

**FIRST RESTATEMENT OF THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE PERSIMMON HILL HOMEOWNERS ASSOCIATION, INC.**

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**FIRST RESTATEMENT OF THE
DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS
OF THE
PERSIMMON HILL HOMEOWNERS ASSOCIATION, INC.**

This **FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** for Persimmon Hill Homeowners Association, Inc. is made by all persons who own Lots in that real property located in Ojai, County of Ventura, State of California, and described as follows:

Lots 2 to 44, inclusive of Parcels A, B, C and D, private streets and easements for utility, storm drain, equestrian and emergency access purposes In Tract 3531, City of Ojai. County of Ventura, State of California, an per Map recorded In Book 91, Pages 95 through 101, of Miscellaneous Records (maps) of the County Recorder of said County.

With this First Restated Declaration, the members of Persimmon Hill Homeowners Association, Inc. hereby revoke the Declaration of Conditions, Covenants and Restrictions, which was recorded on February 13 , 1982 as Instrument number 13674 against the above property and any amendments and substitute this Restated Declaration, which shall (1) bind the property, (2) benefit the members, (3) serve to enhance and protect the desirability, value and attractiveness of the Project, (4) bind each owner and their successors as well as their tenants, heirs, assigns and personal representatives, and (5) run with the land and be binding upon all parties acquiring any interest or title in the Project.

Now, therefore, all Lots as well as any conveyance, sale, transfer, rental, lease or sublease of a Lot shall be deemed to incorporate the provisions of this Restated Declaration of Covenants, Conditions, and Restrictions. By adopting this Restated Declaration, the members intend to subject each successor in interest to all of the covenants, conditions and restrictions contained in this document.

1. **DEFINITIONS**

1.1 "ASSOCIATION"

PERSIMMON HILL HOMEOWNERS ASSOCIATION, INC., a California nonprofit mutual benefit corporation in which all owners shall have a membership interest as more particularly described in Section 3 hereof, provided that membership shall be limited to owners.

1.2 "BOARD OF DIRECTORS"

The Board of Directors of PERSIMMON HILL HOMEOWNERS ASSOCIATION as described in the Association Bylaws and Articles of Incorporation.

1.3 "COMMON AREA"

All real property, easements, and improvements thereon owned by the Association for the benefit of the Owners, including Parcels A, B, C and D, the private streets, and easements for utility, storm drain, equestrian and emergency access purposes easements shown on the Subdivision Map for the Project.

1.4 "LOT"

Lots 2 to 44, inclusive, of Tract 3531 as shown on the subdivision map thereon.

1.5 "MEMBER"

Every person or entity who holds membership in the Association

1.6 "MORTGAGE"

The conveyance of any lot or portion of the Project to secure the performance of an obligation which conveyance shall be terminable upon the due performance of said obligation, whenever the word 'mortgage' is used herein, it shall mean and be synonymous with 'deed of trust' and the same may be used interchangeably.

1.7 "MORTGAGEE"

A person or entity to whom a mortgage is made. The word "beneficiary" shall be synonymous with the word 'mortgagee',

1.8 "OWNER"

The record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation,

1.9 "PROJECT"

That certain real property hereinbefore described including all structures and improvements thereon,

1.10 "UNIT SINGLE-FAMILY RESIDENCE"

Any portion of a building on a lot designated and intended for use and occupancy as a residence by a single family.

2. **USE RESTRICTIONS**

In addition to all other covenants contained herein, the use of the Project and each lot therein is subject to the following:

2.1 Residential Use. None of the lots shall be used except for residential and related purposes. No garage may be converted into a living area.

2.2 No Commercial Use. No part of the Project shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes.

2.3 Signs. Except as otherwise permitted by Civil Code sections 712, 713, and 4710, no sign or other advertising device of any kind shall be erected, maintained or displayed to the public view on any portion of the Project.

2.4 Nuisance. No noxious or offensive activity shall be carried on upon any lot or any part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance, nuisance to, or depreciate the value of the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his/her respective dwelling unit, or which shall in any way increase the rate of insurance.

2.5 Temporary Structures. No structure of a temporary character, trailer, incomplete building, basement, tent, shack, garage, barn or other out-building, shall be used on any lot at any time as a residence, either temporarily or permanently.

2.6 Animals. No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept, bred, or raised within the Project for commercial purposes, except by a minor child incident to his or her participation in a sanctioned youth program by a qualified youth or charitable organization, such as 4-H, Future Farmers of America, Boy or Girl Scouts, or the like.

2.6.1 The Board can limit, restrict or condition the maintenance of any animal. The Board may specifically prohibit or condition the right to keep any animal that constitutes a nuisance by reason of abuse, smell, safety, or otherwise to any other owner in the opinion of the Board, after notice and hearing. The procedures for notice and hearing shall be as set forth in Article 10 below.

2.6.2 Each person bringing or keeping an animal on the development shall be absolutely liable to other owners, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests and invitees for any damage to persons or property caused by any pet brought on or kept on the development by such person or by members of his family, his guests or invitees.

2.6.3 No owner shall keep more than a combination of one horse, cow, sheep, swine or similar per one-half (1/2) acre contained within any lot.

2.7 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon the surface of any lot within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any lot.

2.8 Rubbish. All rubbish, trash, garbage, garbage containers or other inoperative or unusable objects shall be regularly removed from the project and shall not be allowed to accumulate thereon and rubbish, trash, garbage, garbage containers, or other inoperative or unusable objects shall be placed in garages, back yards, or other areas obscured from public view from the common area or other residences, except on the day of collection when they may be set out for a reasonable period. All refuse containers and air conditioning units shall be prohibited unless obscured from view of adjoining residences and streets by a fence or appropriate screen architecturally integrated and consistent with the Project approved by the Architectural Committee of the Association.

2.9 Antennas. Pursuant to the right granted an Association to impose reasonable regulations by Civil Code section 4725, Owners must seek the approval of the Board of Directors before a satellite dish or television antenna may be installed. To obtain such approval, Owners must submit an application as set forth in Article 8 below. In enacting these regulations, the Association is not intending to waive any provisions of law or building codes applicable to the installation of satellite dish or television antennas

2.10 Rentals. The dwelling units within the Project shall not be rented by the Owners thereof for

transient or hotel purposes, which shall be defined as (a) rental for any period less than one hundred eighty (180) days, or (b) any rental if the occupants of the residence are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service.

