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RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Mark T. Guithues, Esq.  
PETERS & FREEDMAN, L.L.P.  
191 Calle Magdalena, Ste. 220  
Encinitas, CA 92024



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FIRST AMENDMENT TO  
THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
INDIAN HILLS - PALM DESERT HOMEOWNERS ASSOCIATION

20



**FIRST AMENDMENT TO  
THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
INDIAN HILLS - PALM DESERT HOMEOWNERS ASSOCIATION**

**RECITALS**

WHEREAS on February 1, 1974, Declarant recorded a Declaration of Covenants, Conditions and Restrictions ("First Declaration") for Indian Hills - Palm Desert Homeowners Association ("Association"). Said Declaration was Instrument No. 13288, in the office of the County Recorder of Riverside, California and is binding upon all owners of condominiums within the Condominium Project known as the INDIAN HILLS Homeowners Association (the "Project").

WHEREAS, the Association amended the First Declaration, which First Amendment was recorded November 24, 1980 in the County Recorder of Riverside, California as Instrument 220174.

WHEREAS, the Association again amended the First Declaration, which Second Amendment was recorded on December 8, 1983 in the County Recorder of Riverside, California as Instrument 220174.

WHEREAS, the Association again amended the First Declaration, which Third Amendment was recorded on April 19, 1984 in the County Recorder of Riverside, California as Instrument 81364.

WHEREAS, the Association restated the First Declaration, which First Restated Declaration of Covenants, Conditions and Restrictions ("First Restated Declaration") was recorded on January 7, 2002 in the County Recorder of Riverside, California as Instrument 4844.

WHEREAS, that Declaration has not been amended as of this date.

BE IT KNOWN: The Board of Directors declares as follows:

The First Restated Declaration for Indian Hills - Palm Desert Homeowners Association are hereby amended as follows:

**Article XVI, Section 1(A)** is hereby amended to add the following language:

Underlying fire insurance coverage for the Common Area and Dwelling units shall be written as part of or in conjunction with said master policy where necessary to protect the individual lenders and owners. Such underlying insurance shall contain a replacement cost endorsement and, to the extent available, such other endorsements as may be part of the master policy. Such insurance shall

likewise name as the insured, all owners and all mortgagees of record, as their respective interest may appear and shall contain a loss payable endorsement in favor of the trustee.

The balance of the Restated Declaration shall continue in full force and effect.

### CERTIFICATE OF AMENDMENT

We, the undersigned, hereby certify that the First Restated Declaration for the Indian Hills - Palm Desert Homeowners Association are amended pursuant to the Association's governing documents.

#### INDIAN HILLS- PALM DESERT HOMEOWNERS ASSOCIATION

Dated: 9/23/02, 2002

Sean M. Mathwig

Dated: 9/23/02, 2002

Seema W. Datta

President

By:

Print Name:

SEAN M. MATHWIG

Secretary

By:

Print Name:

SEEMA W. DATTA

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# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

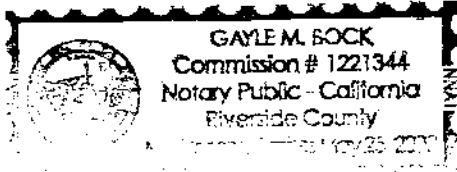
State of CALIFORNIA

County of RIVERSIDE

On September 23, 2002 before me, GAYLE M. BOCK Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared GEAN M. MATHWIG & SANDRA W. DABA  
Name(s) of Signer(s)

personally known to me – OR –  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~~ 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.



WITNESS my hand and official seal.

Gayle M Bock  
Signature of Notary Public

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- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

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OF SIGNER  
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Signer Is Representing:  
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Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
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Signer Is Representing:  
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JEFFREY R. PRATT  
SUSAN K. STEWART

January 13, 1997

Board of Directors  
Indian Hills - Palm Desert Homeowners' Association, Inc.  
c/o Desert Resort Management  
Attention: Marian Adkins  
P.O. Box 4772  
73-550 Alessandro, Suite 5  
Palm Desert, CA 92261

Re: Indian Hills - Palm Desert Homeowners' Association, Inc./First  
Restated Declaration of Covenants, Conditions and Restrictions  
Our File No. 1289

Dear Members of the Board:

Enclosed please find a recorded copy of the First Restated  
Declaration of Covenants, Conditions and Restrictions ("CC&Rs").  
As you can see, the CC&RS were recorded on January 7, 1997 under No.  
004844.

If you have any questions, please do not hesitate to contact the  
undersigned.

Very truly yours,

PETERS & FREEDMAN



Susan K. Stewart

Encls.

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Revision Date: September 10, 1996

**FIRST RESTATED DECLARATION OF COVENANTS**

**CONDITIONS AND RESTRICTIONS FOR**

**INDIAN HILLS - PALM DESERT HOMEOWNERS' ASSOCIATION, INC.**

The Declaration of Covenants, Conditions and Restrictions for INDIAN HILLS - PALM DESERT HOMEOWNERS' ASSOCIATION, INC., on January 11, 1974, and recorded February 1, 1974, as Instrument No. 74-13288, of the Official Records of Riverside County, California ("Amended Declaration"), and all amendments thereto including that certain Amendment to Declaration of Covenants, Conditions and Restrictions recorded on November 24, 1980 as Instrument No. 220173 in the Riverside County Recorder's office, and that certain First Amendment to Declaration of Covenants, Conditions & Restrictions recorded on December 8, 1983 as Instrument No. 254289 in the Riverside County Recorder's Office, and that certain Amendment recorded April 19, 1984, as Instrument No. 81364 in the Riverside County Recorder's Office, which affect all of the Properties described and commonly known as INDIAN HILLS - PALM DESERT are hereby amended and restated in their entirety to read as follows:

**RECITALS**

1. WHEREAS, Declarant was the original owner of that certain real property ("Properties") located in the City of Palm Desert, County of Riverside, and State of California, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

2. WHEREAS, Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

3. WHEREAS, it was the further intention of the Declarant to sell and convey residential Lots improved by residences originally constructed by Declarant to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a "planned development" as that term is defined in Section 1351 (k) of the California Civil Code. Finally, it was the intention of Declarant that the "Common Areas"

and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

## ARTICLE I

### DEFINITIONS

Section 1. "Architectural Control Committee" means the Committee created in accordance with Article VII of this Declaration.

Section 2. "Articles" means the Articles of Incorporation of INDIAN HILLS - PALM DESERT HOMEOWNERS' ASSOCIATION, INC., which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 3. "Assessment" means any Regular, Special or Reimbursement Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article V of this Declaration.

Section 4. [Art. I, Sec. 1] "Association" means INDIAN HILLS - PALM DESERT HOMEOWNERS' ASSOCIATION, INC., a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "Association" as defined in California Civil Code Section 1351(a).

Section 5. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Article IV, Section 2 of this Declaration, as the same may be in effect from time to time.

Section 6. "Beneficiary" means a mortgagee under a mortgage or, as the case may be, the beneficiary of or holder of a note secured by a Deed of Trust, and/or the assignees of such mortgagee, beneficiary or holder.

Section 7. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 8. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 9. "City" means Palm Desert and its various departments, divisions, employees and representatives.

Section 10. [Art. I, Sec. 4] "Common Area" means all the real property owned by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association

at the time of the recordation of this Declaration is described in Exhibit "A" attached hereto and incorporated herein by this reference. Unless the context clearly indicates a contrary intention, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

**Section 11.** "Common Expense" means any use of Common Funds authorized by Article V hereof and Article IV of the Bylaws and includes, without limitation:

(a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities or any portion of any Residence that the Association is obligated to maintain or repair;

(b) All expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors;

(c) Any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities or any portion of any Residence that the Association is obligated to maintain or replace, and for nonpayment of any Assessments; and

(d) The use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

**Section 12.** "Common Facilities" means, without limitation, the trees, hedges, plantings, lawns, shrubs, landscaping, fences, streets, sidewalks, utilities, beams, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

**Section 13.** "County" means the County of Riverside, State of California, and its various departments, divisions, employees and representatives.

