Samuel J. Arsht, Esq. - SBN 100156
Marsha C. Brilliant, Esq. - SBN 173798
SILVER & ARSHT
1860 Bridgegate Street, Suite 100
Westlake Village, California 91361-1409
Phone: (805) 495-4044
Fax: (805) 494-4704
E-mail: sanda@silverandarsht.com

Attorneys for Plaintiffs THEODORE M. SULLIVAN and PAULA C. SULLIVAN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA - EAST COUNTY DIVISION

THEODORE M. SULLIVAN and PAULA C. SULLIVAN, Plaintiffs, vs. WOOD RANCH SYCAMORE CANYON VILLAGE ASSOCIATION, a California nonprofit mutual benefit corporation; and DOES 1 through 25, Inclusive, Defendants	CASE NO. 56-2011-00395532-CU-CO-SIM Unlimited Civil Case FIRST AMENDED COMPLAINT FOR: 1. Breach of Written Contract; 2. Breach of Oral Contract; 3. Negligence; 4. Nuisance; 5. Breach of Fiduciary Duty; 6. Permanent Injunction and Damages - Removal of Association Trees; 7. Declaratory Relief

Plaintiffs THEODORE M. SULLIVAN and PAULA C. SULLIVAN, hereby allege:

GENERAL ALLEGATIONS

(Against all Defendants)

1. Plaintiffs THEODORE M. SULLIVAN ("TED") and PAULA C. SULLIVAN are husband and wife who reside in Ventura County, California (collectively "Plaintiffs" or "SULLIVAN"). SULLIVAN are, and at all times mentioned in this Complaint since in or about October 1999 were, the record owners of that residential real property located at [redacted] Simi Valley, California 93065 ("Property"), which legal description of the Property is as follows: "LOT [redacted], TRACT NO. 4053, as per Map thereof recorded in Book 113, Pages 63 through 82, inclusive, of Maps, in the Office of the County Recorder of said County."

The Property is located within Defendant WOOD RANCH SYCAMORE CANYON VILLAGE ASSOCIATION ("Association"), and is subject to its covenants, conditions, restrictions, reservations, easements, and rights-of-way of record. Plaintiffs are, and at all times mentioned in this Complaint since they purchased the Property were, Members in good standing of the Association.

2. Defendant WOOD RANCH SYCAMORE CANYON VILLAGE ASSOCIATION is a California nonprofit mutual benefit corporation, which was incorporated on May 5, 1989.

3. Plaintiffs are unaware of the names and capacities of the defendants sued herein as Does 1 through 25 and therefore sue said defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when they become known. Plaintiffs are informed and believe and on that basis allege that each of the fictitiously named defendants is responsible in some manner for the damages suffered by Plaintiffs as alleged in this Complaint.

4. The Association caused to be recorded its Declaration of Covenants, Conditions and Restrictions on July 29, 1988 as Instrument No. 88-107320 ("Original CC&Rs"). The Association caused to be recorded its Restated Declaration of Covenants, Conditions and Restrictions on July 22, 1998 as Instrument No. 98-121774 ("CC&Rs" or "Restated CC&Rs"). Section 12.10 of the CC&Rs requires, "[e]xcept for injunctive relief, and unless the parties agree to alternative dispute resolution, any dispute which arises in connection with management or operation of the Association (other than the collection of Assessments) including but not limited to claims to enforce or interpret the terms of the Governing Documents" to be "heard by judicial reference ('Referee') without a jury pursuant to the provisions of Section 638 of the Code of Civil Procedure." This action falls within Section 12.10 of the CC&Rs and, among other things, seeks to enforce and interpret the Governing Documents of the Association. Upon service of this First Amended Complaint ("Complaint") on the Association, Plaintiffs, through their attorneys, will cooperate with the Association, by its attorneys, to select a mutually acceptable Referee.

5. The original developer of the Association was Olympia/Roberts Company, a California general partnership, whose general partner was The Roberts Group, Inc., a California

corporation, with an affiliated entity known as The Roberts Group VII, Inc., a California corporation, which assigned its Development Agreement with the City of Simi Valley recorded on March 16, 1982, as amended, to Standard Pacific Corp., a Delaware corporation ("Standard Pacific") (Olympia/Roberts Company, with its affiliated entities, and Standard Pacific collectively "Developer"). Plaintiffs purchased the Property in or about October 1999 from Standard Pacific. Plaintiffs are the first owners of the Property, on which they built their residence. The Property is a Farm Style Ranch Lot in accordance with the Wood Ranch Specific Plan (Reformatted and Published: July 1999) ("Specific Plan").