2.10.1 The obligation to pay assessments by the lot Owners shall not be affected or limited by any tenancy relationship entered into by the lot Owner.

2.10.2 All leases or rental agreements shall be in writing. Any lease or rental agreement shall include the following language: "The terms of this agreement are subject in all respects to the provisions of the Declaration of Covenants, Conditions and Restrictions, Articles of Incorporation, and Bylaws of Persimmon Hill Homeowners Association. Any failure by the lessee to comply with the terms of such documents shall be a default under the lease. The undersigned, as lessee or tenant, acknowledges that he is familiar with all said restrictions and rules of the Persimmon Hill Homeowners Association and agrees to abide by them."

2.10.3 No tenancy is valid and no lessee shall be permitted occupancy until the Association receives a copy of the lease or rental agreement. Unless this provision is complied with, the lessees or tenants shall not be entitled to use Association facilities. Other than the foregoing, there is no restriction on the right of a lot Owner to lease his lot.

2.11 Clotheslines. Exterior clotheslines or drying racks shall be erected or maintained in the backyards of Owner's lot only as set forth in Civil Code section 4753 and subject to reasonable regulations imposed by the association. There shall be no exterior drying of clothes, towels, or other fabrics on patios, porches, or other areas.

2.12 Windows. The windows shall not be covered in whole or in part with paper, newspaper, aluminum foil, bed sheets, transparent tinting or shading material, or other materials not specifically intended for such purpose

2.13 Trailers, Boats and Motor Vehicles. No mobile home, trailer of any kind, permanent tent, or similar structure, and no truck, camper or recreational motor home, or boat, or boat trailer, nor any other motor vehicle shall be parked, placed, maintained, constructed, reconstructed or repaired by residents of the Project, upon any lot, common area or street within the Project for longer than twenty-four (24) hours out of any forty-eight (48) hour period except in enclosures or in such designated areas as may be approved by the Association.

This section shall not apply to motor vehicles, temporary construction shelters or facilities maintained or parked within the Project during, and used exclusively in connection with the construction of any work or improvement done approved by the Architectural Committee.

No commercial vehicles of any nature shall be parked or stored on any lot or on the streets of the project, except for a commercial vehicle providing services to the Owners of lots or the Association, and in that event only for the duration necessary to provide such services.

2.14 Drainage. As an incident to the development of the Project, changes may occur in the amount of water flowing into natural water courses from that which would occur if the property were left in a natural state. One of the purposes of this Declaration is to minimize any such changes. No

obstruction, diversion, bridging, pollution or confining of drainage courses or of existing channels through which storm surface water naturally flows upon and across any lot shall be made by any Owner in such a manner as to cause drainage to adjacent lots. Any proposed improvement or alteration of a lot, which would affect the drainage pattern established upon the initial grading of the lot or the drainage pattern of any adjoining lot must be approved by the Architectural Committee based on a express finding that alternative suitable drainage is provided in the improvement or alteration plans submitted by the Owner.

2.15 Fencing. Chain link fencing is prohibited along any property line of any lot adjacent to or within one hundred (100) feet of the roads shown on the Subdivision Map of the Project. All or any portion of chain link fencing within the Project shall be subject to prior approval under Article 8 below, and may be conditioned by the Architectural Committee on it being vinyl coated and/or planted with irrigated vines of such a nature as to completely cover the same.

2.16 Fires. There shall be no exterior fires whatsoever except fires contained within receptacles designed for such purposes.

2.17 Tree Removal. One of the most appealing natural features of the Project is the profusion of oak and other trees indigenous to the area. Each Owner shall be responsible for the cultivation and maintenance of the trees which are present on the Owner's lot. In performing such cultivation and maintenance, each Owner shall follow the guidelines for tree preservation provided by the Architectural Committee, the City of Ojai Tree Ordinance, and the County of Ventura Tree Protection Ordinance.

2.18 Trail Encroachments. No tree, shrub, or planting of any kind shall be allowed to be planted upon or to overhang or otherwise to encroach above any equestrian trail shown as such on the Subdivision map of the Project at a height of less than twelve (12) feet above ground level without the prior approval of the Architectural Committee.

2.19 Open Area. No permanent structure shall be constructed within 250 feet of the fault line shown and described on the final Map for Tract 3531. For the purpose of this Section, permanent structures shall not include fences, walks, or driveways.

3. **PROPERTY RIGHTS**

3.1 Owners' Easements of Enjoyment. Owner shall have a nonexclusive right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

3.1.1 The right of the Association to temporarily suspend the voting rights of the owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations (other than failure to pay assessments), which right is to be exercised pursuant to Article 10 below.

3.1.2 The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. Any proposed dedication or transfer under this section must be approved by two-thirds (2/3) of the total voting power of the Association.

3.1.3 The right of the Association to establish uniform rules and regulations pertaining to the use of the common area.

3.1.4 The right of the Association, in accordance with Its Articles and Bylaws, to borrow money for the purpose of improving or renovating the common area and landscaping thereof and in aid thereof, to mortgage said property, provided that the rights of such mortgagee shall be subordinated to the rights of the members.

3.2 Access to Common Area. Said easement described in Section 3.1 hereinabove, shall include all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of said easement, subject to the regulations and rules controlling the same promulgated from time to time by the Association.

3.3 Delegation of Use. Any member may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the common area to the members of his immediate family his guests, invitees, agents, tenants, or contract purchasers who reside on the property. However, use of all common facilities is strictly limited to residents in the Project as owners and tenants.

3.4 Waiver of Use. No member may exempt himself from personal liability for assessments duly levied by the Association, nor release the lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the common area or by abandonment of his lot.

4. **MEMBERSHIP AND VOTING RIGHTS**

4.1 Creation of the Association. The Owners of lots shall constitute a Homeowners Association, which shall be incorporated as a California nonprofit mutual benefit corporation.

4.2 Membership. Every Owner of a lot, or an undivided Interest in any lot, which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

4.3 Transfer. The membership held by an Owner of a lot shall not be transferred, pledged or alienated in any way except upon the sale or encumbrance of such lot, and then only to the purchaser or mortgagee of such lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association.

4.4 Multiple Owner Voting. The vote for each such lot may be cast only as a unit, and fractional votes shall not be allowed. In the event joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter In question. If any Owner or Owners cast a vote representing a certain lot, it shall thereafter be conclusively presumed for all purposes that he or they were acting with authority and consent of all other Owners of the same lot. In the event more than one vote is cast for a particular lot by Class A members, none of said votes shall be counted and all of said votes shall be deemed void.

