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**AMENDMENT AND RESTATEMENT
OF
DECLARATION OF ESTABLISHMENT
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FILED BY
SUNSET MESA PROPERTY OWNERS ASSOCIATION, INC.
ON BEHALF OF LOT HOLDERS IN TRACT NUMBERS
26458, 26459, 26460, 26461, 27152, 27604, 28067, and 28072**

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**AMENDMENT AND RESTATEMENT
OF
DECLARATION OF ESTABLISHMENT
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Amendment and Restatement of Declarations of Establishment of Covenants, Conditions and Restrictions (the "Declaration") is made this ___ day of _____, 2004, to the Declarations of Establishment of Covenants, Conditions and Restrictions for the tracts listed in Exhibit A hereto (referred to individually as "Tract" and collectively as the "Tracts") in the County of Los Angeles, State of California:

WHEREAS, at least a majority of owners of the lots in all of the Tracts listed in Exhibit "A" desire to amend the Declaration governing their specific Tract; and

WHEREAS, the primary purpose of the Declarations and the Amendments thereto was and is to protect existing ocean views of homeowners in the Tracts;

NOW, THEREFORE, the Sunset Mesa Property Owners Association, Inc., a non-profit corporation, on behalf of the owners of lots in the above-mentioned tracts, who have by majority vote agreed to amend and restate their Declarations of Establishment of Covenants and Restrictions, hereby certifies and declares that all of the property described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following provisions, limitations, conditions, restrictions, covenants, easements and reservations, all of which are declared and agreed to be in furtherance of a plan for the Tracts' improvement, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Tracts and every part thereof. All earlier Declarations are deleted in their entirety and the following substituted therefore:

These Amendments and Restatements of Declaration of Establishment of Covenants, Conditions and Restrictions may be amended at any time by a written document signed or approved by a majority of the owners of the lots in the applicable Tract or Tracts. These Amendments and Restatements of Declaration of Establishment of Covenants, Conditions and Restrictions shall remain in effect, as they may be amended from time to time, until January 1, 2014, and thereafter shall be automatically extended, as amended from time to time, for successive periods of ten (10) years unless amended by a majority of the owners of lots in the applicable Tract or Tracts as set forth above.

(a) **Minimum Cost and Size of Houses:** No dwelling shall be permitted on any lot at a cost of less than \$15,000.00, based upon cost levels prevailing on the date these covenants were originally recorded, it being the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated here for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall be not less than 1500 square feet for a one-story dwelling, nor less than 1500 square feet for a dwelling of more than one story.

(b) **Use and Maximum Height of Houses:** No lot shall be used except for residential purposes, which can include a home office or incidental structures such as cabanas, tool sheds, or similar structures. No building or incidental structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed the applicable height limit as specified in Exhibit B, from the ground level of such dwelling and a private garage for not more than three (3) cars. In no event shall the height limit permitted for houses or residential structures of any sort interfere with the ocean views as provided in Section (f) hereof.

(c) **Setbacks:** The front, side, and rear setbacks shall be as set forth in Exhibit B attached hereto. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any encroachment upon another lot, except as set forth in Paragraph (o) hereof.

(d) **Antennas:** No outside television, radio pole, antenna or satellite dish or external communication device shall be constructed, erected or maintained on any building or on any building site, or located in such a manner as to interfere with ocean views as provided in Section (f) hereof.

(e) **Fences and Hedges:** No fences or any residential building shall be erected or permitted to remain between the street and the front set back line, other than fences that do not exceed the applicable height limit, if any, set forth in Exhibit B., nor shall any hedge thereon be permitted to exceed the height limit, if any, set forth in Exhibit B.

(f) **Ocean View Protection:** Notwithstanding any other provision of this Declaration, no trees, fences, plants, hedges, or any other structures or devices may be placed or maintained on any lot or any part thereof if the placement or maintenance thereon will interfere with ocean views enjoyed by other lots in the same Tract or lots in a contiguous Tract. Notwithstanding any other provision of this Declaration, no structure, including but not limited to, dwellings, homes, residential structures and incidental structures, may be erected, altered or reconstructed so as to interfere with presently existing ocean views enjoyed by other lots in the same Tract or lots in a contiguous Tract. For purposes of this Declaration, a contiguous Tract shall be defined as specified in Exhibit C attached hereto

(g) **Architecture Committee:** An Architecture Committee comprised of owners of residences from some or all of the Tracts set forth in Exhibit A shall be appointed by the Board of Directors of Sunset Mesa Property Owners Association, Inc. on an annual basis. No building, garage, fence or balcony shall be erected, placed or altered on any lot until the building plan, and specifications have been approved in writing by the Architecture Committee as to compliance with the ocean view protection clause, as set forth in Section (f) herein, and as to the conformity and harmony of external design with existing structures in the Tract in which the proposed erection, placement or alteration is located. In the event said Committee or its designated representative fails to approve or disapprove such design and location within thirty (30) days after receipt of a written request, accompanied by whatever papers the Committee requires to make a decision, have been submitted to it, and in the event no legal actions have been commenced to enjoin the erection of any such building or the making of such alterations prior to the completion thereof, then the plans for such building or alteration shall be deemed approved and this covenant will be deemed to have been fully complied with. Provided, however, that if necessary to make a decision, the Architecture Committee requires the submission of final building plans or other documentation after the initial submission, then the time for making a final by the Architecture Committee shall automatically be extended to thirty days after submittal of the final building plans or other documentation as requested by the Architecture Committee. Neither the members of such committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