**Section 14.** [Art. I, Sec. 7] "Declarant" means the original Developer of the Properties, namely Carriage Trail Developers, a California Limited Partnership, and its successors and assigns.

**Section 15.** "Declaration" means this instrument, including all of the Exhibits referred to herein (all of which shall be deemed incorporated herein by reference), as the same may be amended from time to time. The "Original Declarations" means and refer to the document referenced in the Preamble to this

Declaration, together with all amendments and annexations thereto, adopted prior to adoption of this Declaration.

Section 16. [Art. I, Sec. 10] "Deed Of Trust" or "Trust Deed" means a first mortgage or a first Deed of Trust, as the case may be.

Section 17. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules.

Section 18. "Improvement" includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the interior of any Residence.

Section 19. [Art. I, Sec. 3] "Lot" means any parcel of real property designated by a number on the Subdivision Map for any portion of the Properties, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot. For purposes of this Declaration, "Lot" does not exclude the parcel on which the tax assessment is based.

Section 20. [Art. I, Sec. 5] "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Articles II and IV of this Declaration.

Section 21. [Art. I, Sec. 8] "Mortgage" means any security device encumbering all or any portion of the Properties, including any Deed of Trust. "Mortgagee" shall refer to the beneficiary of, or the holder of a Note secured by a first Deed of Trust (Trust Deed) or, as the case may be, the mortgagee under a first mortgage, and/or the assignee of such beneficiary, holder or mortgagee.

Section 22. [Art. I, Sec. 6] "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in a Lot. The term "Owner" shall include, except where the context otherwise requires, the family, guests, tenants and invitees of an Owner.

Section 23. "Owner of Record" and "Member of the Association" include an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

**Section 24.** "Private Streets" means those areas shown and designated as such on the subdivision map and the same are deemed a part of the Common Area.

**Section 25.** [Art. I, Sec. 2] "Properties" means all parcels of real property (Common Area and Lots) described and identified in Exhibit "A" hereof, together with all buildings, structures, utilities, Common Facilities, and all other Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

**Section 26.** "Residence" means a private, single family dwelling constructed on a Lot.

**Section 27.** "Rules and Regulations" means such rules and regulations as may be adopted from time to time by the Board with respect to the use of the Common Area by the Owners and by their tenants, guests, invitees and licensees.

**Section 28.** "Single Family Residential Use" means occupancy and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

**Section 29.** "Special Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Article V, Section 4 hereof.

**Section 30.** "Subdivision Map" means the map for any phase of development within the properties referenced in the Recitals of this Declaration.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

**Section 1.** [Art. III, Sec. 1] **Membership.**  
Owners, by virtue of their ownership of a Lot shall be a Member of the Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Articles and Bylaws which are incorporated herein.

**Section 2.** **One Class of Membership.**  
The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

**Section 3. [Art. IV] Voting.**

Subject to Article III, Section 1(c) of this Declaration, each Owner, in good standing, shall be entitled to one (1) vote for each Lot in which he or she holds the interest required for membership and each Lot is allocated a vote equal to each other Lot's vote. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Articles, this Declaration, the Bylaws and the Rules and Regulations adopted thereunder from time to time by the Board.

**Section 4. [Art. III, Sec. 2] Transfer.**

Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then only to the purchaser. The transfer of title to a Lot or the sale of a Lot and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Lot to the transferee. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his or her name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association.

**ARTICLE III**

**PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS**

**Section 1. [Art. II, Sec. 1 and Art. V, Sec. 1] Owners Nonexclusive Easements of Enjoyment.**

Every member shall have a nonexclusive easement for use and enjoyment in and to the Common Areas within the Development. Such right shall be appurtenant to and shall pass with the ownership of a Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, without limitation, the following provisions:

(A) [Art. V, Sec. 1(a)] The right of the Association to limit the number of guests of Members.

(B) [Art. V, Sec. 1(c)] The right of the Association to establish reasonable Rules and Regulations pertaining to the use of the Common Area.

(C) [Art. III, Sec. 3 and Art. V, Sec. 1(e)] The right of the Association to temporarily suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessments remain unpaid. In addition, the Association may suspend a Member's right to use the recreational facilities for any infraction of this Declaration, the Bylaws and/or the

published Rules and Regulations by that Member, his or her lessees, or guests. Any action to suspend a Member's right shall only be valid after a hearing by the Board, in accordance with the provisions of the Bylaws and Section 7341 of the California Corporations Code.

(D) The right of the Association to grant easements on, over and under the Common Area to public utilities or governmental entities or agencies; provided that such easement shall not unreasonably interfere with the right of any Owner to the use and enjoy of his or her Lot and the Common Area.

(E) The right of the Association to grant easements to individual Owners with a value of less than five percent (5%) of the Association's gross fiscal budget.

**Section 2. Persons Subject to Governing Documents.**

All present and future Owners, tenants and occupants of Residences within the Properties shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Residence shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

**Section 3. Waiver of Use.**

No Member may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her from the liens, charges and other provisions of this Declaration, the Articles, Bylaws and Rules and Regulations, by waiver of the use and enjoyment of the Common Area or the abandonment of his or her Lot.

**Section 4. Obligations of Owners.**

Owners of Lots within the Properties shall be subject to the following:

(A) **Owner's Duty to Notify Association of Tenants and Contract Purchasers.** Each Owner shall notify the Secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant of the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant

has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner, contract purchaser or tenant.

(B) Contract Purchaser. A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(C) Payment of Assessments and Compliance With Rules. Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(D) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(E) [Art. IV] Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. No more than three (3) owners are permitted to hold joint ownership of any Lot. Without limiting the foregoing, this subparagraph shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(F) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

(G) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

## ARTICLE IV

### POWER AND DUTIES OF THE ASSOCIATION

#### Section 1. [Art. IX, Sec. 1(a)] Management and Control of the Board.

The Association, through its Board, except as otherwise provided herein, shall have the obligation, sole authority, and duty to manage, make decisions, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements and landscape thereon, all as more fully set forth in this Declaration, the Articles and the Bylaws.

(A) In the event the Board shall determine that any portion of the development required to be maintained by the Association has been damaged or destroyed by any negligent or malicious act or omission of any Owner, his or her guests, tenants, servants, agents or licensees, such Owner shall be responsible for the cost of repairing the damage. In the event that the Owner fails to pay the cost for the repairs, then the Association shall make such repairs or replacements and the cost thereof shall be levied against such Owner as a Special Assessment.

(B) Subject to the provisions of the Governing Documents, the Board shall have the right to adopt reasonable rules and to amend the same from time to time relating to the use of the Common Area and Lots, and all other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities reasonably contemplated under the Association's Governing Documents. The Rules and Regulations may be amended only by the vote of a majority of the Board.

#### Section 2. Powers and Responsibilities of the Board.

(A) Rule-Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend reasonable rules and regulations governing the use of the property within the Development, nor inconsistent with this Declaration, including the activities in the Lot which affect other portions of the Development. The Board shall have the power to make Rules & Regulations which regulate the use, occupancy and maintenance of all the Property within the development. A copy of such rules and regulations shall be:

(i) Maintained in the office of the Association and be available for inspection at all reasonable times; and

(ii) Given to each Owner within a reasonable time after the Association has notice of his or her occupancy of a Lot.

(B) Enforcement Power. The Board shall enforce use restrictions, Declaration and Bylaw provisions, and Rules and Regulations by the imposition of reasonable monetary fines, special assessments for costs incurred in compelling compliance with the Association's Governing documents (Articles, Declaration of Restriction, Bylaws and Rules and Regulations), and suspend use of common facilities and voting privileges. These powers, however, shall not be construed as limiting any other legal means of enforcing the use restrictions or Rules and Regulations of the Association. Any fines so imposed shall be considered an assessment against the Lot and may be collected in the manner provided for collection of other assessments.

