5.4.1 All home occupations shall comply with the Rules and Regulations adopted by the Board of Directors, but shall include at a minimum the following:

(a) All employees shall be members of the resident family and shall reside on the premises;

(b) There shall be no displays, inordinate amount of delivery of mail or merchandise;

(c) There shall be no advertising (including in any telephone book) which identifies the home occupation by street address;

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(d) Pedestrian and vehicular traffic will be limited to that normally associated with residential districts;

(e) The home occupation shall not involve the use of commercial vehicles for the delivery of materials to or from the premises beyond those commercial vehicles normally associated with residential uses;

(f) No more than twenty-five percent (25%) of the living space or two hundred fifty (250) square feet, whichever is greater, of the home may be used for storage of materials and supplies related to the home occupation;

(g) There shall be no outdoor storage of materials or equipment, nor shall merchandise be visible from outside the home;

(h) The home occupation shall be confined within the main building of the Residential Unit. Garages shall not be used for home occupation;

(i) The appearance of the structure shall not be altered nor the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs, or the emissions of sounds, noises and vibrations;

(j) No use shall create or cause noise, dust, vibration, odor, smoke, glare, or electrical interference or other hazards or nuisances;

(k) Activities conducted and equipment or material used shall not change the fire safety or occupancy classifications of the premises; and

(l) If the home occupation is to be conducted on rental property, the property owner's written authorization for the proposed use shall be obtained prior to the approval of the home occupation.

5.5 **Leases.**

5.5.1 All leases or rental agreements must be in writing and be for a minimum of ninety (90) days.

5.5.2 All leases or rentals must be for the entire Residential Unit/Lot and not merely parts thereof, unless the Owner remains in occupancy.

5.5.3 All leases or rentals shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association.

5.5.4 An Owner who leases or rents his/her/its Residential Unit/Lot shall promptly notify the Association in writing of the names of all tenants and members of a tenant's family occupying such Residential Unit/Lot and furnish the Association with a copy of any lease or rental agreement.

5.5.5 All Owners leasing or renting their Residential Unit/Lot shall promptly notify the Association of the address and telephone number where such Owner can be reached.

5.5.6 An Owner who leases or rents his/her/its Residential Unit/Lot shall promptly provide all tenants with a copy of the Governing Documents upon such tenants taking possession of such Residential Unit/Lot.

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5.6 **Residential Unit/Lot Modification.** Subject to other applicable restrictions contained in the Governing Documents, Owners may modify their Residential Units/Lots subject to the following:

5.6.1 Modifications or alterations of the exterior of any Residential Unit/Lot must have the prior written consent of the Board, including any modifications to facilitate handicapped access as provided by Section 1360 of the California *Civil Code.* Any approval of such handicapped access modification may be conditioned on such modification's removal, by the Owner at his/her/its sole expense, once the handicapped access is no longer necessary for the Residential Unit/Lot.

5.6.2 No Owner may install any shutter, screen, blind, curtain, drape or other appurtenance in or on any window or door except those items which are in conformance with standards established by the Board.

5.6.3 No Owner may enclose and/or alter his/her/its Residential Unit/Lot's patio, courtyard, and/or atrium without the prior written consent of the Board.

5.6.4 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter any Exclusive Use Common Area or the Common Area without the prior written consent of the Board.

5.7 **Damage Liability.** Each Owner shall be liable to the Association for any damage to the Common Area or to Association-owned property if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint Ownership of a Residential Unit/Lot, the liability of the co-Owners shall be joint and several, unless the co-Owners and the Association have agreed in writing to an alternative allocation of liability.

5.8 **Parking and Vehicle Restrictions.** The Board of Directors shall have the right to promulgate rules and regulations related to vehicle and parking as it deems necessary from time to time. Unless otherwise expressly permitted by the Board,

5.8.1 Only "conventional passenger vehicles" are permitted to park within the Property. Except for temporary parking as defined in this Section, no commercial vehicles shall be permitted to remain within any area of the Property, including, without limitation, streets, driveways, Common Area, or the Residential Lot's side and rear yards unless parked within the enclosed garage of the Residential Lot Owner. The Association shall have the power, but not the obligation, to have any vehicle which is parked in violation of the Association's Governing Documents towed from the Property at the expense of the owner of such vehicle. Nothing contained in this Section 5.8 shall preclude the parking of an operable vehicle within the garage of a Residential Lot. Abandoned and inoperable vehicles may not be parked or stored within the Property, except for temporary parking to facilitate a repair.