The decision of the Architecture Committee shall be final on the date that the decision is mailed. Within thirty (30) days thereafter, any homeowner may file an appeal to the Board of Directors. The appeal must be in writing. In any such appeal, the Board of Directors will consider all evidence presented to it, including the record presented before the Architecture Committee at the time of its decision. The Board of Directors, in its discretion, may consider any other materials or evidence not presented to the Architecture Committee.

(h) **Nuisance:** No noxious or offensive trade or activity shall be carried on or upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(i) **Out Buildings:** No recreational or other vehicle, boat, trailer, basement, tent, shack, garage, barn or other out-building shall be erected or maintained in the Tract for temporary or permanent residential use, nor shall any structure of a temporary character be used as a residence.

(j) **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 or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot.

(k) **Animals**: No livestock or poultry of any kind shall be raised, bred or kept on any lot.

(l) **Drainage**: The original developers constructed over and under certain lots in the Tracts, conduits, pipes, ditches, catch basins and other drainage devices necessary and required in order to properly drain surface water from all of the herein lots. Said conduits, pipes, ditches, catch basins, drainage devices and easements therefore are established so that none of the same shall exist under any residential or any other appurtenant improvements upon said lands. Said drainage devices are for the mutual benefit and protection for the upper and lower lot owners.

(1) Each and every owner or owners of any lot in said Tracts shall maintain and be responsible for the drainage facilities upon the lot owned by such owner or owners and each such lot owners covenants that he will keep such drainage facilities free of any debris which may obstruct the clear flow of water through such drainage facilities. Any owner of any lot upon which drainage facilities are located, which such facilities extend to, under and/or across any adjacent lot, may, in addition to any other remedies he may have, come upon such adjacent lots for the purpose of cleaning or otherwise repairing such drainage facilities in the event that the owner of such adjacent lot fails, refuses or neglects so to do.

(2) Each and every owner or owners of any lot in said tract shall maintain and protect all slopes upon the lot owned by such owner, so that the flow of surface water will not be increased or otherwise intensified on, over or across adjacent land, and for that purpose, each such owner shall fertilize and plant said slopes with soil fixed grasses, vines or shrubs, or otherwise treat and improve said slopes in such manner as is satisfactory to the appropriate governmental agencies in order to stabilize said slopes and prevent the drainage of water or the washing of soil there from to the detriment or damage of any other owner of lots with said Tract.

(3) No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through the drainage facilities on each of said lots.

(m) **Easements**: Easements for installation and maintenance of utilities are reserved as shown on the recorded subdivision map and records of Los Angeles County. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of said utilities. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

(n) **Signs**: No sign of any kind shall be displayed to the public view on any lot except signs of not more than three (3) square feet advertising the property

for sale or rent, a security sign, or a political sign (only during the 90 day period prior to an election).

(o) **Balconies:** The developers have constructed certain balconies which will extend over a portion of the rear twelve (12) feet of certain adjacent lots. There is reserved over the rear twelve (12) feet of such adjacent lots the right by such balcony owners to enjoy such balconies, together with the right of such owners to come upon the rear twelve (12) feet of the adjacent lots only for the purpose of repairing such balconies.

(p) **Construction of New Balconies:** No balcony shall be erected, placed, altered or repaired until the Architecture Committee has determined in writing that the balcony will not cause ocean view interference in violation of Section (f) hereof. The location of such balconies shall not be other than designated originally by the developer, nor shall the width be other than originally constructed by the developer without the consent of such adjacent lot owner. The decision of the Architecture Committee shall be final on the date that the written decision is mailed. Within thirty (30) days thereafter, any homeowner may file an appeal to the Board of Directors. The appeal must be made in writing. In any such appeal, the Board of Directors will consider all evidence presented to it, including the record presented before the Architecture Committee at the time of its decision. The Board of Directors, in its discretion, may consider any other materials or evidence not presented to the Architecture Committee.

(q) **Certification:** Based upon the vote of a majority of the lot holders in each of the Tracts identified in Exhibit A hereto, the Association does hereby certify and declare that the foregoing provisions, limitations, conditions, restrictions, covenants, easements and reservations, all and singular are for the benefit of each owner of said lands in said Tracts or any interest therein, and are imposed upon said Tracts as an equitable servitude in favor of or binding upon each and every parcel of land therein as the dominant tenement or serviant tenement as the case may be. It is the intent of these Amended and Restated CC&Rs that this equitable servitude run with the land.

