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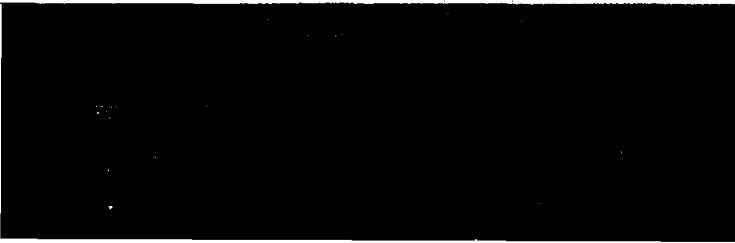
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DECLARATION OF RESTRICTIONS
OF
THE COVE AT INDIAN WELLS PLANNED DEVELOPMENT

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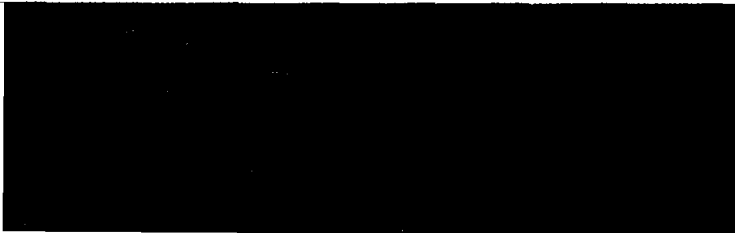
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DECLARATION OF RESTRICTIONS

OF

THE COVE AT INDIAN WELLS PLANNED DEVELOPMENT

THIS DECLARATION OF RESTRICTIONS is made this 21st day of January, by LEWIS HOMES OF CALIFORNIA, a general partnership, herein referred to as "Declarant".

R E C I T A L S

A. Declarant is the owner of certain real property located in the City of Indian Wells, Riverside, County, California, described as:

Lots 1 through 23, inclusive, as well as Common Area Lot A of Tract 19971-1 as per map recorded in book 146, pages 85 through 87, inclusive, of maps filed in the Office of the County Recorder of Riverside County on December 6, 1984, which property shall be the initial Covered Property under this Declaration.

B. The first phase of the overall development project plan for the Planned Development shall be constructed on the initial Covered Property, and consists of twenty-three (23) lots plus the private road. The second phase is planned to be constructed on Tract 19971 adjacent to the initial Covered Property, on Lots 1 through 41 and consists of forty-one (41) lots and additional private road.

C. Declarant is not obligated to complete any of the above development project plan beyond that applicable to the initial Covered Property, and specifically reserves the right to modify or cancel said plan, to apply for and institute other land uses on the subject lands, and to sell, lease, option, abandon, or otherwise use or neglect to use said lands.

D E C L A R A T I O N

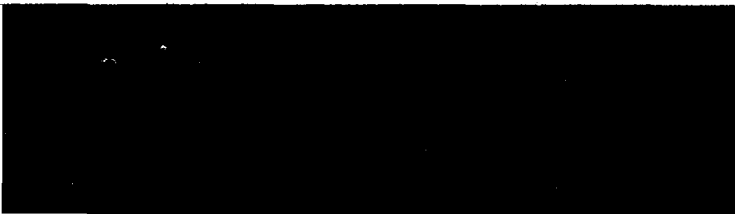
Declarant declares that the initial Covered Property and any subsequently annexed lands as and when annexed, hereinafter collectively referred to as the "Project", and each and every lot and parcel therein, is, and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved, subject to the following limitations, restrictions, easements, covenants, conditions, servitudes, liens, and charges, hereinafter referred to as the "provisions", all of which are declared and agreed to be in furtherance of and pursuant to a general plan for the development of the Project, and all of which are declared and agreed to be for the purpose of enhancing, maintaining, and protecting the value and



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attractiveness thereof. All of the provisions of this Declaration are intended as and are hereby declared to be covenants running with the land or equitable servitudes upon the land, as the case may be, and pursuant to Section 1468 of the California Civil Code or any similar statute then in effect, shall be binding on, inure to the benefit of, and be enforceable by, all parties having or acquiring any right, title, or interest in the Project, and shall be binding on and inure to the benefit of the successors in interest of such parties.

ARTICLE I
DEFINITIONS

- 1.1 "Articles" shall mean the Association's Articles of Incorporation and their amendments.
- 1.2 "Association" shall mean and refer to THE COVE AT INDIAN WELLS HOMEOWNERS ASSOCIATION, INC., a California nonprofit mutual benefit corporation, its successors, and assigns.
- 1.3 "Association Rules" or "Rules", shall mean the rules and regulations regulating the use and enjoyment of the Project, adopted by the Board pursuant to the Bylaws.
- 1.4 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- 1.5 "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.
- 1.6 "City" shall mean the City of Indian Wells, and where City approval or concurrence is required, shall extend to departments, commissions, and similar entities, as appropriate.
- 1.7 "Common Areas" shall mean all real property (including the Improvements thereupon) owned by the Association for the common use and enjoyment of the Owners, whether included in the initial Covered Property or, subsequent to any annexation permitted herein, in such subsequently annexed property. The initial common area shall consist of Lot "A" of Tract 19971-1.
- 1.8 "Common Expenses" shall mean and include the actual and estimated expenses of operating the Common Area and any reasonable reserve for such purpose as found and determined by the Board, and all sums designated Common Expenses by or pursuant to the planned development documents.
- 1.9 "Declarant" shall mean and refer to LEWIS HOMES OF CALIFORNIA, a partnership, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped lot from the Declarant for the purpose of development.
- 1.10 "Declaration" shall mean this Declaration of Restrictions and its amendments, modifications, or supplements.