6. On August 7, 1989, the Developer caused to be recorded an Easement Corporation Grant Deed with the Ventura County Recorder as Instrument No. 89-123061 ("Easement Corporation Grant Deed"). The Easement Corporation Grant Deed granted to the Association various easements for slope maintenance and fuel modification purposes, obligating the Association to continuously maintain the areas described therein. Exhibit "A" requires the Association to maintain a strip of land located on the Property for fuel modification zone purposes. Exhibit "G" requires the Association to maintain a strip of land located on the Property for slope maintenance purposes, which includes a large number of trees on a hillside, including one of the Association Trees, defined in Paragraph 12 herein. Exhibit "L" requires the Association to maintain a strip of land on the Property for slope maintenance purposes which includes approximately 16 Tipu trees that the Association abandoned, and approximately five of the Association Trees, as well as ground cover and an irrigation system that the Association abandoned.

7. Landscape plans for the Property and surrounding area show the location of an "Assessment District" that is approximately 400 feet long and approximately 120 feet wide at the widest point, bordering Wood Ranch Parkway, located on/over the Property ("Assessment District"). Plaintiffs are informed and believe and on that basis allege that the Association is obligated to maintain the Assessment District. Approximately three of the Association Trees are located in this Assessment District, as well as three surviving Sycamore trees, and brush and weeds in this area, all of which the Association has failed to maintain.

8. There are two "Right of Way" areas on the Property as it borders North Martha Morrison Drive, located across from Warrendale Avenue and Twin Peaks Street (collectively "Rights of Way"). Plaintiffs are informed and believe and on that basis allege that the Association is obligated to maintain these Rights of Way. Approximately five Association Trees are located in these Rights of Way. The Association has failed to clear the weeds and brush in the Rights of Way.

9. Among other relevant provisions of the CC&Rs, Section 1.5 includes within the definition of "Association," when the context requires, "its Board of Directors, officers, and duly authorized representatives and agents." "Governing Documents" are defined in Section 1.18 to "mean these CC&Rs, Articles of Incorporation, Bylaws, Architectural Standards, Rules and Regulations, any amendments to these documents, and such other written documents, reports, maps, schedules and exhibits as are required by law to be recorded, filed or issued in connection with the Village." "Village" is defined in Section 1.33 as "the planned residential development known as Sycamore Canyon Village situated in the master planned community known as Wood Ranch in Simi Valley, California."

10. Section 7.03(b) of the Original CC&Rs required every "Owner" to "install and thereafter maintain in attractive and viable condition front yard landscaping in accordance with the provisions of this Article." Section 7.04(b) of the Original CC&Rs required the "Owner" to maintain the landscaping of "all portions of a Lot which are unimproved with a Dwelling or Structure" "in a clean, safe and attractive condition . . . ." Section 7.04(b) of the Original CC&Rs further states: "Any Maintenance Association shall maintain any landscaped areas which it owns or which are owned in common by its members in a clean, safe and attractive condition according to any rules promulgated by the Board." Section 4.2 of the CC&Rs requires the Association to maintain "in a first-class condition," among other things, "landscaping and rail fences located on Wood Ranch Parkway, Martha Morrison Drive . . . ." Section 4.3 requires the Association to "maintain the Village landscaping in a first-class condition along the street sides of Martha Morrison Drive . . . for the full length of those streets. The Association shall also maintain the street side landscaping on both sides of Wood Ranch Parkway . . . ." Pursuant to Section 4.4,

"[t]he Association shall stabilize and maintain, including landscaping and watering, all major slopes and drainage contours throughout the Village . . . ." Section 4.5 requires the Association to "control and maintain, in an appropriate manner, as the Board shall determine, the Open Area Lots." The Open Area Lots, under Section 1.24, are "those lots owned and maintained by the Association." Under Section 4.6, "[t]he Association shall maintain and replace as required any . . . asset owned by the Association." Section 7.1 states: "Each Member shall keep all shrubs, trees, grass and plantings of every kind on his Lot, including set-back areas and planted areas between adjacent sidewalks and the street curb neatly trimmed, watered, cultivated and free of trash, weeds and other unsightly material." Section 7.2 states: "No tree, shrub or planting of any kind shall be allowed to protrude onto a sidewalk or to overhang a sidewalk or other pedestrian walkway from ground level to a height of ten feet." Section 8.6 states: "All conditions which existed prior to the recording of these Restated CC&Rs which would otherwise violate the provisions of these CC&Rs, are grandfathered and exempted from compliance with these CC&Rs . . . ."

11. Plaintiffs are informed and believe and on that basis allege that the Association's maintenance obligations on the Property related to the Easement Corporation Grant Deed, Assessment District and Rights of Way were conditions of development of the Association and/or are incorporated into the Association's maintenance obligations described in the CC&Rs, constituting a written agreement with Plaintiffs.

