

Section 3 – Modification or Alteration of the Party Wall. No Owner shall alter the shape, size or construction of a party wall, or repair or replace a party wall using materials different than those used in the original construction of the party wall, without the written consent of the Architectural Committee, and the written consent of the Owner of the adjoining Lot who is jointly responsible for the maintenance and repair of the party wall. All written consents required by this Section shall be obtained in compliance with the terms and conditions contained within the Architectural Standards concerning party wall consents.

Section 4 - Sharing of Repair and Maintenance. Except as the Association is obligated to maintain a party wall, the cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 5 - Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 6 - Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 7 - Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 8 - Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, all owners of the Party Wall agree to submit the dispute to binding arbitration at Judicial Mediation and Arbitration Service (JAMS, Inc.) or other mutually agreeable alternative dispute resolution service, to have the matter arbitrated before a mutually agreeable arbitrator. If an arbitrator cannot be agreed upon, JAMS, Inc. or another mutually agreeable alternative dispute resolution service shall select an arbitrator upon the request of any of the parties. The Association shall only be a party to such binding arbitration if an Owner is challenging the Association's denial of such Owner's application to modify a party wall, or if an Owner is challenging the Association's approval of an adjoining Owner's application to modify a party wall.

ARTICLE XVII GENERAL PROVISIONS

Section 1 – Enforcement. The Association, or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect to architectural control, Assessment liens or any other liens or charges and Association Rules, the Association shall have the exclusive right to the enforcement thereof.

Section 2 - No Waiver. Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

Section 3 - Cumulative Remedies. All rights, options and remedies of the Association, the Owners or Mortgagees under this Declaration are cumulative, and not one of them shall be exclusive of any other, and the Association, the Owners and the Mortgagees shall have the right to pursue any one or

all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

Section 4 - Severability. Invalidation of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 5 - Covenants to Run with the Land: The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners and seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held, has been recorded at least one (1) year prior to the end of any such period, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 6 - Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Covered Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 7 - Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

Section 8 - Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

Section 9 - Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees, expert fees, and costs of such suit.

Section 10 - Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered in compliance with Civil Code Section 1350.7 or any comparable successor statute.

(b) Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee in Orange County, California, or if no such office is located in said County, to any office of such Mortgagee.

(c) The affidavit or declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee or Mortgagees, or to all Members or all Mortgagees, to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

Section 11 - Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration and shall be binding and enforceable as to all or any portion of this Declaration, or these provisions are considered to be in compliance with public laws, ordinances and regulations applicable thereto. If this Declaration is found by a court of competent jurisdiction to be invalid for any reason, the Original Declaration shall be revived to full force and effect as if this First Amended and Restated Declaration had never been adopted.

Section 12 - Personal Covenant. To the extent the acceptance of a conveyance of a Residence creates a personal covenant between the Owner of such Residence and Association or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money and other obligations to the Association.

Section 13 - Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the architectural Committee, or any other committees of the Association or any member of such Board or committee, shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 14 - Leases. Any agreement for the leasing or rental of a Residence (hereinafter in this is Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, the Association Rules and any applicable agreements between the Association and any of the Federal agencies. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease his Residence shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, the Bylaws and the Association Rules; No Residence shall be leased for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days or any rental whatsoever, 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.

Section 15 Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees, or otherwise, this Declaration may be amended is follows:

(a) Any amendments shall require the affirmative written assent or vote of not less sixty-six and two-thirds percent (66 2/3%) of the voting power of the Members.

(b) Any amendment or modification to this Declaration affecting the maintenance obligations of the Association or the property exempt from Assessments shall require the prior written approval of the City's Planning Director and City Attorney.

(c) An amendment or modification that requires the vote and arid written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinafter provided, and when recorded in the Official Records of Orange County, California.

(d) Notwithstanding the foregoing, any provisions of this Declaration, or the Articles, Bylaws, or Association Rules which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association.

Section 16- Exemption of Public Property. All properties dedicated to and accepted by, or otherwise owned or acquired by a public authority shall be exempt from this Declaration.

Section 17- Amended Declaration.

a. Effective Date of Amendment

This Amended and Restated Declaration will be effective upon the recording of this Amended Declaration in the Office of the Recorder of Orange County along with a Certificate of Amendment duly executed and certified by the president of the Association setting forth in full the amendment so approved and that the approval requirements of the Original Declaration on Amendment, have been duly met.

b. On _____, 2005, at least seventy-five percent of the voting power of the Association, voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of the Owners to replace the Original Declaration, in its entirety, with the recordation of this Declaration. The Owners' action to amend and restate the Original Declaration as set forth in this Declaration and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this Declaration by duly authorized officers of the Association, as required by the Original Declaration. As so amended and completely restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Covered Property in the Development, and shall be binding upon all persons or entities having or acquiring any right, title or interest in the Development or any portion thereof, and shall inure to the benefit of each Owner thereof.

LIST OF PROPERTY OWNERS

A list of property owners of Association required by Government Code, Section 27288.1, is attached hereto as Exhibit "B" and incorporated herein by this reference.

CERTIFICATE OF APPROVAL

The undersigned President and Secretary of the Association hereby certify that the following amendment has been approved by the members, which approval was obtained by Written Ballot on _____, 2005, pursuant to Corporations Code, Sections 7513 and 7514.

THE HIGHLANDS COMMUNITY ASSOCIATION, a
California Non Profit Mutual Benefit Corporation

BY: _____
_____, Its President

BY: _____
_____, Its Secretary