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- 1.11 "Improvements" shall include buildings, outbuildings, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, trash enclosures, sewer and drainage systems, and all other structures and landscaping improvements of every type and kind.
- 1.12 "Lot" shall mean and refer to any plot of land or parcel shown upon any recorded subdivision map of the Project, including all improvements thereon, and any easements appurtenant thereto.
- 1.13 "Manager" shall mean the person or entity appointed as such by the Association.
- 1.14 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.
- 1.15 "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or other portion of the Project. A "Mortgagee" shall include the beneficiary under a deed of trust. An "institutional" mortgagee is a mortgagee that is a bank or entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property, or any insurance company or any federal or state agency. A "first mortgage" or "first mortgagee" is one having priority as to all other mortgages or holders of mortgages encumbering the same Lot.
- 1.16 "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is a part of the Project, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.17 "Project" shall mean and refer to the property as herein defined, e.g., the initial Covered Property as well as any subsequently-annexed additions, when annexed, including all structures and improvements erected or to be erected thereon.
- 1.18 "Public Report" shall mean the report pertaining to the Project issued by the California Department of Real Estate pursuant to section 11018.2 of the California Business and Professions Code.
- 1.19 "Residential Lot" shall mean any plot or land or parcel shown upon the recorded subdivision map of the Project, numbered by integer, and intended for construction of a residential dwelling unit.

ARTICLE 2
PROPERTY RIGHTS

- 2.1 Conveyance of Common Area. Declarant hereby covenants for itself, its successors, and assigns, that prior to the first close of escrow for conveyance of a Residential Lot to a public purchaser it will convey fee simple title to that portion of Common Area to the



Association, free and clear of all encumbrances and liens, except easements, covenants, conditions, and reservations then of record, including those set forth in this Declaration.

2.2 Conditions on Use of Common Area. Every Owner shall have, and is hereby granted, a right and non-exclusive easement of ingress, egress, and of enjoyment in and to any and all Common Area which may be initially included in, or subsequently annexed to, the project such easement shall be of a reciprocal nature and shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights and restrictions:

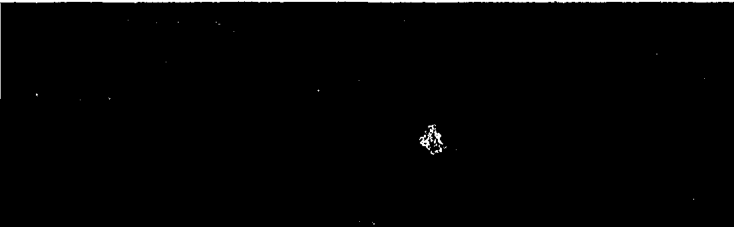
- (a) The right of the Association to limit the number of guests and to adopt Association Rules.
- (b) Subject to provisions or limitations herein contained, the right of the Association to borrow money to improve, repair, or maintain the Common Area.
- (c) The right of the Association to adopt and enforce Association Rules concerning the control and use of any private streets, roadways, and paved areas located upon or across the Common Area, including the right to regulate the kind of vehicles traveling thereon, the speed thereof, and the parking of vehicles upon such private streets and roadways. However, traffic upon such private streets and roadways shall be subject to and governed by all applicable provisions of the California State Vehicle Code and traffic regulations of the Indian Wells Municipal Code. Declarant or the Association is authorized to delegate to a municipality or other governmental entity or to contract with any private security patrol company to exercise its authorized rights in connection with such private streets, roadways, and parking areas.
- (d) Entry or Use Rights. Each Lot, including the Common Area, shall be subject to, in addition to any others set forth in the Declaration, the following servitudes, licenses, and rights of entry and use:
 - (1) The right of Declarant or its designees to enter upon the Common Area or upon any Residential Lot in order to make repairs and remedy construction defects, provided that such entry upon an occupied Residential Lot shall not interfere with the use or occupancy thereof, unless authorized by its Owner, which authorization shall not be unreasonably withheld.
 - (2) The right of the Association or the Architectural Committee or their agents to enter upon and inspect any Residential Lot, at any reasonable time or times, with the consent of its Owner, which consent shall not be unreasonably withheld, for the purpose of ascertaining whether the maintenance of such Residential Lot, the maintenance, construction, or alteration of structures

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thereon, and any other matters referred to in this Declaration are in compliance with its provisions.

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- (3) The right of the Association, or its agents, to enter upon any Lot to cure any violation or breach of this Declaration or the Bylaws, or the Association Rules, provided that at least thirty (30) days' prior written notice of such violation has been given to the Owner, and provided that, within said thirty-day (30-day) period such Owner had not acted to cure such violation or breach. The Association shall be entitled to levy a reimbursement demand for its costs of effecting such cure against the Owner in accordance with the procedures herein contained. The rights of entry and cure shall be immediate in case of an emergency originating upon or threatening any Residential Lot, whether or not its Owner is present.
 - (4) The right of the Association to grant permits, licenses, and easements over the Common Areas for utilities, quasi-utility services, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.
 - (5) The right of the Association, or its agents, to enter upon any of the Lots to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair for the benefit of the Common Area in watering, planting, cutting, removing, and otherwise caring for the landscaping thereon, as herein provided, cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained any underground utility lines serving each Lot. The rights shall be immediate in case of an emergency originating upon or threatening any Lot, whether or not its Owner is present; otherwise, the Owner's consent shall first be obtained, which consent shall not be unreasonably withheld.
 - (6) The right of any Owner, or his representatives, to enter upon the Lot or appurtenant thereto of any other Owner for purposes of performing permissible installations, alterations, or repairs to mechanical or electrical services, including installation of television antennae and related cables.
 - (7) The right of the Association or Owners (or their representatives) of adjoining Lots of entry upon and access to any slopes or drainageways located upon a Lot which affect adjoining Lots when such access is essential for the maintenance or stabilization of slopes or drainage, or both, on such Lots, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Lot is being entered upon.