12. Prior to SULLIVAN's purchase of the Property in 1999, and prior to the recording of the Restated CC&Rs, the Association, via the Developer and/or Board of Directors ("Board"), planted approximately 47 trees on the Property owned at that time by the Developer or by the Association ("Association Trees"). The Association owned the Association Trees before SULLIVAN purchased the Property and continues to own the Association Trees to this date. Some of the Association Trees were planted near Wood Ranch Parkway and others were planted close to the curb of North Martha Morrison Drive. Prior to the recording of the Restated CC&Rs, prior to SULLIVAN's purchase of the Property, and continuing through the time that SULLIVAN purchased the Property, the Association, by and through the Developer and/or

Board, was watering and maintaining all of the Association Trees, at the Association's sole cost and expense, and continued to do so after SULLIVAN purchased the Property. Plaintiffs are informed and believe and on that basis allege that the Association planted the Association Trees on the Property, and watered and maintained them, prior to the recording of the Restated CC&Rs, and both before and after Plaintiffs purchased the Property, to beautify North Martha Morrison Drive, and the surrounding neighborhood, and because of the Property's proximity to the Open Area Lots. The planting of the Association Trees on the Property did not benefit Plaintiffs in any way.

13. In or about 1999, the Association entered into an agreement with SULLIVAN (the "1999 Agreement") whereby, in exchange for SULLIVAN agreeing to permit the Association to plant additional Association Trees on the Property, the Association agreed to: (1) continue to maintain all of the Association Trees on the Property in perpetuity in "first class" condition per the CC&Rs at its sole cost and expense; (2) have the Association's maintenance company move the above ground irrigation pipes/system off of the SULLIVAN's maintenance road and place the pipes/system as close as possible to the Wood Ranch split rail fence so that the irrigation pipe/system did not obstruct the SULLIVAN's maintenance road; and (3) maintain the approximate 10-foot wide strip of land on the Property all along the Wood Ranch split rail fence in perpetuity at its sole cost and expense ("Strip"). The 1999 Agreement was both an oral agreement and a written agreement. It was an oral agreement with respect to the Association's agreement to perform items (1), (2) and (3) described herein. It was a written agreement because the Association was required to perform its obligations under the 1999 Agreement in accordance with the CC&Rs, and the Association's other Governing Documents, as well as operative law.

14. Among other provisions of the Governing Documents, the Association was required to comply with Sections 7.1 and 7.2 of the CC&Rs under the 1999 Agreement, having stepped into the shoes of SULLIVAN, as Members, when the Association agreed to perform items (1), (2) and (3). Further, the Association's obligation to water and maintain all of the Association Trees was grandfathered under Sections 7.03(b) and 7.04(b) of the Original CC&Rs and Section 8.6 of the CC&Rs, thereby permanently relieving SULLIVAN from any present or

future obligation to water and maintain the Association Trees or otherwise comply with Section 7.1 or 7.2 of the CC&Rs or any other provision of the Governing Documents requiring SULLIVAN to maintain the Association Trees or any area surrounding the Association Trees.

15. The 1999 Agreement was fully executed by the parties; to wit, the Association planted the additional Association Trees on the Property, moved its irrigation pipes/system to the new location, continued maintenance of the original and new Association Trees and commenced maintenance of the Strip, all at the Association's sole cost and expense. For approximately 21 years, the Association watered and maintained the Association Trees on the Property at its sole cost and expense. For approximately 11 years, the Association maintained the Strip at its sole cost and expense.

16. Plaintiffs and/or Plaintiffs' attorneys repeatedly notified the Association, via its Board and/or the Association's attorneys, in person and in writing, of the matters described in this Complaint, to no avail.

FIRST CAUSE OF ACTION

(Breach of Written Contract against all Defendants)

17. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General Allegations of this Complaint and incorporate them into this first cause of action.

18. Plaintiffs have performed all obligations required on their part to be performed under the 1999 Agreement and Governing Documents of the Association and in connection with the Assessment District, Rights of Way and Easement Corporation Grant Deed except those obligations, if any, which were excused as a result of defendants' breach of their respective obligations under the 1999 Agreement and the Governing Documents or otherwise.

19. Within the last four years prior to the filing of this action, defendants breached their obligations under the 1999 Agreement, Governing Documents, the Easement Corporation Grant Deed, and in connection with the Assessment District and Rights of Way when they failed to perform, or properly perform, their landscape maintenance, Association Tree maintenance and other maintenance duties as required thereunder.

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20. In January 2010, defendants breached the 1999 Agreement and the Governing Documents of the Association when the Association, unilaterally, and without any prior notice to SULLIVAN, removed its irrigation pipes/system from the Property, thereby depriving the Association Trees of water. The Association also improperly removed one or more of the pipes, which caused flooding on the Property. Plaintiffs are informed and believe and on that basis allege that the Association, via its Board, removed its irrigation/pipes from the Property in an attempt to deny that it had watered and maintained the Association Trees on the Property and to avoid any continued responsibility for the Association Trees.