(C) [Art. IX, Sec. 1(d)] The Board may grant permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Development under, through, or over the common elements, as may be reasonably necessary to or desirable for the ongoing development and operation of the Development.

(D) [Art. IX, Sec. 1(d)(a)] The Board shall maintain and otherwise manage all of the Common Area and facilities, including all recreational facilities, improvements and landscaping thereon, and all property subsequently acquired by the Association.

(E) The Board shall provide water, sewer, gas, electrical, refuse collection and gardening service for the Common area, and may make available to all Residences, electrical, water and gas service, cable T.V. service, and such other utilities as the Board may determine.

(F) The Board may adopt and implement rules. Such rules may provide that the Owner of a Lot whose occupant leaves property in or around the Common Area in violation of the rules may be specially assessed, after appropriate notice and an opportunity for a hearing before the Board, to cover the expense incurred by the Association in removing such property and storing or disposing thereof.

### Section 3. Right of Entry.

For the purpose of maintaining the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under the Declaration, the Association's officers, agents or employees shall have the right, after reasonable notice to Owner(s), to enter any Lot, or any portion of the Lot at

reasonable hours and after reasonable notice to the Owner of the Lot.

In addition to and not in limitation of all other rights the Association may enter into Residences for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. In an emergency situation, if practicable, prior to entering the Residence, a reasonable attempt will be made to notify the occupant and the Owner of the Lot of the Association's need and intent to enter the Residence.

**Section 4. Limitation of Liability.**

In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Association, which acts on behalf of and as representative of the Owners, and no Member of the Board of Directors shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in good faith.

**ARTICLE V**

**COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**

**Section 1. Assessments Generally.**

(A) Purpose of Assessment. The assessments for common expenses provided for herein shall be used for the general purpose of the preservation and proper operation of the Development and for promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and/or occupants of Lots in the Development as may be more specifically authorized from time to time by the Board.

(B) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and discharges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Lot or any other portion of the Properties.

**Section 2. [Art. VI, Sec. 1] Creation of Lien and Personal Obligation for Assessments.**

Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay the Association: (a) annual regular assessments or charges; (b) special assessments, to be established and collected as hereinafter provided; and (c) special individual

assessments against any particular Lot which are established pursuant to the terms of the Association's Governing Documents.

(A) All such assessments, together with late charges, interest, costs, and all attorney's fees reasonably incurred, as provided in this Declaration and in the maximum amount permitted by the laws of the State of California, whichever is greater, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Each Owner of a Lot shall be jointly and severally liable for the entire assessment coming due while he or she is the Owner of a Lot.

(B) Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the assessments shall be due and payable to the Association on a monthly basis.

(C) The personal obligation shall not pass to an Owner's bona fide and for value successors in title unless expressly assumed by them.

(D) The payment of assessments is for the mutual benefit and protection of the entire development and for all Members of the Association and may not be legally withheld because of non-use of the Common Area, the Association's failure to perform services, or for any other reasons.

(E) Any assessment not paid within fifteen (15) days after the date due shall bear interest from the date due at the rate provided for in the Association's Governing Documents or California law, whichever is greater. No Owner shall be exempt from personal liability for payment of assessments by waiver of the use or enjoyment of any of the Common Areas, or by abandonment or no-use of the Owner's Lot or any part thereof.

(F) Payments to the Association shall be applied first to payment of fines, if any, and then to attorney's fees and costs, interest, late charges, and individual special assessments, if any, and then to the principal of assessments due.

### Section 3. Regular Assessments.

(A) [Art. VI, Sec. 3] Preparation of Annual Budget: Establishment of Regular Assessments. Not less than 45 nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses

for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a budget satisfying the requirements of Article XII of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws.

(B) [Art. VI, Sec. 3] Establishment of Regular Assessment by Board or Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (A) above, and subparagraph (C) below, the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association.

1. Prior to raising regular assessments at any time during the fiscal year without membership approval, up to the twenty percent (20%) limitation, the membership shall be given thirty (30) days notice of such increase in regular assessments.

(C) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (C), an emergency situation is any of the following:

1. An extraordinary expense required by an order of a court.

2. An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.

3. An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any

portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subparagraph (A) above, provided that, prior to the imposition or collection of an assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(D) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, than the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Article V, Section 4 herein for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year and the Assessments shall be payable on the regular payment dates established by the Association.

**Section 4. [Art. VI, Sec. 4] Special Assessments.**

In addition to the Regular Assessments, authorized above, the Board may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any capital improvement to the Common Area or such other purpose as may be determined by the Board; provided, however, that no Special Assessment shall exceed, in the aggregate during any fiscal year of the Association, an amount equal to five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of a majority vote of the Association's Membership. All such Special Assessments shall be levied upon each Lot in the same proportion as regular assessments are levied.

**Section 5. Reimbursement Assessments.**

(A) Circumstances Giving Rise to a Reimbursement Assessment. In addition to the Special Assessments levied against all Owners in accordance with Section 4, above, the Board of Directors may impose Reimbursement Assessments against an Owner in any of the circumstances described, without limitation, in subparagraphs (1) through (3) below, provided that no Reimbursement Assessments may be imposed against an Owner pursuant to this Section 5 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to this Article V, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Reimbursement Assessments include the following:

1. Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of the Residence structure which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any Member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

2. Expenses Incurred in Gaining Membership Compliance. In the event that the Association incurs any costs or expenses, to accomplish (a) the payment of delinquent Assessments, (b) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (c) to otherwise bring the Owner and/or his or her Lot into compliance with any provision with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorney's fees) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

3. Required Maintenance on Lots. As more particularly provided in Article XII, Section 3, and without limiting the generality of that subparagraph, if any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles, or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Reimbursement Assessment against the offending Owner.

(B) Levy of Reimbursement Assessment and Payment. Once a Reimbursement Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed herein, notice thereof shall be mailed to the affected Owner and the Reimbursement Assessment shall thereafter be due and payable in full to the Association within 30 days after the mailing of notice of the Assessment.

**Section 6.** [Art. VI, Sec. 7] **Notice.**

Written notice of an assessment shall be given to every Owner subject thereto. Assessments may be collected as determined by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or other agent of the Association setting forth whether the assessments of a specified Lot have been paid.

**Section 7.** **Exemption of Certain of the Properties From Assessments.**

The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempted from the Assessments and the lien thereof provided herein:

- (A) Any portion of the Properties dedicated and accepted by a local public authority;
- (B) The Common Area and Common Facilities; and
- (C) Any Lot owned by the Association.

**Section 8.** [Art. VII, Sec. 1] **Remedies of the Association for Non-Payment of Assessments.**

The Association shall have the power to impose assessments as provided in these Governing Documents. Such assessments are the personal obligation of the Owner against whom they are assessed and are a lien against that Lot. The Association shall have the authority to create and enforce a lien with the power of sale on each separate Lot and all improvements thereon to secure payment of the amount of any Assessment, to the full extent permitted by applicable law. The obligation and the lien for assessments may also include: a late or delinquency charge in the amount of the greater of ten dollars (\$10.00) or ten percent (10%) of the amount of each assessment or lump sum or installment payment of any special assessment or special individual assessment not paid when due, or such higher amount as may be authorized by the laws of the State of California; interest on each assessment or installment not paid when due and on any delinquency fee or late charge pertaining thereto from the date the charge was first due and payable at the rate of twelve percent (12%) per annum, or such higher rate as may be authorized by the laws of the State of California; the costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees actually incurred; and the fair rental value of the Lot from the time of institution of suit until the sale at foreclosure or other satisfaction of any judgment.