(r) **Successors in Interest:** It is further provided, as to the owner and owner's successors in interest of any lot or lots in said Tract, the provisions, limitations, conditions, restrictions, covenants, easements and reservations, all and singular, are and shall be hereby made covenants running with the land, and breach or violation thereof or continuance of any such breach may be enjoined, abated or damages may be recovered by appropriate proceedings by the undersigned, its successors or assigns, or by any owners of any lot, or such owner's successors in interest. But the breach of any of said covenants and restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said lots or property, or any part thereof, but such provisions, restrictions or covenants shall be binding and effective against any owner of said property whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

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PROVIDED FURTHER, enforcement of the foregoing provisions, limitations, conditions, restrictions, covenants, easements and reservations may be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Such enforcement action may be brought either by the Sunset Mesa Property Owners Association, Inc., or by any individual (or group) of aggrieved homeowners. Given the limited resources of Sunset Mesa Property Owners Association, Inc., with respect to lawsuits, no inference shall be drawn about the lack of participation of the SMPOA in any lawsuit brought by an individual homeowner seeking to enforce these provisions.

Any invalidation or determination of unenforceability of any one of these provisions, limitations, conditions, restrictions, covenants, easements or reservations by judgment or court order, shall in no way affect any of the other of such terms, and they shall remain in full force and effect; provided, however, that if any one or more than one of such provisions, limitations, conditions, restrictions, covenants, easements or reservations shall for any reason be so determined to be invalid or unenforceable, that term shall be reformed and constructed in a manner to allow it to be enforced to the maximum extent permitted by applicable law. If for whatever reason, a court determines that all of the provisions of these Amended and Restated Covenants, Conditions and Restrictions are void, invalid or unenforceable for any period of time, then it is the intent and purpose of the voting lot holders that the original set of CC&Rs applicable to their particular tract remain in place until such time as an amendment may be approved.

IN WITNESS WHEREOF, the Association has hereunto subscribed its corporate name, affixed its corporate seal, this ___ day of _____.

Sunset Mesa Property Owners Association, Inc.

By:

President

By:

Secretary

[NOTARIZATION FORMAT OMITTED]

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**EXHIBIT A—LIST OF TRACTS AFFECTED BY AMENDED AND
RESTATEMENT OF DECLARATION OF ESTABLISHMENT OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

| Tract No. |
|------------------|
| 26458 |
| 26459 |
| 26460 |
| 26461 |
| 27152 |
| 27604 |
| 28067 |
| 28072 |

EXHIBIT B TO AMENDMENT AND RESTATEMENT OF DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS, AND RESTRICTIONS

CC&R HEIGHT LIMITATIONS AND SETBACKS

| <u>Tract Number</u> | <u>House Height</u> | <u>Front Setback</u> | <u>Side Setback</u> | <u>Rear Setback</u> | <u>Fence Height</u> | <u>Hedge Height</u> |
|----------------------------|----------------------------|-----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| 26458 | 25' 6" | 12' | 3' | 20' | 6' | 5' |
| 26459 | 25' 6" | 12' | 3' | 20' | 6' | 5' |
| 26460 | 25' 6" | 5' | 3' | 15' | No Limit | No limit |
| 26461 | 25' 6" | 5' | 3' | 15' | No Limit | No limit |
| 27152 | 25' 6" | 5' | 3' | 15' | No limit | No limit |
| 27604 | 25' 6" | 5' | 3' | 15' | No limit | No limit |
| 28067 | 25' 6" | 12' | 3' | 20' | 6' | 5' |
| 28072 | 25' 6" | 5' | 3' | 15' | No limit | No limit |

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EXHIBIT C: LIST OF CONTIGUOUS TRACTS

| Tract No. 26458 | Contiguous To Tract No. |
|------------------------|--------------------------------|
| | Tract 26459 |
| | Tract 26460 |
| | Tract 26461 |
| | Tract 27604 |
| | Tract 28072 |
| | Tract 28339 |

| Tract No. 26459 | Contiguous to Tract No. |
|------------------------|--------------------------------|
| | Tract 26458 |
| | Tract 28067 |
| | Tract 26460 |
| | Tract 27152 |

| Tract No. 26460 | Contiguous to Tract No. |
|------------------------|--------------------------------|
| | Tract 28072 |
| | Tract 26458 |
| | Tract 26459 |
| | Tract 27152 |

| Tract No. 26461 | Contiguous to Tract No. |
|------------------------|--------------------------------|
| | Tract 28072 |
| | Tract 27604 |
| | Tract 26458 |

| Tract No. 27152 | Contiguous to Tract No. |
|------------------------|--------------------------------|
| | Tract 28072 |
| | Tract 26460 |
| | Tract 26459 |

| Tract No. 27604 | Contiguous to Tract No. |
|------------------------|--------------------------------|
| | Tract 26461 |
| | Tract 26458 |

| Tract No. 28067 | Contiguous to Tract No. |
|------------------------|--------------------------------|
| | Tract 26459 |

EXHIBIT C: LIST OF CONTIGUOUS TRACTS

| Tract No. 28072 | Contiguous to Tract No. |
|------------------------|--------------------------------|
| | Tract 26458 |
| | Tract 26460 |
| | Tract 26461 |
| | Tract 27152 |