21. Defendants also breached the 1999 Agreement, the Governing Documents, the Easement Corporation Grant Deed, and their obligations in connection with the Assessment District and the Rights of Way by their actions, or omissions including, but not limited to, the following:

(a) Failing to water and maintain the Association Trees and the Strip, as required under the 1999 Agreement, Governing Documents, Easement Corporation Grant Deed, Assessment District and/or Rights of Way including, but not limited to, those sections of the CC&Rs described in the General Allegations of this Complaint.

(b) Improperly maintaining the Association Trees including, but not limited to, leaving metal deeply imbedded in the trees, causing trees to become scarred, causing trees to grow with co-dominant trunks, and structural weakness; causing trees to grow with epicomic branches (water sprouts or suckers) caused by bad pruning, other injuries or environmental stress; causing trees to lose large amounts of bark; causing trees that are proportionately very tall and slender and lean toward the street, likely caused by the trees searching for sunlight as they are shadowed by the trees behind them; causing trees to become weakened from wind storms; improperly wiring trees, causing them to weaken; and permitting the roots of trees to grow around rebar, all of the foregoing creating an eyesore on the Property and resulting in hazardous conditions on and off the Property, exposing Plaintiffs to liability, and causing most of the Association Trees to become weak, non-viable and/or in need of drastic rehabilitation.

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(c) Failing to properly and timely prune the Association Trees, causing the Association Trees to protrude onto the pedestrian strip of grass/walkway ("Pedestrian Walkway") or to overhang the Pedestrian Walkway in violation of the 1999 Agreement, Governing Documents, Easement Corporation Grant Deed, Assessment District and/or Rights of Way, causing a hazardous condition and exposing Plaintiffs to liability.

(d) Failing to cap, or properly cap, the Association pipes when the Association removed its irrigation pipes/system from the Property, causing flooding to the Property in March and April 2010, and preventing trucks from driving up SULLIVAN's maintenance road.

(e) Spraying a vegetation killer in the area of the Strip without any authorization by SULLIVAN, damaging, or potentially damaging, organically grown trees on the Property which SULLIVAN planted.

(f) Failing to maintain the Association Trees and the Strip, causing an overgrowth of the Association Trees, blocking SULLIVAN's maintenance road, and preventing SULLIVAN's maintenance crew from driving their truck to the necessary locations on the Property to do their work.

(g) Dumping debris on the Property including, but not limited to the following: (i) three (3) railroad/tie wooden steps, that the Association's workers dumped on the Property when they put in new steps on the other side of North Martha Morrison Drive, which the Association permitted to remain on the Property for almost one year after TED notified the Association in writing about this situation; (ii) many broken cement pieces from the Wood Ranch split rail fence that the Association's workers dumped on the Property after repairing broken fence sections; (iii) permitting the Association's workers to enter onto the Property on various occasions, despite "No Trespassing" signs, to urinate and defecate on the Property, leaving, among other things, Coke and other bottles containing urine on the Property, after SULLIVAN notified the Association about this problem and demanded that it stop.

(h) Unilaterally, and wrongly, declaring that, upon the removal of the irrigation pipes/system from the Property in January 2010, the Association had and has no further

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obligation to water or maintain any of the Association Trees and Strip and that SULLIVAN own all of the Association Trees.

(i) Unilaterally, and wrongly, demanding, upon the removal of the irrigation pipes/system from the Property in January 2010, that SULLIVAN water, maintain and prune the Association Trees and maintain the Strip.

(j) Unreasonably refusing to permit SULLIVAN to remove the Association Trees from the Property, notwithstanding their condition, confirmed by professional arborists, as weak, non-viable and/or in need of drastic rehabilitation.

(k) Harassing SULLIVAN including, but not limited to, sending a letter to SULLIVAN on behalf of the Board dated August 17, 2010, demanding that SULLIVAN remove overgrown weeds along "Martha Morrison North," which is not required by Owners of Farm Style Ranch Lots in accordance with the Specific Plan, and demanding that SULLIVAN remove so-called "debris" that was either not debris or were items described in this Paragraph 21(g) that the Association dumped on the Property and which the Association was responsible for removing. Plaintiffs are informed and believe and on that basis allege that the Association, via the Board, sent the aforementioned letter to SULLIVAN as a disingenuous and clearly veiled attempt to avoid its maintenance responsibilities on the Property.