5.8.2 Camping and/or overnight living in any recreational vehicle, commercial vehicle, conventional passenger vehicle, truck, boat, trailer, van, or garage is strictly prohibited.

5.8.3 Recreational vehicles and boats owned or rented by an Owner may be parked in front of said Member's Residential Lot (and not in front of any other Residential Lot) for the sole purpose of loading and/or unloading such recreational vehicle or boat immediately prior to or after the use of such recreational vehicle or boat for recreational purposes, subject to time limitations and other rules and regulations established from time to time by the Board of Directors.

5.8.4 Except as otherwise provided in this Section 5.8, no conventional passenger vehicle, or any other motorized vehicle may be parked upon any street at any time within the Property without the written approval of the Board of Directors. Vehicles of all Owners, their guests and invitees should be kept in garages and residential driveways of the Residential Lot; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking in the Property is otherwise prohibited or the parking of any inoperable vehicle. Additionally, guests and invitees of Owners

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may park conventional passenger vehicles in the specially marked "Guest Parking" area; provided however, that no vehicle other than a conventional passenger vehicles may be parked within the Guest Parking area, and no vehicle may be parked in the Guest Parking area for a period of over seventy-two (72) hours in any seven-day period.

5.8.5 No conventional passenger vehicle, recreational vehicle or equipment or commercial vehicle or any other motorized vehicle may be dismantled, rebuilt, repaired, abandoned, disabled, serviced or repainted within the Property. The foregoing restrictions shall not be deemed to prevent temporary parking for loading or unloading of vehicles or washing and polishing and those activities normally incident to washing and polishing of vehicles.

5.8.6 There shall be no loud noises or noxious odors from motor vehicles (including motorcycles, off-road vehicles, conventional passenger vehicle or commercial vehicles), which may unreasonably interfere with the quiet enjoyment of the Property.

5.8.7 As used in this Section, "conventional passenger vehicles" shall be defined to be station wagons, family sedans, compacts, sport utility vehicles, subcompacts, passenger vans and similar passenger vehicles, as well as pick-up trucks having a manufacturer's rating or payload capacity of 1.5 ton or less, and passenger vans designed to accommodate eight (8) or fewer people, provided the vehicle is properly licensed and in operating condition.

5.8.8 As used in this Section, "recreational vehicles" shall include without limitation, trailers, boats, campers, trailer coaches, buses, house camp cars, motor homes, or any other similar type of equipment or vehicle.

5.8.9 As used in this Section, "commercial vehicle" shall be defined as a truck having a manufacturer's rating or payload capacity of greater than 1.5 ton , a passenger van designed to accommodate eight (8) or more people, and/or any vehicle with a sign displayed on any part thereof advertising any kind of business or on which trucks, materials, and/or tools are visible, or with a body type normally employed as a business vehicle whether or not a sign is displayed on any part thereof. The type of motor vehicle license plate shall not be material to the foregoing definition.

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5.8.10 "Temporary parking" shall mean parking for a short period of time for the purposes of furnishing services to an Owner or for loading and unloading purposes related to the Owner(s)' Residential Lot. Temporary parking shall only be permitted during normal business and construction hours as may be identified by the Association from time to time. There shall be no temporary parking overnight within any portion of the Property.

5.8.11 The Board may adopt rules for the regulation of the admission of vehicles (including but not limited to motorcycles, mopeds, motor scooters, and other motorized vehicles with less than four wheels) and parking of vehicles within the Property, including the assessment of charges to Owners who violate or whose invitees violate, such rules. Any charges so assessed shall be Enforcement Assessments.

5.8.12 Garages shall be used for storage and parking purposes only, and shall not be converted for living purposes. Garage doors shall remain closed excepting when entering or existing or when the garage is being cleaned or repaired.

ARTICLE 6 - REPAIR AND MAINTENANCE

6.1 **General.** The Association and all Owners have a shared responsibility to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include without limitation, painting, weatherproofing and cleaning to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Residential Unit/Lot and the Project and protect the values thereof. The Board shall have the power to determine the standards of such maintenance.

