

**CC & R'S**

**IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER ESXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, GENETIC INFORMATION, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (p) OF SECTION 12955, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NO BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.**

Revised January 2014

RECORDING REQUESTED BY:

First American Title

**COPY** of Document Recorded  
 on **JAN 14 2004** as No. **0028020**  
 has not been compared with  
 original.  
**GARY L. ORSO**  
 County Recorder  
 RIVERSIDE COUNTY CALIFORNIA

AND WHEN RECORDED MAIL TO:

Miraleste Partners  
 C/O Kenneth Bernard  
 3991 MacArthur Blvd., Suite 350  
 Newport Beach, California 92660

Tel: (949)263-1511 Fax: (949)263-0229

M	S	U	PAGE	SIZE	DA	PCOR	NOCOR	SMF	MSC	
	1		51							
									TV	
A	R	L				COPY	LONG	REFUND	NCHG	EXAM

DECLARATION OF COVENANTS,  
 CONDITIONS, RESTRICTIONS AND  
 RESERVATION OF EASEMENTS

FOR

MIRALESTE TOWNHOMES - TRACT NO. 30925

(A Condominium Project)

159-  


DRE-2797

[C-Single Attached -02/05/02]  
 [This Set: 12/22/03]

Document Prepared By:

Timothy S. Murakami, Esq.  
 1990 So. Bundy Drive, Suite 540  
 Los Angeles, California 90025  
 Tel: (310)979-0325

THE INSTRUMENT IS RECORDED IN THE COUNTY OF  
 RIVERSIDE AT THE REQUEST OF FIRST AMERICAN TITLE  
 COMPANY AS AN ACCOMMODATION ONLY. IT HAS  
 NOT BEEN EXAMINED AS TO ITS EXECUTION OR AS TO  
 ITS EFFECT UPON THE TITLE.

## TABLE OF CONTENTS

<u>Article</u>	<u>Description</u>	<u>Page</u>
	DECLARATION AND RECITALS	R-1
I	DEFINITIONS	I-1
II	DIVISION, MAINTENANCE AND INSURANCE OF PROPERTY	II-1
	2.01 Units	II-1
	2.02 Common Area(s)	II-1
	2.03 Exclusive Use Common Area(s)	II-1
	2.04 Repair and Maintenance of the Property by Owner	II-1
	2.05 Repair and Maintenance of the Property by Association	II-3
	2.06 Association Insurance	II-3
	2.07 Owner Insurance	II-4
III	OWNERS GENERAL USE RESTRICTIONS	III-1
	3.01 Unit Use	III-1
	3.02 Common Area Use	III-1
	3.03 Nuisances	III-1
	3.04 Debris, Trash and Refuse	III-2
	3.05 Signs	III-2
	3.06 Use/Alteration Affecting Insurance Rates	III-2
	3.07 Parking / Vehicle Code Regulations	III-2
	3.08 Animal Regulations	III-2
	3.09 Exterior Apparatus Regulations	III-3
IV	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS	IV-1
	4.01 Membership	IV-1
	4.02 Membership Classes	IV-1
	4.03 Voting Rights	IV-1
	4.04 Transfer of Membership	IV-2
V	DUTIES AND POWERS OF THE ASSOCIATION	V-1
	5.01 Commencement of Duties	V-1
	5.02 Specific Association Duties and Powers	V-1
	5.03 Board Powers and Limitations	V-1
	5.04 Budget, Financial Statements and Governing Documents	V-3
	5.05 Penalties for Non-Compliance	V-4
	5.06 Right of Entry	V-5

<u>Article</u>	<u>Description</u>	<u>Page</u>
<b>VI</b>	<b>COVENANT FOR ASSESSMENT</b>	<b>VI-1</b>
6.01	Assessments	VI-1
6.02	Commencement; Due Dates of Assessments	VI-1
6.03	Assessment Rate	VI-1
6.04	Assessment Duties of the Board of Directors	VI-1
6.05	Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association	VI-1
6.06	Nonuse and Abandonment	VI-3
6.07	Waiver of Exemptions	VI-3
<b>VII</b>	<b>ARCHITECTURAL CONTROL</b>	<b>VII-1</b>
7.01	Approval by the Committee	VII-1
7.02	Certain Procedures for the Committee	VII-2
7.03	Review Standards	VII-2
7.04	Appeal	VII-2
7.05	Architectural Committee Hearings	VII-2
<b>VIII</b>	<b>MORTGAGEE PROTECTION</b>	<b>VIII-1</b>
8.01	Subordination of Lien and Foreclosure	VIII-1
8.02	Mortgagees Are Not Required to Cure Certain Breaches	VIII-1
8.03	Effect of Breach of Declaration	VIII-1
8.04	Exemption from Right of First Refusal	VIII-1
8.05	Restrictions on Certain Changes	VIII-2
8.06	Inspection of Association Books and Records	VIII-3
8.07	Condemnation Awards and Insurance Proceeds	VIII-3
8.08	Mortgagee's Right to Attend Meetings	VIII-3
8.09	Payments by Mortgagees	VIII-3
8.10	Loss Payable Endorsement	VIII-3
8.11	Notices to Mortgagees	VIII-4
<b>IX</b>	<b>DESTRUCTION OF IMPROVEMENTS</b>	<b>IX-1</b>
9.01	Restoration of the Property	IX-1
9.02	Sale of Property and Right to Partition	IX-1
9.03	Notice to Owners and Listed Mortgagees	IX-1
<b>X</b>	<b>CONDEMNATION</b>	<b>X-1</b>
10.01	Representation by Board in Condemnation Proceeding	X-1
10.02	Distribution of Award	X-1
<b>XI</b>	<b>COVENANT AGAINST PARTITION AND RESTRICTION ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST</b>	<b>XI-1</b>
11.01	No Partition; Exceptions; Power of Attorney	XI-1
11.02	Proceeds of Partition Sale	XI-1
11.03	No Separate Conveyance of Condominium Components	XI-1

<u>Article</u>	<u>Description</u>	<u>Page</u>
<b>XII</b>	<b>EASEMENTS</b>	<b>XII-1</b>
	12.01 Certain Rights and Easements Reserved to Declarant	XII-1
	12.02 Certain Easements for Owners	XII-1
	12.03 Certain Easements for Association	XII-1
	12.04 Encroachment	XII-1
	12.05 Creation of Easements	XII-2
	12.06 Utility Easements Granted by the Association	XII-2
<b>XIII</b>	<b>SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF DECLARANT'S OBLIGATION TO COMPLETE COMMON AREA IMPROVEMENTS</b>	<b>XIII-1</b>
	13.01 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements	XIII-1
<b>XIV</b>	<b>AMENDMENT</b>	<b>XIV-1</b>
	14.01 Amendment	XIV-1
<b>XV</b>	<b>DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE (DECLARANT'S DISPUTES); WAIVERS</b>	<b>XV-1</b>
	15.01 Enforcement and Nonwaiver	XV-1
	15.02 Notice of Actions Against Declarant	XV-1
	15.03 Alternative Dispute Resolution	XV-1
<b>XVI</b>	<b>PROVISIONS BENEFITTING THE CITY</b>	<b>XVI-1</b>
	16.01 Compliance With Law	XVI-1
	16.02 Enforcement by the City	XVI-1
	16.03 Other Rights of City	XVI-2
	16.04 No City Liability	XVI-2
	16.05 Amendment	XVI-2
	16.06 Covenants Running with the Land	XVI-3
	16.07 Agreement Between Declarant and City	XVI-3
	16.08 Notices	XVI-3
	16.09 Miscellaneous	XVI-3
<b>XVII</b>	<b>MISCELLANEOUS PROVISIONS</b>	<b>XVII-1</b>
	17.01 Disclosures	XVII-1
	17.02 Term of Declaration	XVII-1
	17.03 Notices	XVII-1
	17.04 Partial Invalidity	XVII-1
	17.05 Number	XVII-2
	17.06 Attorneys' Fees	XVII-2

**EXECUTION PAGE**

**SUBORDINATION BY LIENHOLDER**

**EXHIBIT A - PROPERTY**

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RESERVATION OF EASEMENTS FOR  
MIRALESTE TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS ("Declaration") is dated this 22nd day of October, 2003 (for reference purposes), by MIRALESTE PARTNERS, a joint venture ("Declarant").

**RECITALS**

- A. Declarant is the owner in fee of that certain real property ("Property") in the City of Palm Springs, County of Riverside, State of California, legally described in attached Exhibit "A".
- B. Declarant intends to develop the Property into a Condominium project ("Project") under the provisions of California Civil Code Section 1351(f).
- C. Declarant desires to impose a general plan for the development, maintenance, improvement, protection use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.
- D. For purposes of this Declaration, "City" or "City of Palm Springs" shall mean either the City of Palm Springs or the Community Redevelopment Agency of the City of Palm Springs.
- E. The City has fee or easement interests in various streets, sidewalks and other property within the City and the City is responsible for the planning and development of land within the City in such a manner as to provide for the health, safety and welfare of the residents of the City.
- F. Declarant and the City intend that, in exchange for the granting by the City of approval for the improvements on the Property ("Governmental Approval"), Declarant shall hold, sell and convey the Property subject to the covenants, conditions, restrictions and reservations set forth in this Declaration and that the City shall have the right and power to enforce the covenants, conditions, restrictions and reservations to the extent provided herein.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property and division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes in accordance with Civil Code Section 1354 and shall be binding upon Declarant and its successors and assignees, and all parties having or acquiring any right, title or interest in or to any part of the Property.

## ARTICLE I

### DEFINITIONS

The following definitions apply unless otherwise required by the context:

**"Approval"** - Prior written approval.

**"Articles"** - The Articles of Incorporation of the Association, including any amendments.

**"Assessments"** - All types of Association charges and Assessments levied against the Owners. The three (3) types of Assessments are Regular, Special, and Compliance Assessments.

