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Craig S. Bickler, Esq.
 Bickler Law Offices APC
 11210 Old Castle Rd.
 Valley Center, CA 92082

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RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ECHO HILLS HOMEOWNERS ASSOCIATION

A Residential Planned Development Project

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violations state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Table of Contents

	Page No.
Recitals	6
ARTICLE 1 – DEFINITIONS	7
1.1 "Architectural Rules"	7
1.2 "Articles"	7
1.3 "Association"	7
1.4 "Board"	7
1.5 "Bylaws"	7
1.6 "Common Area"	8
1.7 "Association Landscape Maintenance Area"	8
1.8 "Director" or "Directors"	8
1.9 "Dwelling"	8
1.10 "Governing Documents"	8
1.11 "Lot"	8
1.12 "Member"	8
1.13 "Mortgage"	8
1.14 "Mortgagee"	8
1.15 "Officers"	8
1.16 "Owner"	8
1.17 "Owner Landscape Maintenance Areas"	8
1.18 "Person"	8
1.19 "Project"	8
1.20 "Restated Declaration"	9
1.21 "Rules and Regulations"	9
1.22 "Street Lot"	9
1.23 "Yard Area"	9
ARTICLE 2 – THE PROPERTY	9
2.1 Project Subject to Restated Declaration	9
2.2 Equitable Servitudes	9
2.3 Prohibition Against Partition	9
2.4 Prohibition against Severance of Elements	9
2.5 Annexation Pursuant to Approval	9
2.6 Mergers or Consolidations	9
2.7 Drainage and Slope Easements	10
2.8 Association Easements Over Lots	10
2.9 Owner Easements Over Common Area	10
2.10 Association Grant of Easements	10
2.11 Encroachment Easements	10
2.12 Utility Easements	11
ARTICLE 3 – ASSOCIATION	11
3.1 Organization of the Association	11
3.2 Board of Directors	11
3.3 Membership	11
3.4 Membership Class; Voting Rights	11
3.5 General Powers and Authority	11
3.6 Duties of the Association	13



ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES		14
4.1	Covenant to Pay	14
4.2	Purpose of Assessments	14
4.3	Regular Assessments	14
4.4	Special Assessments	14
4.5	Limitations on Regular and Special Assessments and Changes to Assessments	15
4.6	Owner Notice of Regular and Special Assessments	15
4.7	Individual Assessments	15
4.8	Monetary Fine	15
4.9	Costs, Late Charges and Interest	15
4.10	Priority of Payments	16
4.11	No Offsets	16
4.12	Enforcement of Assessments and Late Charges	16
4.13	Priority of Lien	16
4.14	Statement of Delinquent Assessment	17
4.15	Assignment of Rents	17
4.16	Waiver of Exemptions	17
ARTICLE 5 - USE RESTRICTIONS AND COVENANTS		17
5.1	General	17
5.2	Common Area	17
5.3	General Restrictions on Use	19
5.4	Minimum/Maximum Occupancy	22
5.5	Damage Liability	22
5.6	Owner Responsibility	22
ARTICLE 6 - REPAIR AND MAINTENANCE		23
6.1	General Standards of Maintenance	23
6.2	General Division of Responsibility	23
6.3	Division of Landscaping Authority over Certain Portions of Lots or Common Area	23
6.4	Slope Control, Use and Maintenance	24
6.5	Owner Improvements	24
6.6	Access over Common Area	24
6.7	Failure to Maintain	24
6.8	Damage Caused by Owner or Item Under Control of Owner	24
6.9	Limitation of Liability	25
6.10	Damages to Lot; Water or other substance Intrusion Damage	25
6.11	Owner Notification to Association	26
ARTICLE 7 - COMMON WALLS AND FENCES		26
7.1	Party Walls	26
7.2	Sharing of Repair and Maintenance	26
7.3	Destruction by Fire or Other Casualty	26
7.4	Weatherproofing	26
7.5	Party Wall Easements	26
7.6	Rights of Contribution Are Appurtenant	26
7.7	Dispute Resolution	26
ARTICLE 8 - ARCHITECTURAL AND DESIGN CONTROL		26
8.1	General	26