5. **COMMON AREA**

5.1 Exclusive Use. Said common area shall be for the exclusive use and enjoyment of the owners of

lots in this Project, and their guests, employees, invitees, and lessees.

6. **COVENANT FOR MAINTENANCE AND ASSESSMENTS**

6.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

6.1.1 Annual assessments or charges;

6.1.2 Special assessments for capital Improvements or other purposes, such assessments to be established and collected as hereinafter provided; and

6.1.3 Any other obligations provided for herein, including but not limited to interest, late charges, attorney fees, and collection costs.

6.1.4 The annual, special and reimbursement assessments, together with interest, late charges, costs and reasonable attorney fees, shall be a charge on the land and shall be the debt of the owner of the Lot and shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

6.2 Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of operating the Association for the benefit, welfare and enjoyment of its members, and In this connection, for the maintenance and improvement of the common area thereon and to provide funds for the Association to carry on its duties set forth herein, or in Its Articles of Incorporation and Bylaws.

6.3 Annual Assessment. The Board of Directors will set the annual assessment to the extent permitted by law without a vote of the members and the same shall be uniformly determined under Section 6.7. Any proposed increase exceeding 20% will be submitted to a vote of the members under Section 6.6 below.

6.4 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason (including, but not limited to, unanticipated delinquencies, litigation, costs of construction, unexpected repairs or replacements, or maintenance of capital improvements or landscaping on the common area, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board it shall become a special assessment.

6.4.1 The Board may, in its discretion, prorate such special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each lot. Unless exempt from federal or state Income taxation, all proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

- 6.4.2 Any special Assessment in excess of twenty five percent (25%) of the budgeted gross expense of the Association for the fiscal year in which a special assessment is levied shall require approval by vote of fifty-one percent (51%) of the total voting power of the Association, except in the case of a special reimbursement assessment against an Owner as a remedy utilized by the Board under Section 6.5 below, to reimburse the Association for costs incurred in bringing the member into compliance with the provisions of this Declaration.
- 6.5 Reimbursement Assessments. To the extent permitted by Civil Code section 5725, subdivision (a), the Board may levy a Special Assessment against an individual Owner to recover expenses incurred by the Association to repair damage arising out of the actions or omissions of an Owner or the Owner's family, Residents, Tenants, guests, or pets or to perform maintenance or repairs on an owner's lot pursuant to section 7.4 below.
- 6.6 Notice and Quorum for any Action Authorized. Under Section 6.3 and 6.4, any action authorized under Section 6.3 and 6.4 requiring membership approval shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of the members entitled to vote on such action. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting.
- 6.7 Uniform Rate of Assessment. Except as provided In this Declaration, regular and special assessments must be fixed at a uniform rate for all lots by dividing the total assessment for the Project by the total number of lots then within the Project subject to assessment and shall be collected on a monthly basis.
- 6.8 Assessment Period. The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year, and regular assessments shall be payable in equal monthly installments unless the Board adopts some other basis for collection. The regular assessments and all special assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly Installments unless the Board adopts some other basis for collection.
- 6.9 Notice and Assessment Installment Due Dates. Written notice of each annual regular assessment and each special assessment shall be given to all owners of each lot subject to assessment in which the due dates for the payments of installments shall be specified. This date shall not be earlier than thirty (30) days after the giving of notice thereof. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Board. Each Installment of regular assessments and special assessments shall become delinquent if not paid within fifteen (15) days after its due date.
- 6.10 Maintenance Fund. Assessment charges so collected shall be promptly deposited in a commercial bank account in a bank to be selected by the Board, which account shall be clearly designated: Persimmon Hill Homeowners Association Maintenance Fund Account. The Board or the manager, as the case may be, shall have exclusive control over said account and shall be responsible to the Owners for the maintenance of accurate records thereof at all times. No withdrawal shall be made from said account, except to pay for the charges and expenses for the common benefit of all Owners.

6.11 Certificate of Payment. The Association shall, upon not less than twenty (20) days prior written notice, furnish to any Owner liable for assessment, a certificate in writing signed by an officer of the Association or the Association Manager setting forth whether the regular and special assessments on a specified lot have been paid and the amount of delinquency if any. A reasonable charge of not less than Ten Dollars (\$10.00) may be made by the Board for the issuance of these certificates. A properly executed certificate of the Association as to the status of Assessments on a lot is binding upon the Association as of the date of its issuance.

6.12 Enforcement Rights. In addition to all rights provided for by law, the Board has the right to collect delinquent Assessments as follows:

6.12.1 The Association may file a lawsuit directly on the debt. In any action to collect delinquent Assessments, late charges, interest, and collections costs, the prevailing party shall be entitled to attorney fees and costs. By filing a lawsuit, the Association does not waive its right to record a lien and pursue foreclosure.

6.12.2 A delinquent Assessment together with any late charges, interest, collection costs, and attorney fees shall become a lien on the Unit when a "Notice of Delinquent Assessment" is recorded. The Board may then enforce the Assessment lien against a Unit by (1) filing an action seeking judicial foreclosure or (2) proceeding with a nonjudicial foreclosure.

6.13 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption laws of California in effect at the time any assessment, or installment becomes delinquent or any lien is imposed.

6.14 Cumulative Remedies. The assessment lien and the rights to foreclosure and sale there under shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

6.15 Subordination of the Lien of Mortgagee. The lien of the assessments provided for herein shall be subordinate only to the lien of any first priority deed of trust or first mortgage (and not to any second priority deed of trust or mortgage). Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure, based upon any first priority deed of trust or mortgage, shall extinguish the liens of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Any purchaser or grantee in the event of foreclosure under any second priority trust deed or mortgage shall take subject to the obligation to pay all past due and future assessments. Each Owner does hereby waive to the extent of any liens created pursuant to this Section the benefit of Civil Code section 1237 et seq., Code of Civil Procedure section 690.31, and any other homestead or exemption laws of the State of California, in effect at the time any assessment becomes delinquent or any lien is imposed, pursuant to the terms hereof.

7. **DUTIES AND POWER OF THE ASSOCIATION**

7.1 Administration of Project. The owners and each of them, together with all parties bound by this Declaration, covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the bylaws, and such rules and regulations as may be adopted by the Board, and amendments, changes, and modifications thereto, as may come into effect from time to time. In the event of any inconsistency between the provisions of this Declaration and the provisions of the Bylaws, or said rules and regulations, the provisions of this Declaration shall prevail.