**"Association"** - Miraleste Townhomes, Inc., a California nonprofit mutual benefit corporation formed (or to be formed) to govern the Project. The term includes its agents, the Board or any committee as applicable.

**"Beneficiary"** - The lender on the security of a Promissory Note and Deed of Trust.

**"Board"** or **"Board of Directors"** - The Board of Directors of the Association.

**"Bylaws"** - The Bylaws of the Association, including any amendments.

**"Code Section"** - Refers to Codes of the State of California (e.g. "Civil Code", "Vehicle Code"). Reference to any specific Code Section shall include any future successor Code Sections.

**"Common Area(s)"** - The entire Property (including structures, land and improvements) other than the Units described in this Declaration and the Condominium Plan.

**"Common Expenses"** - The actual and estimated expenses of the Association in performing its duties as set forth in the Governing Documents.

**"Compliance Assessment"** - An Assessment imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

**"Condominium"** - An estate in real property (defined in Sections 783 and 1351(f) of the California Civil Code) consisting of both:

- (a) A separate interest in space called a "Unit"; and
- (b) An undivided interest in the Common Area.

**"Condominium Plan"** - The recorded diagrammatic drawings of the Units built or to be built on the Property which identifies each Unit and shows its dimensions pursuant to California Civil Code Section 1351(e).

**"Declarant"** - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein, including any Mortgagees acquiring Declarant's interest in the Project by foreclosure or deed in lieu of foreclosure.

**"Declaration"** - This instrument and any amendments.

**"Deed of Trust"** - A three party security instrument conveying title to land as security for the repayment of a loan. Also called "Trust Deed". Reference to Deed of Trust includes a mortgage.

**"DRE"** - The California Department of Real Estate and any successors thereto.



"Eligible First Mortgagees" - Holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents and other Association matters.

"Exclusive Use Common Area" - Those portions of the Common Area designated by the Declaration, and/or Condominium Plan or by law for the exclusive or restricted use of the Owners of particular designated Units.

"FHA" - The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

"FHLMC" - The Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

"First Mortgage" or "First Mortgagee" - A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Condominium or any other portion of the Project, including a First Mortgagee's blanket Mortgage recorded prior to the recording of this Declaration.

"First Sale" - The date on which the first deed is recorded conveying fee title to a Condominium to the first Owner pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the Department of Real Estate.

"FNMA" - The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

"Governing Documents" - All documents governing the Property, including this Declaration, the Articles, Bylaws, Condominium Plan and any Rules and Regulations.

"Grant Deed" - A written instrument transferring title to real property.

"Institutional Mortgagee" - Any bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution holding a recorded First Mortgage on any Condominium.

"Manager" or "Managing Agent" - The person(s), firm or corporation contractually engaged by the Association or Declarant and charged with the management of the Common Area(s) and the performance of other duties of the Association as provided for in this Declaration.

"Member" - Any person who is an Owner based upon the provisions of the Governing Documents.

"Mortgage" - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

"Mortgagee" - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust including a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

"Mortgagor" - The party executing a Mortgage. Reference to Mortgagor includes the Trustor under the Deed of Trust.

"Notice and a Hearing" - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

"Occupant" - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Unit.

**"Owner" or "Owners"** - The person(s) or legal entity holding a recorded fee simple interest in a Condominium (including the Declarant), or the purchaser(s) of a Condominium under an installment land sales contract. "Owner" does not include any person or entity having an interest in a Condominium merely as security for the performance of an obligation.

**"Person"** - A person, partnership, corporation, trustee or other legal entity.

**"Project" or "Property"** - The real property described in Paragraph "A" of the Recitals to this Declaration. The Project is a "Condominium Project" as defined in Section 1351(f) of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 1351(c) of the California Civil Code.

**"Quorum"** - Members entitled to vote (in person or by proxy) holding a majority of the total voting power of the Association constitute specifically, a quorum for business transactions at all Member meetings (except as otherwise specifically provided in this Declaration or the Bylaws of the Association).

**"Regular Assessments"** - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

**"Rules and Regulations"** - The rules as established and adopted from time to time by the Board as provided for in this Declaration.

**"Special Assessments"** - Assessments levied on an as-needed basis to meet expenses of an extraordinary or capital nature.

**"Total Voting Power"** - One hundred percent (100%) of the votes by Owners which may potentially be cast. (Even if any Owner's voting rights have been suspended, the number of votes constituting the Total Voting Power would include any suspended vote(s).)

**"Trustor"** - The borrower from a Trust Deed lender, who deeds real property securing the loan to a Trustee to be held as security for the loan.

**"Unit"** - The elements of a Condominium not owned in common with other Owners as defined in California Civil Code Section 1351(f). Each Unit is designated as a Unit in the Condominium Plan for the Property and is separately identified.

**"VA"** - The Department of Veterans Affairs of the United States and any department or agency of the federal government which succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

## ARTICLE II

### DIVISION, MAINTENANCE AND INSURANCE OF PROPERTY

Ownership of each Condominium shall include a Unit, an undivided interest in the Common Area (or a portion of it), membership in the Association, and any Exclusive Use Common Area(s) appurtenant to such Unit.

#### 2.01 Units.

Each Unit consists of all elements and areas identified as such on the Condominium Plan.

#### 2.02 Common Area(s).

- (a) The Property not constituting the Units is the Common Area.
- (b) Each Owner of a Condominium in the Property will receive the following undivided interest in the Common Area in the Property: one/fourteenth (1/14).

#### 2.03 Exclusive Use Common Area(s).

- (a) As set forth in Civil Code Section 1351(i), "Exclusive Use Common Area(s)" are portions of the Common Area(s) for the exclusive use of the Owner(s) of the Unit to which the Exclusive Use Common Area is appurtenant.
- (b) As set forth in Civil Code Section 1351(i)(2), internal and external telephone wiring designed to serve a particular Unit, but located outside the boundaries of the Unit, are Exclusive Use Common Areas allocated exclusively to that Unit, whether or not they are designated and shown as such on the Condominium Plan.
- (c) Use of the Exclusive Use Common Area(s) are subject to reasonable restrictions contained in any Governing Documents.
- (d) Portions of the Common Area(s) designed to serve a particular Unit but located outside the boundaries of the Unit, are Exclusive Use Common Areas as set forth in Civil Code Section 1351(i)(1), if not shown and designated as such on the Condominium Plan.
- (e) As shown and designated on the Condominium Plan, Declarant hereby reserves and will convey the following Exclusive Use Common Areas for the exclusive use of the appurtenant Unit: decks and patios.

#### 2.04 Repair and Maintenance of the Property by Owner.

- (a) In accordance with the Governing Documents, each Owner must maintain and repair all of the following, except as otherwise specifically stated herein:
  - (1) All of the Owner's Unit (see the Condominium Plan for a detailed description) in a clean, sanitary and attractive condition, including the following within the Unit's boundaries:
    - (A) Utility fixtures and equipment;
    - (B) Plumbing fixtures and pipes; and
    - (C) Electrical fixtures.

- (2) The Unit's Exclusive Use Common Area(s), as shown and designated on the Condominium Plan, if any, in a clean, sanitary and attractive condition;
  - (3) The following, whether located within or outside the Unit, that solely and exclusively serves the Unit:
    - (A) Air conditioning and heating equipment; and
    - (B) Hot water heaters.
  - (4) Windows, exterior doors and related hardware, exterior door frames, balcony doors, and patio doors; and
  - (5) Any damage to any real or personal property in the Project caused by the negligence of an Owner or an Owner's Occupants or invitees, even if the damage is to an area otherwise maintained by the Association or another Owner. All the repairs shall be subject to prior approval of the Board.
- (b) Except as otherwise provided herein, each Owner has the exclusive right to paint, wallpaper or otherwise furnish and decorate the interior surfaces of the walls, partitions, ceilings, and doors within the Unit (including furniture and furnishings), without prior approval of the Board.
- (c) An Owner shall notify the Association of any substantial improvements to the Unit and Exclusive Use Common Area(s), if any, in consideration of any effect of such improvements on the Association's insurance policy.
- (d) Any change to the exterior appearance of a Unit must be approved by the Architectural Committee in accordance with the Governing Documents and applicable laws.
- (e) Subject to this Declaration, California Civil Code Section 1360, and obtaining the necessary approvals and permits from the City and any other governmental entity, an Owner may do the following:
- (1) Make any improvement or alteration within the Unit and its Exclusive Use Common Area (if any) that does not impair the structural integrity or mechanical systems, or lessen the support of any portion of the Property.
  - (2) Modify a Unit and its Exclusive Use Common Area (if any) to eliminate hazards and facilitate access for disabled persons (including the route from the public way to the Unit door) subject to the following conditions:
    - (A) The modifications must be consistent with applicable building code requirements.
    - (B) The modifications must be consistent with applicable provisions of the Governing Documents regarding safety and aesthetics.
    - (C) External modifications to the Unit or its Exclusive Use Common Area may not prevent reasonable passage by other Owners, and must be removed by the Owner when the Unit is no longer occupied by the person(s) requiring the modifications.
    - (D) Plans and specifications must be submitted to the Board for review to determine compliance with the provisions of this paragraph.
    - (E) The Board may not deny approval of the proposed modifications without good cause.