6.2 **Failure to Maintain.** In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such Notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and a hearing, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

6.3 **Maintenance by Owner.** Except as specifically allocated as a maintenance and repair responsibility of the Association pursuant to Section 6.4, each Owner shall be responsible for the maintenance, repair and replacement of his/her/its Residential Unit/Lot and all improvements located thereon, Exclusive Use Common Areas appurtenant to the Residential Lot, and those items located anywhere within the Project which are used exclusively by that Owner in a clean manner, consistent with the surrounding properties, and to ensure that such area does not pose a threat to the health, safety or welfare of other Owners. The replacement of exterior items shall be subject to the requirements of Article 7 herein. Each Owner shall be specifically responsible for the maintenance, repair, and/or replacement of the following:

6.3.1 All landscaping within the side and rear yards and annual color within the front yard on his/her/its Residential Lot in a neat and attractive condition.

6.3.2 Any portion of a perimeter wall for the Property adjacent to and/or on the rear lot line of the Resident Lot. For purposes of this Declaration, the term "Perimeter Wall" shall refer to those walls surrounding the perimeter of the Property.

6.3.3 Certain Residential Lots within the Project have a common wall or fence which divides the Residential Lots upon which the homes are constructed, the Residential Lot from a Common Area Lot and/or the Residential Lot from an Association landscape maintenance area (such as the strip landscaping on Medano and Verona Streets (hereinafter "Party Wall"). 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 extent they are not inconsistent with the provisions of this Section 6.3.3. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the owners (including the Association, where applicable) who make use of the Wall in equal proportion to such use. If a Party Wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance, the replacement of the Party Wall so destroyed shall be shared by the owners who make use of the Party Wall in equal proportion to such use. In the event that replacement of the Party Wall is required, the replacement may not be of wood, but must be made of slump stone materials or other materials approved in writing by the Board of Directors. In the case where a Party Wall is located upon the dividing line between the adjacent lots, each owner of the adjoining lot shall have reciprocal mutual non-exclusive easements for the maintenance of such Party Wall and/or the reconstruction of such Party Wall in the event of partial or total destruction.

6.3.4 Any fence/wall located upon the Residential Lot which is not a Perimeter Wall or Party Wall shall be the sole maintenance responsibility of the Owner of said Residential Lot. In the event of a question regarding maintenance and/or repair of any wall, whether Perimeter Wall, Party Wall or any other wall within the Property, the Board's decision on the matter shall be final and binding on all applicable parties.

6.3.5 Mailboxes. To maintain the aesthetics within the Property, the Association shall facilitate the painting, repair and replacement of all mailboxes and mailbox structures. Painting the mailbox and mailbox structures necessitated from normal wear and tear shall be considered a common expense of the Association. Except for the damage caused to the mailbox or mailbox structure by any owner or his/her/its invitee, pursuant to Section 6.6 (which shall be allocated to the Culpable Owner), the Association's cost incurred to repair and/or replace the structures containing the mailbox(es) shall be allocated equally to each and every Owner within the Property. To the extent that the Association incurs expenses to repair or replace the mailbox itself, separate and apart from the mailbox structure, said costs shall be allocated to the Owner of the Residential Lot served by said mailbox as a Reimbursement Assessment, payable to the Association within thirty (30) days of the Association billing for same.

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6.4 **Maintenance by Association.** Except as specifically allocated as a maintenance and repair responsibility of the Owner pursuant to Section 6.3, the Association shall be responsible for the maintenance, repair and replacement of those items allocated to the Association pursuant to this Section, or, if there is no such allocation, all Common Area items which do not constitute Exclusive Use Common Area under this Restated Declaration or under California law, including the following:

6.4.1 All Association amenities, including any pools, spas, tennis court, and related facilities and the walls/fences directly surrounding the pools, spas, and tennis court.

6.4.2 Except for any landscaping located within the Exclusive Use Common areas, all Common Area landscaping, including trees, shrubs, lawns, drainage facilities and the irrigation system.

6.4.3 All front yard landscaping, except for annual color and trees. Annual color and trees shall be the responsibility of each Owner.

6.4.4 All furnishings, equipment and property that is owned by, or may be acquired by the Association.

6.4.5 The maintenance and repair of all Common Area pavement, whether concrete, asphalt or otherwise.

6.4.6 All landscaping on Medano and Verona Streets adjacent to the Project, as required by the City of Cathedral City.

6.4.7 All mailboxes consistent with Section 6.3.5.

6.4.8 Removal of graffiti from the outside surface (facing Common Areas and not the surface facing the Owner's Residential Lot) of the Perimeter Wall surrounding the subdivision.