7.2 Authority of the Board. The Board, as constituted from time to time, shall at all times be responsible for the day to day operation and management of the affairs of the Association, and shall have the sole power and duty to perform and carry out the powers and duties of the Association as set forth in this Declaration and the Bylaws, together with the powers and duties otherwise expressly delegated to the Board by this Declaration or the Bylaws, except for action or activity expressly set forth herein or in the Bylaws, or the California Corporations Code, as requiring the vote or assent of members of the Association, or a given percentage thereof. Without limiting the generality of the foregoing, the Association acting through the Board shall:

7.2.1 Own, maintain, improve, construct, reconstruct (in the event of deterioration or destruction) and manage all of the common area and all facilities, improvements, lighting, and landscaping thereon, and all property acquired by the Association and to pay all the costs thereof.

7.2.2 Pay all real and personal property taxes and other charges assessed against the common area, unless said assessments are included in the assessments to the lots.

7.2.3 Have the authority to obtain, for the benefit of the common area, all water, gas and electric service.

7.2.4 Grant easements where necessary for utilities and sewer facilities over the common area to serve the common area.

7.2.5 Maintain such policy or policies of insurance on the common area as the Board of Directors of the Association deem necessary or desirable in furthering the purposes of and protecting the interests of the Association and its members.

7.2.6 Enforce applicable provisions of this Declaration and the Bylaws and Articles of Incorporation of the Association and establish, modify from time to time, and enforce uniform rules and regulations pertaining to the maintenance and use of the lots and the common area, including but not limited to, signs, refuse collection and disposal, maintenance standards, parking, traffic control, view obstruction, noises, animal maintenance and control, and architectural restrictions. The Association may exercise all rights in law and equity, hire legal counsel, and levy fines for any violation by an Owner, guest, tenant, agent, or family members.

7.2.7 Contract for materials and/or services for the common area or for the Association, with the term of any service contract limited to two (2) years, unless a longer term is approved by a majority of the voting power of each class of members of the Association.

7.3 Exterior maintenance of Lots. The Association shall not be responsible for exterior maintenance

of single family residences, walks, driveways, landscaping, or any other improvements. Said exterior maintenance is the responsibility of each respective lot Owner. Strict compliance to the architectural control provisions of Article 8 herein shall be required of all owners with regard to all said maintenance and repair. Each respective lot Owner shall be responsible for landscaping and landscape maintenance within the area of each lot and for maintaining and repairing of the driveways, walks and fences themselves. Such responsibility shall also include the duty to maintain the residence, out buildings, driveways, and walkways in a good, neat, clean, and well painted condition, including but not limited to repairing, painting, resurfacing, and/or maintaining the roof, doors, exterior walks, siding, stucco, windows, and screens of the dwelling, and walks and driveways. Each Owner shall keep all shrubs, trees, grass and plantings of every kind neatly trimmed, properly cultivated, and free of trash, weeds and other unsightly material and shall replace any trees that become dead or diseased. All trees shall be trimmed so as not to unreasonably impede the view from nearby lots. Each lot Owner shall perform necessary rodent and insect control activities on his lot. No Owner shall remove, alter or injure any tree or shrub placed within the Project without the prior consent of the Architectural Committee. If an Owner fails to maintain or repair the owner's Lot the Association shall the right to perform the maintenance and repair upon notice to the owner, upon vote of a majority of the Board of Directors and after notice to the owner and the right to a hearing as provided in section 10.5 below, the Association shall have the right, through its agents and employees (but not the obligation) to enter upon the lot at any time during daylight hours to provide such maintenance or make such repairs or replacements. Pursuant to Section 6.5, the cost thereof shall be added to the assessments chargeable to such lot and shall be payable to the Association by the Owner of such lot within thirty (30) days of notice thereof.

7.4 Access at Reasonable Hours. For the purpose solely of exercising its right to do landscape and other maintenance and repair and for inspection to ascertain if the Owner is in default of any of his obligations hereunder, the Association shall have a nonexclusive easement and right of entry for its agents or employees to enter upon any lot at any time without notice during daylight hours, or, in the event of an emergency, at any time. If entry into a dwelling is necessary to accomplish said maintenance and repair, the lot Owner shall permit said entry by the Association's agents or employees on due notice, no less than twenty-four (24) hours, or by mail on no less than three (3) days prior to such entries. Neither the Association nor its agents shall be liable for trespass or invasions of privacy or otherwise for exercising this right of entry.

7.5 Liability and Indemnification of Officers and Directors. The Association may indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding if approved by the then Board of Directors) to which he may be made a party by reason of being or having been an officer or director, whether or not such person is an officer or director at the time such expenses are incurred, except for their own individual willful misfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association) and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director may be entitled. The Association may at the Board's option, as a common expense maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

7.6 Owner Liability for Damage. Each and every lot Owner and their agents and employees and any tenant occupying a unit with the consent of the Owner shall be jointly and severally liable for all property damage, to the extent not covered by insurance, occurring to the common area or the lots or any improvements thereon, no matter how occurring if such damage is proximately caused by the acts or omissions of their guests, invitees, or family members, regardless of whether such family members, guests, or invitees were or should have been under the Owner's supervision or control prior to, during, or after the occurrence of such damage.

7.7 Insurance. The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, any manager, and the Owners and occupants of dwelling units, and their respective family members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the common area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury, and property damages arising out of a single occurrence. Such insurance shall include coverage against liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

7.8 Equestrian Trails. The Association shall maintain the equestrian trail as shown on the Subdivision Map reasonably free of weeds and litter and shall prevent encroachments as specified in Section 2.17 above.

8. **ARCHITECTURAL COMMITTEE**

8.1 Organization. The Architectural Committee will consist of three (3) owners to be appointed by the Board of Directors.

8.2 Designation of members and Terms of Office.

8.2.1 Members. Members of the Architectural Committee will be appointed by a majority vote of the Board of Directors. Each member shall serve for two (2) years unless they have resigned or been removed by a majority vote of the Board of Directors. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed. Members of the Architectural Committee can serve for a maximum period of six (6) years in any ten (10) year period.

8.2.2 Resignations. Any member of the Architectural Committee may resign by notifying the President of the Board of Directors.