2.05 Repair and Maintenance of the Property by Association.

Except as otherwise specifically stated, the Association (not individual Owners) is responsible for maintaining in a first class condition, free from waste and debris, and in accordance with all applicable law, rules, ordinances and regulations of all federal, state and local bodies and agencies having jurisdiction, repairing, modifying, and altering Common Areas (not including Exclusive Use Common Areas), including bearing walls (except for the finished surfaces thereof), plumbing and pipes in Common Area walls, roofs, sidewalks, landscape, irrigation, lighting, signs, fences between the curb and property line, window frames, balcony door frames, patio door frames, finished surfaces and structural components of balconies, balcony railings, patios, storage spaces, and parking areas in common garages.

2.06 Association Insurance.

- (a) The Board shall obtain and maintain the following specified (or equivalent) insurance coverages, provided it is reasonably prudent to do so:
- (1) Fire insurance for one hundred percent (100%) of the full insurable value of all improvements in the Common Area(s), with a guarantee that the improvements are replaced without deduction for depreciation or coinsurance naming as insured the Owners, their Mortgagees, and/or the Association.
  - (2) Extended coverage for replacement costs of damage to the Common Area(s) that arises out of vandalism or malicious mischief.
  - (3) Comprehensive general liability insurance in a reasonably prudent amount that covers the Association, Board, Managing Agent, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area(s) against physical injury, death and property damage arising out of a single occurrence. The Board should consider maintaining insurance in the amount specified by Civil Code Sections 1365.7 and 1365.9 and the notification requirements of Section 1365.9.
  - (4) If available, an extended coverage endorsement clause known as "special form".
  - (5) Each hazard insurance policy must be written by a carrier who meets FNMA requirements for a "Best Rating".
  - (6) At the option of the Board, a fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months aggregate Assessments on all Condominiums and reserve funds) that could be affected by the dishonest act of any Member of the Association or Board, managing agent, employee, or Occupant, who handles funds for the Owners' benefit.
  - (7) Workers' compensation insurance, in compliance with all applicable laws (if there are any employees or any workers hired to work in the Common Areas).
  - (8) If contractors are utilized, the Association should require evidence of Workers Compensation insurance and a certificate of insurance verifying Comprehensive General Liability insurance in a minimum amount of \$1,000,000.00, naming the Association as additional insured. The contractor's policy shall have a minimum 30 day notice of cancellation provision.
- (b) Association insurance policies must contain the following provisions, ("Special Condominium Endorsements") as appropriate and if available:
- (1) Inflation Guard Endorsement, if obtainable at a reasonable cost; and

- (2) Standard Mortgage clause and name Mortgagee, holder of First Mortgage, FNMA or servicers (if applicable), or Mortgagees under any first Deeds of Trust, as their interests may appear.
- (c) All fire insurance proceeds payable for losses to real property and improvements, and all casualty insurance proceeds, may be paid to a Trustee, to be held and expended for the benefit of the Owners, the Association, Mortgagees, and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other financial institution with trust powers in the County in which the Project is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association shall have the duty to contract for such work as provided for in this Declaration.
- (d) The Board shall consider including in the Association policy, coverage for flood insurance available under the appropriate programs for the National Flood Insurance Agency, or any other such agency.
- (e) The Board shall consider including in the Association policy coverage for earthquake insurance.
- (f) Insurance and fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice, and to First Mortgagee.
- (g) At least annually, the Board must review the Association's insurance policies.
- (h) If economically feasible, prior to each annual review the Board shall obtain a current appraisal of the full replacement value of improvements on the Property, including foundations and footings, without deduction for depreciation.

2.07 Owner Insurance.

- (a) It is each Owner's responsibility, if desired, to obtain insurance for the following:
  - (1) Insurance for the personal property or potential liability occurring within a Unit;
  - (2) Loss assessment coverage for certain future Special Assessments; and
  - (3) Any other available insurance.
- (b) An Owner shall consider including in the policy coverage for earthquake insurance.

## ARTICLE III

### OWNERS GENERAL USE RESTRICTIONS

#### 3.01 Unit Use.

- (a) Each Unit shall be used solely as a private residential dwelling and for no other purpose.
- (b) An Owner may rent a Unit for residential purposes provided:
  - (1) There is a written agreement;
  - (2) The lease states it is subject to all the provisions of the Governing Documents;
  - (3) Owners must give the Board the names and telephone numbers of all Occupants, tenants, and their roommates; and
  - (4) The Association and each Owner shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.
- (c) Subject to Declarant's rights pursuant to the Article entitled "*Easements*" herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Unit, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Unit.

#### 3.02 Common Area Use.

- (a) Common Area(s) and Exclusive Use Common Area(s), if any, may only be used for purposes which are compatible with usages customarily associated with common areas located within residential developments in California, and subject to the limitations described in this Declaration and other Governing Documents.
- (b) Any Owner may delegate his/her rights of use and enjoyment of any Common Area facilities to the members of his/her immediate family, and guests and invitees. If an Owner has rented or leased his/her Condominium, such rights shall be automatically delegated to the tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any such facilities for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his/her rights to use and enjoy any such facilities to the purchaser under the contract.

#### 3.03 Nuisances.

- (a) Illegal, offensive, obnoxious actions, or noxious odors that interfere with any Occupant's quiet enjoyment are not permitted anywhere on the Property.
- (b) An Occupant may not cause the level of noise or sound from the Unit to interfere with the quiet enjoyment of an Occupant of another Unit (i.e., loud music or television, shouting, slamming of doors, and other such actions.)
- (c) The Board shall have the right to determine if any unreasonable action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation.

**3.04 Debris, Trash and Refuse.**

Weeds, rubbish, debris, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Unit or the Common Area(s).

**3.05 Signs.**

- (a) For up to five (5) years from the First Sale in the Project, Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property, as long as the activities do not unreasonably interfere with any Owner's use of the Property.
- (b) Subject to Civil Code Sections 712 and 713, and any local ordinance, an Owner may advertise a Condominium for sale or lease with sign(s) with a size, format, and location previously approved by the Board.
- (c) No other sign, poster, display, or advertising device may be displayed anywhere on the Property visible outside a Unit without the prior written consent of the Board.

**3.06 Use/Alteration Affecting Insurance Rates.**

- (a) Acts that threaten cancellation or an increase of insurance rates for the Property may not be committed without Board approval.
- (b) If a particular Owner's use or activity is the cause of increased insurance rates, the responsible Owner is personally liable for the additional insurance premiums.

**3.07 Parking / Vehicle Code Regulations.**

All applicable provisions of the California Vehicle Code Section 22658.2 (regarding illegally parked cars) shall be enforced.

**3.08 Animal Regulations.**

- (a) A maximum of two (2) domesticated cats and/or dogs may be kept in a Unit, unless a greater number is authorized by the Board and provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times, subject to compliance with subsections (c) through (g) of this Section.
- (b) In addition, small domesticated animals (e.g., birds, hamsters, fish, turtles) may be kept in a contained environment (cage or aquarium), provided they are not kept, bred or raised for commercial purposes, and subject to the following sub-paragraphs of this Section.
- (c) Animals that bother or annoy other Owners or residents (e.g., excessively barking dogs, chirping birds, or noisy aquarium filters) may not be kept on the Property or in a Unit.
- (d) An animal may only enter the Common Area(s) while on a leash which is held by a person capable of controlling it.
- (e) Owners must prevent their pets from soiling the Common Area(s), and are solely responsible for any required clean-up.
- (f) The Board shall determine whether specific pets are a nuisance and should be removed from any Unit.



- (g) Each Owner of a pet shall defend, indemnify and hold harmless all other Owners, the management company, the Association and the Board of Directors from any and all losses, costs, and liability arising from having any pet on the Property:

3.09 Exterior Apparatus Regulations.

Subject to California Code Section 1376 and any applicable decisions of the Federal Communication Commission, electrical or telephone wiring, antennae, satellite dishes (or any other electronic receiving or broadcasting device), etc., are not permitted unless authorized by the Board.

## ARTICLE IV

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

#### 4.01 Membership.

Every Owner is automatically an Association member.

#### 4.02 Membership Classes.

(a) The Association has two (2) classes of voting membership:

- (1) Class A Members - All Owners (other than Declarant).
- (2) Class B Member - Declarant, entitled to three (3) votes for each Condominium owned by Declarant.

(b) Class B Membership irreversibly ceases and converts to Class A Membership on the first to occur of the following:

- (1) The total outstanding votes held by Class A Membership equals the total outstanding votes held by Class B Membership (tripled); or
- (2) Two (2) years after the First Sale of a Condominium in the Project.

#### 4.03 Voting Rights and Requirements.

(a) Voting rights shall commence for each Condominium within the Project when Assessments against the Condominium have been levied by the Association.

- (1) Each Co-Owner has an indivisible interest in a single Membership.
- (2) If Co-Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.
- (3) If a Co-Owner casts a vote representing a certain Condominium, it will be presumed for all purposes to be a vote with the authority and consent of all other Co-Owners of the Condominium.

(b) After Notice and Hearing as provided herein, the Board has the right to suspend the voting rights of any Owner delinquent more than forty-five (45) days in the payment of Assessments.

(c) Unless otherwise specifically required, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (and after conversion, approval of Class A only).

(d) If Membership approval of a specified prescribed majority (e.g. 67%) of the voting power (other than Declarant) is required, the following rules apply:

- (1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or
- (2) After conversion to all Class A memberships, the required vote is a bare majority of the Total Voting Power of the Association, and the prescribed majority of the Total Voting Power of Members other than Declarant.

- (e) With the exception of the provisions of the Article herein entitled "*Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements*", no provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Condominiums which Declarant owns.

4.04 Transfer of Membership.

- (a) Membership of each Owner shall be appurtenant to the Condominium owned, and may only be (and is automatically) transferred upon conveyance of title to a Condominium to the new Owner.
- (b) In connection with any transfer or change of ownership of any Condominium, the Association and each Owner must comply with Civil Code Section 1368.