8.2	General Modifications Requiring Prior Approval	27
8.3	Specific Modifications	27
8.4	Architectural Changes Not Requiring Prior Approval	27
8.5	Procedure for Obtaining Approval of Architectural Changes	28
8.6	Architectural Rules	28
8.7	Standard of Architectural Review	29
8.8	Architectural Committee	29
8.9	Fee for Review	29
8.10	Compensation	29
8.11	Liability	29
8.12	Enforcement	29
8.13	Non-Compliance with Laws	30
8.14	Governmental Approval	31
ARTICLE 9 – INSURANCE		31
9.1	Fire and Casualty Insurance	31
9.2	General Liability Insurance	31
9.3	Directors and Officers Liability Insurance	31
9.4	Fidelity Coverage	31
9.5	Other Association Insurance	31
9.6	Review of Insurance; Notice of Cancellation or Modification	32
9.7	Qualifications of Insurance Carriers	32
9.8	Failure to Acquire Insurance	32
9.9	Trustee for Policies	32
9.10	Insurance Premiums	32
9.11	Insurance Policy Deductibles	32
9.12	Owner Notification of Insurance	34
9.13	Individual Property Insurance	34
9.14	Individual Liability Insurance	34
9.15	Making Claims to the Association’s Insurance	34
ARTICLE 10 - DAMAGE OR DESTRUCTION		34
10.1	Duty to Restore Lot	34
10.2	Duty to Restore Common Area	34
10.3	Cost of Repair	34
10.4	Repair Plans	34
10.5	Insurance Proceeds	34
10.6	Disbursements to Owners and Mortgagees	34
10.7	Certificates By Board	34
10.8	Certificates by Attorneys or Title Insurance Companies	35
ARTICLE 11 - EMINENT DOMAIN		35
11.1	Association as Trustee for Owners	35
11.2	Condemnation of a Lot	35
ARTICLE 12 - RIGHTS OF MORTGAGEES		35
12.1	General	35
12.2	No Right of First Refusal	35
12.3	Unpaid Dues or Charges	35
12.4	Action Requiring First Mortgagee Approval	35
12.5	Payment of Taxes and Insurance	36
12.6	Priority of Proceed or Award Distribution	36



12.7	Notification of Mortgagee	36
12.8	Termination of Professional Management	36
12.9	Inspection of Documents, Books and Records	37
12.10	Non-Curable Breach	37
12.11	Loan to Facilitate	37
12.12	Mortgagees Furnishing Information	37
12.13	Financial Statement	37
12.14	Termination without Substantial Destruction	37
ARTICLE 13 – ENFORCEMENT		37
13.1	Right to Enforce; Remedies	37
13.2	Nuisance	37
13.3	Failure to Enforce	37
13.4	Violation of Law	38
13.5	Compliance with Statute	38
ARTICLE 14 – AMENDMENTS		38
14.1	Owner Approval of Amendments	38
14.2	First Mortgagee Approval of Amendments	38
14.3	First Mortgagee Approval Response	39
14.4	Amendment of Restated Declaration or Bylaws by Board Vote	39
14.5	Statute of Limitations to Challenge Amendments	39
ARTICLE 15 - GENERAL PROVISIONS		40
15.1	Term	40
15.2	Nonwaiver of Remedies	40
15.3	Severability	40
15.4	Binding	40
15.5	Interpretation	40
15.6	Limitation of Liability	40
15.7	Fair Housing	40
15.8	Number and Headings	40
15.9	Attorneys' Fees	40
15.10	Variances	40
15.11	Governing Document Priorities	41
15.12	Conflict with Statutes	41
15.13	References to Code Sections	41
15.14	Joint and Several Liability	41



RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ECHO HILLS HOMEOWNERS ASSOCIATION

THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Restated Declaration") is made this 10th day of June, 2010, by Echo Hills Homeowners Association, a California nonprofit mutual benefit corporation ("Association"), with reference to the following Recitals.