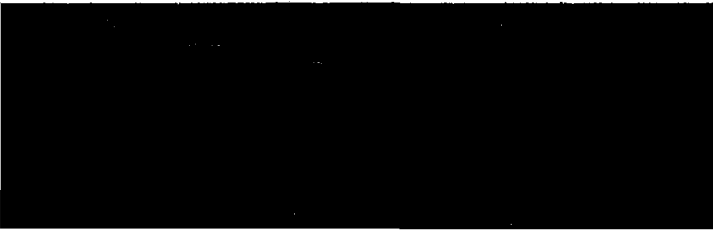
In case of emergency the right of entry shall be immediate.

- (8) The right of Declarant to enter on the Common Area and to install and/or construct thereon Improvements such as roads and streets, amenities, landscaping, sewer and drainage systems, and all other works of construction intended for the benefit of subsequent phases.

Subject to Rules or regulations adopted by the Board, any Member may delegate his rights of ingress, egress, and enjoyment to the Common Areas and facilities to the members of his family, his tenants, guests, or contract purchasers who reside at the Project; provided, that each Owner shall notify the secretary of the Association of the names of any contract purchasers or tenants of his Lot. Each Owner, contract purchaser, or tenant shall also notify the secretary of the Association of the names of all persons to whom the Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship which each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are those rights of Owners.

- 2.3 Common Area Encroachment Easement. If any portion of the Common Area encroaches upon any Residential Lot, or vice versa, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event any structure thereon is partially or totally destroyed and then rebuilt, the Residential Lot Owners agree that minor encroachments into the Common Area due to construction shall be permitted and that valid easements for such encroachments and the maintenance thereof shall exist.
- 2.4 Power to Grant Easements. Declarant or the Association shall have the power to grant and convey to any third party easements and rights-of-way in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities which may be reasonably necessary or beneficial to the Project. Each Owner, in accepting a deed to a Lot, expressly consents to such easements and rights-of-way and authorizes and appoints the Association and Declarant (so long as Declarant owns one (1) or more Lots) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.
- 2.5 Public Record Easements. Each Lot and its Owner, the Common Area, and the Association, as the case may be, is hereby declared to be subject to all the easements, dedications, and rights-of-way granted or reserved in, on, over, and under the Project as shown on the Tract Map or otherwise contained in the public records of said

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County, specifically including, where applicable, sewers and/or drainage systems provided as part of the original construction.

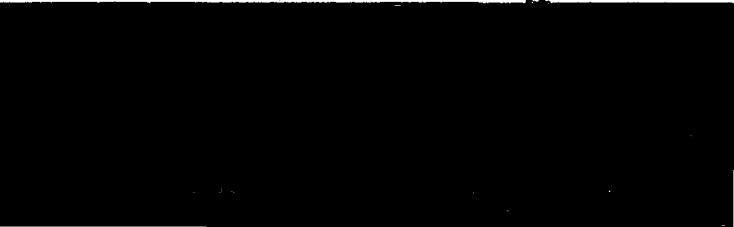
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- 2.6 Utility and Drainage Easements. There is hereby created a blanket easement upon, across, over, through, and under the Project for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and systems including, but not limited to, water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated on the Project except as programmed and approved by the Developer prior to the conveyance of the first Lot in a parcel to an Owner or by the Architectural Review Board thereafter. This easement shall in no way affect any other recorded easements on said premises. This easement shall be limited to Improvements as originally constructed.

Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or drainage systems, which may be in violation of any ordinance or resolution of a governmental agency, or which may change the direction or flow of drainage channels or may obstruct or retard the flow of water through such channels. The easement area of each Residential Lot, if any, and all Improvements in it shall be maintained continuously by the Owner, subject to a right of enforcement in the Association as provided herein, except for those Improvements for which a public authority or utility company may be responsible to maintain.

- 2.7 Annexation of Additional Parcels. Additional parcels may be annexed to and become subject to this Declaration by either of the following methods set forth in this section. The effects of annexation shall subject the annexed property to the provisions of this Declaration without the necessity of amending individual sections hereof.

(a) Annexation without approval. The property described in the Recitals herein may be annexed to and become a part of the Project, subject to this Declaration, and subject to the jurisdiction of the Association, without the assent of the Association, and without the assent of the Residential Lot Owners, on condition that:

- (1) Any annexation pursuant to this section shall be made prior to the third anniversary of the original issuance of the Public Report for the most recently annexed phase of the Project; provided, however, in the event units in the Project are sold utilizing FHA or VA financing programs, annexation will be subject to a determination by FHA and/or VA, as applicable, that said annexation is



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in accordance with the general plan heretofore approved by them.