(l) Harassing and singling SULLIVAN out by sending SULLIVAN a letter dated April 13, 2011 on behalf of the Board, stating: "It has come to the HOA's attention that the required 100-foot brush clearance along the perimeter of your property, which had been cleared by the HOA in the past, is the homeowner's responsibility to maintain . . . .," and requiring that SULLIVAN "arrange for the brush clearance to be completed in the area by June 1, 2011 to meet the Fire Department's deadline." Said letter/demand was contrary to the express language of the Easement Corporation Grant Deed, recorded in August 1989, which requires the Association to perform all brush clearance/fuel modification zone clearance at/on the Property. Moreover, the Association, via the Board, sent this letter to SULLIVAN while, at the same time, arranging for the Association to perform the required brush clearance/fuel modification on the property of SULLIVAN's fellow "homeowner" neighbor, whose property was subject to the same Easement

Corporation Grant Deed. On May 6, 2011, the Board withdrew its request that SULLIVAN perform the above brush clearance (but was investigating whether it would do so in the future) only after receiving a letter from SULLIVAN's attorneys, wherein the Board/Association stated: ". . . the Association (at its expense) has arranged for the 100-foot brush clearance to be completed in this area by June 1, 2011 to meet the Fire Department's deadline." Despite the foregoing promise by the Association, by and through the Board, as of June 22, 2011, the Association had only completed about half of the required brush clearance and had not removed the cuttings from the area where the brush clearance had been done, representing a fire hazard and failure to meet the Fire Department's June 1, 2011 deadline.

(m) Failing to perform, or properly perform, the maintenance obligations on/at the Property required under the Easement Corporation Grant Deed.

(n) Failing to perform, or properly perform, the maintenance obligations on/at the Property required in connection with the Assessment District.

(o) Failing to perform, or properly perform, the maintenance obligations on/at the Property required in connection with the Rights of Way.

22. As a result of defendants' breach of the 1999 Agreement, the Governing Documents, the Easement Corporation Grant Deed, and their obligations in connection with the Assessment District and the Rights of Way, Plaintiffs have been damaged in an amount and of a nature according to proof at trial.

23. Pursuant to Civil Code section 1354(c), and Section 12.11 of the CC&Rs, Plaintiffs are entitled to recover from defendants their reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION

(Breach of Oral Contract against all Defendants)

24. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General Allegations of this Complaint and paragraphs 18 through 23 of the First Cause of Action and incorporate them into this Second Cause of Action.

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25. Plaintiffs have performed all obligations required on their part to be performed under the 1999 Agreement except those obligations, if any, which were excused as a result of defendants' breach of their respective obligations under the 1999 Agreement.

26. As a result of defendants' breach of the 1999 Agreement, Plaintiffs have been damaged in an amount and of a nature according to proof at trial.

THIRD CAUSE OF ACTION

(Negligence against all Defendants)

27. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General Allegations of this Complaint and paragraphs 18 through 21 and paragraph 23 of the First Cause of Action and incorporate them into this Third Cause of Action.

28. The Association was formed and now exists for the purposes set forth in the Governing Documents, among them: "Be for the benefit of Members of the Association" as stated on page 1 of the CC&Rs.

29. Pursuant to the 1999 Agreement and the applicable provisions of the Governing Documents including, but not limited to those sections of the CC&Rs described in the General Allegations of this Complaint, the Association was, and is, obligated to properly water and maintain all of the Association Trees in a "first-class" condition, and to keep all of those Association Trees, and the area around them, neatly trimmed, watered, cultivated and free of trash and other unsightly material. Further, the Association was required to ensure that none of the Association Trees protruded onto the Pedestrian Walkway or overhung the Pedestrian Walkway from ground level to a height of ten feet. The Association also has maintenance obligations on/at the Property pursuant to the Easement Corporation Grant Deed, and in connection with the Assessment District and Rights of Way.

30. The Association, by and through its Board, had, and has, a duty of due care to Plaintiffs to perform its obligations under the 1999 Agreement, the Governing Documents, Easement Corporation Grant Deed, and their obligations in connection with the Assessment District and Rights of Way, and to exercise due care for Plaintiffs, their Property, the Strip, and the Association Trees which are planted on the Property.

31. Defendants failed to properly maintain the Association Trees and to exercise due care for Plaintiffs, the Property, the Strip, and the Association Trees, under the Association's control, by their actions or omissions including, but not limited to, the acts and omissions described hereinabove, after repeated notice by Plaintiffs, individually, and by and through their attorneys.

32. Plaintiffs are informed and believe and on that basis allege that the Board specifically authorized, directed and/or participated in the above-described tortious conduct of the Association or specifically knew or reasonably should have known that defendants' actions could cause damage to Plaintiffs but negligently failed to take or order appropriate action to avoid the harm.