8.2.3 Vacancies. Vacancies on the Architectural Committee will be filled by a majority vote of the Board of Directors.

8.3 Duties. The Architectural Committee will review and approve proposals or plans to follow the principles set by the rules in the CC&R's or more specific Architectural Committee Rules.

8.4 Meetings. The Architectural Committee shall meet from time to time as proposals are submitted

to the committee. The vote or written consent of a majority of the Architectural Committee shall constitute an act by the Architectural Committee. The Architectural Committee shall be entitled to reimbursement for reasonable compensation and for expenses incurred by them in the performance of any Architectural Committee function. It shall keep and maintain for three (3) years a record of all actions taken.

8.5 Architectural Committee Rules. The Architectural Committee may, from time to time and with the approval of the board, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Committee Rules". The Architectural Committee will set the standards and procedures for review of proposals and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in a project. New dwellings shall contain a minimum of two thousand (2,000) square feet of living area. This minimum square footage of living area excludes garages, porches, guesthouse and decks.

8.6 Application for Approval of Improvements. Work on a project can only start after a written approval by the Architectural Committee is issued and project is in full compliance with any building codes or similar regulations or ordinances. Items requiring approval include the following: guesthouse, out building, fences, walls, sheds, patio covers, other structures, grading, and attachments. In addition, changes or alterations to the exterior of any dwelling, including any fence or wall, change of color; and any plantings, which most likely obstruct the view of a nearby residence. All projects will need to be in compliance with the codes and ordinances of the City of Ojai (Ojai), County of Ventura (VENCO) and the State of California (CA) regarding architectural design conformity and construction, variances, lot setbacks, landscaping, lighting and other environmental controls.

The application for approval shall describe the nature of the proposed work with such information as the Architectural Committee may require, including, but not limited to, (1) a plot plan of the lot showing the location of all existing and proposed improvements, (2) floor plans; (3) elevation drawings; (4) samples of exterior materials and colors; and (5) the Owner's proposed construction schedule. The Architectural Committee may require that the application for approval in connection with any improvement to be constructed be accompanied by an inspection fee in an amount not to exceed Three Hundred Dollars (\$300.00), increased every two (2) years in accordance with any increase in the Consumer Price Index for the Los Angeles-Long Beach Area.

8.7 Basis for Approval of Improvements. The Architectural Committee shall grant the requested approval only if:

8.7.1 The Owner shall have strictly complied with the provisions of Section 8.6 above.

8.7.2 The Architectural Committee shall find that the plans and specifications conform to these Restrictions, and to the Architectural Committee Rules in effect at the time such plans were submitted to such Committee, and

8.7.3 The members of the Architectural Committee in their sole discretion determine that the proposed improvements would be compatible with the standards of the Project and the purposes of these Restrictions as to quality of workmanship and materials, as to harmony of external design and quality with existing structures and topography, and as to location with respect to natural topography and finished grade elevations.

8.8 Form of Approval. All decisions under Section 8.7 shall be in writing. A disapprovals shall include both an explanation of why the proposed change is disapproved. However, any request for approval, which has not been rejected within sixty (60) days from the date of submission to the Architectural Committee, shall be deemed approved. One set of all plans and specifications submitted with the application shall be kept as a permanent record.

8.8.1 An owner may request a hearing with the board of directors to appeal the decision to disapprove the plans. This request must be in writing and must be made within twenty-one (21) days of receipt of the decision to disapprove the proposed change. The board will then set a hearing with notice to the owner no more than thirty (30) days after receipt of the request for hearing, which time period can be extended by (1) the board for a date not more than fifteen days beyond the initial period or (2) the agreement of the parties for a date not more than thirty (30) days beyond the initial period.

8.9 Proceeding with Work. Upon receipt of approval from the Architectural Committee pursuant to Section 8.7 above, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval. Such commencement, in all cases, shall be within one (1) year from the date of such approval. In addition, a certificate of occupancy must be provided to the ARC within 20 days after receipt from the City of Ojai. If the Owner shall fail to comply with this section any approval given pursuant to Section 8.7 above, shall be deemed revoked unless the Architectural Committee, upon written request of the Owner made prior to the expiration of said one (1) year period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted.

8.10 Failure to Complete Work. The Owner shall in any event complete the construction, reconstruction, refinishing, or alteration of any such improvement within the calendar submitted for the project plus a grace period of six months. An exception might be granted by the Architectural Committee if such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner. If Owner fails to comply with this section, the Architectural Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 8.11 below, as though the failure to complete the improvement were a noncompliance with approved plans.

8.11 Inspection of Work. Inspection of work and correction of defects shall proceed as follows:

8.11.1 Upon the completion of any construction or reconstruction or the alteration or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Section, the Owner shall give written notice to the Architectural Committee.

8.11.2 Within sixty (60) days thereafter, the Architectural Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Architectural Committee finds that such construction, reconstruction, alteration or refinishing was

not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within twenty (20) days of the inspection or determination of noncompliance, specifying particulars of noncompliance, and shall require the Owner to remedy such noncompliance.

8.11.3 If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board In writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall be not more than forty five (45) days nor less than fifteen (15) days after notice of the noncompliance to given to the Board by the Architectural Committee. Notice of the hearing date shall be given at least fifteen (15) days in advance thereof by the Board to the Owner, the Architectural Committee and, in the discretion of the Board, to any other interested party.

8.11.4 At the hearing, the Owner, the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion may grant, the Board, at its option, may either remove the non-complying improvement, remedy the noncompliance or seek an injunction requiring the Owner to do so. The Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If the Owner does not promptly repay such expenses to the Association, the Board shall levy a reimbursement assessment against such Owner pursuant to Section 6.5 hereof.

8.11.5 If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of said notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plan.

8.12 Application for Preliminary Review. Any Owner proposing to construct improvements requiring the prior approval of the Architectural Committee may apply to the Committee for preliminary review by submission of preliminary drawings of the proposed improvements in accordance with the Architectural Committee Rules. The purpose and process for a Preliminary review is as follows:

8.12.1 To obtain constructive feedback regarding compliance with these Architectural Committee Rules for a proposed project prior to submission of the project to the City of Ojai planning department and commission. The result of this Architectural Committee review is not binding on applicant or Architectural Committee and there is no fee for this service.

8.12.2 Request for review of a project is accomplished by submitting short notes to the Architectural Committee on style and design of building and placement on lot. A pencil sketch and worded description are adequate.