(2) A Declaration of annexation shall be recorded covering the applicable portion of the Project to be annexed. Said Declaration may contain such complementary additions and modifications of the provisions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the scheme of this Declaration.

(b) Annexation by approval - Upon approval in writing of the Association, pursuant to approval of sixty-seven percent (67%) of the voting power of its members other than Declarant, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record a declaration of annexation in the manner described herein; provided, however, that no annexation may take place more than seven (7) years from the date of recordation of this Declaration.

Membership in the Association shall be expanded at the effective date of annexation to include Owners within annexed properties and all Members shall thereafter have all rights and obligations herein established.

2.8 Adoption of Rules. The Association shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Common Area and other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles, and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein.

2.9 Transfer of Assets to Public Agency. The Association shall have the right to dedicate or transfer all or substantially all of its assets, including all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding any contrary provision in the Articles or Bylaws, so long as there is any Lot for which the Association is obligated to provide management, maintenance, preservation, or control, no such dedication or transfer shall be effective unless approval of sixty-seven percent (67%) of the Members and at least sixty-seven percent (67%) of the first mortgagees of the Lots agreeing to such dedication or transfers has been obtained.

2.10 Borrowing Money for Common Area Improvements. The Association shall have the right, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in



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aid thereof, and with the assent of sixty-seven percent (67%) of each class of Members, hypothecate any or all real or personal property owned by the Association. After conversion of the Class B to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (a) sixty-seven percent (67%) of the voting power of Members of the Association and at least a majority of the voting power of Members of the Association other than Declarant.

ARTICLE 3
HOMEOWNERS ASSOCIATION

- 3.1 Association Membership. The Cove at Indian Wells Homeowners Association, Inc., a California nonprofit mutual benefit corporation, has been formed for the purpose of managing the Project. The Owner of a Residential Lot shall automatically, upon becoming the Owner of same, be a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessments.
- 3.2 Continuity of Life. If the Association should be dissolved as a corporation, an unincorporated association immediately and without further action or notice shall be deemed to exist and shall succeed to all rights and duties of the Association. The affairs of such unincorporated association shall be governed by the laws of the State of California and, to the extent not inconsistent with this Declaration, by the Articles and Bylaws of the Association as if created for the purpose of governing the affairs of such unincorporated association. In the event of dissolution of the Association and the formation of an unincorporated association, each Member of the Association shall have an underlying beneficial interest in all of the Association's property in direct proportion to the number of Residential Lots owned by such Member.
- 3.3 Confirmation of Powers. All rights and powers granted to or reserved in the Association or the Board pursuant to Article 2 of this Declaration are confirmed to the Association or the Board, as applicable.
- 3.4 Duty of Maintenance. Except as otherwise provided herein, the Association, acting through the Board and officers, shall have the sole and exclusive right and duty to manage, operate, control, repair, replace, or restore all of the Common Area, and easements appurtenant thereto, or any portion thereof, together with the Improvements.
- 3.5 Transfer of Membership. The membership of an Owner shall not be transferred, pledged, or alienated in any way except upon transfer of interest to the Owner's Residential Lot and then only to the transferee of such interest to such property. Any attempt to make a prohibited transfer shall be void.



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3.6 Voting Membership. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all the Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

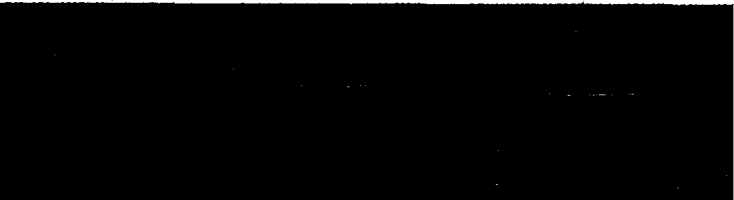
Class B. Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or
- (b) Two (2) years following the date of original issuance by the California Department of Real Estate of the Public Report for the most recently annexed phase or increment of development of the Project, or
- (c) Not later than the fourth anniversary of the original issuance of the Public Report for the first phase or increment of the development.

3.7 Unit Voting Required. Each vote must be cast as a unit and fractional votes shall not be allowed. If multiple Owners are unable to agree as to how a vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners shall cast a vote representing a certain Lot, it thereafter will be presumed conclusively for all purposes that he or she was or they were acting with the authority and consent of any other Owners of the same Lot.

3.8 Cumulative Voting. Each Owner entitled to vote at any election of Directors may cumulate his or her votes pursuant to procedures specified in section 7615(b) of the Corporations Code and give one (1) candidate or divide among the candidates a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which such Owner otherwise is entitled.