RECITALS

A. Association is a corporation whose Members are the Owners of all the Lots within that certain real property in the City of Hemet, County of Riverside, State of California, more particularly described as Lots 1 through 34, inclusive and Lots A and B of Tract 10496 as shown on a Map recorded in Book 98, Pages 18-22, of Maps in the Office of the County Recorder of Riverside County, State of California, (the "Project").

B. The Project was developed as a Planned Development, as defined in Section 1351(k) of the California Civil Code, and consists of thirty-four (34) residential Lots, one Lot forming part of Buena Vista Street and one (1) Common Area Lot.

C. The Project is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the following documents:

1. The Declaration of Covenants, Conditions and Restrictions recorded February 26, 1979, as Book 1979, Page 37922 ("Original Declaration");
2. The First Amendment to Declaration of Covenants, Conditions and Restrictions recorded August 6, 2008, File No. 2008-0431162 ("First Amendment");

all of Official Records of the County Recorder of Riverside County hereinafter referred to together as "Declaration," unless the context indicates otherwise.

D. Association now desires to amend and restate the Declaration and replace it in its entirety with this Restated Declaration. Association further desires that, upon recordation of this Restated Declaration, the Project 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. This Restated Declaration has been adopted under the provisions of Articles 7.3 and 9.8 of the Original Declaration. Article 7.3 states, inter alia, that except as otherwise provided therein, the Original Declaration may be amended by not less than seventy-five percent (75%) of each class of members, provided that the amendment is recorded and approved by the City Planning Department. On October 6, 2006, the Planning Department for the City of Hemet confirmed that the City does not regulate Declarations of Covenants, Conditions and Restrictions. Article 9.8 states, inter alia, that except with the prior written approval of at least seventy-five percent (75%) of all



mortgagees neither the Association nor the members may change certain provisions of the Original Declaration. Article 9.8 further states that any mortgagee who is sent a written request or ballot by properly prepaid certified or registered mail with a return receipt requested to consent to or approve actions, additions or amendments requiring consent or approval by any mortgagee pursuant to the Original Declaration and who does not submit a written negative response to the requesting party within thirty (30) days after mailing (or such longer period as the requesting party may specify) shall be deemed to have consented to or approved such actions, additions or amendments.

F. California Civil Code Section 1355(a) states, inter alia, that the Declaration may be amended pursuant to such title and is effective after (1) the approval of the percentage of owners required by the governing documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the officer designated in the Declaration or by the Association for that purpose, or if no one is designated by the President of the Association, and (3) that the writing has been recorded in each county in which a portion of the common interest development is located.

G. The undersigned President and Secretary of the Association hereby certify pursuant to California Civil Code Section 1355(a) that the approval of the percentage of owners and mortgagees required by the governing documents has been obtained.

NOW, THEREFORE, Association hereby declares that all of the Project 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 Project. All provisions of this Restated Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Project, and shall be binding on and for the benefit of all of the Project and all parties having or acquiring any right, title, or interest in all or any part of the Project, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Lot.

DECLARATION

ARTICLE 1 - DEFINITIONS

1.1 **"Architectural Rules"** means the Rules and Regulations regulating modifications and alterations to the Lots and Common Area adopted by the Board pursuant to Section 8.6 herein.

1.2 **"Articles"** means the Articles of Incorporation of Echo Hills Homeowners Association, filed in the Office of the Secretary of State of the State of California on December 28, 1979, as File No. 948594, and any amendments thereto now existing or hereafter adopted.