**Section 9.** [Art. VI, Sec. 2] **Effect of Non-Payment of Assessments.**

As more particularly provided in California Civil Code §1367 or comparable superseding statute, at any time after any assessments levied by the Association affecting any Lot have become delinquent,

the Association may file for recording in the Office of the Riverside County Recorder a notice of delinquency as to such Lot, which notice shall state all amounts which have become delinquent with respect to such Lot and the costs (including attorney's fees) and interest which have accrued thereon, the amount of any assessments relating to such Lot which are due and payable, although not delinquent, a description of the Lot with respect to which the delinquent assessments are owed, and the name of the record or reputed record Owner of such Lot. Such notice shall be signed by the President or other officer of the Board, or by a majority of the Members of the Board, or by the Association's attorney.

Immediately upon the recording of any notice of delinquency pursuant to the foregoing provisions of this Section the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees), penalties and interest accruing thereon, shall be and become a lien upon the Lot described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Lot following such recording, and all costs (including attorney's fees), penalties and interest accruing thereon. Said lien shall continue until all amounts secured thereby are fully paid or otherwise satisfied.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Lot, together with all costs (including attorney's fees) and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

**Section 10. Assignment of Rents.**

Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section 8 shall be subordinate to the rights of any First Mortgagee.

**Section 11. [Art. VI, Sec. 3] Foreclosure of Assessment Lien.**

Each assessment lien may be foreclosed upon as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to California Civil Code Section 2924 and following and Section 1356 of the California Civil Code, and to that end a power of sale is hereby conferred upon the Association.

**Section 12. [Art. VI, Sec. 6] Subordination of Lien.**

The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage of record made in good faith and for value upon any Lot, provided that such subordination shall apply only to the assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage. Otherwise, sale or transfer of any Lot shall not affect the assessment lien.

**ARTICLE VI**

**USE RESTRICTIONS**

**Section 1. Occupancy.**

Use restrictions regarding the use of Lots and the Common Areas may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws of the Association, and are as follows:

(A) [Amendment; Art. XI, Sec. 11] **Single Families.** The Residences within the Development are restricted exclusively to residential use, and no Residence shall be occupied by more than a single family. "Occupancy," for purposes of this Declaration, shall be defined as staying overnight in a Residence for a total of more than thirty (30) days, either consecutive or non-consecutive days, in any one (1) year. "Family," for purposes of this Declaration, shall be defined as a group bearing the generic character of a family unit as a relatively permanent household.

This single family occupancy restriction shall not apply to require the removal of any person occupying a Residence on the date on which this Declaration is recorded in the Office of the Riverside County Recorder. However, any person who is not an occupant of a Residence on the date on which this Declaration is recorded in the Office of the Riverside County Recorder, shall be permitted to occupy a Residence if either before or after the occupancy by such person, that Residence does not or would not comply with the single family occupancy restriction set forth in this paragraph.

(B) [Art. XI, Sec. 2] **Residential Use.** Each Residence shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Residence

or any part of the Lot, including business uses secondary to a primary residential use. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary or generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an on-going basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Nothing in this section shall be deemed to restrict or prohibit business use of a residence which does not affect the Common Area.

(C) Lessee/Tenant Bound by Governing Documents. Each Owner shall have the right to lease his or her Lot and interest in the Common Area together, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board; provided, however, that no such lease shall be for transient or hotel purposes. Any such lease which is either for a period of less than thirty (30) days or pursuant to which the Lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes. See Article VIII herein for the rights and obligations of Owners with respect to leasing of Lots.

(D) No camping, whether temporary or permanent, and no temporary structures of any kind shall be permitted on any Lot.

Section 2. Subdivision of Lots and Structures.

No Lot may be subdivided into a smaller Lot, except as is approved by the Board, and no Lot Owner shall erect or use any structure(s) of a temporary character, trailer, tent, shack, carport, garage, barn, or other outbuilding on any portion of the Lot at any time, either temporarily or permanently, except as approved by the Board.

Section 3. [Art. XI, Sec. 6] Pets.

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the development, except that no more than two (2) dog(s), cat(s), or other normal household pets may be kept by their respective Owners in their respective Residences, provided that they are not kept, bred, or maintained for any commercial purpose and do not endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof or create a nuisance. No pet, regardless of size or type, shall be permitted to be kept within any portion of the Development property if it makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners. No pet enclosures shall be erected,

placed, or permitted to remain on any property subject to this Declaration, except as approved by the Board. The keeping of pets and their ingress, egress, and travel upon the common areas shall be subject to such Rules and Regulations as may be issued by the Board. If an Owner or occupant fails to abide by the rules and regulations and/or covenants applicable to pets, the Board may restrict or bar the pet(s) of the Owner or occupant from use or travel upon the common areas. Each Owner must immediately clean up after their pet. Dogs shall be allowed on the Common Area only when they are leashed and are otherwise under the supervision and restraint of their Owners. In addition, any pet which endangers the health of any Owner or resident of a Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the sole discretion of the Board, must be permanently removed from the Development property upon seven (7) days' written notice by the Board.

**Section 4. [Art. XI, Sec. 3] Signs.**

Except as may be required by legal proceedings, no signs, billboards, flags or advertising of any kind shall be maintained or permitted on any portion of the property without the prior written approval of the Board, except for one "For Sale" or "For Rent" sign per Lot, not larger than 18" by 24," placed as permitted by the Board. The Board, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on the common areas. All signs must conform with applicable governmental ordinances. No signs shall be erected or displayed on the Common Area, except signs placed by authority of the Board.

**Section 5. [Art. XI, Sec. 9] Antennas and Similar Devices.**

No Owner shall construct, instal, maintain or use any external radio or television antenna, satellite dish or similar device, except:

(a) As permitted by the Architectural Committee pursuant to Article VII of this Declaration; and/or

(b) As permitted by Civil Code §1376, or any successor statute, as that statute applies to the installation or use of video or a television antenna that has a diameter or diagonal measurement of thirty-six inches (36") or less.

**Section 6. [Art. XI, Sec. 5] Vehicles and Parking.**

No trailer, motorhome, recreational vehicle, recreational camper, commercial vehicle, boat or similar equipment shall be permitted to remain on the property outside of a garage. No vehicle shall be permitted to remain in the development which cannot reasonably fit in a parking space.

Common Area parking facilities shall not be used for parking in excess of two hours for any boat, camper or commercial vehicle, nor

for overnight parking of any vehicle other than vehicles of temporary guests of residents, it being the intent that the residents shall utilize the parking facilities within the residential lots and keep the Common Area parking area free for use of guests. The Common Area parking facilities shall not be used for vehicle washing or repair. No storage of any kind is permitted in any carport or other parking space.

**Section 7. Garages.**

No garage doors shall be permitted to remain open except for a temporary purpose. Garages shall be used only for the purpose of parking automobiles or storing an Owner's personal property. The Board shall have the power to make reasonable rules regarding the use of and storage in garages. For purposes of this section, "temporary purpose" shall be defined as permitting reasonable work to be performed in the garage during normal daytime/evening hours.

**Section 8. Impairment of Lots and Easements.**

No Owner or occupant shall perform nor commence any work that will impair the structural soundness or integrity of another Lot, Common Area or impair any easement, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or occupants.

**Section 9. [Art. XI, Sec. 8] Rubbish, Trash, and Garbage.**

All rubbish, trash and garbage shall be removed no less than weekly from the Lot, and shall not be allowed to accumulate outside of any Residence and/or upon any Lot. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the development property. If a residence is in the process of construction on any Lot, a dumpster must be placed on the Lot and dumped regularly.

**Section 10. [Art. XI, Sec. 4] Nuisance.**

No noxious, illegal, or materially offensive activities shall be carried out or conducted upon any Lot or Common Area or in any part of the development, nor shall anything be done within the Development which shall unreasonably interfere with any other resident's right to quiet enjoyment. No Owner or occupant of a Residence may use or allow the use of the Residence or any portion of the Lot in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or occupants of a portion of the Lot; or in such a way as to constitute, in the sole opinion of the Board, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved owner to proceed individually for relief from interference with his or her property or personal rights.