6.5 **Exclusive Use Common Areas.** Except as provided under Paragraph 6.3 and 6.4, each Owner shall be responsible for the maintenance, repair and replacement of all improvements located within Exclusive Use Common Areas, including but not limited to any and all landscaping, irrigation, as well as hardware incident to any component thereto.

6.6 **Damage Caused by Owner or Item Under Control of Owner.** Should any damage to the Common Area, Exclusive Use Common Area, and/or any Residential Lot result from the conduct of any Owner, or such Owner's tenants, guests, invitees, pets or other person or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which an Owner is responsible (hereinafter "Culpable Owner"), the cost of all repairs shall be borne solely by the Culpable Owner and not the Association.

The Association shall be responsible for performing the repair of any damage to the Common Area or items over which the Association is responsible to maintain at the Culpable Owner's expense. The Culpable Owner shall be responsible for performing the repair of any damage to his/her/its Residential Lot and/or Exclusive Use Common Area for which such Owner has control. The Owner of any other Residential Lot which sustained damage shall be responsible for performing the repair of any such damage, and may charge the cost thereof to the Culpable Owner.

If the Culpable Owner disputes or refuses to pay the costs of repair, the Association, after reasonable notice and hearing procedures as provided for the imposition of enforcement assessments or suspensions, may charge the cost of such repair to such Owner as an reimbursement or special assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole unfettered discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the Culpable Owner shall be responsible for the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance or the

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Association elected not to submit the claim due to the Owner's negligence, the Cuplable Owner shall be responsible for the total cost of repair.

All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform with any applicable building codes in effect at the time the damage is repaired.

6.7 **Water Intrusion Damage.**

a. Notwithstanding any other provision in the Governing Documents, each Owner shall be solely responsible for causing the repair or replacement of any damage (including but not limited to mold remediation) to any and all interior items of his/her/its Residential Unit, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces (including, but not limited to any portion of the ceilings within the Residential Unit), floor and wall coverings, appliances, fixtures or other items therein, caused by water intrusion from whatever source. An Owner may obtain and maintain such insurance, at his/her/its sole expense, to protect against any damage or loss of property due to water intrusion, or the cost of repair or replacement of damaged items for which such Owner is responsible. Association shall not be liable for damage to personal property, wall coverings, floor treatment or any other fixtures or furnishings within the interior of the Residential Unit, resulting from water which may leak or flow from within the Residential Unit, from outside of any Residential Unit or from any part of the Residential Lot, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, officers, agents or employees. Similarly, each Owner shall be responsible for the repair and/or replacement of any damage caused to the Residential Lot adjacent to said Owner's Residential Lot by water intrusion emanating from the Owner's Residential Lot.

b. It is hereby acknowledged that the irrigation system for the areas maintained by the Association has overspray which may overflow to those areas which could impact windows, sliding doors and other glass surfaces of the individual Residential Unit (hereinafter "glass components"). Nevertheless, any repair or replacement of such glass components which is caused by such overspray shall be the responsibility of the Owner.

c. The responsibility for the cost to repair or replace any item which has been damaged or requires repair because of the access needed to facilitate repairs to water pipes underneath the slab shall be the responsibility of the Owner of the Residential Unit in which said repairs are necessitated and the Association shall have no responsibility for said repair or replacement cost.

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ARTICLE 7 - ARCHITECTURAL AND DESIGN CONTROL

7.1 **General.** Any change or improvement to the exterior of a Dwelling Unit or to the interior which affects the exterior of a Dwelling Unit, or any mechanical or service systems (HVAC systems, gas, water or electrical pipes or wires, etc.), or the structural integrity of any building, shall be governed by this Article. Changes or improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board, which shall be responsible for approving or rejecting any architectural submittal in conformance with the Architectural Rules. Any architectural submission which does not conform to and is a variance of the Association's Architectural Rules shall require approval by the Board of Directors.

7.2 **Architectural Changes Not Requiring Prior Approval.** Nothing contained herein shall be construed to limit the right of an Owner to (1) make minor repairs to the exterior of the Dwelling Unit; (2) routine gardening; (3) routine exterior maintenance, including painting to the same color of any portion of the Dwelling Unit; (4) paint the interior of his or her Dwelling Unit any color desired; or (5) improve or alter any improvements within the interior of the Dwelling Unit, provided such improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Residential Lots.