1.3 **"Association"** means Echo Hills Homeowners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development,

1.4 **"Board"** means the Board of Directors of the Association. One or more members of the Board of Directors may be referred to as a "Director" or "Directors."

1.5 **"Bylaws"** means the Bylaws of the Association and any amendments thereto.

1.6 **"Common Area"** means those portions of the Project and all improvements thereon owned by the Association for the common use and enjoyment of the Owners, consisting of Lot A and possibly Lot B of Tract No. 10496.



1.7 **"Association Landscape Maintenance Area"** means those portions of any Lots which are maintained by the Association. The provisions relating to Association Landscape Maintenance Areas are set out in Article 6.3 herein.

1.8 **"Director" or "Directors"** means one or more members of the Board of Directors.

1.9 **"Dwelling"** means a single family residential dwelling, and any buildings ancillary thereto, located on a Lot.

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

1.11 **"Lot"** means any residential lot within the Project, including all improvements now or hereafter built thereon, with the exception of the Common Area,

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

1.13 **"Mortgage"** means a mortgage or deed of trust encumbering a Lot. **"First Mortgage"** means a mortgage that has priority over all other mortgages encumbering the same Lot.

1.14 **"Mortgagee"** means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. **"First Mortgagee"** means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Lot. The term **"Beneficiary"** shall be synonymous with the term **"Mortgagee."**

1.15 **"Officers"** means the Officers of the Association appointed by the Board of Directors pursuant to the Bylaws.

1.16 **"Owner"** means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Lot, as shown on the most recent deed for the Lot recorded in the Office of the Riverside County Recorder, including Association, and any contract sellers under recorded contracts of sale. **"Owner"** shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation. For purposes of exercising membership rights, including the right to serve as a Director, and incurring membership obligations when an Owner is a corporation, firm, limited liability company or other entity, any director, officer, employee or agent designated in writing by the Owner may exercise the membership rights attributable to the Owner. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.

1.17 **"Owner Landscape Maintenance Areas"** means any portion of any Common Area (but excluding any Yard Area) which is maintained by the Owner of a specific Lot. The provisions relating to Owner Landscape Maintenance Areas are set out in Article 6.3 herein.

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

1.19 **"Project"** means the entire common interest development as described in Recital "A" herein, including all improvements thereon.

1.20 **"Restated Declaration"** means this Restated Declaration of Covenants, Conditions and Restrictions and any amendments hereto.

1.21 **"Rules and Regulations"** means any Rules and Regulations, including the Architectural Rules, for the Association regulating the use of the Lots, the Common Area, the Project and any facilities located thereon adopted by the Board pursuant to the provisions herein.



1.22 **“Street Lot”** means that portion of the Project consisting of Lot B of Tract Number 10496.

1.23 **“Yard Area”** means those portions or areas of the Project adjacent to each Lot which are located within Common Area but which were enclosed by fencing by the original developer with the intention that such areas would be used as yards exclusively benefiting the respective Lots to which they are adjacent.

ARTICLE 2 – THE PROPERTY

2.1 **Project Subject to Restated Declaration.** The entire Project shall be subject to this Restated Declaration upon recordation hereof.

2.2 **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.

2.3 **Prohibition Against Partition.** There shall be no judicial partition of the Project or any part of it, nor shall the Association 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.

2.4 **Prohibition against Severance of Elements.** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a 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.

2.5 **Annexation Pursuant to Approval.** Upon the vote or written assent of not less than seventy-five percent (75%) of the Association voting power, any person who desires to add real property to the plan of this Restated Declaration and to subject such property to the jurisdiction of the Association, may file of record a Supplementary Declaration. A certificate of the President and the Secretary of the Association attached to any Supplementary Declaration recorded pursuant to this Section verifying that the required seventy-five percent (75%) of the Association voting power has approved the recordation of such Supplementary Declaration shall be deemed conclusive proof thereof.