33. As a proximate result of the negligence and carelessness of defendants, and each of them, Plaintiffs have been damaged in an amount and of a nature according to proof at trial.

FOURTH CAUSE OF ACTION

(Nuisance against all Defendants)

34. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General Allegations of this Complaint and paragraphs 18 through 21 and paragraph 23 of the First Cause of Action and incorporate them into this Fourth Cause of Action.

35. Defendants have dumped debris on the Property and permitted other acts to occur in violation of Plaintiffs' rights including, but not limited to, the acts and omissions alleged hereinabove.

36. The aforementioned occupation, use and maintenance of the Property by defendants constitutes a nuisance within the meaning of Section 3479 of the Civil Code, in that it is injurious to the health and/or is indecent or offensive to the senses and/or an obstruction to the free use of the Property, so as to interfere with the comfortable enjoyment of life or property.

37. Plaintiffs are informed and believe and on that basis allege that, unless restrained by this court, defendants will continue to maintain this nuisance and continue the acts complained of, and similar acts, and each and every act has been, and will be, without the consent, against the will, and in violation of Plaintiffs' rights.

38. As a proximate result of the nuisance created by the defendants, and each of them, Plaintiffs have been, and will be, damaged in an amount and of a nature according to proof at trial.

39. Unless defendants, and each of them, are restrained by order of this court, it will be necessary for Plaintiffs to commence many successive actions against defendants, and each of them, to secure compensation for damages sustained, thus requiring a multiplicity of suits, and Plaintiffs will be regularly threatened with dumping of debris on the Property and the Association's workers urinating and defecating on the Property, and will be forced to maintain the Association Trees which, due to the actions and omissions of defendants, have become weak, non-viable and/or in need of drastic rehabilitation, and will have to prune the overgrowth from the Association Trees protruding onto the Pedestrian Walkway or overhanging the Pedestrian Walkway, and perform other maintenance obligations on/at the Property which is the Association's sole responsibility.

40. Plaintiffs have no plain, speedy, or adequate remedy at law, and injunctive relief is expressly authorized by Sections 526 and 731 of the Code of Civil Procedure.

41. Plaintiffs are informed and believe and on that basis allege that the Board acted with advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud or malice, and specifically authorized, directed and/or participated in the above-described tortious conduct of the Association. Plaintiffs are further informed and believe and on that basis allege that, in maintaining this nuisance, defendants, and each of them, are acting with full knowledge of the consequences and damage being caused to Plaintiffs, and their conduct is willful, oppressive, and malicious; accordingly, Plaintiffs are entitled to punitive damages against defendants, and each of them.

FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duty against all Defendants

42. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General Allegations of this Complaint, paragraphs 18 through 23 of the First Cause of Action, paragraphs 25 through 26 of the Second Cause of Action, paragraphs 28 through 33 of the Third Cause of

Action and paragraphs 35 through 41 of the Fourth Cause of Action and incorporate them into this Fifth Cause of Action.

43. The Association, by and through its Board, had, and has, a fiduciary relationship with Plaintiffs, who are analogous to shareholders of a corporation, which gave rise to a special duty of good faith on the Association's part, as the fiduciary, to comply with the 1999 Agreement, the Governing Documents, Easement Corporation Grant Deed, and its obligations in connection with the Assessment District and Rights of Way, and to exercise due care for Plaintiffs, their Property, the Strip, and the Association Trees which are planted on the Property. The Association, by and through its Board, owes this fiduciary duty to Plaintiffs, individually, and not just to the homeowners as a whole. By the actions and omissions of the Association, by and through its Board and other defendants, described in the General Allegations, and First, Second, Third and Fourth Causes of Action of this Complaint, incorporated herein, the Association and other defendants have breached their respective fiduciary duty to Plaintiffs, damaging Plaintiffs in an amount and of a nature according to proof at trial.

44. Plaintiffs are informed and believe and on that basis allege that the Board acted with advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud or malice, and specifically authorized, directed and/or participated in the above-described tortious conduct of the Association. Plaintiffs are further informed and believe and on that basis allege that the acts and conduct of defendants were oppressive, fraudulent, and malicious, and that defendants knew that their conduct was unjust and unreasonable to Plaintiffs, and acted with full knowledge of the consequences and damage being caused to Plaintiffs. Accordingly, Plaintiffs are entitled to punitive damages against defendants, and each of them.

SIXTH CAUSE OF ACTION

(Permanent Injunction against all Defendants -

Removal of Association Trees)

45. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General Allegations of this Complaint, paragraphs 18 through 23 of the First Cause of Action, paragraphs 25 through 26 of the Second Cause of Action, paragraphs 28 through 33 of the Third Cause of

Action, paragraphs 35 through 41 of the Fourth Cause of Action, and paragraphs 43 through 44 of the Fifth Cause of Action and incorporate them into this Sixth Cause of Action.