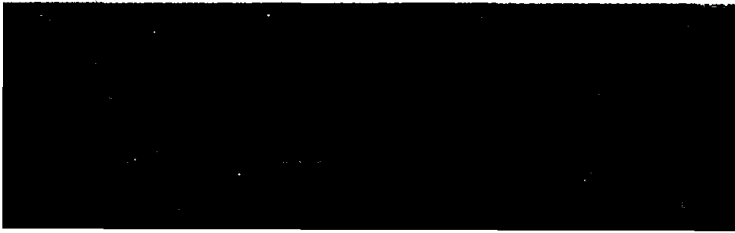
3.9 Delegation of Power to the Board. In discharging their duties and responsibilities, the Board exercises the power of, acts on behalf of, and as representative for, the Association, which acts on behalf of and as representative of the Owners, and no Board member shall be individually or personally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



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3.10 Association Duties and Powers. In addition to rights, powers, and duties enumerated in Article 2, the Association shall have the obligation to do and perform the following specific functions for the benefit of the Owners and for the maintenance and improvement of the Project:

- (a) To accept all Common Areas conveyed, leased, or otherwise transferred to it by Declarant or by any other person or organization pursuant to the terms of this Declaration.
- (b) To operate and maintain the Common Areas, or to provide for same through the services of a managing agent; to keep Common Area Improvements of whatever kind and for whatever purpose from time to time located thereon in good order and repair. To contract and pay for maintenance, utilities, materials, supplies, and services relating to the Common Area and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services.
- (c) To contract for or provide (to the extent adequate services are not provided by a public authority) police and fire protection, sewage disposal, refuse disposal, street maintenance, and such other services, facilities, and maintenance of a public or quasi-public nature as may be deemed necessary or desirable for the effectuation of the purposes of this Declaration. In connection with any such facilities and services, the Association may contract with or assign its duties to any public authority, governmental body, or special district.
- (d) To pay all real property taxes and assessments levied upon any property conveyed, leased, or otherwise transferred to the Association to the extent not assessed to the Owners. Such taxes and assessment may be contested or compromised by the Association; provided, however, that they are either paid or a bond insuring the payment is posted prior to the sale or other disposition of any property, to satisfy the payment of such taxes.
- (e) To obtain and maintain in force fire insurance with extended coverage endorsement on all buildings and other structures and Improvements within the Common Area (other than trees, shrubs, and other foliage) in the amount of the full insurable value thereof. SUCH POLICY OR POLICIES SHALL SPECIFICALLY INCLUDE A FULL REPLACEMENT COST COVERAGE ENDORSEMENT. The master policy representing such insurance shall be carried in the name of the Association and the original or a certificate of the master policy and a copy of the receipt for payment of the premium (or other satisfactory evidence of payment) shall be furnished to Declarant at each renewal period during the time Declarant retains any ownership interest in the Project. The terms of such insurance shall require at least fifteen (15) days' notice to Declarant prior to cancellation or material change of such insurance.



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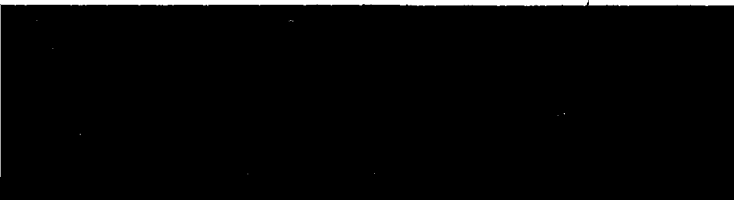
All losses so covered shall be payable to the Association which will see to the replacement or repair of the destroyed or damaged structure or improvement. If the cost of such replacement or repair shall exceed the insurance proceeds payable by reason of the loss, the Board shall assess it to the appropriate Owners on an equitable basis, and in the case of Common Area Improvements shall prorate the difference and assess it to all Owners, which for such purposes shall include Declarant only as to Lots within the increments or phases which have been annexed to the Association but are not yet sold to public purchasers at the time of such loss. If the proceeds payable shall exceed the cost of replacement or repair, the excess shall be added to the Association funds.

All insurance shall be obtained from and carried with companies approved by Declarant, for so long as Declarant owns any interest in the Project, and rated A+XII, or better, in the then current edition of Best's Key Rating Insurance Guide.

- (f) To obtain and maintain in force the following policies of insurance:
- (1) Bodily injury liability insurance with limits of not less than \$1,000,000 per person and \$3,000,000 per occurrence and property damage liability with limits of not less than \$500,000 per occurrence, insuring against liability for bodily injury, death, and property damage arising from the activities of the Association or with respect to property under its jurisdiction;
 - (2) A fidelity bond in an amount equal to one hundred fifty percent (150%) of the Association's annual assessments plus reserves, which names the Association as obligee and insures against loss by reason of the acts, including misuse and misappropriation of funds, of Members of the Board, officers, and employees of the Association and any management agent and his employees, whether or not such persons are compensated for their services.
 - (3) Workers' Compensation Insurance covering all of its employees, indemnity and other bonds as required, and such other insurance as the Association shall deem necessary or expedient to carry out its functions as set forth in this Declaration and in the Articles or Bylaws.

Declarant will procure that insurance detailed in Subparagraphs (e) and (f) hereinabove prior to closing of escrow of the first sold unit in the Project. The Association shall reimburse Declarant for such insurance premiums prorated from the date of said first closing to the end of policy year.