2.6 **Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association which merger or consolidation must be approved by seventy-five percent (75%) of the Association voting power, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Restated Declaration within the Project, together with the covenants and restrictions established upon any other property as one plan.

2.7 **Drainage and Slope Easements.** The Owner of a Lot shall permit free access by Owners of adjacent or adjoining Lots, or the Association and its agents, to slopes or drainageways located on his or her Lot, when such access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for the protection and use of

property other than the Lot on which the slopes or drainageway is located. The Owner of any Lot shall not in any way interfere with the established drainage pattern over his or her Lot from adjacent or adjoining Lots, unless the Owner makes adequate provisions for continued drainage over his or her Lot from adjacent Lots. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Project was completed.

2.8 Association Easements Over Lots. The Association has an easement over each Lot, as the servient tenement, for the purpose of allowing the Association's agents to enter the Lot to perform such duties or exercise such rights as may be required or permitted by the Governing Documents, or by law. Such easement shall include, but not be limited to, easements to install, plant, irrigate and maintain landscaping up to the exterior walls or fence of a Residence as provided or permitted herein. Although Yard Areas form part of Common Area owned by the Association, for the avoidance of doubt, the Association shall be entitled to enter Yard Areas at any time for any work or purpose reasonably required by the Association. Each Owner shall be responsible to make his Yard Area available to the Association on request and each Owner shall take down and reinstall fencing or clear and replace any improvements or possessions necessary to permit the Association to undertake any work or achieve any purpose requiring access or use of any Yard Area.

2.9 Owner Easements Over Common Area. Except for Yard Areas, each Owner shall have a nonexclusive easement for use and enjoyment of the Common Area now or hereafter owned by the Association and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Restated Declaration, as well as to the right of the Association pursuant to the Governing Documents to perform its obligations under this Restated Declaration, or otherwise regulate the Common Area as provided in the Governing Documents. Each of the easements reserved or granted herein shall be covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article. Each Owner shall have an exclusive use of the Yard Area adjacent to that Owner's Lot as was fenced and intended by the developer to benefit that Owner's Lot, provided that any Yard Area shall only be used for landscaping and recreational purposes, and otherwise in accordance with the Governing Documents.

2.10 Association Grant of Easements. 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 for any other purpose reasonably related to the operation and maintenance of the Project. No such easement may be granted, however, if it would substantially interfere with any exclusive easement, or with any Owner's use or occupancy of his or her Lot without the approval of the affected Owner.

2.11 Encroachment Easements. None of the rights and obligations of the Owners created herein, or by the deed creating the Project, shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments over the Common Area or Lots upon which the encroachment exists so long as the encroachments shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event that a structure on a Lot is partially or totally destroyed and then rebuilt or repaired, the Owners of any adjoining Lots or Common Area agree that minor encroachments over the adjoining Lots shall be permitted and there shall be easements for maintenance of such encroachment so long as they shall exist.



2.12 **Utility Easements.** In the case where utility facilities are located on a Lot or Lots owned by other than the Owner of a Lot served by the utility facilities, the Owners of any Lots served by the utility facilities shall have the right of reasonable access for themselves or their agents to repair, replace and generally maintain the utility facilities as and when the same may be necessary. A Lot Owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining utility facilities exclusively servicing such Owner's Lot. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include such conditions as the Board determines reasonable.

In the case of utility facilities which serve more than one Lot, the Owner of each Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service his or her Lot.

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 invested with the powers prescribed by law and set forth in the Governing Documents.

3.2 **Board of Directors.** The affairs of the Association shall be managed and its duties and obligations performed by a Board of Directors, as provided in the Bylaws.

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

3.4 **Membership Class; Voting Rights.** The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. On matters presented to the membership for a vote, each Lot shall be assigned one vote, subject to the provisions of the Bylaws.

3.5 **General Powers and Authority.** The Association shall have all the powers of a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It 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 Article 4 herein.