7.3. **Architectural Changes Requiring Prior Approval.** Except for those items set forth in Section 7.2, nothing may be erected, placed or planted on the exterior of any Dwelling Unit or on the Common Area by any Owner, including any building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, atrium cover, courtyard cover, trellis, tree, grass, shrub or other landscaping, any improvement or structure of any kind without the prior written approval of the Board. Additionally, prior written approval of the Board shall be required for any alteration, modification, painting or other change or addition to any existing exterior improvement or landscaping.

7.4 **Procedure for Obtaining Approval of Architectural Changes.** The procedure for obtaining approval of any architectural change shall be as follows:

7.4.1 Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed improvements, alterations or landscaping, as well as the proposed contractor and any other information as required by the Board, shall be prepared by the requesting Owner and submitted to the Board.

7.4.2 The Board shall review the submission and provide a written approval or disapproval of any such submission, including the reasons for any decision, to the requesting Owner within forty-five (45) days of receipt of such submission.

7.4.3 Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within a reasonable time.

7.4.4 Oral approvals from the Board of Directors or members of the Association shall have no force or effect. Approvals must be in writing.

7.5 **Inspection of Work.** The Board may require that final approval of an architectural submittal be conditioned upon an inspection of the completed work. Provided a final inspection is required, the Owner shall be responsible for the costs associated therewith. After such inspection, the Board shall provide the Owner with written notice of either a letter of completion or a letter of noncompliance, setting forth either: (a) all improvements made and other work completed by said Owner complies with the Governing Documents, or (b) such improvements or work do not so comply, in which event the notice shall identify the non-compliance improvements or work and set forth with particularity the basis of such non-compliance. In the event the work is found not to comply with the Governing Documents, the Owner shall promptly correct such deficiency and reapply for another inspection, or shall remove the proposed improvement and return the area to its original condition.

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7.6 **Standard of Architectural Review.** An architectural submittal made by an Owner shall be reviewed for conformity with the Architectural Rules. Additional factors to be considered include, but are not limited to, the quality of proposed workmanship, the design and harmony of the improvement with existing structures, the location of the improvement in relation to surrounding structures, topography, and finish grade elevation, Owner and contractor insurance coverage, compliance with governmental permit requirements and contractor license status.

7.7 **Architectural Rules.** The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary and by majority vote, rules and regulations to be known as "Architectural Rules." Said Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project, provided, however, that said Architectural Rules shall not be in derogation of the standards required by this Restated Declaration. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal.

7.8 **Variances from Architectural Rules.** Upon application by an affected Owner, the Board may grant variances from the requirements of the Architectural Rules provided that such variance is reasonably necessary in order to carry out the general purpose and intent of the Governing Documents, or

is necessary to avoid extensive hardship, expense or impossibility of conformance. Any variance shall be in writing and shall not constitute a waiver of any Architectural Rule or hinder the enforcement thereof.

7.9 **Compensation.** The members of the Board shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

7.10 **Liability.** Neither the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, or (c) the development of any property within the neighborhood.

7.11 **Enforcement.** In addition to other enforcement remedies set forth in this Restated Declaration, the Board shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity in accordance with this Section.

7.11.1 No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation or commencement of a suit to enjoin such work.

7.11.2 The Board shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required to the extent that it has not been approved by the Board, or if it does not conform to the plans and specifications submitted to the Board.

7.11.3 If the Owner fails to remedy any noticed noncompliance within the timeline set by the Board of Directors, the Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The Board shall notify the Owner in writing of the hearing by either first class mail or personal delivery at least ten (10) days prior to the hearing date.

7.11.4 At the hearing, the Owner and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance.

7.11.5 If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant.

7.11.6 If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may pursue all legal and equitable remedies available to remedy or remove the noncomplying improvement and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of an enforcement assessment against such Owner. In addition to all of the remedies available to the Association and to the extent permitted by California law, the Association has the right to record in the office of the Riverside County Recorder a Notice of Non-Compliance against the Residential Lot of the Owner who fails to take the corrective action as described above. This Notice shall remain against the Residential Lot until the corrective action has been taken, as determined by the Board of Directors, at which time the Association will record a Release of said Notice.