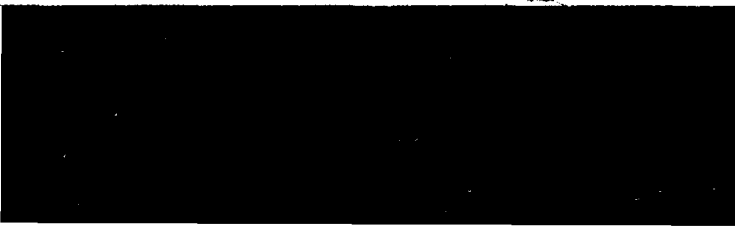
Insurance referred to above shall name as separately protected insureds, where applicable, the Declarant, the Association, the Board, and their representatives, members, and employees,



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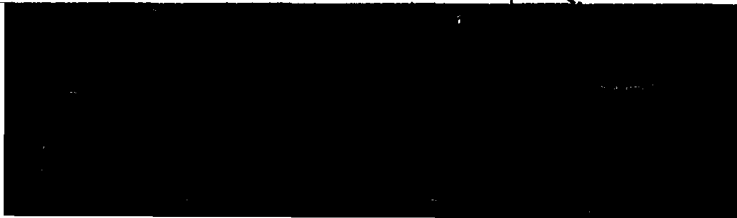
and the Owners (as a class). Such policy or policies shall protect each of the insureds as if separately insured under separate policies; provided, however, that such policy or policies shall not require the insurers to pay any amount in excess of the maximum limits stated therein. Each policy of insurance obtained by the Association, whether or not required to be obtained pursuant to the provisions of this Declaration, expressly shall waive any and all rights of subrogation against Declarant, its representatives, and employees, and all Owners, as well as a waiver of any "pro rata" clause, unless such waivers are prohibited by law or unavailable from insurers deemed qualified under this Declaration. The Association is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Declaration, and is granted full right and authority to compromise and settle any claim, and to enforce the same by legal or equitable action, and to execute releases in favor of any insurer. The name of the insured under policies required by this Declaration must be set forth substantially as "The Cove at Indian Wells Homeowners Association, Inc., a Non-Profit Mutual Benefit Corporation, for use and benefit of the individual owners."

- (g) The Board may purchase and maintain in force at all times demolition insurance in adequate amounts to cover demolition in the event of destruction and a decision not to rebuild. The premium therefor shall be paid out of the monies collected from the assessments. Such policy, if purchased, shall contain a determinable demolition clause, or similar clause, to allow for the coverage of the cost of demolition in the event of destruction and a decision not to rebuild.
 - (h) The Board may delegate its responsibility for the everyday management of the Project to a Manager, if it so chooses. Notwithstanding any of the foregoing, if a Manager is chosen to manage the Project, it will be responsive to the dictates of the Board.
 - (i) To take such other action, whether or not expressly authorized herein, as may be reasonably necessary to enforce the provisions of this Declaration or of the Rules.
- 3.11 Duty of Members. Each member shall be obligated promptly, fully, and faithfully to comply with the provisions of this Declaration, and the Bylaws of the Association, and any Rules and Regulations from time to time which may be prescribed by its officers or directors.
- 3.12 Distribution of Rules. A copy of the Rules as adopted, amended, or repealed from time to time shall be mailed or otherwise delivered to each Owner, and may be recorded. Upon such recordation, the Rules shall have the same force and effect as if a part of this Declaration.



ARTICLE 4
COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

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- 4.1 Regular Assessment of Lots. The Association has and shall have the right and power to make from time to time reasonable assessments upon the Owners to meet anticipated authorized expenditures of the Association, and to change from time to time the amount, installments, and/or frequency of payment of these regular assessments. Each Residential Lot shall be assessed separately for its share of such expenditures and all sums assessed in accordance with the provisions of this paragraph shall constitute a lien on each respective Lot prior and superior to all other liens except (a) all taxes, bonds, assessments, and other levies which by law would be superior thereto and (b) the lien or charges of any first trust deed of record (meaning any recorded trust deed with first priority over other trust deeds) made in good faith and for value.
- 4.2 Uniform Rate and Collection. Both regular and special assessments must be fixed at a uniform rate for all Residential Lots and may be collected on a monthly basis.
- 4.3 Covenant for Payment and Establishment of Lien. The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Residential Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) regular annual assessments, (b) special assessments for capital improvements, and (c) any other assessments, reimbursement demands, or monetary penalties levied pursuant to the provisions of this Declaration, such levies to be established and collected as herein provided. The regular and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the lot against which each such assessment is made, the lien to become effective upon recordation of a notice of delinquent assessment; provided, however, that a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the governing instruments or as a reimbursement to reimburse the Association for certain costs incurred shall not become a lien against the Member's subdivision interest.
- 4.4 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of all the residents in the entire Project and for the improvement and maintenance of the Common Area, for the common good of the Project and of the homes situated upon the properties.
- 4.5 Commencement of Assessments. The regular assessments provided for herein shall commence as to all Residential Lots in an phase of the Project on the first (1st) day of the month following the conveyance of the first Residential Lot of that phase to an Owner, or of the Common Area to the Association, whichever shall first occur. The first regular annual assessment shall be adjusted



according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Residential Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

4.6 Amount of Regular Assessments. Until January 1 of the year immediately following conveyance of the first Residential Lot to an Owner, the maximum annual regular assessment shall be \$33.88 per Lot per month.

(a) From and after January 1 of the year immediately following the conveyance of the first Residential Lot to an Owner, the maximum annual assessment may be increased each year not more than the greater of (1) ten percent (10%) or (2) the percentage by which the U.S. Bureau of Labor Statistics Los Angeles Area Consumer Price Index for All Urban Consumers has increased as of the date of the increase over the level of the Index as of the date the annual assessment was last established without a vote of the membership. In no case shall the increase of regular assessments be greater than ten percent (10%) of the preceding year's assessment without the vote of fifty-one percent (51%) of each class of members; provided, however, that following the conversion of the Class B membership to Class A membership, any such increase shall have the vote or written assent of (i) fifty-one percent (51%) of the total voting power of the Association and (ii) fifty-one percent (51%) of the total voting power of members other than the Declarant.