## ARTICLE V

### DUTIES AND POWERS OF THE ASSOCIATION

#### 5.01 Commencement of Duties.

The Association's responsibility for the management, maintenance and administration of the Property in accordance with the Governing Documents commences upon First Sale of a Condominium.

#### 5.02 Specific Association Duties and Powers.

The duties and powers of the Association are those set forth in the Governing Documents, together with its general and implied powers as a nonprofit mutual benefit corporation, generally to do all things which are necessary or proper for the peace, health, comfort, safety and general welfare of its Owners, including the following:

- (a) Enforce the applicable provisions of the Governing Documents and other instruments for the ownership, management and control of the Project.
- (b) Contract for goods and/or services for the Common Areas (not including Exclusive Use Common Areas), facilities, and interests, or for the Association subject to the limitations set forth below.
- (c) Borrow money with the assent of sixty-seven percent (67%) of the voting power and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.
- (d) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.
- (e) Have the authority, through the Board, to enter into a maintenance agreement, as approved by DRE, with Declarant for temporary suspension of a portion of Regular Assessments.

#### 5.03 Board Powers and Limitations.

The powers and duties of the Board shall normally include, but shall not be limited to, the following:

- (a) Enforcement of applicable provisions of the Covenants, Conditions and Restrictions, Articles, Bylaws and other instruments for the ownership, management and control of the Project.
- (b) Contracting for casualty, liability and other insurance on behalf of the Association.
- (c) Delegating its powers to committees, officers or employees of the Association as expressly authorized by the Governing Documents.
- (d) Preparation of budgets and financial statements for the Association as prescribed in the Governing Documents.
- (e) Formulation of rules of operation of the common areas and facilities owned or controlled by the Association.
- (f) Election of officers of the Board of Directors.
- (g) Filling of vacancies on the Board of Directors, except for vacancies created by removal of a director.

(h) The Board is authorized to:

- (1) Adopt and enforce reasonable Rules and Regulations not inconsistent with the Governing Documents concerning the Property;
- (2) Pay taxes and assessments which are, or could become, a lien on the Common Area or a portion thereof;
- (3) Contract for goods and/or services for the Common Area(s) and facilities for the Association subject to the limitations set forth below;
- (4) Delegate its powers to committees, officers or employees of the Association or outside companies or persons hired by the Association as expressly authorized by the Governing Documents;
- (5) Formulate rules of operation of the Common Area(s) and facilities owned or controlled by the Association;
- (6) Commence disciplinary proceedings against members of the Association for violations of provisions of the Governing Documents in accordance with procedures set forth in the governing instruments; and
- (7) Enter upon any privately owned Unit after providing written notice to the Owner as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Area(s) or the Owners in common.

(i) The Board is authorized to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:

- (1) Enforcement of the Governing Documents;
- (2) Damage to the Common Area(s);
- (3) Damage to the separate interests which the Association is obligated to maintain or repair; or
- (4) Damage to the separate interests which arises out of, or is integrally related to, damage to the Common Area(s) or separate interests that the Association is obligated to maintain or repair.

(j) The Board may not ordinarily take any of the following actions unless approved by a majority of Members (other than Declarant) constituting a quorum, at a meeting or by written ballot without a meeting, pursuant to Corporations Code Section 7513:

- (1) Enter into a contract for a term longer than one (1) year with a third person who furnishes goods or services for the Common Area(s) or the Association, with the following exceptions:
  - (A) A management contract with terms approved by the FHA or VA;
  - (B) A contract with a public utility company if the Public Utilities Commission regulates rates charged for materials or services, provided that the contract term does not exceed the shortest term for which the supplier will contract at the regulated rate;
  - (C) Prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration, provided that the policy permits short-rate cancellation by the insured;
  - (D) Lease agreements for laundry room fixtures and equipment not to exceed five (5) years duration, provided that Declarant's ownership interest in the lessor under the agreement does not exceed ten percent (10%);

- (E) Agreements for satellite dishes or cable television services and equipment, not to exceed five (5) years duration, provided that the Declarant's ownership interest in the entity does not exceed ten percent (10%);
  - (F) Agreements for sale, lease, installation or services of burglar and fire alarm equipment, not to exceed five (5) years duration, provided that Declarant's ownership interest in any entity involved does not exceed ten percent (10%); and
  - (G) A management contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.
- (2) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
  - (3) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
  - (4) Pay compensation to Members of the Board or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a Member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.
  - (5) Except with the vote or written assent of the Members holding more than two-thirds (2/3) of the voting rights of each class of Members, if two classes exist, or, if only one class exists, more than two-thirds (2/3) of the voting rights of all Members and more than two-thirds of the voting rights of all Members other than Declarant, the Board shall not initiate any claim under California Civil Code Section 895, et seq., and Declarant, and its representatives on the Board, shall have no control over the issue to decide whether to initiate a claim under such statutory provisions.

**5.04 Budget, Financial Statements and Governing Documents.**

- (a) The Board of Directors of the Association must comply with all current requirements of California Civil Code Sections 1365 and 1365.5 or successor statutes pertaining to financial records, Governing Documents, etc.
- (b) In addition to the requirements of California Civil Code Sections 1365 and 1365.5, the Association shall make the following documents available for inspection and copying by a Member or the Member's duly appointed representative at the office of the Association upon request during normal business hours or under other reasonable circumstances:
  - (1) Current copies of all Governing Documents, books, records, and financial statements of the Association for lenders, holders, insurers and guarantors of a First Mortgage on any Condominium; and
  - (2) Copies of relevant California Code Sections referenced in any Governing Documents.
- (c) Owners shall annually be provided a summary of the provisions of California Civil Code Section 1354, which must include the following language: "Failure by any member of the association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the Governing Documents." This summary shall be provided either at the time that a pro forma budget required by Section 1365 is distributed, or in the manner specified in Section 5016 of the Corporations Code.

- (d) The Association may charge a fee to the requesting party for this service which may not exceed the reasonable cost to prepare and reproduce any requested documents.

5.05 Penalties for Non-Compliance.

- (a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:
  - (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specifies the amounts of potential monetary penalties);
  - (2) Assess such penalties against any Owner found to be in violation of any provision of the Governing Documents; and
  - (3) Temporarily suspend an Owner's voting rights as a Member of the Association and/or rights to use Common Area facilities for as long as the violation continues.
- (b) Notice and a Hearing relating to the imposition of any penalties in this Section must be given in the following manner, and at a minimum:
  - (1) Notice must be given to the relevant Owner's most recent address in the Association's records at least fifteen (15) days before the proposed effective date of the penalty;
  - (2) Notice must set forth details of the violation itself, the proposed penalty, and the date, time and place of the Hearing;
  - (3) The Owner may be heard (either orally or in writing) at a Hearing held at least five (5) days before the effective date of the proposed penalty;
  - (4) Hearing will be held by the Board of Directors, and their decision is final and binding upon the Owner;
  - (5) The Board shall meet in executive session if requested by the Owner being disciplined, and the Owner shall be entitled to attend the executive session; and
  - (6) Following the Hearing, the Board must decide whether or not the Owner should in fact be penalized, and the nature of the penalty.
- (c) If the Board establishes a policy imposing any monetary penalty, including any fee on any Member for a violation of the Governing Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a Member, the Board shall adopt and distribute to each Member by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Member discipline contained in the Governing Documents. (The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Members.)
- (d) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, such penalties and costs shall not be treated as an Assessment that may become a pre-judgment lien enforceable by Civil Code Section 2924.
- (e) Notwithstanding the foregoing, the Owner shall be given, at a minimum, the rights set forth in Corporations Code Section 7341, or any successor statute.

5.06 Right of Entry.

- (a) The Association has the right to enter any Unit or Exclusive Use Common Area(s) to determine compliance with the Governing Documents and to perform its duties.
- (b) In case of emergency, or by Court order, a Unit may be entered immediately. Otherwise, a Unit or its Exclusive use Common Area(s) may only be entered at reasonable hours after the Owner has received three (3) days written notice, and if the entry will not result in a breach of the peace.
- (c) Entry must be made with as little inconvenience as possible to the Owner/Occupant.



## ARTICLE VI

### COVENANTS FOR ASSESSMENT

#### 6.01 Assessments.

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area(s), administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) Each Owner, by acceptance of a deed to a Condominium, whether or not it shall be so expressed in any deed, covenants and agrees to pay all Assessments to the Association.
- (c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner, but are not the personal obligation of successors in title unless expressly assumed by them. The Condominium remains subject to any Assessment liens of record, except upon foreclosure of a First Mortgage, as stated in the Article entitled "*Mortgagee Protection*".
- (d) Pursuant to Civil Code Section 1366.1, the Association may not collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

#### 6.02 Commencement; Due Dates of Assessments.

- (a) Regular Assessments for all Condominiums in the Project commence on the first day of the month following the First Sale within the Project.
- (b) Regular Assessments shall be due and payable in any reasonable manner established by the Board.

#### 6.03 Assessment Rate.

- (a) Regular Assessments and Special Assessments must be fixed at a uniform rate for all subject Condominiums, except as otherwise provided.
- (b) Each subject Condominium is liable for a pro rata share (the fractional number one (1) over the total number of Condominiums subject to Assessment by the Association at that time).

#### 6.04 Assessment Duties of the Board of Directors.

- (a) The Board must levy Regular and Special Assessments in compliance with Civil Code Section 1366.
- (b) The Board must establish separate bank accounts for operating monies and reserve monies.