3.5.2 The power to adopt reasonable Rules and Regulations governing the use of the Lots, Dwellings, Common Area, 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:



- (i) Reasonable restrictions on use of the Common Area, Lots and Dwellings by the Owners and their families, guests, employees, tenants and invitees.
 - (ii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to activities on the Common Area, Lots and Dwellings.
 - (iii) In accordance with California laws and the Bylaws, the establishment of reasonable hearing procedures and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents.
- (b) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be mailed to the Owners of each Lot within thirty days of adoption by the Board.
 - (c) 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 Lots that the Association is obligated to maintain or repair.
 - (d) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots that the Association is obligated to maintain or repair.
 - (e) Enforcement of payment of assessments in accordance with the provisions of Article 4 herein.
 - (f) Any other matter in which the Association is a party, including, but not limited to, contract disputes.
- 3.5.4 Subject to the limitations set forth in the Bylaws, the right to discipline a Member for violation of any of the provisions of the Governing Documents by (a) suspending the Member's membership rights, including the Member's voting rights, right to run as a candidate for election to the Board of Directors, and the rights and privileges to use the Common Area and facilities appurtenant to the Member's Lot, (b) imposing monetary fines, and (c) recording a notice of noncompliance in the Office of the County Recorder of Riverside County encumbering the Lot of the Owner if permitted by law.
- 3.5.5 The right for its agents and employees to enter any Lot when necessary in connection with any maintenance, landscaping, or construction work for which the Association is or may be responsible or to reduce the likelihood of

or prevent damage to the Common Areas or another Lot. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any entry by the Association to investigate a reported or suspected water intrusion shall be deemed an emergency.

- 3.5.6 Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance and without prejudice to the provisions of Article 6.3 hereof, the right upon receiving the affirmative vote of not less than fifty-one (51%) of the total voting power of the Association, 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 Lot, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project unless that Owner consents to the use.
- 3.5.7 The right to grant exclusive use of Common Area without a vote of the Membership in any circumstances which fall within the provisions of Civil Code Section 1363.07(a)(1)-(3).
- 3.5.8 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 Sections 22658-22658.2.

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 shall be responsible for the following:

- 3.6.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components assigned to the Association as provided herein or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.6.2 The Association shall use the general operating 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 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.
 - (d) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.



ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 **Covenant to Pay.** Each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agrees to pay to the Association the assessments and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration. An 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 each Owner of the Lot at the time the assessment or other sums are due and payable. Co-Owners of a Lot shall be jointly and severally liable for all charges levied by the Association on that Lot. No Owner may waive or otherwise escape liability for these assessments by non-use of the Common Area or abandonment of the Owner's Lot.

4.2 **Purpose of Assessments.** Except as provided herein, the Association shall levy assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively for the recreation and welfare of the Owners; for the operation, replacement, improvement, and maintenance of the Project as provided herein, and to perform any other rights and/or obligations of the Association under this Restated Declaration. All assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

4.3 **Regular Assessments.** During each fiscal year, 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 from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be divided equally among all Lots. 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 regular 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. If, for any reason, the Board of Directors fails to make an estimate as provided herein for any fiscal year, then the regular assessment made for the preceding fiscal year shall be assessed against each Owner and his or her Lot on account of the then current fiscal year and the assessments shall be payable on the regular payment dates established by the Association.

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. Special assessments shall be levied equally against each Lot and collected in the same manner as regular assessments. The Board may levy a special assessment in one lump sum or in installments over a period of time as the Board determines appropriate.

4.5 **Limitations on Regular and Special Assessments and Changes to Assessments.** Except in emergency situations or as otherwise provided by Civil Code Section 1366, the Board may not, without the approval of Members constituting a quorum of the Owners and casting a majority of the votes at a meeting or mailed Ballot conducted in accordance with California law, levy a regular assessment per Lot that is more than twenty percent greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent of the budgeted gross expenses of the Association for that fiscal year. The Board of Directors may change the amount of regular assessments at any time during any fiscal year upon not less than thirty (30) nor more than sixty (60) days prior written notice to the membership.