Nothing shall be done on any Lot or in any Residence or in, on, or to the Common Area which may impair the structural integrity of any building, or which would structurally change any building located therein. Except as otherwise provided herein, nothing shall be

altered or constructed in or removed from the Common Area except upon the written consent of the Board or an architectural committee appointed by the Board.

**Section 11. Unsightly or Unkept Conditions.**

The pursuit of hobbies or other activities, including without limitations, the assembly and/or disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkept conditions, shall not be pursued or undertaken on any part of the Lot nor on or within any part of the Development property which unreasonably interferes with the Common Area. Patios visible from the common area must be maintained in an attractive manner. No storage is permitted therein.

**Section 12. Dangerous Use of Lots.**

No Lot or improvement situated therein shall be occupied or used for any purpose or in any manner which shall cause such improvement to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof.

**Section 13. Responsibility for Damage to the Common Area.**

Each Owner shall be legally liable to the Association for all damages to the Common Area or any area in which the Association has the maintenance obligation, including but not limited to the buildings, recreational facilities and landscaping caused by such Owner, his or her licensee(s) or any occupant of such Owner's Lot. In the event, after written request by the Board, the Owner fails to pay the Association for the damage caused by the Owner, his or her licensee(s) or any occupant of such Owner's Lot as such liability may be determined under California law, the Board, by majority vote, may specially assess the Owner in the same manner and with the same remedies as previously described in these Governing Documents.

**Section 14. Alterations of Residences.**

No Owner shall make or cause to be made structural alterations or modifications to his or her Residence which would have a material effect on another Lot without the prior written consent of the Architectural Committee as provided in Article VII herein.

**Section 15. Use of Common Area.**

Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

- (A) affording vehicular passage and pedestrian movement within the Development property, including access to the Lots;

(B) recreational use by the Owners and occupants of Residences in the Development and their guests, subject to rules established by the Board;

(C) beautification of the Common Area and providing privacy to the residents of the Development through landscaping and such other means as the Board shall deem appropriate;

(D) parking of vehicles in areas provided therefor as may be designated and approved by the Board, upon such terms and conditions as may from time to time be determined by the Board;

(E) no alteration to or modification of the existing radio and/or television antenna system shall be permitted and no Owner shall be permitted to construct and/or use and operate his or her own external radio and/or television antenna without the prior written approval by the Board.

(F) no part of the Common Area shall be obstructed so as to interfere with the use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses or for storage of maintenance equipment used exclusively to maintain the Common Area).

(G) no Owner shall make any alteration or improvement to the Common Area, or remove any plants, structure, furnishings or other object therefrom, except with the prior written consent of the Board. The building, construction or placing by any Owner, or by the Board, or by any other person or persons, of any structure, hedge, fence, shrubbery or any obstruction of any kind or character in such position as to encroach on any of such private roads or driveways as presently shown on said map, is prohibited. Each Owner shall be liable to the Association for all damage to the Common Area or to any improvements thereon or thereto, including, but not limited to, buildings, recreational facilities and landscaping, caused by such Owner or any guest or occupant of such Owner's Residence.

**Section 16.** [Art. XI, Sec. 8] **Window Covers.**

Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil or similar material. The Board shall have the power to make reasonable rules regarding window coverings which are visible from the exterior of the Residence.

**Section 17.** **Rules of Association.**

Each Owner and his or her lessee, licensees, residents, occupants or guests of a Residence shall comply with the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the

Association, which may be amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief, or for any other remedy permitted by law or permitted by the terms of this Declaration.

**Section 18. No Exterior Clotheslines.**

No exterior clotheslines shall be erected or maintained and there shall be no outside drying or laundering of clothes on the property or on the balcony or enclosed patio area of any Lot in a manner which is visible from any neighboring property or the Common Area.

**Section 19. Business Activities.**

No business or commercial activities of any kind whatsoever shall be conducted in any Residence, garage or out building on any portion of any Lot without the prior written approval of the Board, provided that the foregoing restrictions shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents.

**Section 20. [Art. XI, Sec. 8] Machinery and Equipment.**

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Properties.

**Section 21. Diseases and Pests.**

No Owner shall permit any thing or condition to exist on her or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

**Section 22. Children.**

Each Owner and resident shall be accountable to the remaining Owners and residents, their families, visitors, guests and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner or resident and, for any property damage caused by such children.

**Section 23. Activities Affecting Insurance.**

Nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or within the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Resident or any part of the Common Area.

**Section 24. No Temporary Structures.**

No recreational vehicle, trailer, mobilehome, camper, tent, shack, used structures, structures of a temporary character, or other out buildings shall be used on any Lot at any time as a residence.

**ARTICLE VII**

**ARCHITECTURAL CONTROL**

**Section 1. [Art. VIII, Sec. 2] Architectural Committee.**

The Board may appoint an Architectural Committee (the "Committee") which consists of at least three (3) members, none of whom shall be required to meet any particular qualifications, except that members appointed to the Committee by the Board shall be from the membership of the Association. The Board may act as the Committee.

**Section 2. Duties of the Committee.**

It shall be the duty of the Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to insure that any improvements constructed on the property conform to plans approved by the Committee, to adopt Architectural Rules, and to perform other duties imposed upon it by this Declaration.

**Section 3. [Art. VIII, Sec. 1] Architectural Committee Approval of Improvements.**

(A) Notwithstanding anything contained in this Declaration expressly or impliedly to the contrary, no building, fence, wall or other structure or improvement shall be constructed or maintained upon the Development, nor shall any exterior addition, change or alteration be made in, on or to the Development, or any part thereof, including without limitation patio covers, landscaping and all improvements referred to in Article VI, Section 15 of this Declaration, until the plans and specifications showing the nature, shape, dimensions, materials and location of the same shall have been submitted to and approved in writing as to the harmony of design and location in relation to surrounding improvements and topography by the Committee. The Committee shall recommend to the Board whether or not the prevention or removal of any unauthorized and unapproved constructions of Improvements should be undertaken. The Board, on behalf of the Association, may then exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of improvements on the Development property or any portion thereof.

(B) The Committee shall approve or disapprove plans submitted to it within thirty (30) days. In the event the Committee fails to approve the submitted plans within thirty (30) days, the applicant may send written notice, via certified mail, to

the Committee advising the Committee that the plans will be deemed approved if not disapproved thirty (30) days from the receipt of said certified letter.

(C) Once a work of improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications thereof and no subsequent alteration, relocation, addition or modification shall be made to the work of improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Architectural Committee, in its discretion, may order the Owner, his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

**Section 4. Meetings.**

The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the Committee Members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Committee shall not receive any compensation for services rendered.

**Section 5. Architectural Rules.**

The Committee may, from time to time, and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, Rules and Regulations, to be known as "Architectural Rules." The Architectural Rules shall interpret and implement this Declaration by setting forth the standards and procedures for Committee review and the guidelines for design and placement of improvements and/or alterations.

**Section 6. Variances.**

The Architectural Committee shall be entitled to allow reasonable variances with respect to this Article VII or any restrictions specified in Article VI in order to overcome practical difficulties, avoid unnecessary hardships, provided that the following conditions are met:

- (A) The Committee must make a good faith determination that:
1. the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein or that the proposal allows the objectives of the violated requirements to be substantially achieved despite noncompliance; or

2. the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or

3. the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Residence, Common Area or Owner within the Properties.

**Section 7. Waiver.**

The approval by the Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee 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.

**Section 8. Liability.**

Neither the Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; provided that with respect to the liability of a member, such member has acted in good faith on the basis of actual knowledge possessed by him or her.

**Section 9. Approval of Committee.**

There shall be no approval of plans and specifications by any single Committee Member. In the event a single Committee Member approves architectural plans and specifications, such approval should not be relied upon and shall not be deemed approval by the Architectural Committee.