#### 6.05 Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association.

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
  - (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 1366 (or any successor statutes);
  - (2) Reasonable collection costs and attorney's fees; and

- (3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Condominium when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Condominium.
- (c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Board as a disciplinary measure for failure of an Owner to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas and facilities for which the Owner was allegedly responsible or in bringing the Owner and his/her Unit into compliance with the Governing Documents, may not become a lien against the Owner's Unit enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. However, this does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for Delinquent Assessments and/or charges to reimburse the Association for the loss of interest or for costs reasonably incurred including attorney's fees, in its efforts to collect other Delinquent Assessments.
- (d) In addition to all other legal rights and remedies, the Association may:
- (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);
  - (2) Judicially foreclose the lien against the Condominium, including the Assessment, interest, collection costs and late charges;
  - (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
  - (4) Bid on the Condominium through authorized agents at the foreclosure sale, to acquire and thereafter to hold, lease, Mortgage or convey; or
  - (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.
- (e) Foreclosure action may not proceed until thirty (30) days after a Notice of Delinquent Assessment is duly recorded with the relevant County Recorder that meets the requirements of Civil Code Section 1367.
- (f) A copy of the Notice of Delinquent Assessment must be sent by certified or registered prepaid United States mail, addressed to the Owner or the Owner's designated agent previously given in writing to the Association at the Condominium (or an address that the Owner has previously given in writing to the Association which address must be within the United States).
- (g) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.
- (h) No transfer of an Owner's interest in a Condominium as a result of a foreclosure or exercise of a power of sale shall relieve the new Owner whether it be the former beneficiary of the First Mortgage or another person, from liability for any Assessment thereafter becoming due or from the lien thereof.

6.06 Nonuse and Abandonment.

An Owner does not waive or otherwise avoid liability for Assessments by nonuse of the Common Area(s) or abandonment of a Unit.

6.07 Waiver of Exemptions.

With respect to Assessment liens, each Owner waives (to the extent permitted by law) the benefit of any California homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

## ARTICLE VII

### ARCHITECTURAL CONTROL

#### 7.01 Approval by the Committee.

- (a) An Architectural Committee composed of three (3) to five (5) Members (the exact number shall be determined by the Board) for the control of structural and landscaping architecture, and design within the Property is hereby established as set forth below.
  - (1) The Declarant shall appoint all of the original members of the Architectural Committee and all replacements until the first anniversary of the first conveyance of a Unit in the Project. The Declarant reserves to himself the power to appoint a majority of the Members of the Committee until ninety percent (90%) of all the Condominiums in the Project have been sold or until the fifth (5<sup>th</sup>) anniversary of the First Sale of a Condominium in the Project, whichever first occurs.
  - (2) After one (1) year from the date of the first conveyance of a Unit in the Project, the Board shall have the power to appoint one Member to the Architectural Committee until ninety percent (90%) of all of the Condominiums in the Project have been sold or until the fifth (5<sup>th</sup>) anniversary date of the First Sale of a Condominium in the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the Members of the Architectural Committee.
  - (3) Members appointed to the Architectural Committee by the Board shall be from the membership of the Association and may be members of the Board.
- (b) Any exterior alteration or improvement or change to the exterior of a Unit anywhere on the Property (and any Common Area) must first be approved in writing by the Architectural Committee.
- (c) Complete plans and specifications must be submitted in writing to the Committee showing plot layout, materials, sizes, color, design and landscaping, and with the signature of the Owner.
- (d) The Association may charge an Owner for reasonable costs incurred for review of any proposals submitted (e.g., an Architect's fee).
- (e) Final landscaping plans shall include landscaping in front of garages.
- (f) All proposed trees within the public right-of-way and within ten (10) feet of the public sidewalk and/or curb shall have City approved deep root barriers installed per City's Engineering Specifications.
- (g) All materials on the flat portions of the roof shall be earth tone in color.
- (h) All roof mounted mechanical equipment shall be screened from all possible vantage points both existing and future per Palm Springs Zoning Ordinance Section 93.03.00. The screening shall be considered as an element of the overall design and must blend with the architectural design of the building(s). The exterior elevations and roof plans of the buildings shall indicate any fixtures or equipment to be located on the roof of the building, the equipment heights, and type of screening. Parapets shall be at least six (6) inches above the equipment for the purpose of screening.
- (i) No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.
- (j) No outside storage of any kind shall be permitted except as approved as a part of the proposed plan.

- (k) Wall heights to be measured from top of curb.
- (l) Height of buildings shall not exceed twenty-four (24') feet.
- (m) Handicapped accessibility shall be indicated on the site plan to include the location of handicapped parking spaces, the main entrance to the proposed structure and the path of travel to the main entrance. Consideration shall be given to potential difficulties with the handicapped accessibility to the building due to the future grading plans for the property.

#### 7.02 Certain Procedures for the Committee.

- (a) The Committee shall meet from time to time as necessary.
- (b) If any Member is unable (or unwilling) to serve on the Committee, the remaining Member(s) will have authority to approve or reject any proposed construction or alteration.
- (c) If the Committee fails to rule on a proposal within thirty (30) days after complete plans and specifications have been submitted as outlined below, the plans will be considered automatically approved.
- (d) Complete plans and specifications must be either:
  - (1) Personally delivered to a Committee Member; or
  - (2) Mailed postage prepaid, certified mail, return receipt requested to the Committee at its current address.

#### 7.03 Review Standards.

- (a) The Committee must approve or reject plans and specifications submitted for proposed construction or alteration based on:
  - (1) Aesthetic aspects of design, placement, landscaping, color, finish, materials, and harmony with existing structures; and
  - (2) Overall benefit or detriment to the Property and the area immediately surrounding the Unit involved.
- (b) The Committee is not responsible for approval of plans from the standpoint of structural safety or conformance with building codes.

#### 7.04 Appeal.

- (a) After the Declarant has lost the right to appoint a majority of Members of the Committee, all decisions of the Committee are subject to review by the Board.
- (b) Unless the composition of the Membership of the Committee is identical to the Board, the Board must review and decide upon the proposal within forty-five (45) days after the decision by the Committee, otherwise the proposal will be deemed approved.

#### 7.05 Architectural Committee Meetings.

Meetings of the Architectural Committee shall be held from time to time as necessitated by action to be taken. Notice, hearing and conduct of the meetings must be in accordance with the Bylaws of the Association and general corporation laws regarding committee meetings.

ARTICLE VIII

MORTGAGEE PROTECTION

8.01 Subordination of Lien and Foreclosure.

- (a) Any lien for Regular or Special Assessments created or claimed in this Declaration:
- (1) Is subject and subordinate to the rights of any First Deed of Trust that encumbers any part of the Property made for value in good faith; and
  - (2) May not in any way impair or invalidate the obligation or priority of a First Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgagee to the Subordination by Lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.
- (b) No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.
- (c) Upon foreclosure of a First Mortgage, the purchaser:
- (1) Will take the Condominium title free of any Assessment lien accrued up to the time of the foreclosure sale (provided that nothing herein is intended to impair the rights of the Association to receive payment on any Assessment lien in the event the net sale proceeds are in excess of what is owed on all encumbrances prior to the Assessment lien); and
  - (2) Is only obligated to pay Assessments or other Association charges accruing after the title to the Condominium is acquired.
- (d) If the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien shall not be extinguished upon recordation of the deed.

8.02 Mortgagees Are Not Required to Cure Certain Breaches.

A First Mortgagee who acquires title by foreclosure or by a deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

8.03 Effect of Breach of Declaration.

No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

8.04 Exemption From Right of First Refusal.

- (a) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Condominium, unless a Mortgagee of the Property grants written consent to the Association.

(b) Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other party) may not impair the rights of a First Mortgagee to do any of the following:

- (1) Foreclose or take title to a Condominium, pursuant to the remedies provided in the Mortgage;
- (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or
- (3) Sell or lease a Condominium acquired by the Mortgagee.

**8.05 Restrictions on Certain Changes.**

(a) In addition to the requirements of Article XIV, and unless a greater percentage is expressly required by law, approval by Owners who represent at least sixty-six and two-thirds percent (66 2/3%) of the total allocated votes in the Owners Association and by Eligible First Mortgagees who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible First Mortgagees must be obtained prior to adoption of any amendment of any Governing Documents of a material nature affecting any of the following matters:

- (1) Voting rights;
- (2) Reductions in reserves for maintenance, repair, or replacement of the Common Area improvements;
- (3) Responsibility for maintenance and repairs ;
- (4) Reallocation of interests in the Common Area or Exclusive Use Common Area or rights to their use;
- (5) Redefinition of any Unit boundary;
- (6) Convertibility of Units into Common Area or Common Area into Units;
- (7) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
- (8) Hazard or fidelity insurance requirements;
- (9) Imposition of any restrictions on the leasing of Units;
- (10) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (11) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration;
- (12) Any provisions that expressly benefit mortgage holders, insurers, or guarantors;
- (13) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or

- (b) If Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Property, Eligible First Mortgagees who represent at least sixty-six and two-thirds percent (66 2/3%) of the votes of the mortgaged Condominiums must agree. If any Eligible First Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a return receipt requested, the Eligible First Mortgagee shall be considered to have granted approval.

**8.06 Inspection of Association Books and Records.**

Any First Mortgage holder has the right to examine the books and records of the Association after notice to the Association and only during business hours.

**8.07 Condemnation Awards and Insurance Proceeds.**

- (a) First Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in a case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.
- (b) All applicable fire, physical loss or extended coverage insurance policy must contain loss payable clauses acceptable to the affected First Mortgagee, naming the Mortgagees as their interests may appear.

**8.08 Mortgagee's Right to Attend Meetings.**

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote.

**8.09 Payments by Mortgagees.**

- (a) First Mortgagees may pay the following jointly or severally:
- (1) Taxes or other charges in default which may be a charge against any part of the Common Area(s); and
  - (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s).
- (b) Upon making such payments, the Association:
- (1) Owes immediate reimbursement to First Mortgagees making such payments; and
  - (2) Must, upon Mortgagee's request, execute an agreement that reflects the First Mortgagees' entitlement to such reimbursement.