8.12.3 Discussions should be held with the Architectural Committee before proceeding with construction or alteration for buildings, grading, property line fencing, walls, shed, additions, attachment, change or alteration to be made to the exterior of any dwelling, or similar structure,

including change of color. Improvements such as fencing, color changes, and minor changes during repairs will follow an expedited review and approval at the discretion of Architectural Committee.

The purpose of the preliminary review procedure is to allow an Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary review shall be considered within thirty (30) days after proper application for preliminary review. The Architectural Committee shall provide feedback on the project and indicate items that are in compliance with the Architectural Rules as well as items that would need to change or further consideration.

8.13 Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under these Restrictions, 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.

8.14 Estoppel Certificates. Within thirty (30) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any lot of said Owner) that as of the date thereof either (a) all improvements made and other work done upon or within said lot comply with these Restrictions, or (b) such improvements or work does not to comply. If non-compliant, the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchase from the Owner or from anyone deriving any interest in sold lot through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners, and such persons deriving any interest through them.

8.15 Liability. Neither the Architectural Committee 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, (c) the development of any property within the Project, or (d) the execution and filing of an estoppel certificate pursuant to Section 8.14 herein, whether or not the facts therein are correct, provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of any architects, engineers or other outside consultants and any Owner with respect to the proposal submitted to it.

9. **LOT MAINTENANCE EASEMENTS**

9.1 Party Walls/Fences

9.1.1 General Rules of Law to Apply. Each wall which was built as a part of the original construction of the homes upon the properties and placed on the dividing line between the lots shall constitute a party wall/fences, and, to the extent not inconsistent with the provisions of this

section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

9.1.2 Ownership and Use. The Owner of the lot on which the wall/fence or portion thereof is located shall own each party wall/fences or portion. Notwithstanding the ownership of the walls, all walls of the type defined herein as party walls shall constitute party walls in which the adjoining Owners shall have the rights, benefits, burdens and obligations provided herein. Each lot Owner shall maintain in good state of repair the side of each party wall/fence facing his lot and shall do nothing, which may alter, damage, impair, or tend to alter, damage or impair the structural integrity of the wall/fence. The Owner of a lot adjoining a party wall shall not drive any nails, screws, bolts or other objects into the party wall to a depth that causes the same to protrude out the other side.

9.1.3 Sharing of Repair and Maintenance. If any party wall/fence is damaged or destroyed through the act of a lot Owner whose lot adjoins such wall, or any of his family, guests or agents (whether such act is negligent or otherwise Culpable,), so as to deprive the other adjoining lot Owner or Owners of the full use and enjoyment of such wall/fence, then the first of the aforementioned Owners shall forthwith proceed to rebuild and repair the same to the condition as formerly existed, without cost to the adjoining Owner of Owners.

9.1.4 Destruction by Fire or Other Casualty. If any such party wall in damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining lot Owners, his agents, guests or family, all Owners whose lots adjoin such wall shall proceed forthwith to rebuild or repair the same to the condition as formerly existed, at their joint and equal expense (provided that the Owner of the structure in which any damage or destroyed structural wall/fence is located shall bear all expenses of rebuilding or repairing all damaged portions of his structure other than the party wall/fence).

9.1.5 Other Changes. In addition to meeting the requirements of this Section and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his residence in any manner which requires alterations to any party wall/fence, shall first obtain the written consent of the adjoining Owner as well as the Association.

9.1.6 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

9.1.7 Arbitration. In the event of any dispute arising concerning a party wall, or, under the provisions of this Section each party shall choose an arbitrator, and such arbitration shall choose one additional arbitrator, and the decision of said arbitrators shall be by a majority of all the arbitrators and shall be final and conclusive upon the parties.

9.1.8 Easement for Ingress and Egress. There to specifically reserved upon each structural party wall lot (servient tenement) for the benefit of the adjoining structural party wall lot (dominant tenement) an easement for ingress and egress from the dominant tenement Owner to pass on to the servient tenement to perform such work during daylight hours as may be necessary or advisable in connection with the maintenance, repair or restoration of the party wall.

10. **ENFORCEMENT**

10.1 Power to Adopt Rules. The Board may adopt, amend, or repeal Rules to interpret and implement these CC&Rs and for the general health, welfare, comfort, and safety of all Owners pursuant to Civil Code section 4300, et seq. Owners retain the right granted by Civil Code section 4365..

10.2 Owner Enforcement Rights. An Owner may enforce these CC&Rs and shall be entitled to bring an action against any defaulting Owner for damage or to enjoin a violation of these CC&Rs.

10.3 Association Enforcement Rights. The Association, acting through the Board, may enforce the Governing Documents in any of the following ways:

- a. Monetary Penalties. The Board may assess monetary penalties for violations of the Governing Documents.
- b. Demand to Cure. The Board may require an Owner to cure any violation of the Governing Documents existing on the Owner's lot.
- c. Suspend Common Area Privileges. The Board may suspend the Common Area privileges of Owners, family members, residents, tenants, and guests for the failure of any of the above to comply with the Governing Documents. This suspension may be applied for an Assessment delinquency or a delinquency in paying monetary penalties imposed, which delinquencies exist for more than thirty (30) days. The suspension may continue for as long as the violation continues and in the case of non-continuing violations the suspension shall be no more than thirty (30) days. A suspension of privileges does not affect the obligation of the Owner to pay Regular and Special Assessment, which Assessments shall be due and payable.
- d. Suspend Voting Rights. The Board may suspend the voting rights of an Owner for the failure of an Owner and family, Unit Residents, Tenants, and guests to comply with the Governing Documents. This suspension may be applied for an Assessment delinquency or a delinquency in paying monetary penalties imposed, which delinquencies exist for more than thirty (30) days. The suspension may continue for as long as the violation continues and in the case of non-continuing violations the suspension shall be no more than thirty (30) days. A suspension of voting rights does not affect the obligation of the Owner to pay Regular and Special Assessment, which Assessments shall be due and payable.
- e. Judicial Enforcement. The Association may file an action in a court of competent jurisdiction to enforce these CC&Rs and that action may take the form of a complaint for damages or a request for injunctive relief.

These methods of enforcement are in addition to any other rights described in these CC&Rs and may be exercised without waiving the Association's right to institute other enforcement measures. The remedies and rights of enforcement provided by these CC&Rs or by law or available in equity shall be cumulative and the exercise of one or more of the rights or remedies shall not preclude or affect the exercise any other rights or remedy.