**ARTICLE VIII**

**LEASING OF LOTS**

**Section 1. Liability for Assessments.** Upon written request by the Board, the tenant shall pay to the Association all unpaid annual and special assessments, but not to exceed the rental payments unpaid at the time of the Association's request. All such payments thus made shall reduce the tenant's obligation to Lessor by like amount. Payment of assessments shall be deemed necessary for maintenance of the habitability of the Residence.

**Section 2. Compliance with Declaration, Bylaws and Rules and Regulations.** Lessee and Lessee's guests, residents, and occupants shall abide by and comply with all provisions of the Declaration, Bylaws, and Rules and Regulations adopted, pursuant thereto, as

they may be amended from time to time, and the violation of same shall constitute a default under their lease. If a tenant or an occupant violates the Declaration, Bylaws, or a Rule or Regulation for which a fine is imposed, such fine shall be the joint responsibility of the Owner or tenant. Unpaid fines constitute an assessment and a lien against the Lot.

The Owners hereby delegate and assign to the Association, acting through the Board, the power and authority of enforcement against the tenant for breaches resulting from the violation of the Declaration, Bylaws and the Rules and Regulations adopted pursuant thereto, including the power and authority to evict the tenant on behalf of and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the tenant, any costs, including attorneys' fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner(s) thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner(s) thereof.

**Section 3. Use of Common Elements.** The Owner transfers and assigns to the tenant, for the term of the lease, any and all rights and privileges that the Owner has to use the common elements, including, but not limited to, the use of any and all recreational facilities and other amenities.

#### ARTICLE IX

[First Amendment; Art. III, Sec. 4]

#### PROHIBITION OF TIMESHARES

**Section 1. Timeshare Prohibition.** Timeshare projects, timeshare estates, timeshare programs and timeshare uses as defined pursuant to Section 11003.5 of the California Business and Professions Codes are prohibited and Timeshares and Timeshare Programs as defined in this section are prohibited.

..(A) For the purpose of this section, the term "Timeshare Program" shall include and not be limited to any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a Timeshare Interval is created and whereby the use, occupancy or possession of an Accommodation, Lot, Improvement, single-family dwelling, within such use, occupancy or possession circulates among purchasers of the Timeshare Interval according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess one (1) year in duration.

(B) For the purpose of this section, the term "Timeshare Use" means any contractual right of exclusive occupancy, whether

fixed for a specific time period or not, which does not fall within the definition of a "Timeshare Estate," including, without limitation, a vacation license, prepaid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

Section 2. Multiple Ownership Restrictions.

Ownership of a Lot or Residence as tenants in common, joint tenants or any other form of multiple ownership by more than three (3) persons or entities is prohibited.

ARTICLE X

ALTERNATIVE DISPUTE RESOLUTION

Section 1. Request for Resolution.

Prior to the filing of a civil action by either the Association or Owner, or a member of the Association solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in connection with a claim for monetary damages, other than Association assessments, not in excess of Five Thousand Dollars (\$5,000.00), related to the enforcement of the governing documents, the parties shall submit their dispute to a form of Alternative Dispute Resolution such as mediation or arbitration. The form of Alternative Dispute Resolution chosen may be binding or non-binding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to dispute a Request for Resolution.

Section 2. Failure to Comply.

Failure by any member of the Association to comply with the preceding requirements of this Article XI, and Civil Code Section 1354 shall result in the loss of a parties' rights to sue the Association or another member of the Association regarding enforcement of the governing documents. ANY REQUEST FOR RESOLUTION SENT TO AN OWNER PURSUANT TO THIS ARTICLE XI, SHALL INCLUDE A COPY OF THE LANGUAGE OF THIS SECTION 5.

ARTICLE XI

MAINTENANCE RESPONSIBILITIES

Section 1. Common Area.

The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement, or shall create any excavation or fill or change the natural existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation, or plant any tree, shrub, or other vegetation upon

the Common Area or the Recreational Area without express written approval of the Board or Architectural Committee.

The Association shall provide exterior maintenance of each residence located on a Lot which is subject to assessment, only as follows: Paint, maintain and repair and replace (if required because of normal wear and tear because of deterioration) roofs, gutters, downspouts, and exterior building surfaces, and maintain the front yard landscaping (including trees, shrubs, grass and walks, within the residential Lots. Such exterior maintenance shall not include: glass surfaces, air conditioning units, atriums, landscaping within the private patio areas of each residential Lot, patio covers (painting only) or other additions built or maintained within said private patio areas by an Owner, repairs or replacements arising out of or caused by the wilful or negligent act of the resident Owner, his family, guests or invitees, or caused by any of the perils covered by a standard form of fire insurance policy with extended coverage endorsement thereon, or caused by flood, earthquake, or other acts of God. Such excluded items shall be the responsibility of each Lot Owner; provided, however, that if a Lot Owner shall fail to maintain or make the repairs or replacements which are the responsibility of such Lot Owner, then upon vote of a majority of the Board and after not less than thirty (30) days notice to said Lot Owner, the Association shall have the right to provide such maintenance or make such repairs or replacements and the cost thereof shall be added to assessments chargeable to such Lot and shall be payable to the Association by the Lot Owner of such residence.

**Section 2. Owner Maintenance Responsibilities.**

Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot. Owners are also responsible for the maintenance of their atriums, atrium drains, and irrigation.

**Section 3. Failure of Owner to Carry Out Maintenance Responsibilities.**

In the event the Owner of a Lot fails to perform his or her maintenance responsibilities, the Board shall have the right, but not the obligation, through itself or its agents, to perform appropriate maintenance and/or repairs at the expense of the Owner. In such event, in addition to other penalties and disciplinary measures imposed by the Board, the Board may levy a Special Assessment against such Owner in the amount equal to all direct and indirect costs and expenses incurred by the Board in its performance of such maintenance and/or repairs. Any claim against the Board shall not constitute a defense or offset in any action of the Board for nonpayment of any amounts which may have been assessed hereunder.

**Section 4. Liability for Damage.**

Owners shall be responsible to the Association for repairs necessitated by the act(s) and/or negligence of the Owners, their

licensees, residents, tenants or guests. The owner shall be liable for any damage or additional maintenance costs incurred as a result of Owner's unauthorized construction, erection or repair of the Common Area or areas of which the Association has the maintenance responsibility.

At the discretion of the Board, damages incurred under this section may be a Special Assessment against the Owner's Lot.

**Section 5. Cooperative Maintenance Obligations.**

To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

**ARTICLE XII**

**PARTITION PROHIBITED**

Each of the Owners of a Lot is prohibited from participating or in any other way severing or separating such Ownership from any of the other Ownerships in the Common Area, except upon a showing that

(A) more than three (3) years before the filing of the action, the Development was damaged or destroyed so that a material part was rendered unfit for its prior use, and the Development has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or

(B) that three-fourths (3/4) or more of the Development has been destroyed or substantially damaged, and that Owners holding in aggregate more than fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Development, or

(C) that the Development has been in existence in the excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Development; provided, however, that if any Lot shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition by sale as between such co-tenants.

**ARTICLE XIII**

**POWER OF ATTORNEY**

The Association is hereby granted an irrevocable power of attorney to sell the Development for the benefit of all the Owners thereof when partition of the Owners's interest in said Development may be

had pursuant to Article XIII. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area by any three (3) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the San Diego County Recorder, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

#### ARTICLE XIV

##### AMENDMENTS

##### Section 1. [Art. XII, Sec. 5] General.

This Declaration may be amended at any time and from time to time by the vote or written consent of a majority of the total voting power of the Association. Any amendments shall be effective upon the recording thereof with the Office of the County Recorder of Riverside County, California.

#### ARTICLE XV

[Art. IX, Sec. 3]

##### DESTRUCTION OF IMPROVEMENTS

##### Section 1. Insurance Proceeds Sufficient.

In the event of damage to or the partial destruction of the improvements in the Development, and if the available proceeds of the insurance are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof, the damaged or destroyed improvements shall be promptly repaired and rebuilt unless, within ninety (90) days from the date of such damage or destruction, at a duly constituted meeting of the Association, Owners representing seventy-five percent (75%) of the total voting power of the Association determine that such repair and reconstruction shall not take place.