**8.10 Loss Payable Endorsement.**

All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the Condominiums.



8.11 Notices to Mortgagees.

- (a) Each Eligible First Mortgage Holder is entitled to timely written notice of:
- (1) Any condemnation or casualty loss that affects a material portion of the Project or the Unit securing its Mortgage;
  - (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Condominium on which it holds the Mortgage;
  - (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
  - (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgage Holders.
- (b) To obtain the information above, the Mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the Condominium number or address of the Condominium for which it has the Mortgage.

## ARTICLE IX

### DESTRUCTION OF IMPROVEMENTS

#### 9.01 Restoration of the Property.

If there is damage to or destruction of any improvements on the Property for which the Association is responsible:

- (a) If insurance proceeds cover at least eighty-five percent (85%) of restoration costs, the Association shall cause Common Area damage to be repaired unless sixty-six and two-thirds percent (66 2/3%) of the Total Voting Power elect not to reinvest or repair.
- (b) If insurance proceeds cover less than eighty-five percent (85%) of restoration costs, then the vote (or written assent) of sixty-six and two-thirds percent (66 2/3%) of the Owners and First Mortgagees must approve proceeding with restoration. A Special Assessment shall be levied by the Board against each Condominium, to pay for the difference between insurance proceeds and the actual costs.
- (c) If the estimated cost of repair does not exceed ten thousand dollars (\$10,000.00), the Board must cause the repair to occur without the consent of Members irrespective of the available amount of insurance proceeds. The Board is empowered to levy a Special Assessment if necessary as described herein.
- (d) If the Owners and Mortgagees determine that restoration costs would be substantial and reconstruction would not be in their best interests, the Owners may proceed as provided below.

#### 9.02 Sale of Property and Right to Partition.

If the Association elects not to rebuild, an independent M.A.I. (Member Appraisal Institute) appraiser (or an appraiser of comparable experience) shall determine the relative fair market values of all Condominiums as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such values.

#### 9.03 Notice to Owners and Listed Mortgagees.

Immediately upon learning of any material damage or destruction to the Common Property or any Unit, the Board must notify all Owners, and First Mortgagees, insurers or guarantors of any relevant Mortgagees who have filed a written request for Board notice (see "Mortgagee Protection" Article).

ARTICLE X  
CONDEMNATION

**10.01 Representation by the Board in Condemnation Proceedings.**

In case any portion of the Common Area is taken by condemnation or sale by eminent domain, the Board will be the representative of all Owners in any action to recover awards and all aspects of condemnation proceedings.

**10.02 Distribution of Award.**

- (a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).
- (b) Any award must first be applied toward payment of any balance due on any Mortgages of record, in order of priority.
- (c) If the condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.
- (d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Condominiums as determined by an independent M.A.I. appraiser(s) hired by the Board and approved by fifty-one percent (51%) of the Mortgagees. If said percentage of Mortgagees do not approve, then any Mortgagee may hire an M.A.I. appraiser at their own cost, and the award amount will be calculated based upon the average of all appraisals obtained.
- (e) The determination of the appraiser(s) of each Condominium's value and degree of affect by the proceedings will be final and binding on all Owners and Mortgagees.

## ARTICLE XII

### EASEMENTS

#### 12.01 Certain Rights and Easements Reserved to Declarant.

For up to five (5) years from the date of the First Sale in the Project (and without unreasonably interfering with other Owners) the Declarant and its representatives reserve easements and rights for the following purposes without the need to seek or obtain Board approval:

- (a) To complete excavation, alteration, grading and construction of improvements;
- (b) To construct, alter or make additional improvements Declarant deems advisable in the course of Property development;
- (c) To use any Unit owned by Declarant as an office for construction, decoration, real estate sales and leasing; and
- (d) To make reasonable use of any Common Areas for ingress, egress, development, sales and construction purposes.

#### 12.02 Certain Easements for Owners.

Declarant grants nonexclusive easements for enjoyment, ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Area (except Exclusive Use Common Areas) to all Owners, subject to Governing Documents.

#### 12.03 Certain Easements for Association.

Declarant grants to the Association nonexclusive easements over the Common Areas and Units as reasonably necessary to discharge its obligations as described in this Declaration.

#### 12.04 Encroachment.

- (a) Easement rights are hereby created, established and granted to Declarant, the Association and Owners of any Unit or Common Area, originally constructed by Declarant, or as reconstructed in substantial conformance with the Condominium Plan, with improvements encroaching on, over and across any portion of a contiguous Unit or Common Area, as shown in the Condominium Plan, resulting from engineering errors, errors or adjustments in original construction, reconstruction, repair, settling, shifting, or any other movement.
- (b) If a portion of a Unit encroaches on, over and across any portion of a contiguous Unit or Common Area, the encroaching Unit Owner's easement rights shall be exclusive.
- (c) If a portion of the Common Area encroaches on, over and across any portion of a contiguous Unit, the Association's easement rights shall be non-exclusive.
- (d) Declarant, the Association and Owners of the encroaching improvements shall have the right to maintain, repair or replace the encroaching improvements.
- (e) In interpreting this Declaration, the Condominium Plan and all instruments of conveyance, the existing physical boundaries of Unit(s), including any encroachment as defined in (a) above, shall be the actual boundaries, rather than any description and/or depiction set forth in this Declaration, the Condominium Plan, or instrument of conveyance.

**12.05 Creation of Easements.**

- (a) Easements referred to herein are established upon the First Sale in the Project, and the provisions hereof with respect to such easements shall be covenants for the use and benefit of Condominiums and Property superior to all other encumbrances.
- (b) Individual grant deeds to Condominiums shall state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

**12.06 Utility Easements.**

The Association may grant easements and rights of way through the Common Area(s) and Units for water, sewer, telephone and cable lines, gas and other utilities, storm drains, underground conduits, sprinkler systems, and other purposes intended to maintain the health, safety, convenience and enjoyment of the Units and Common Area(s).

ARTICLE XIII

SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF  
DECLARANT'S OBLIGATION TO COMPLETE COMMON AREA IMPROVEMENTS

13.01 Special Provisions Relating to Enforcement of Declarant's Obligation  
to Complete Common Area Improvements.

- (a) The Board must consider and vote on Association action to enforce bond obligations regarding any Common Area improvement if the following factors apply:
  - (1) Declarant has not completed Common Area improvements before the First Sale;
  - (2) The Association is the obligee under a bond or other arrangement securing completion; and
  - (3) A Notice of Completion has not been filed within sixty (60) days of the completion date specified in the planned construction statement appended to the bond.
- (b) The Association may grant a written extension for a Common Area completion.
- (c) If a notice of completion has not been filed within thirty (30) days after the extension expires, the Board will meet and vote on enforcement options.
- (d) Owners may submit a petition signed by at least five percent (5%) of Association voting power calling for a Special Meeting to be held between thirty-five (35) and forty-five (45) days after the Board receives the petition.
- (e) At the Special Meeting, a majority vote of Owners (other than Declarant) overrides the Board's decision and causes the Board to enforce bond obligations through appropriate action in the name of the Association.

ARTICLE XIV

AMENDMENT

14.01 Amendment.

- (a) Before the First Sale, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration (subject to the Article entitled "*Mortgagee Protection*") by recording an instrument of amendment in the relevant County Recorder's Office.
- (b) After the First Sale, this Declaration may only be amended in the following ways (and subject to the Article entitled "*Mortgagee Protection*"):
  - (1) If there is only one Membership Class, approval by at least sixty-seven percent (67%) of Members other than Declarant, and by at least sixty-seven percent (67%) of the total voting power, including Declarant; and an instrument signed by two (2) Association officers certifying that the amendment was approved by at least sixty-seven percent (67%) of Members other than Declarant, and also approved by at least sixty-seven percent (67%) of the total voting power, including Declarant.
  - (2) If Class B Membership exists, approval by at least sixty-seven percent (67%) of the Members of each Class, and an instrument signed by two (2) Association officers certifying that the amendment was approved by sixty-seven percent (67%) of the Members of each Class.
- (c) Any amendment must be properly recorded in the County Recorder's Office.
- (d) The percentage of Owners needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 1356, or any successor statutes).
- (f) While the Declarant holds or directly controls at least twenty-five percent (25%) of the votes, any proposed amendment to any Governing Documents must comply with Business and Professions Code Section 11018.7.
- (g) No amendments to any provisions in this Declaration or other Governing Documents which specifically benefit the Declarant as Developer, shall be made without the written consent of the Declarant.

## ARTICLE XV

### DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE (DECLARANT DISPUTES); WAIVERS

#### 15.01 Enforcement and Nonwaiver.

- (a) Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Rules and Regulations, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- (b) Procedure for Enforcement. Notwithstanding anything to the contrary set forth in subparagraph (a) above, in enforcing any action under the Governing Documents for monetary damages, the parties shall comply with the provisions of California Civil Code Section 1354 and any successor statutes or laws. The Board shall annually provide to the Owners a summary of the provisions of California Civil Code Section 1354 and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Association Assessments set forth in Section 1354 shall not apply to disputes between an Owner and the Association regarding Assessments imposed by the Association, if the Owner chooses to pay in full the Association all of the Assessments as specified in California Civil Code Section 1366.3 and any successor statutes or laws.

#### 15.02 Notice of Actions Against Declarant.

To the extent applicable, the Association shall comply with the provisions of California Civil Code Sections 1368.4, 1375, and any successor statutes or laws.

#### 15.03 Alternative Dispute Resolution.

The purpose of this section is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between i) Owner or the Association, and ii) Declarant concerning the Property that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as "*Dispute*" and collectively as "*Disputes*").

