

ATTACHMENT 3:  
DECLARATION OF RESTRICTIVE COVENANTS  
(4067 ELSIE DRIVE)

RECORDING REQUESTED BY  
CITY OF YORBA LINDA

THIS AREA FOR RECORDER'S USE ONLY

When recorded, return to:

City of Yorba Linda  
Engineering Division  
4845 Casa Loma Avenue  
Yorba Linda, CA 92885

EXEMPT (FREE) RECORDING REQUESTED  
UNDER GOVERNMENT CODE 27383

**DECLARATION OF RESTRICTIVE COVENANTS**  
**(ENCROACHMENT ON CITY EASEMENT)**

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made this 22<sup>nd</sup> day of September, 2022, by and between CITY OF YORBA LINDA ("CITY"), a public agency, and ANDRE WINEBAR ("DECLARANT"), with reference to the following:

RECITALS

- A. The DECLARANT owns real property located at 4067 Elsie Drive, Yorba Linda, California 92886 (APN 323-191-35) ("Subject Property"), which is more particularly described as

**EXHIBIT "A"**  
(See attached)

- B. City is the owner of a 20' storm drain easement, on, over, under, and across a portion of the Owner's Property with a 48" reinforced concrete pipe approximately 10' deep and as shown in

**EXHIBIT "B"**

- C. The DECLARANT desires to construct improvements that include but are not limited to colored concrete, patio cover, electrical lines, sewer and water lines, barbeque, sink, gate and low-growth (i.e. turf & shrub) landscaping (collectively herein referred to as "Improvements") within and along the Easement area (hereinafter referred to as an "Encroachment"), as illustrated in Exhibit "B" attached hereto and incorporated by reference herein. No other utilities are allowed within subject Easement area unless otherwise approved by the City.
- D. CITY conditionally consents to the Encroachment within and along the Easement area as stipulated in this Declaration. DECLARANT is aware that the Improvements will affect the CITY's use of the Easement and DECLARANT will be liable for any costs arising out of or related to the Encroachment.

NOW, THEREFORE, incorporating the above recitals, CITY and DECLARANT hereby declare as follows:

1. **Covenant Running with Land.** This Declaration constitutes a covenant running with the land, as provided by California Civil Code Section 1468, and shall benefit, burden, and bind the DECLARANT and the CITY. The term "DECLARANT" shall include not only the present DECLARANT, but also the DECLARANT'S heirs, successors, executors, administrators, and assigns.
2. **Damages to City Facilities.** DECLARANT assumes full responsibility and liability and shall pay for any cost(s) or damage(s) to the City Facilities and appurtenant structures, arising from or related to the construction, existence, removal, and/or use of the Improvements. CITY shall not be responsible for any cost(s) or damage(s) to the City Facilities and appurtenant structures that arise from the Encroachment.
3. **Damages to Third Parties.** DECLARANT agrees to indemnify, defend and hold harmless CITY and its officers, directors, employees, agents, consultants, and other authorized representatives from any and all liability, claims, demands, damages (whether contract or tort, including personal injury, death, or property damage), costs, and financial loss, including all costs and expenses of litigation or arbitration, which result or are claimed to have resulted directly or indirectly from the Encroachment, including but not limited to the construction, existence and/or use of the Improvements.
4. **Notice of Intent to Remove Improvements.** DECLARANT shall notify City of its intent to remove any and all Improvement(s) in the Easement area at least fourteen days prior to removal.
5. **Damages to Improvements.** DECLARANT acknowledges that the CITY may damage or demolish the Improvements so that it can reasonably access or conduct reasonable work within and under the Easement area. CITY, its officers, directors, employees, agents, consultants, and other authorized representatives shall not be responsible for any damage(s) to or because of the Improvements which result from CITY's exercise of its rights under the Easement. DECLARANT waives all known, unknown, and future claims, liabilities, causes of action, and expenses against CITY, its officers, directors, employees, agents,

consultants, and other authorized representatives for losses and damages to the Improvements and from any obligation to protect, preserve, repair, or replace the Improvements. The construction, use, protection, repair and replacement of the Improvements shall be entirely the risk and obligation of DECLARANT, even if damage is caused by CITY.

6. **Recording of Agreement.** This Declaration shall be recorded in the Office of the Recorder of the County of Orange, California, and shall constitute notice to all successors and assigns of the title to the Subject Property of the rights and obligations set forth herein.
7. **Severability.** The invalidity or unenforceability of any provision of this Declaration shall in no way affect the validity or enforceability of any provision hereof.
8. **Governing Law.** This Declaration shall be governed by, and construed in accordance with, the laws of the State of California.
9. **Attorneys' Fees.** In the event any action shall be instituted between the DECLARANT and the CITY in connection with this Declaration, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including, without limitation, attorneys' fees and costs as fixed by the court therein.