(b) From and after January 1 of the year immediately following the conveyance of the first Residential Lot to the Owner, the maximum annual assessment may be increased above the amount provided in subparagraph (a) by the vote or written assent of fifty-one percent (51%) of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, the maximum annual assessment may be increased more than the amount provided in subparagraph (a) above the maximum annual assessment for the previous year by the vote or written assent of a majority of the voting power of the Members of the Association, and at least a majority of the voting power of Members of the Association other than Declarant.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum permitted herein.

4.7 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, on the same basis and in the same manner as a regular annual assessment, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement

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upon the Common Area, including fixtures and personal property related thereto; provided, however, that any special assessment shall require the vote or written assent of fifty-one percent (51%) of each Class of members; provided, however, that after the conversion of a Class B membership to Class A membership, any such assessment shall have the vote or written assent of (i) fifty-one percent (51%) of the total voting power of the Association and (ii) fifty-one percent (51%) of the total voting of the members other than the Declarant.

The Association may also levy a reimbursement demand against any Member to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of this Declaration, any amendments thereto, the Articles, the Bylaws, and the Association Rules and regulations, which demand may be levied upon the vote of the Board after notice and an opportunity for hearing which satisfies the requirements of Section 7431 of the California Corporations Code.

4.8 Enforcement of Payments. Each assessment levied pursuant to this Declaration or the Bylaws shall be a separate, distinct, and personal debt and obligation of the Owner against whom the same is levied. In the event of a default in payment of any such levy, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation by either or both of the following procedures as may be applicable:

- (a) The Association, may bring a suit at law to enforce each such assessment obligation. Any judgment rendered in any such action shall include the late charge if any and interest provided in this Declaration along with a sum for reasonable attorney's fees in such amount as the court may adjudge against the defaulting Owner.
- (b) At any time after thirty (30) days from the due date of a regular or special assessment payment, the Association may make a demand to the defaulting Owner for payment, which demand shall state the date and amount of delinquency. If the delinquency is not paid within ten (10) days after delivery of the notice, the Association may elect to file a claim of lien against the residential property of such delinquent Owner. The claim of lien shall state:
 - (1) The name of the delinquent Owner.
 - (2) The legal description and street address of the property against which the claim of lien is made.
 - (3) The amount claimed to be due and owing (with any proper offset allowed) which shall include interest from the due date at the rate of six percent (6%) per annum, or the maximum rate permitted by law, whichever is lesser.

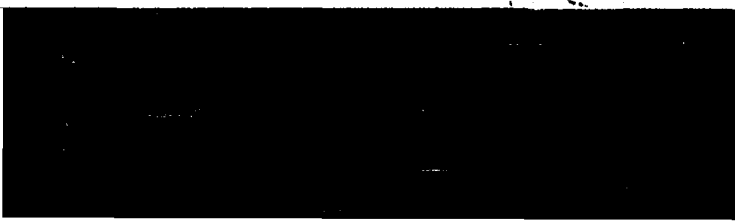


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- (4) That the claim of lien is made by the Association pursuant to the terms of this Declaration.
- (5) That a lien is claimed against the property in an amount equal to the amount of the stated delinquency. Upon recordation of a duly executed original and a copy of such claim of lien by the Recorder of Riverside County, the lien immediately shall attach and become effective, subject only to the limitations hereinafter set forth. Each default shall constitute a separate basis for a claim of lien or a lien, but any number of defaults may be included within a single claim of lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a trust deed. If foreclosure is by action in court, reasonable attorneys' fees shall be allowed to the extent permitted by law. If the foreclosure is in the manner provided by law for foreclosure of a trust deed under power of sale, the Association shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted.
- (d) In any such foreclosure, the Owner shall be required to pay a reasonable rental for the Residential Lot subsequent to the foreclosure sale, and the Association or its nominee may bring an action therefor. The Association acting on behalf of the Owners shall have the power to bid the amount owed as a credit bid at foreclosure and to acquire, hold, resell, lease, mortgage, and convey the same. Suit to recover a money judgment for unpaid Common Expenses, rent, and attorneys' fees shall be maintainable without foreclosure or waiving of the lien securing the same.

4.9 Reimbursement Demands and Monetary Penalties. The Association may also levy a reimbursement demand against any Member to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of this Declaration, any amendments thereto, the Articles, the Bylaws, and the Association Rules and regulations, which demand may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfies the requirements of Section 7431 of the California Corporations Code.

Each reimbursement demand or monetary penalty levied pursuant to this Declaration or the Bylaws shall be a separate, distinct, and personal debt and obligation of the Owner against whom the same is levied. In the event of a default in payment of any such levy, and in addition to any other remedies herein or by law provided, the Association may bring a suit at law to enforce each such assessment obligation, reimbursement demand, or monetary penalty. Any judgment rendered in any such action shall include the late charge if any and interest provided in this Declaration along with a sum for reasonable attorney's fees in such amount as the court may adjudge against the defaulting Owner.



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A reimbursement demand or monetary penalty may not become a lien against the Member's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Civil Code Sections 2924, 2924(b) and 2924(c).