46. The acts and omissions of defendants including, but not limited to the foregoing allegations; specifically (a) failing to properly water and maintain the Association Trees, Strip and the surrounding Property, causing the Association Trees to become weak, non-viable and/or in need of drastic rehabilitation, and exposing Plaintiffs to liability on and off the Property; (b) unilaterally removing the Association's irrigation pipes/system from the Property in January 2010 without prior notice to SULLIVAN; (c) unilaterally, and wrongly, declaring that, upon removal of the Association's irrigation pipes/system from the Property in January 2010, SULLIVAN owned all of the Association Trees, and demanding that SULLIVAN maintain the Association Trees at SULLIVAN's sole cost and expense; and (d) unreasonably refusing to permit SULLIVAN to remove the Association Trees from the Property, notwithstanding their non-viable condition, confirmed by professional arborists, were undertaken by defendants negligently and carelessly and in breach of their fiduciary duty owed to Plaintiffs, and proximately caused damage to Plaintiffs as alleged in this Complaint.

47. Defendants' failures to properly maintain the Association Trees, coupled with the "secret" removal of the irrigation pipes/system from the Property, evidences the fact that defendants lacked the ability, intention and desire to comply with their obligations under the 1999 Agreement and Governing Documents. Having caused the Association Trees to become weak, non-viable and/or in need of drastic rehabilitation, defendants have attempted to "wash their hands" of their ownership and maintenance obligations, and have wrongly attempted to thrust those obligations onto Plaintiffs while, at the same time, unreasonably refusing to allow Plaintiffs to remove the Association Trees from the Property.

48. Plaintiffs are informed and believe and on that basis allege that Section 7.3 of the CC&Rs, requiring the express written consent of the Architectural Review Board to destroy or remove any living tree having a height of six feet or more, does not apply to SULLIVAN, because (i) it was the Association, via the Developer and/or the Board, which planted the Association Trees, which continue to belong to the Association; (ii) the Association, via the

Board, is solely responsible for maintaining the Association Trees, and causing the Association Trees to become weak, non-viable and/or in need of drastic rehabilitation; (iii) Section 7.3 of the CC&Rs, when drafted, was intended to apply to individual homeowners who planted trees on their property, or whose predecessor homeowners had done so, with continuing maintenance obligations for them, unlike the situation with SULLIVAN; and (iv); the CC&Rs did not contemplate the current situation where the Association/Board is unreasonably forcing SULLIVAN to continue to live with hazardous, weak and non-viable Association Trees which, in the professional opinion of arborists, should be removed, and unreasonably refusing to consent to their removal, while simultaneously attempting to shift all responsibility for the Association Trees, and all liability for them, to SULLIVAN.

49. The wrongful conduct of defendants, unless and until enjoined and restrained by order of this court, will cause great and irreparable injury to Plaintiffs in that they will be forced to own and maintain the Association Trees at their sole cost and expense, in violation of the 1999 Agreement and Governing Documents, and Easement Corporation Grant Deed, Assessment District and Rights of Way, and will be forced to do so notwithstanding the opinion of professional arborists that the Association Trees should be removed from the Property.

50. Money damages alone for the wrongful conduct of defendants cannot adequately compensate Plaintiffs for the damages currently being suffered and which are threatened because the Association has demanded that Plaintiffs permanently take on the ownership and maintenance responsibilities for the Association Trees without having the ability to remove them.

SEVENTH CAUSE OF ACTION

(Declaratory Relief against all Defendants)

51. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General Allegations of this Complaint, paragraphs 18 through 23 of the First Cause of Action, paragraphs 25 through 26 of the Second Cause of Action, paragraphs 28 through 33 of the Third Cause of Action, paragraphs 35 through 41 of the Fourth Cause of Action, paragraphs 43 through 44 of the Fifth Cause of Action, and paragraphs 46 through 50 of the Sixth Cause of Action and incorporate them into this Seventh Cause of Action.

52. An actual controversy has arisen and now exists between Plaintiffs and defendants concerning their respective rights and duties in that Plaintiffs contend that the Association was, and is, obligated to properly water and maintain the Association Trees, and Strip, and perform other maintenance obligations on/at the Property at its sole cost and expense, in perpetuity, in accordance with the 1999 Agreement, the Governing Documents, Easement Corporation Grant Deed, and in connection with the Assessment District and Rights of Way and, having failed to do so, that Plaintiffs should be permitted to remove the Association Trees from the Property, at the Association's sole cost and expense, because the Association caused most of them to become weak, non-viable and/or in drastic need of rehabilitation, whereas the Association disputes these contentions and contends that the Association has no further obligation to maintain the Association Trees, or perform other maintenance obligations on/at the Property, and that the Plaintiffs now own and must permanently maintain the Association Trees, and Strip, and perform other maintenance obligations including, but not limited to those, described in the Easement Corporation Grant Deed, at Plaintiffs' sole cost and expense.