(INTENTIONALLY BLANK)

**DECLARATION OF RESTRICTIVE COVENANTS**  
**(ENCROACHMENT ON CITY EASEMENT)**  
4067 Elsie Drive

CITY OF YORBA LINDA

DECLARANT

By: \_\_\_\_\_  
Carlos Rodriguez  
Mayor

By:   
Andre Winebar, Owner

Please See Attached

Attest:

By: \_\_\_\_\_  
Marcia Brown  
City Clerk

Approved as to Form:  
Rutan & Tucker LLP

By: \_\_\_\_\_  
Todd Litfin  
City Attorney

**CALIFORNIA 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 ORANGE }

On September 22, 2022 before me, HANSWAHINI KUMAR - Notary  
Date Here Insert Name and Title of the Officer

personally appeared ANDRE WINEBAR  
Name(s) of Signer(s)

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.

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 Hanswahini Kumar

Place Notary Seal and/or Stamp Above

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**

Title or Type of Document: Declaration of restrictive covenants  
Document Date: \_\_\_\_\_ Number of Pages: 6  
Signer(s) Other Than Named Above: None

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Andre Winebar Signer's Name: \_\_\_\_\_  
 Corporate Officer – Title(s): \_\_\_\_\_  Corporate Officer – Title(s): \_\_\_\_\_  
 Partner –  Limited  General  Partner –  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer is Representing: CADL Signer is Representing: \_\_\_\_\_

## EXHIBIT "A"

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE CITY OF YORBA LINDA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 7 OF TRACT NO. 16595 AS SHOWN ON A MAP FILED IN BOOK 899, PAGES 23 THROUGH 30, INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPT THEREFROM A PORTION OF LOTS 23 AND 24, ALL MINERALS, OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES, AS SET FORTH IN A DOCUMENT FROM GAILERD C. PAGE AND VIOLA M. PAGE RECORDED SEPTEMBER 18, 1962 AS INSTRUMENT NO. 11583, IN BOOK 6253, PAGE 242 OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM A PORTION OF LOTS 19, 20 AND 30, THE OWNERSHIP OF ALL DEPTHS BELOW 500 FEET BELOW THE FINISHED GRADE OF THE PROPERTY, WITHOUT THE RIGHT OF SURFACE ENTRY, EXCEPT AS PERMITTED UNDER SUBSECTION (E) BELOW, TOGETHER WITH ALL THE RIGHTS THAT ORDINARILY ACCOMPANY OWNERSHIP OF THE MINERAL ESTATE, INCLUDING BY WAY OF EXAMPLE BUT WITHOUT LIMITATION THE FOLLOWING RIGHTS:

(A) THE RIGHT TO OPERATE FOR AND EXTRACT ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING THAT MAY BE UNDER THE PROPERTY BELOW A DEPTH OF 500 FEET BELOW THE FINISHED GRADE OF EACH PORTION OF THE PROPERTY (THE "OIL, GAS AND MINERALS").

(B) TOGETHER WITH THE PERPETUAL RIGHT AND EASEMENT (INCLUDING THE RIGHT TO GRANT THE SAME TO OTHERS) TO DRILL, MINE, EXPLORE, DEVELOP AND OPERATE THEREFOR, STORE IN, REMOVE AND SELL THE OIL, GAS AND MINERALS FROM THE PROPERTY, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THE PROPERTY, OIL, OR GAS WELLS, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY-DRILLED WELLS, TUNNELS, AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO RE-DRILL, RE-TUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN, AND OPERATE ANY SUCH WELLS.

(C) ALL CURRENT AND FUTURE RIGHT, TITLE AND INTEREST IN AND TO ALL OIL, GAS AND OTHER MINERAL LEASES COVERING ALL OR ANY PORTION OF THE PROPERTY, TOGETHER WITH ALL OTHER CONTRACTUAL, WORKING, OPERATING AND UNIT RIGHTS AND INTEREST HELD IN CONNECTION WITH THE OIL, GAS AND MINERALS IN, UNDER AND PRODUCTS FROM THE PROPERTY, AND

(D) ALL FUTURE RIGHT, TITLE AND INTEREST IN AND TO OIL, GAS AND MINERAL LEASES TOGETHER WITH ALL PRESENT AND FUTURE RIGHT, TITLE AND INTEREST IN AND TO OIL, GAS AND MINERAL ROYALTIES, OVERRIDING ROYAL TIES, PRODUCTION PAYMENTS, RIGHTS TO TAKE PRODUCTION OR ROYALTIES IN KIND, NET PROFITS INTEREST OR OTHER RIGHTS AND INTEREST IN AND TO THE EXPLORATION OR PRODUCTION OF OIL, GAS AND MINERALS ARISING OUT OF THE PROPERTY.

(E) THE RIGHT, BUT NOT THE DUTY, TO ENTER ONTO THE PROPERTY AND PERFORM AN INVESTIGATION AND REMEDIATION IN ACCORDANCE WITH APPLICABLE ENVIRONMENTAL LAWS IN RESPONSE TO ANY ASSERTION OR CLAIM THAT THERE EXIST ON THE PROPERTY ANY CONDITION OF THE SOIL, SURFACE WATERS, GROUNDWATERS THAT (I) REQUIRES INVESTIGATORY, CORRECTIVE OR REMEDIAL MEASURES, AND/OR (II) COMPRISES A BASIS OF CLAIMS OF AND/OR LIABILITIES IN RESPECT OF THE OWNERSHIP OR OPERATION OF THE PROPERTY. THE AGREED UPON STANDARD FOR ANY REMEDIATION SHALL BE NO MORE

114-21000447-TBI