7.11.7 The approval by the Board of Directors of any plans, drawings or specifications for any work of improvement done or proposed, or for any other matter requiring the approval of the Board of Directors under this Restated Declaration, or any waiver thereof, 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 by the same or some other Owner. Different location for improvements, the size of the

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structure, proximity to other residences or the Common Area and other factors may be taken into consideration by the Board in reviewing a particular submittal.

7.11.8 If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

7.12 **Non-Compliance with Laws.** Neither the Association nor the Board shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

7.13 **Approval by City.** Prior to commencing any alteration or improvements approved by the Association, the Owner shall comply with all appropriate governmental laws and regulations. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Association shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to completely satisfy the requirement of Association approval. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Association, which penalties shall be the responsibility of such Owner.

ARTICLE 8 - INSURANCE

8.1 **Fire and Casualty Insurance.** The Association shall obtain and maintain a policy of fire and casualty insurance with an extended coverage endorsement in an amount not less than ninety percent (90%) of the aggregate insurable value, *i.e.* ninety-percent (90%) of the actual replacement value, of all of the improvements in the Common Area. The amount of any deductible shall be determined by the Board.

8.2 **General Liability Insurance.** The Association shall obtain and maintain a policy or policies insuring the Association, its officers, directors, agents and employees, the Owners, and the Owner's invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any property owned by the Association, including but not limited to General Liability and Business Automobile Liability Insurance. Limits of liability under the insurance shall not be less than three million dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence.

The limits and coverage shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten (10) days' prior written notice to the Association of any cancellation or substantial modification.

8.3 **Officers and Directors Liability Insurance.** The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of officers and directors of the Association for negligent acts or omissions of those persons acting in their capacity as officers and directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion, provided, however, that said limits shall not be less than two million dollars.

8.4 **Fidelity Bond Coverage.** The Association shall also purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If there is a management agent who handles Association funds, such agent shall also be covered by a fidelity bond. As long as commercially available for a reasonable price, the Association should require coverage equal to the estimated maximum amount of funds in the custody of the Association or its managing agent at any given time during the term of each bond; provided, however, that there shall be no requirement to obtain any fidelity bond in excess of $100,000. The bonds must contain a provision that they may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

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8.5 **Other Association Insurance.** The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Project and a decision not to rebuild. The Association may purchase such other insurance the Board considers necessary or advisable, including earthquake insurance coverage. The Association shall have the authority, but not the obligation, to obtain earthquake insurance coverage for the insured property. Any earthquake insurance coverage provided shall be in an amount recommended by one or more reputable insurance brokers or consultants. Additionally, the Board of Directors must have the prior approval of a majority of a quorum of the members before choosing to cancel or not renew any existing earthquake insurance policy for the Common Area Improvements.

8.6 **Qualifications of Insurance Carriers.** All insurance provided under Section 8.1, 8.2, and 8.3 of this Article must be written by an insurance carrier which meets the FNMA requirements for a "Best's Insurance Rating".

8.7 **Failure to Acquire Insurance.** The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member entitled to notice that the specific insurance will not be obtained or renewed.

8.8 **Trustee for Policies.** The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insured under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 9 herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

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8.9 **Individual Insurance.** An Owner should separately insure his/her/its real and personal property, and shall obtain and maintain personal liability and property damage liability insurance for his/her/its Dwelling Unit and Residential Lot.

8.10 **Insurance Premiums.** Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular or special assessments.

8.11 **Insurance Policy Deductibles.** As provided in this Article, the Board of Directors 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 insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

8.11.1 Owners shall be responsible for the cost of any deductible if the damage or loss occurs to an item of his/her/its personal property, or for any property damage which is based upon an occurrence located in an area for which the Owner is responsible to maintain.

8.11.2 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 any property damage which is based upon an occurrence located in an area for which the Association is responsible to maintain.

8.11.3 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.