4.6 **Owner Notice of Regular and Special Assessments.** The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments not less than thirty (30) nor more than ninety (90) days prior to the increase becoming due, and shall provide notice of the imposition of a special assessment in the same manner not less than thirty nor more than sixty days prior to the assessment becoming due, or as otherwise provided or permitted by statute.

4.7 **Individual Assessments.** Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy individual assessments against Owners and Lots whenever the Association (a) 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, and/or (b) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner and/or (c) incurs any costs to bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents. Such individual assessment shall include the cost thereof, together with any legal, financing and administrative costs incurred by the Association. Prior to levying an individual assessment, the Board shall provide the Owner with notice and an opportunity for a hearing in accordance with California law or the governing documents. The notice and hearing regarding the levy of an individual assessment may be combined with the notice and hearing regarding any underlying violation. Duly levied individual 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 Lot, in the same manner as regular and special assessments.

4.8 **Monetary Fine.** The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary fines against an Owner and his or her Lot. In the event the Board of Directors imposes a monetary fine, that fine shall be payable and due fifteen days after written notice is mailed to an Owner by first class mail, and shall be subject to costs, late charges and interest as described in this Article for delinquent assessment payments, and may become a lien on the Lot, collectible by the Association through judicial foreclosure as permitted by this Article or by law. In no event may the Association collect a monetary penalty or fine through nonjudicial foreclosure, unless permitted by law.

4.9 **Costs, Late Charges and Interest.** Late charges may be levied by the Association against an Owner for the delinquent payment of assessments, and monetary fines. An assessment, including any installment payment or any fine, is delinquent fifteen days after its due date. If an assessment or fine is delinquent, the Association may recover all of the following from the Owner:

- 4.9.1 Reasonable costs incurred in collecting the delinquent assessment or fine, including actual attorneys' fees.
- 4.9.2 A late charge not exceeding ten percent of the delinquent assessment or fine, or the maximum amount allowed by law.
- 4.9.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent (or such other rate as may be allowed by Civil Code Section 1366) commencing thirty days after the assessment or fine becomes due.
- 4.9.4 The fair rental value of the Lot from the time of institution of suit until the sale at foreclosure or other satisfaction of any judgment and/or during any period between sale at foreclosure and the time the Association actually takes title to the Lot.

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 this Article.

4.10 **Priority of Payments.** The Board, in its sole discretion, may enact policies, in compliance with applicable law, regarding how payments received from Owners will be applied to any outstanding balances due the Association from that Owner.

4.11 **No Offsets.** All assessments shall be payable in the amounts specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

4.12 **Enforcement of Assessments and Late Charges.** A delinquent assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), interest assessed in accordance with this Article and other costs and expenses as provided by this Article and as permitted by law, shall become a lien upon the Lot when a Lien is duly recorded as provided by California law. The Association's President, property manager, legal counsel or any other person designated by the Board may sign and/or record any lien. A copy of the lien shall be mailed to all record Owners of the Lot.

If not paid in full within thirty days after recordation of the Lien, or such other minimum period as provided by law, and subject to compliance with any applicable legal provisions or requirements, any Lien may be enforced in any manner permitted by law, including judicial foreclosure or non-judicial foreclosure. Any non-judicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Section 2924(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 Lien, and all assessments and other charges, fees and costs accruing up to the date of any lien release or notice of rescission 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, record a notice of rescission of any recorded notice of default and demand for sale.

The 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 Lien. The Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments. The Association may also, in its discretion, refuse to accept or, if accepted without Board approval, return any partial payments and require that all payments due hereunder are paid in full before discontinuing any collection action.

4.13 **Priority of Lien.** As set forth herein below, the lien referred to in Section 4.12 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 prior 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:

4.13.1 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