53. Plaintiffs desire a judicial determination of their rights and duties, and a declaration as to whether the Association is still obligated to maintain the Association Trees and Strip, and perform other maintenance obligations on/at the Property, and having failed to comply with its obligations under the 1999 Agreement, Governing Documents, Easement Corporation Grant Deed, and in connection with the Assessment District and Rights of Way, that the Association must pay for the removal of all of the Association Trees from the Property and continue to perform other maintenance obligations on/at the Property.

54. A judicial declaration is necessary and appropriate at this time under the circumstances in order that Plaintiffs may ascertain their rights and duties regarding the responsibility for the Association Trees and Strip, and other maintenance obligations on/at the Property, and the Association's obligation to remove the Association Trees at its sole cost and expense.

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Plaintiffs therefore pray for judgment against defendants, and each of them, as follows:

ON THE FIRST CAUSE OF ACTION:

1. For compensatory damages according to proof at trial;

ON THE SECOND CAUSE OF ACTION:

2. For compensatory damages according to proof at trial;

ON THE THIRD CAUSE OF ACTION:

3. For general damages according to proof at trial;

ON THE FOURTH CAUSE OF ACTION:

4. For a permanent injunction enjoining defendants, and each of them, and their agents, servants, contractors, and employees, from dumping debris on the Property, and permitting the Association's agents and contractors from urinating and defecating on the Property; and compelling defendants to permit Plaintiffs to remove all of the Association Trees from the Property, at the Association's sole cost and expense, including all overgrowth from the Association Trees on the Property and off the Property that protrudes onto the Pedestrian Walkway or overhangs the Pedestrian Walkway;

5. For general damages according to proof;

6. For exemplary and punitive damages;

ON THE FIFTH CAUSE OF ACTION:

7. For general damages according to proof;

8. For exemplary and punitive damages;

ON THE SIXTH CAUSE OF ACTION:

9. For a permanent injunction compelling defendants to permit Plaintiffs to remove all of the Association Trees from the Property, at the Association's sole cost and expense, including all overgrowth from the Association Trees on the Property and off the Property that protrudes onto the Pedestrian Walkway or overhangs the Pedestrian Walkway;

ON THE SEVENTH CAUSE OF ACTION:

10. For a declaration that the Association was, and is, required to properly maintain all of the Association Trees, and the Strip, in perpetuity, and perform other maintenance obligations

on/at the Property, and having failed to comply with its obligations under the 1999 Agreement and Governing Documents, as well as the Easement Corporation Grant Deed, Assessment District and Rights of Way, that the Association must permit Plaintiffs to remove all of the Association Trees from the Property at the Association's sole cost and expense, including all overgrowth from the Association Trees on the Property and off the Property that protrudes onto the Pedestrian Walkway or overhangs the Pedestrian Walkway, and the Association must perform all of its other maintenance obligations on/at the Property;

ON ALL CAUSES OF ACTION:

11. For reasonable attorneys' fees and costs of suit herein pursuant to Civil Code section 1354(c) and Section 12.11 of the CC&Rs;

12. For such other and further relief as the Court deems just and proper.

Dated: June 29, 2011 SILVER & ARSHT

By: _____

SAMUEL J. ARSHT, ESQ.
MARSHA C. BRILLIANT, ESQ.
Attorneys for Plaintiffs THEODORE M. SULLIVAN and PAULA C. SULLIVAN

W:\SULLIVAN\HOA\FIRST AMENDED COMPLAINT.wpd

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I am employed in the County of Ventura, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 1860 Bridgegate Street, Westlake Village, California 91361-1409.

On June 29, 2011, I served the foregoing document described as **FIRST AMENDED COMPLAINT** on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

David Gorney, Esq.
David M. Gruen, Esq.
Mannings & Kass Ellrod, Ramirez & Trester LLP
15th Floor at 801 Tower
801 South Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 624-6900
Facsimile: (213) 624-6999
Attorneys for Defendant WOOD RANCH SYCAMORE CANYON VILLAGE ASSOCIATION

[X] **[VIA MAIL]** I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. It is deposited with the United States Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] I caused such envelope to be deposited in the mail at Westlake Village, California. The envelope was mailed with postage thereon fully prepaid.

[ ] **[BY FACSIMILE]** I transmitted a true copy of said document by facsimile machine, pursuant to Rule 2005. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Said facsimile transmission was directed as indicated on the fax number listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 29, 2011, at Westlake Village, California.

JENNIFER COSTIN