##### Section 2. Insurance Proceeds Insufficient.

If the available proceeds of such insurance are less than eighty-five percent (85%) of the cost of repair or reconstruction, such repair or reconstruction may nevertheless take place if, within ninety (90) days from the date of such damage or destruction, Owners representing a majority of the total voting power of the Association so elect at a duly constituted meeting of the Association. If the Board is unable to obtain sufficient participation at such meeting, the Board shall have the right to petition the Superior Court of Riverside County to allow it to rebuild without a majority approval of the Membership.

**Section 3. Assessments.**

If the Owners determine to rebuild, each Owner shall be obligated to contribute such funds as may be necessary to pay his or her proportionate share of the cost of construction, over and above the insurance proceeds, and the proportionate share of each Owner shall be the same as his or her proportionate share of regular and Special Assessments. In the event of the failure or refusal of any Owner to make his or her proportionate contribution, the Board may levy a special assessment against such Owner, and enforce such assessment as provided in Article V.

**Section 4. Failure to Rebuild.**

If a majority of the Owners do not agree to the repair or rebuilding of the Common Area, then each Owner (and his or her Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of his or her Lot as compared to the aggregate decrease in fair market values of all the Lots caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a qualified real estate appraiser selected by the Board and hired by and at the expense of the Association. Should a dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitrations.

**Section 5. Interior Repairs.**

Any reconstruction undertaken pursuant to the foregoing provisions shall cover only the exterior and structural components of the damaged or destroyed Lots, and such other damage to such Lots as may be covered by insurance maintained by the Association. If a destroyed Lot is so rebuilt, the Owner of such Lot shall be obligated to repair and rebuild the damaged portions of the interior of his or her Lot in a good and workmanlike manner at such Owner's expense.

**ARTICLE XVI**

**INSURANCE**

**Section 1. [Art. IX, Sec. 2(a)-(g)] Types of Insurance Coverage.**

The Association shall obtain and continue in effect the following:

- (A) Fire and Casualty Insurance. A policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area, and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost (excluding foundations and excavation, but without deduction for depreciation) as determined annually by

the insurance carrier, all Common Facilities and the personal property of the Association for or against the following:

1. Loss or damage by fire or other risks covered by the standard coverage endorsement;
2. Loss or damage from theft, vandalism or malicious mischief; and
3. Such other risks, perils or coverage as the Board of Directors may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities.

(B) General liability for full extended coverage, including, but not limited to, vandalism, malicious mischief, public liability with a cross-liability endorsement. The limits of such insurance shall not be less than \$3,000,000.00 for death or injury to any one person and \$3,000,000.00 for death or injury to more than one person in any one occurrence, and \$100,000.00 for property damage in any one occurrence or any amount greater as determined by the Board from time to time.

(C) A fidelity bond covering officers and employees, and employees of any manager or managing agent naming the Association as obligee and written in an amount not less than 25% of each year's estimated annual operating expenses and reserves and shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including officers and directors liability insurance, that it deems necessary or desirable.

(D) If necessary, Worker's Compensation coverage in and for amounts satisfactory to the Board, but without prejudice to the right of the Owner of a Lot to obtain individual insurance.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association. Each Owner shall be responsible for payment of any deductible amount for any loss to his or her Lot.

**Section 2. Owner's Liability Insurance.**

It is strongly recommended that each Owner maintain whatever personal liability and property damages liability insurance that he

or she desires with respect to the contents in his or her Lot and any other item that the Association is not obligated to maintain or repair. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any institutional First Mortgagee.

#### ARTICLE XVII

#### CONDEMNATION

If any portion of the Development is taken by condemnation, eminent domain or any proceeding in lieu thereof, then:

A. In the event of any taking of a Lot, the Owner (and his or her Mortgagees as their interest may appear) of the Lot shall be entitled to receive the award for such taking and after acceptance thereof such Owner and his or her Mortgagee shall be divested of all further interests in the Lot property if such Owner shall vacate his or her Lot as a result of such taking. In such event said Owner shall grant his or her interest in the Common Area, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

B. In the event of any taking of the Common Area, the Owners of the Common Area, and their Mortgagees, shall be entitled to receive the award for such taking in proportion to the interest of each in the Common Area; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Article XVI for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Article XVI for determining whether to rebuild or repair following damage or destruction.

#### ARTICLE XVIII

#### RIGHTS OF LENDERS

##### Section 1. Encumbrances.

Any Owner may voluntarily or involuntarily encumber his or her interest in his or her Lot with or by a real property mortgage, deed of trust, or other instrument of hypothecation.

**Section 2. Liability for Unpaid Assessments.**

Any First Lender (First Trust Deed Holder) who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for unpaid assessments or charges against the Lot which accrue prior to the acquisition of title to such Lot by the First Lender.

**Section 3. Subordination of Lien.**

Each and every lien created by or pursuant to this Declaration is and shall be subordinate, inferior and subject to the lien charge of any real property mortgage or deed of trust encumbering any interest in the Lots and given in good faith for value. In the event any lender shall acquire any title to any interest in the identified parcels or Lots thereof by judicial foreclosure, exercising the power of sale contained in any real property mortgage or deed of trust, or deed in lieu of foreclosure, and shall thereafter convey such interest in the parcel or lots thereof, any real property mortgage or deed of trust received by such lender as security for all or a portion of the purchase price of such interest in the lot thereof shall be incontrovertibly deemed "given for value."

**Section 4. Superiority of Liens.**

Notwithstanding the provisions of Section 3 above, any lien created by or pursuant to this Declaration, including liens securing payments of assessments, accruing prior to the sale as described in Section 3 above, and prorated over the period of such lender's holding of title to said interest in the parcel of lots thereof, shall be a lien superior to the lien of said real property mortgage or deed of trust received to secure a portion of said purchase price. All of such covenants, conditions, and restrictions set forth in this Declaration, shall be binding upon and effective against any Owner whose title is derived through foreclosure at a trustee sale.

**Section 5. Mortgage Protection.** The liens authorized to be created hereunder or by law upon a lot in the project, shall be subject and subordinate to and shall not affect the rights of the obligee of any indebtedness secured by any recorded first mortgage upon such lot made in good faith and for value, provided that after the foreclosure of any such mortgage, the Board shall have the authority to create, in the manner prescribed hereinabove, a lien on the interest of the purchaser at such foreclosure sale to secure all assessments levied hereunder for or payable during any period after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein in the case of other liens for unpaid assessments.

No amendment to any part of this Declaration shall affect the rights of the mortgagee of any such mortgage, recorded prior to the recordation of such amendment who does not join in the execution thereof.

The holder of the trust deed is entitled to written notification from the Association, thirty (30) days prior to the effective date of:

(a) Any change in this Declaration, Bylaws and/or Regulations.

(b) Any change of the manager of the planned residential project.

The holder of the trust deed is entitled to written notification from the Association of any default by the trustor of any lot in the performance of such trustor's obligation under this Declaration, Bylaws and/or regulations, which is not cured within thirty (30) days.

Any beneficiary under a deed of trust which comes into possession of the lot, pursuant to the remedies provided by law, the conditions of the trust deed, or by a deed-in-lieu of foreclosure, shall be exempt from any right of first refusal, or other restriction on the sale or rental of the lot involved, including, but not limited to, restrictions on the gage of the lot occupants and restrictions on the posting of signs pertaining to the sale or rental of such unit.

Any holder of the trust deed which comes into possession of the lot, pursuant to the remedies provided by law, the deed of trust, or deed-in-lieu of foreclosure, shall take the property, free of any claims for unpaid assessments, or charges against the subject lots, which accrue prior to the time such holder comes into possession of such lot (except for claims for a pro rata share of such assessments or charges to all lots, including the subject lot).