8.12 **Owner Notification of Insurance.** In accordance with Section 1365.9 of the *Civil Code*, or any successor statute or law, the Association shall, upon issuance or renewal of insurance, but no less than annually, notify the Owners as to the amount and type of insurance carried by the Association. The notice shall include a statement regarding whether the Association is or is not insured to the levels specified by Section 1365.9, and that if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the Association is insured to the levels specified, then Owners may be individually liable only for their proportional share of assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance. The Association shall be required to comply with the provisions of this Section to the extent it is required by Civil Code Section 1365.9 or any successor statute or law.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 **Duty to Restore.** A portion of the Project for which insurance carried by the Association is in effect, that is damaged or destroyed, must be repaired or replaced promptly by the Association unless:

9.1.1 The Project is terminated.

9.1.2 Repair or replacement would be illegal under a state statute or municipal ordinance.

9.1.3 Seventy-five percent (75%) of Owners, including each Owner of a Residential Lot that will not be rebuilt, vote not to rebuild.

9.2 **Cost of Repair.** Except as otherwise provided in this Restated Declaration, any cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense, levied against Residential Lots in the same proportion as regular assessments are levied.

9.3 **Repair Plans.** The Project must be repaired and restored in accordance with either (a) the original plans and specifications, updated as required to reflect applicable building codes, or (b) other plans and specifications which have been approved in writing by the Board and a majority of Owners.

9.4 **Replacement of Less Than Entire Project.**

9.4.1 The insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Project.

9.4.2 Except to the extent that other persons or entities will be distributees:

(a) The insurance proceeds attributable to a Residential Unit/Lot that is not rebuilt must be distributed to the Owner of that Residential Lot or to lien holders, as their interests may appear.

(b) The remainder of the proceeds must be distributed to each Residential Lot Owner or lien holder, as their interests may appear, in proportion to the interests of all the Residential Lots.

(c) If the Owners vote not to rebuild a Residential Unit/Lot, the common interest portions of the Residential Lot shall be reallocated among all other Residential Lots, and the Association shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

9.5 **Uninsured Loss.** The Board shall have the duty to repair and reconstruct all Common Areas without the consent of Members in all cases of partial destruction, unless the amount of any uninsured loss exceeds One Hundred Thousand Dollars ($100,000). In such cases wherein the uninsured loss exceeds One Hundred Thousand Dollars ($100,000), the Board shall have the duty to repair and reconstruct only those portions of the Common Areas related to the uninsured loss if a majority of a quorum of the members approves such reconstruction for the uninsured loss areas. In the case of such uninsured loss for which members approve such reconstruction or repair, all Residential Lots shall be assessed a special assessment for their equal portion of any such uninsured loss.

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9.6 **Insurance Proceeds.** An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and lien holders as their interests may appear. Subject to the provisions of this Restated Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property. In the event of a surplus after the Project has been completely repaired or restored, such surplus will be disbursed to the Reserve Funds. The Association, Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Project has been completely repaired or restored, or unless the Project is terminated.

9.7 **Disbursements to Owners and Mortgagees.** Any insurance proceeds distributed to Owners and Mortgagees shall be distributed proportionately according to the fair market values of the Residential Lots at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

9.8 **Certificates By Board.** The trustee, if any, may rely on the following certifications in writing made by the Board:

9.8.1 Whether or not damaged or destroyed property is to be repaired or restored.

9.8.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

9.9 **Certificates by Attorneys or Title Insurance Companies.** If payments are to be made to Owners or Mortgagees, then the Board and the trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the mortgagees.

ARTICLE 10 - EMINENT DOMAIN

10.1 **Common Area Taking.** In the event of a taking by eminent domain of any part of the Common Area, the Association shall appoint an independent appraiser who shall participate in the negotiations, and who shall propose the method of division of the proceeds of condemnation, where Residential Lots are not valued separately by the condemning authority or by the court. Proceeds of condemnation, less any costs and fees incurred in collection thereof, shall be distributed among Owners of Residential Lots and their respective Mortgagees according to the relative values of the Residential Lots affected by the condemnation.

10.2 **Substantial Taking.** If there is a substantial taking of the Project (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California *Civil Code* Section 1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association. The proceeds from the partition sale, less any costs or fees incurred in collection thereof, shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of the Residential Lots.

ARTICLE 11 - RIGHTS OF MORTGAGEES

11.1 **General.** No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first Mortgage on any Residential Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

11.2 **No Right of First Refusal.** This Restated Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Residential Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of

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any First Mortgagee to: (a) foreclose or take title to a Residential Lot pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Residential Lot acquired by the Mortgagee.

11.3 **Unpaid Dues or Charges.** Except as otherwise provided by statute, where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Lot obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Residential Lots including such acquirer, his successors and assigns.