10.4 Failure to Enforce not a Waiver. A failure of the Board or any Owner to enforce the Governing Documents shall not be deemed a waiver of the right of the Board or any Owner to pursue enforcement

later.

10.5 Notice and Hearing Procedures. Before the Board imposes fines, suspends privileges, or requires an Owner to cure a violation, the following process shall apply:

- a. Notice of Hearing. The Board shall set a hearing date and notify the Owner in writing at least ten days before the hearing. The notice shall set forth the date and nature of the violation, the proposed penalty, and the Owner's right to present evidence.
- b. Hearing. The hearing shall be in executive session unless the Owner requests otherwise.
- c. Notice of Decision. The Board shall provide written notice of decision if the Board decides to impose fines, suspend privileges, or require the Owner to cure a violation. This written notice shall be given within fifteen (15) days after the decision is made.

10.6 Remedy at Law Inadequate. Remedies at law for violation of the Governing Documents are inadequate and as a result, equitable and injunctive relief may be sought and awarded.

10.7 Alternative Dispute Resolution. Before a lawsuit is filed to enforce the Governing Documents by means of injunctive or declaratory relief, either solely or along with a claim for monetary damages of five thousand dollars or less, the person seeking litigation shall serve on the other side a request for resolution. The procedure shall in accordance with Civil Code section 5900, et seq. This section shall not apply to the Association's right to pursue judicial enforcement with respect to delinquent assessments.

10.8 Attorney Fees. In the event any party initiates an action or a proceeding to enforce the Governing Documents, the prevailing party shall be awarded reasonable attorney fees and costs.

11. **DAMAGE AND DESTRUCTION OF COMMON AREA**

If any portion of the common area is damaged or destroyed by fire or other casualty, then:

11.1 Available Insurance Proceeds Cover Costs. If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Board of Directors shall thereupon contract to repair or rebuild the damaged portions of the common area substantially in accordance with the original plans and specifications.

11.2 Available Insurance Proceeds Do not Cover Costs. If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than fifty-one percent (51) of the budgeted gross expenses of the Association for that fiscal year, and if fifty-one percent (51) of the owners vote to approve the repair or restoration of the Project, then the Board of Directors shall contract as provided in subsection (11.1) above. If said Owners do not so agree, then all insurance proceeds shall be applied to the account of the Board of Directors, to be held for the benefit of the Owners and their mortgagees as their respective interests shall appear.

11.3 Special Assessment. If a bid to repair or rebuild is accepted, the Board shall levy a special assessment in proportion to the interest of each Owner in the common area to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether subject to liens of mortgagees or not, shall be paid to the account of the Board of Directors, to be used for such rebuilding.

12. **GENERAL PROVISIONS**

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

12.2 Term and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years. These CC&Rs may be amended if approved by the vote of at least sixty-six (66) percent of the owners entitled to vote.

12.3 Encroachment Easement. Each lot within the Project shall be subject to an easement for the benefit of owners of adjoining lots for the purposes of:

12.3.1 Accommodating any encroachment due to engineering errors in original construction, settlement, or shifting of the building, or any other cause.

12.3.2 Drainage of water onto the adjoining lot, provided, however, said lot Owner shall be obligated to make repairs for damages caused by such drainage. There will also be easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting, provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each lot agree that minor encroachments over adjoining lots shall be permitted, and that there shall be easements for the maintenance of said encroachments so long as they shall exist. In the event any portion of any dwelling unit encroaches upon the common area as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Project, an easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

12.4 No Restrictions. No Owner nor the Association shall execute or file or record any instrument which imposes a restriction upon the sale, lease or occupancy of his unit on the basis of race, creed, or color.

12.5 Books and Records of the Association. Books And records of the Association and books and records of any agent thereof pertaining to the maintenance fund or any other funds may be inspected or audited by any Owner or his duly authorized representative for such purposes, at all reasonable times.

12.6 Taxes. Each Owner shall pay any real and personal property taxes separately assessed against his respective lot and all utility charges separately metered or charged against his lot, and such payment shall be made by each Owner in addition to and separately from assessments otherwise payable to the

Association by each such Owner.

12.7 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the Owners.

12.8 Delivery of Notices and Documents. Any written notice or document required by this Declaration may be delivered personally, by mail or email. It will be addressed as follows:

12.8.1 If to an Owner, to the address of any lot in the Project owned by him in whole or in part, or to the address or email last furnished to the Board by such Owner for the purpose of giving notice and delivering documents. Each Owner shall file in writing or via email with the Board, promptly upon becoming an Owner, his address for the purpose of giving notice and delivering documents and shall promptly notify the Board in writing of any subsequent change of address.

12.8.2 Notices to the Board shall be addressed to the Secretary of the Association

12.9 Notification of Transfer. Within five (5) business days after any transfer of any lot, the transferee shall notify the Board in writing of: (1) the name of the transferee and his transferor, (2) street address or lot number of the lot transferred (3) transferee's mailing address, and (4) date of the transfer. Prior to receipt of such notification any and all communications required or permitted to be given by the Board or any agent or representative thereof, shall be deemed to be duly made and given to transferee if duly and timely made and given to the transferor. Transfer for these purposes shall include any conveyance of a lot by deed, contract of sale, or court order.

12.10 Joint and Several Liability. In the case of joint ownership of a lot, the liability of each of the Owners thereof, in connection with liabilities and obligations of Owners, set forth in or imposed by this Declaration, shall be joint and several.

13. **PROTECTION OF MORTGAGEES**

13.1 Mortgage Permitted. Any Owner may encumber his lot with a mortgage.

13.2 Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any first mortgage that encumbers all or a portion of the development, or any lot, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien.

13.3 Amendment. The prior written consent of seventy-five percent (75%) of the holders of all first mortgages (based upon one (1) vote for each mortgage held) shall be required for any material amendment to this Declaration. As used herein, the term "any material amendment" is defined to mean amendments to provisions of this Declaration or to the Bylaws governing the following subjects:

13.3.1 The purpose for which the development may be used;

13.3.2 Voting;

- 13.3.3 Assessments, collection of Assessments, creation and subordination of assessment liens,
- 13.3.4 Reserves for repair and replacement of common area improvements,
- 13.3.5 Maintenance of common area and improvements thereof,
- 13.3.6 Casualty and liability insurance, common area and improvements thereon, in the event of damages or destruction,
- 13.3.7 Rebuilding or reconstruction of common Area and improvements thereon, in the event of damage or destruction;
- 13.3.8 Rights of use to and in the common area;
- 13.3.9 Any provision, which by its terms is specifically for the benefit of first mortgagees, or specifically confers rights on first mortgagees.