Unless all holders of first trust deed liens on individual lots have given their prior written approval, the Association shall not:

(a) Fail to employ a professional manager for the planned residential development project.

(b) Change the pro rata interest or obligation of any lot for purposes of levying assessments.

(c) Subdivide any lot into the project.

(d) By act or omission to act, seek to abandon the planned residential development status of the project, as provided by statute in the case of substantial loss to the common elements of the project.

No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall

defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale, or otherwise.

## ARTICLE XIX

### GENERAL PROVISIONS

#### Section 1. General Duties and Powers.

The Association shall have all those duties and powers set forth in the Articles and Bylaws of the Association or permitted pursuant to the provisions of the California Corporations Code for nonprofit mutual benefit corporations. All such duties and powers shall be subject to any specific limitations set forth in this Declaration, the Articles or Bylaws of the Association. All such duties and powers shall be exercised by the Board unless specifically reserved to the Members.

#### Section 2. Association Rules.

Pursuant to the authority of the Board described above, the Board shall have the power to adopt or repeal such Rules and Regulations as it deems reasonable. These Rules and Regulations may include the establishment of a system of fines and penalties enforceable by Special Assessment. A copy of such Rules and Regulations shall be distributed to the Members in the same manner established in the Bylaws for notice to Members of annual or special meetings. Upon completion of the above notice requirement the Rules and Regulations shall have the same force and effect as if they were set out in this Declaration.

#### Section 3. [Art. XII, Sec. 1] Enforcement.

The Association and any Owner shall have the right to enforce, by any proceeding at law or in equity, the provisions of this Declaration. Failure by the Association or any Owner to enforce any provision of this Declaration shall not be deemed a waiver of the right to do so thereafter.

#### Section 4. Litigation.

Notwithstanding the restrictions set forth in Article X herein, in the event the Association, or any Owner, shall commence litigation to enforce any of the Covenants, Conditions or Restrictions herein contained, the prevailing party in said action shall be entitled to actual attorneys' fees and costs reasonably incurred.

#### Section 5. Owners' Compliance.

Each Owner, lessee, licensee, guest, resident and occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws, the Rules and Regulations and decisions and resolutions of the Association or its duly authorized representative. Failure to comply with any such provisions, decisions or resolutions shall be

grounds for an action to recover sums due for damages and/or for injunctive relief.

**Section 6. Notices.**

Any notice to be given to an Owner or a Mortgagee under the provisions of this Declaration shall be in writing and may be delivered personally or by first class mail, postage prepaid to the latest recorded address in the business records of the Association.

**Section 7. [Art. XII, Sec. 3] Extension of Declaration.**

Each and all of these Covenants, Conditions and Restrictions shall terminate on December 31, 2045, after which date they shall automatically be extended for successive periods of ten (10) years unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2044, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2044, or at the end of such ten (10) year period.

**Section 8. Limitation of Liability.**

In discharging its duties and responsibilities, the Board acts on behalf of and as representative of the Association which acts on behalf of and as representative of the Owners of Lots. No member of the Board shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in good faith.

**Section 9. Liberal Interpretation of Declaration.**

The provisions of this Declarations shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Development for the mutual benefit of all Owners.

**Section 10. Cumulative Remedies.**

Each and all legal or equitable remedies provided for herein shall be deemed to be cumulative.

**Section 11. Indemnification.**

Every director and every officer past or present of the Association shall be indemnified by the Association against expenses and liabilities, including reasonable attorney's fees and cost incurred or imposed upon him or her in connection with any proceeding in which such director or officer may be a party, or in which such officer or director may become involved, by reason of his or her being, or having been, a director or an officer of the Association, or any settlement thereof, except in such cases wherein the director or officer is adjudged guilty of gross negligence or malfeasance in the performance of his or her duties. Indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

**Section 12. Violation of Law.**

Any violation of any state, municipal or local law, ordinance or regulation, pertaining to the ownership, occupation or use of the Development or any part thereof is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**Section 13. Owner Assessment Payments.**

Unless otherwise directed in writing by the Owners, assessment payments shall be applied as follows: Fines, Attorney's Fees, Late Charges, Interest, Special Assessments, Regular Assessments.

**Section 14. Partial Invalidity.**

The invalidity or partial invalidity of any provision of this Declaration shall not affect the validity or enforceability of any other provision.

**Section 15. Number; Gender.**

The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

**Section 16. Severability.**

Invalidation or reformation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstance(s) or any other provision(s) which shall remain in full force and effect.

**Section 17. Annexation.**

Upon the approval in writing of the Association, pursuant to a vote of a three-fourths (3/4) majority of the voting power of its Members, or the written assent of such Members, the Owner of such property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file or record a Declaration of Annexation.

**Section 18. Successors and Assigns.**

This Declaration shall be binding upon and shall inure to the benefit of all heirs, personal representatives, successors, assigns, personal representatives, grantees, lessees, licensees and renters of Owners.

**Section 19. Waiver or Breach of Declaration.**

No waiver or any breach of any covenants or conditions of this Declaration shall constitute a waiver on any succeeding or preceding breach of the same, or any other covenant or condition herein contained. Any breach of the covenants contained in this Declaration shall not affect or impair the lien or charge of any bonified mortgage or deed of trust made in good faith and for value on any lot; provided, however, that any subsequent Owner of a Lot

shall be bound by such covenant whether such Owner's title was acquired by foreclosure or in a trustee's sale or otherwise. A lender who acquired title by foreclosure or deed in lieu of foreclosure, shall not be obligated to cure any breach of the covenant which occurred prior to such acquisition of title, if such breach was or is non-curable or is a type of breach which is not practical or feasible to cure, as may be determined by the Board of Directors.

**Section 20. Joint and Several Liability.**

In the case of Joint Ownership of a Lot, the liability of each Owner and the Owners thereof in connection with the liabilities and obligations of the Owners, set forth in or imposed by this Declaration, shall be joint and several.

**Section 21. [Art. XII, Sec. 6] Encroachment Easements.**

The Owner of each Lot is hereby granted an easement over all adjoining Lots and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting, provided, however, that in no event shall an easement for encroachment be created in favor of any Owner if said encroachment occurred due to the willful misconduct of an Owner. In the event any portion of a structure on the property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Exclusive Use Areas or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

**Section 22. Conflicts.** If there are conflicts or inconsistencies between the provisions of California law, this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations, the provisions of California laws, the Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations (in that order) shall prevail.

I, the undersigned, declare:

1. I am the duly elected and acting President of INDIAN HILLS - PALM DESERT HOMEOWNERS' ASSOCIATION, INC., a California Nonprofit Mutual Benefit Corporation; and

2. The foregoing FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR INDIAN HILLS - PALM DESERT HOMEOWNERS' ASSOCIATION, INC. comprising forty-three (43) pages, constitutes the Declaration of Restrictions of the Association duly adopted by a vote of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of the Association.

IN WITNESS WHEREOF I hereunto subscribe my name and affix the seal of said corporation this 7<sup>th</sup> day of Nov., 1996.

Dean M. Mathwig  
President

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF RIVERSIDE )

On 11/7/96, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared DR. GEAN M. MATHWIG, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Carol E. Calhoun  
Notary Public for the  
State of California

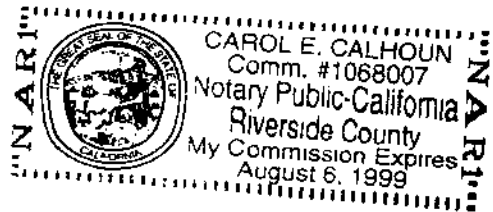


EXHIBIT A

Real property in the County of Riverside, State of California,  
described as:

Lots 1 through 121, inclusive, of Tract 5057, in the County of  
Riverside, State of California, as per Map recorded in Book 79,  
Pages 30 to 35 inclusive of Maps, in the Office of the County  
Recorder of Riverside County.