11.4 **Action Requiring Mortgagee Approval.** Except as provided by statute in case of condemnation or substantial loss to the Residential Lot and Common Area, unless at least fifty-one percent (51%) of the First Mortgagees (based upon one (1) vote for each mortgage owned) have given their prior written approval (as defined in Section 13.3), the Association and/or the Owners shall not be entitled to:

11.4.1 By act or omission seek to abandon, or terminate the Project as a planned unit development (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).

11.4.2 Change the pro rata interest or obligations of any individual Residential Lot for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of Ownership of each Residential Lot in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.

11.4.3 Partition or subdivide any Residential Lot.

11.4.4 By act or omission seek to abandon, partition, or subdivide the Common Area, or any property owned, directly or indirectly, by the Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause).

11.4.5 Use hazard insurance proceeds for losses to any of the Project (whether to Residential Lots or to Common Area) for other than the repair, replacement or reconstruction of such property.

11.5 **Mortgagees Furnishing Information.** Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

11.6 **Financial Statement.** Any First Mortgagee shall be entitled, on written request therefor, to have the Association provide an audited financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

ARTICLE 12 - ENFORCEMENT

12.1 **Right to Enforce.** The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each Owner of a Residential Lot shall have a right of action against the Association or any Owner for failure to comply with the provisions of the Governing Documents.

12.2 **Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance,

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either public or private, shall be applicable against every such result and may be exercised by any Owner and the Association. Each remedy provided herein shall be cumulative and not exclusive.

12.3 **Failure to Enforce.** Failure by the Association or any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

12.4 **Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the Ownership, occupation or use of any Residential Unit/Lot within the Project is declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures herein set forth.

12.5 **Compliance with Statute.** All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable laws, statutes and ordinances. This Section shall apply to both the Association and to all Owners.

ARTICLE 13 - AMENDMENTS

13.1 **Owner Approval of Amendments.** This Restated Declaration may be amended by the vote or written consent of an affirmative vote of at least fifty percent (50%) plus one vote of all Owners. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Restated Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that specific clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been recorded in Riverside County.

13.2 **Eligible Mortgagee Approval.** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the approval of fifty-one percent (51%) of Eligible Mortgagees shall be required to add or amend any material provisions of this Restated Declaration which establish, provide for, govern or regulate:

13.2.1 Assessments, assessment liens or subordination of such liens.

13.2.2 Reserves for maintenance, repair and replacement of the Common Area.

13.2.3 Insurance or fidelity bonds.

13.2.4 An Owner's interest in the Common Area.

13.2.5 Imposition of any rights of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his/her/its Residential Lot.

13.3 **Eligible Mortgagee Approval Response Time.** An Eligible Mortgagee who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Mortgagee, who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request.

ARTICLE 14 - GENERAL PROVISIONS

14.1 **Term.** The provisions of this Restated Declaration shall continue in effect for a term of fifty (50) years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten (10) years, until the membership of the Association decides to terminate it.

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

14.3 **Severability.** The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision shall not affect the validity or enforceability of any other provision.

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

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

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

14.7 **Fair Housing.** Neither Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Residential Unit/Lot to any person on the basis of race, color, sex, sexual-orientation, religion, ancestry, national origin, age, marital status or physical handicap.

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

14.9 **Attorneys' Fees.** In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its actual attorneys' fees and costs so incurred. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Residential Lot which is enforceable pursuant to Article 4 herein. This Section shall also apply to actual attorneys' fees incurred to collect any post-judgment costs.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this 31 day of December, 2004.

SHADOW CREST HOMEOWNERS ASSOCIATION

By: _____
Kent R. Robbins — President

By: _____
Jill Reed — Secretary

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside } ss.

On 2-16-05 (Date), before me, Kathleen A. Frazelle Notary Public (Name and Title of Officer [e.g., "Jane Doe, Notary Public"])

personally appeared Gill Reed & Kent R. Robbins (Name(s) of Signer(s))

☑ personally known to me
☑ ~~proved~~ to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in ~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KATHLEEN A. FRAZELLE
Commission # 1436700
Notary Public - California
Riverside County
My Comm. Expires Sep 24, 2007

WITNESS my hand and official seal.

Place Notary Seal Above

Kathleen A. Frazelle
Signature of Notary Public

OPTIONAL

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☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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