13.4 Restrictions on Certain Changes. Unless at least seventy-five percent (75%) of the first mortgagees of lots based on one (1) vote for each mortgage, have given their prior written approval, neither the Association nor the Owners shall be entitled:

- 13.4.1 By act or omission to seek to abandon or terminate Project, except for abandonment provided by statute in case of substantial loss to the lots and common area;
- 13.4.2 To change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner, or to change the pro rata interest or obligations of any lot for purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds of condemnation awards,
- 13.4.3 To partition or subdivide any lot, or to abandon, partition, subdivide, encumber, sell, or transfer the common area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common area by the Association or the Owners shall not be deemed to be a transfer within the meaning of this clause,
- 13.4.4 To use hazard insurance proceeds for losses to lots or common area or common area improvements in the development for other than the repair, replacement or reconstruction of such improvements or property, except as provided by statute in case of substantial loss to the lots or common area of the development,
- 13.4.5 By act or omission to change, waive or abandon the provisions of this Declaration, or the enforcement thereof, pertaining to architectural design or control of the exterior appearance of structures in the development, the maintenance of the common area, walks or fences and driveways, or the upkeep of lawns and plantings In the common area.

13.5 Right to Examine Books and Records. First mortgagees may examine the books and records of the Association and may require the submission of financial data concerning the Association or the Project, including annual audit reports and operating statements as furnished to the Owners.

13.6 Distribution of Insurance and Condemnation Proceeds. No lot Owner, or any other party, shall have priority over any right of first mortgagees of lots pursuant to their mortgages in case of a distribution to lot Owners of insurance proceeds or condemnation awards for losses to or taking of lots or common area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected mortgagees naming the mortgagees, as their interests may appear.

13.7 Amenities. All amenities, if any, in the common area (such as parking, equestrian trails,) shall be available for use by Owners. All such amenities on the common area shall be owned in fee by the Association free of encumbrances except for any easement granted for public utilities or for other public purposes consistent with the intended use of such property by the Owners or by the Association.

13.8 Notices to Mortgagees of Record. On any loss to any lot covered by a mortgage, if such loss exceeds Five Thousand Dollars (\$5,000.00), or on any loss to the common area, if such loss exceeds Ten Thousand Dollars (\$10,000.00), or any taking of the common area, notice in writing of such loss or taking shall be given to each mortgagee of record, if requested. If any Owner of a lot is in default under any provision of these covenants, conditions, and restrictions, or under any provision of the Bylaws or the rules and regulations adopted by the Association, which default is not cured within ninety (90) days after written notice to such Owner, the Association shall give to the mortgagee of record of such Owner written notice of such default and of the fact that the ninety (90) day period has expired.

13.9 Voting Rights on Default. In case of default by the Owner of any lot in any payment due under the terms of first mortgage encumbering such Owner's lot, or the promissory note secured thereby, the mortgages, or his representative, on giving written notice to such defaulting Owner or Owners, and placing of record a Notice of Default, to hereby granted a proxy to exercise the voting rights of such defaulting owner at any regular or special meeting of the members held during such time as such default may continue.

13.10 Payments by Mortgagees. Mortgagees of lots may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for common area improvements or other insured property of the Association and, upon making any such payments, such mortgagees shall be owed immediate reimbursement therefore from the Association. This provision shall constitute an agreement by the Association for the express benefit of all mortgagees and upon request of any mortgagee, the Association shall execute and deliver to such mortgagee a separate written agreement embodying the provisions of this Section 13.10.

13.11 Effect of Breach. No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any mortgage in good faith and for value, but all of the covenants, conditions, and restrictions shall be binding on any Owner whose title to derived through foreclosure sale, trustee's sale, or otherwise.

13.12 Foreclosure. If any lot is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or

installments of assessments shall not operate to affect or impair the lien of the first mortgage. On foreclosure of the first mortgage, the lien for assessments, or installments that has accrued up to the time of foreclosure, shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser taking title to the lot free of the lien for assessments or installments that has accrued up to the time of the foreclosure sale. On taking title to the lot, the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the lot. The subsequently levied assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and his successors and assigns, are required to pay their proportionate share as provided herein.

13.13 Non-Curable Breach. Any mortgagee who acquires title to a lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

13.14 Loan to Facilitate. Any mortgage given to secure a loan to facilitate the resale of a lot after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Section.

13.15 Appearance at Meetings. Because of its financial interest in the development, any mortgagee may appear (but cannot vote except under the circumstances set forth in subsection 13.9) at meetings of the members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

13.16 Right to Furnish Information. Any mortgagee may furnish information to the Board concerning the status of any mortgage, and the same shall not be construed by the mortgagee as a violation of his right of privacy or confidentiality.

13.17 Inapplicability of Right of First Refusal to Mortgagee. No right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey the Owner's lot shall be granted to the Association without the written consent of any mortgagee of the lot. Any right of first refusal or option to purchase a lot that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such lot, whether voluntary or involuntary, to a mortgagee which acquires title to or ownership of the lot pursuant to the remedies provided in its mortgage or by reason of foreclosure of the mortgage or deed or assignment in lieu of foreclosure.

13.18 Conflicts. In the event of any conflict between any of the provisions of this Section 13 and any other provisions of this Declaration, the provisions of this Section 13 shall control.

CERTIFICATE ON FOLLOWING PAGE

CERTIFICATION

WE CERTIFY this 27 day of April 2018 that these Restated Declaration of Covenants, Conditions and Restrictions have been duly approved and adopted by at least 75% of the total voting power of the Association.

The President and Secretary of the Association hereby declare that the above is true and correct.



Raoul Freeman
President



Robert Meyer
Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California

County of Ventura

On 4/27/18 before me, Ricardo Torres Notary Public

personally appeared Robert Meyer and Raoul Freeman

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



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Ricardo Torres
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document First Restatement of the Declaration of Covenants, Conditions and restrictions of the Perisimmon
Title or Type of Document: Hill HOA Association Inc

Document Date: None Number of Pages: 28

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer - Title(s): _____
 Partner - Limited General
 Individual Attorney in Fact
 Trustee Guardian of Conservator
 Other: _____
Signer is Representing: _____