- (a) Mediation – Construction Defect Disputes Subject to Mediation. Disputes related to or arising out of construction defect claims covered by California Civil Code Section 895 *et seq.* shall be handled by the following procedures ("*Contractual Pre-Litigation Procedures*") in lieu of the procedures set forth in California Civil Code Sections 910-938 ("*Statutory Pre-Litigation Procedures*"):
- (1) If Owner/Association discovers a material, structural or other defect in the Property covered by California Civil Code Section 895 *et seq.* ("*Claimed Defect*") that Owner/Association feels may be the responsibility of Declarant or any director, officer, partner, member, employee or agent of Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following Dispute notification and resolution procedure (collectively "*Declarant*



*Parties*"), Owner/Association shall notify Declarant, in writing, at Declarant's address for service of process registered with the California Secretary of State, which is currently c/o Gary W. Brown, 11473 Riverside Drive, Suite 106, No. Hollywood, California 91602.

- (2) Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner/Association or an agent of either will be available during ordinary business hours for service calls or inspections by Declarant.
- (3) Declarant shall, in its sole discretion, be entitled to inspect the Property regarding the reported Claimed Defect and, within its sole discretion, be entitled to cure such Claimed Defect. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.
- (4) Owner's/Association's written notice to Declarant is a condition precedent to Owner's/Association's right to institute a legal proceeding, and Owner/Association shall not pursue any other remedies available, at law or otherwise, including without limitation the filing of any lawsuit or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. If the parties are unable to resolve the matter concerning the Claimed Defect, the matter shall be submitted to mediation by and pursuant to the rules of Judicial Arbitration and Mediation Services ("*JAMS*"), its successor, or to any other entity offering mediation services agreed to by the parties. The mediation shall be limited to four (4) hours, except as otherwise mutually agreed by the parties, before a nonaffiliated mediator paid for by Declarant. No person with any financial or personal interest in the mediation's result shall serve as a mediator, except by the written consent of the parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption or bias or prevent a prompt commencement of the arbitration process.
- (5) Prior to the mediation, Declarant shall have the right to perform an inspection or testing of each and every alleged violation. Declarant and Owner/Association shall schedule a mutually convenient date and time during normal business hours for the inspection. Declarant shall not be responsible for any damages arising from a delay in performing the inspections resulting from the unavailability of Owner/Association or the failure of the Owner/Association to provide Declarant with reasonable access to complete such inspections and testing. Declarant shall have the right to invite other parties to observe or participate in any of the inspections and/or testing. Owner/Association shall provide access to all areas of the Property to perform the inspections and testing. Owner/Association shall not be responsible for any costs incurred by Declarant to perform the inspection and/or testing. Declarant shall be responsible for any damage caused by the inspection or testing. Declarant shall restore the Property to its pre-testing condition within ten (10) business days after completion of the final inspection or testing, unless otherwise agreed by the parties. Such inspections or testing can be observed and electronically recorded, videotaped, or photographed by either party or their legal representative. Nothing that occurs during the inspection or testing (or any inspection or testing by Owner/Association) may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent proceeding. If Owner/Association performs its own inspections or testing, the Owner/Association shall give Declarant at least three (3) business days advance notice of any such inspection or testing. Declarant and its agents, employees and consultants have the right to observe such inspections and testing.

- (6) The mediation shall be held in the county where the Property is located or such place as is acceptable to the parties. Prior to the commencement of the mediation proceedings, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code Sections 1115 *et seq.*, or pursuant to any similar successor statute, in order to exclude the use of any testimony or evidence produced at the mediation at any subsequent proceeding. Pursuant to California Evidence Code Section 1119(a), "No evidence of anything said or of any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled in any arbitration, administrative adjudication, civil action or other non-criminal proceeding in which, pursuant to law, testimony can be compelled to be given".
- (7) Each party shall bear its own costs and attorneys' fees. The parties are not required to have attorneys participate in the mediation.
- (8) Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss that Owner/Association may suffer as a result of any Claimed Defect in the Property, which reasonably might have been avoided had Owner/Association given Declarant timely notice and opportunity to cure Claimed Defect.

(b) Arbitration of Disputes.

- (1) Agreement to Arbitrate. Owner/Association and Declarant shall resolve any Dispute arising out of this Agreement, under this Agreement, including but not limited to construction defect claims covered by Civil Code Section 895 *et seq.* not resolved through the above described mediation procedure, exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought. Alternatively, Owner/Association or Declarant may elect to resolve such Disputes through a small claims court proceeding, in which case the party filing the small claims action will have waived the right to any relief in excess of the jurisdiction of the small claims court.
- (2) Waiver of Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, Owner/ Association and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury.
- (3) Rules Applicable to All Cases. The arbitration will be conducted by JAMS in accordance with the JAMS rules ("*JAMS Rules*") then applicable to the claims presented, as supplemented by this Declaration. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.
- (4) Qualifications of Arbitrators. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least fifteen (15) years experience as a practicing lawyer.
- (5) Appointment of Arbitrator. The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.
- (6) Expenses. All fees charged by JAMS and the arbitrator shall be advanced by Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may direct Owner/Association, as applicable, to reimburse Declarant for up to fifty percent (50%) of the JAMS fee and arbitrator's fee advanced by Declarant within sixty (60) days after the final arbitration award.

- (7) Preliminary Procedures. If state or federal law requires Declarant or Owner/Association to take steps or procedures before commencing an action in court, then Declarant or Owner/Association must take such steps or follow such procedures, as the case may be, before commencing the arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.
  - (8) Participation by Other Parties. Declarant or Owner/Association, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.
  - (9) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but may receive hearsay evidence. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.
  - (10) Attorneys' Fees and Costs. Each party shall bear its own attorneys' fees and costs (including expert witness costs) in the arbitration.
- (c) Procedure for Appeal of Certain Cases. In any arbitration in which a claim of Declarant or Owner/Association exceeds \$250,000 in value, each party shall have a limited right to appeal the arbitration award as set forth below.
- (1) Right of Appeal. There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner that it can be converted to an accurate and reliable written transcript.
  - (2) Appellate Arbitration. An appeal shall be decided by one (1) neutral appeal arbitrator appointed by JAMS under the rules that govern appointment of arbitrators. The appeal arbitrator must be a retired judge.
  - (3) Issues on Appeal. The only issues that may be considered on appeal are: (i) the award of money was excessive; (ii) the award of money was insufficient; (iii) the arbitrator awarded non-monetary relief that was inappropriate; (iv) a party who received non-monetary relief should have received other or additional relief. The appeal arbitrator may affirm the arbitration award or make any alternative award he or she finds to be just, but must not reject the arbitrator's decisions a) that a particular party is entitled to relief of some nature or amount or b) that a particular party is responsible to provide relief of some nature or amount.
  - (4) Notice of Appeal. To appeal an arbitration award, a party must serve written notice of the appeal on JAMS and all parties to the arbitration within thirty (30) days after mailing of the arbitrator's award to the parties. The written notice of appeal must include a general description of the grounds for appeal and the relief requested. A party who has received a timely notice of appeal may thereafter file and serve its own notice of appeal within sixty (60) days after mailing of the arbitration award to the parties.
  - (5) Expenses and Costs on Appeal. The appealing party must advance all fees for the appeal and provide JAMS with a written transcript of the oral testimony, copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the JAMS fees and the cost of preparing and copying the transcript and all other evidence received by the arbitrator. The appeal arbitrator may award costs of the nature provided in the Federal Rules of Appellate Procedure provided that the maximum, which may be awarded to Declarant as the prevailing party, is fifty percent (50%) of the total costs of the arbitration appeal.

- (6) Appellate Briefs. The appeal arbitrator may receive written briefs from the parties and hear oral argument, but must not receive new evidence. The appeal arbitrator must make his or her decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrator may visit any site involved in the Dispute.
- (7) Decision on Appeal. The decision of the appeal arbitrators shall be the final award in the case and shall be treated as the arbitration award for all purposes.
- (8) Federal Arbitration Act. Declarant and Owner/Association acknowledge that because many of the materials and products incorporated into the home are manufactured in other states, the conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

(d) Agreement to Arbitration and Waiver of Jury Trial.

- (1) Arbitration of Disputes. By executing this Declaration, and by accepting a deed as defined herein, Declarant and Owner/Association agree to have any dispute decided by neutral arbitration in accordance with the Federal Arbitration Act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act, and Declarant and Owner/Association are giving up any rights Declarant and Owner/Association might possess to have the dispute litigated in a court or jury trial. Declarant and Owner/Association are giving up their respective judicial rights to discovery and appeal, unless those rights are specifically included in this section. If Declarant or Owner/ Association refuse(s) to submit to arbitration after agreeing to this provision, such party may be compelled to arbitrate under the Federal Arbitration Act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act.
- (2) Waiver of Jury Trial. In the event the foregoing arbitration provision is held not to apply or is held invalid, void or unenforceable in its entirety for any reason, all Disputes shall be tried before a judge in a court of competent jurisdiction without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. Declarant, by executing this Declaration and Owner/Association by accepting a deed to any portion of the Property, hereby waive and covenant not to assert their constitutional right to trial by jury of any Disputes, including, but not limited to, Disputes relating to construction defects, misrepresentation or Declarant's failure to disclose material facts. This mutual waiver of jury trial shall be binding upon the respective successors and assigns of such parties and upon all persons and entities asserting rights or claims or otherwise acting on behalf of Declarant and Owner/Association or their respective successors and assigns.

- (e) Final and Binding Award. The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the County in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.
- (f) Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this section is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Declaration shall be conducted under the remaining enforceable terms of this section.

ARTICLE XVI

PROVISIONS BENEFITTING THE CITY

In addition to all other rights granted to City pursuant to the provisions of this Declaration, the City shall have the following additional rights:

16.01 Compliance With Law.

- (a) Declarant, the Association and each Owner shall comply with all ordinances, regulations and standards of the City applicable to the Property. Declarant, the Association and each Owner shall comply with all rules and regulations of any assessment district of the City that the Property is subject to. In addition, Declarant, the Association and each Owner shall comply with the following special maintenance conditions:
- (1) Each Owner and the Association shall be responsible for the maintenance of all improvements that may exist on said Owner's Unit or the Common Area from time to time, including, without limitation, buildings, sidewalks, parking lots, lighting, signs, planters, irrigation and drainage facilities, walls and facades, at all times in first class condition or repair, and in good working order, and shall keep the Property neat, clean and sanitary, free from any accumulation of debris or waste materials. Each Owner and the Association, as the case may be, shall promptly make all necessary replacements, repairs, and alterations. All sidewalks and parking areas shall be promptly swept and cleaned. All asphalt and concrete paved areas shall be repaired, replaced, and re-stripped, as necessary, to maintain said pavement at all times in a level and smooth condition.
  - (2) All landscaping, including vegetation, irrigation systems and earth mounding, shall be installed as provided in the landscape plan and shall be permanently maintained in good, first class condition, healthy, without deterioration, and free of waste and debris. Dead or diseased plants shall be promptly replaced with landscaping similar in type, size and quality. The automatic irrigation systems shall be properly maintained and other reasonable and adequate landscape maintenance facilities shall be provided to fill the foregoing requirements.
  - (3) The Property shall be maintained in such manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to public health, safety or general welfare, or such condition or deterioration or disrepair causes appreciable harm or has been truly detrimental to Property or improvements within one thousand (1000) feet of such portion of the Property. The Property shall be kept and maintained to be in conformity with the landscaping maintenance standards of the City.
- (b) Parking and Driveways. The driveways and traffic aisles on the Property shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Property, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Property shall park solely on the Property and shall not park on streets or adjacent Property.

16.02 Enforcement by the City.

- (a) The City's public parcel consists of fee ownership and easement interests in streets, sidewalks, open space, parks and other areas located around and adjacent to the Property. Each Owner acknowledges by acceptance of the deed or other conveyance therefor, whether or not it shall be expressed in any such deed or other instrument, that each of the

covenants, conditions and restrictions set forth in this Article benefit the public parcel and the City, and that the City has a substantial interest to be protected with regard to assuring compliance with, and enforcement of, these covenants, conditions and restrictions, and any amendments thereto. All such covenants, conditions and restrictions shall be enforceable by the City by proceedings at law or in equity or by any method available to the Association as provided elsewhere in this Declaration.

- (b) In furtherance thereof, the City shall have the same rights and remedies to enforce a breach of a provision of this Declaration that is enforceable by the City that the Association has to enforce a breach of this Declaration, including the right to enter upon all or any portion of the Property to remedy said breach at the expense of the violating party and to charge an assessment against an Owner or the Association for a breach of a provision of this Declaration that is enforceable by the City, upon providing the Owner or the Association with such notices and hearing opportunities as the Association is obligated to provide an Owner for such a breach as more particularly set forth elsewhere in this Declaration. In the event said breach has been committed by an Owner, the City may enforce the foregoing rights against either the Association or the breaching Owner. If the City exercises its enforcement rights against the Association for a breach by an Owner, the City shall extend the time in which the Association must cure the breach by the Owner for so long as the Association is diligently attempting to cause the breaching Owner to cure the breach. If the Association has the right to assess the breaching Owner for such a breach and if said breach by the Owner has not been cured by the Association or the breaching Owner within the times provided herein, the City may elect either to assess the Association or the breaching Owner for the breach. If the City elects to assess the Association for breach committed by an Owner, the Association shall have the right to pass the assessment on to the breaching Owner. Upon the failure of the Owner or the Association to pay such assessment to the City, the City shall have the same rights against said Owner or the Association that the Association would have against an Owner for failure to pay such an assessment as more particularly set forth elsewhere in this Declaration, including any lien rights. Any lien against the Association shall be a lien against the entire Common Areas.

#### 16.03 Other Rights of City.

In the event of any violation or threatened violation of any of the provisions of this Declaration, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions hereof, the City shall have the right to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Property or any part thereof or interests therein as to the violating person or one threatening violation.

#### 16.04 No City Liability.

The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Declaration. The failure of the City to enforce this Declaration shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to Declarant, the Association, or any Owner, for any default or breach by the City under this Declaration.

#### 16.05 Amendment.

Any amendment to any provision of this Article or to any other provisions of this Declaration enforceable by the City shall require the prior written consent of the City.

16.06 Covenants Running with the Land.

Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the restrictions, covenants, conditions and equitable servitude set forth in this Article, all of which are for the purpose of uniformly enhancing or protecting the value, attractiveness and desirability of the Property. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall run with the Property and shall be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the public parcel and any interest therein; and shall inure to the benefit of and be binding upon Declarant, the City and their successors and assigns and successors-in-interest; and may be enforced by the City.

16.07 Agreement Between Declarant and City.

Declarant, in exchange for the granting of the City's approval of this Declaration, hereby agrees to hold, sell and convey the Property subject to the covenants, conditions, restrictions and reservations contained in this Articles. Declarant also grants to the City the right and power to enforce the covenants, conditions, restrictions and reservations contained in this Article against Declarant and all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns and successors-in-interest.

16.08 Notices.

Any notices to be provided to the City as provided for in this Declaration, shall be provided to the following addresses:

To City: City of Palm Springs  
3200 East Tahquitz Canyon Way  
Palm Springs, California 92262  
Attention: City Manager

With copy to: Aleshire & Wynder, LLP  
18881 Von Karman Ave., Suite 400  
Irvine, California 92612  
Attention: David J. Aleshire, Esq.

16.09 Miscellaneous.

- (a) Notwithstanding anything in this Declaration to the contrary, the City's Director of Planning shall have the right to approve all construction, repair, modification, or alteration of any buildings, equipment, structures, or improvements in the Property.
- (b) The Association shall be required, on January 1st of each year, to file with the City's Director of Planning the names, addresses, and telephone numbers of the Association's Property management company and responsible Property manager and each member of the Association's Board of Directors.

ARTICLE XVII

MISCELLANEOUS PROVISIONS

17.01 Disclosures.

- (a) Declarant does not in any manner guarantee or warrant that the Property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Property, including noise or sound emanating from Units, heating, ventilation air conditioning systems, plumbing, Common Area(s), garages, etc.
- (b) Notice of Airport in Vicinity. This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, and odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

17.02 Term of Declaration.

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Condominiums record a signed, written instrument:
  - (1) At least one (1) year before the beginning of any ten (10) year period; and
  - (2) Agreeing to change or terminate this Declaration.

17.03 Notices.

Any required notice must be given in writing by:

- (a) Personal delivery to the location of the address of the recipient of the Notice; or
- (b) Mailing by first-class, registered or certified pre-paid U.S. mail (deemed given five (5) days after deposit in the mail);
- (c) Delivery by a reputable overnight courier service such as Federal Express, United Parcel Service, etc. (deemed given upon delivery to the location of the address of the recipient of the Notice); or
- (d) Facsimile transmission (deemed given upon date of transmission upon confirmation of receipt).

17.04 Partial Invalidity.

If any of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.



17.05 Number.

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

17.06 Attorneys' Fees.


In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs, and damages, to reasonable attorneys' fees.


IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Tract No. 30925 on the day and year first written above.

"Declarant"

MIRALESTE PARTNERS  
a joint venture

By: WESTVEST, INC.,  
a California Corporation  
its: Member

  
By: \_\_\_\_\_  
its: President

  
By: \_\_\_\_\_  
its: SECRETARY

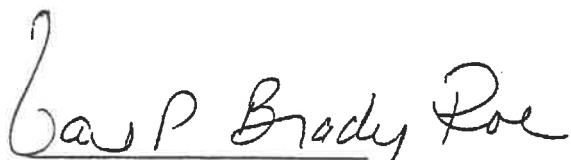
STATE OF CALIFORNIA )  
COUNTY OF orange ) ss.

on October 22, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared;

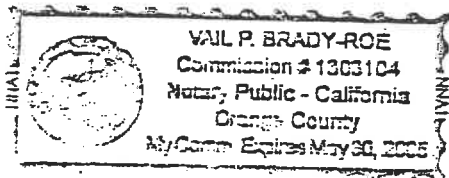
Kenneth Bernard

[  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/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
Notary Public

(SEAL)



GOVERNMENT CODE 27361.7

I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

NAME OF NOTARY: Vail P. Brady-Roe

DATE COMMISSION EXPIRES: May 30, 2005

COUNTY WHERE BOND IS FILED: Orange

COMMISSION NUMBER: 1303104

MANUFACTURER/VENDOR NUMBER: \_\_\_\_\_

PLACE OF EXECUTION: ~~SANTA ANA~~ Orange DATE: October 22, 2003

SIGNATURE: Janet C. Davis  
FIRST AMERICAN TITLE INSURANCE CO.

I CERTIFY UNDER PENALTY OF PERJURY THAT THE ILLEGIBLE PORTION OF THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

"See Above"

PLACE OF EXECUTION: SANTA ANA

DATED: 1-6-04

SIGNATURE: Janet C. Davis  
FIRST AMERICAN TITLE INSURANCE CO.

\*he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

**EXHIBIT "A"**

**PROPERTY**

Lot 1 of Tract No. 30925, in the City of Palm Springs, as per Map recorded in Book 343, Pages 5 and 6 of Maps, in the Office of the County Recorder of Riverside County.