- 4.10 Delinquent Payment Sanctions. The Board may suspend or cause by rule the automatic suspension of the voting rights of, and the right to use any recreational facilities by any Owner for any period during which an assessment, reimbursement demand, or monetary penalty authorized by this Declaration or the Bylaws shall remain delinquent. Any assessment, reimbursement demand, or monetary penalty not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum, or the maximum rate permitted by law, whichever is lesser.
- 4.11 No Exception from Assessment. No Owner may exempt himself from personal liability for his contribution towards the expenses of the Association by waiver of the use of or enjoyment of any of the Common Areas or by the abandonment of his Lot.
- 4.12 Start-Up Fund. Upon acquisition of record title to a Residential Lot from Declarant, its successors or assigns, the Owner shall make a contribution to the capital of the Association in an amount equal to two (2) times the amount of the regular monthly assessment as determined by the Board for the Association's "start-up fund." Said capital contributions shall be limited to the original sales of Residential Lots by Declarant and shall not apply to any resale of Lots. Such contribution set forth herein shall be in addition to a sum representing one (1) monthly assessment prorated from close of escrow to the first day of the following month. Within six (6) months following the date of the first of said contributions for the benefit of the Association, in a particular increment or phase, the Declarant shall deposit with the Association a sum equal to two (2) times the regular monthly assessment for each unsold Lot therein which may still be owned by Declarant at such time and for which no start-up fund contribution had previously been paid. Declarant shall be reimbursed for such contributions from the contributions of subsequent purchasers of Lots in the Project through the use of appropriate escrow instructions. Declarant will furnish a bond guaranteeing payment within said six-month (6-month) period. The Association shall use amounts deposited in the start-up fund for any proper purpose, including but not limited to, reimbursements to Declarant for any costs or expenses advanced on behalf of the Association.
- 4.13 Assessments Include Reserves. The regular assessments shall include reasonable amounts, as determined by the Association, collected as reserves for the future periodic maintenance, repair, or replacement of all or a portion of the Common Area Improvements or any other purpose as determined by the Association. All amounts collected as reserves, whether pursuant to this section or otherwise, shall be deposited by the Association in a separate bank account to be held in trust for the purpose for which they are

collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

- 4.14 Estoppel Certificate. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Residential Lot is binding upon the Association as of the date of its issuance.

ARTICLE 5
USE AND RESTRICTIONS

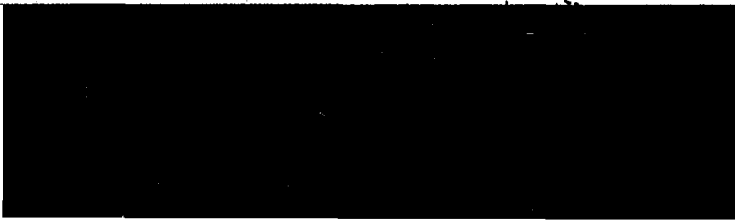
- 5.1 Covenant Against Partition. Declarant, its successors, and assigns by this Declaration, and all future Owners of Residential Lots by their acceptance of their respective ownership interest, covenant and agree as follows:
- (a) The Common Areas shall remain vested in the Association and no Owner shall bring any action for partition, dissolution of the Association, or any action to divide the Common Areas, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project.
 - (b) The Residential Lots and Improvements thereupon shall be occupied and used by the respective Owner only as a private dwelling for the Owner, his family, tenants, and social guests and for no other purpose.
- 5.2 Common Area Alterations. No Owner of a Residential Lot shall make any alteration or improvement to the Common Area or remove any planting, structure, furnishings, or other object therefrom except with the written consent of the Board.
- 5.3 Sign Restrictions. No sign of any kind or for any use or purpose whatsoever, other than one sign of customary and reasonable dimensions advertising the property for sale shall be erected, posted, pasted, painted, or displayed upon any of said Lots. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agents of structures or signs necessary or convenient to the development, sale, operation, renting, or other use of property within the Project. This exemption shall terminate six (6) months after all the residential property in the Project has been sold and conveyed to public purchasers.
- 5.4 Visual Aesthetics. No antenna for radio or television reception or transmission and no clothesline, air-conditioning unit, or other appliance or apparatus, laundry, bedding, garment, or other like item shall be placed within the Common Areas. No such item shall



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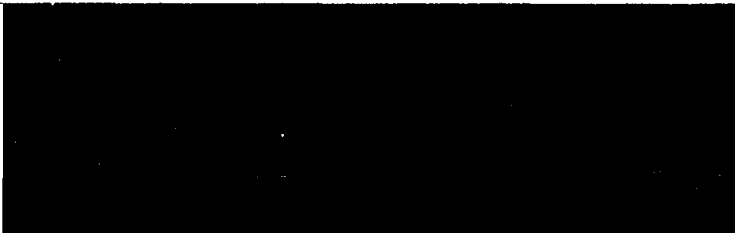
be placed upon or within any Residential Lot so as to be visible from the Common Areas.

- 5.5 Temporary Residence. No tent, shack, trailer, boat, motorhome or recreational vehicle, camper, basement, garage, or outbuilding shall at any time be used as a residence of a temporary character.
- 5.6 Vehicles and Parking. No vehicle of any kind, including an automobile, boat, camper, trailer, motor home, truck, or commercial vehicle may stand or be parked for longer than eight (8) hours outside of a garage or on any private road, which eight-hour span shall be limited to the hours between 9:00 A.M. and 6:00 P.M. There shall be no painting nor maintenance work done on any vehicle outside of a garage or on any private road. No automobile overhaul or repair work other than of an emergency nature shall be permitted on the Project.
- 5.7 Power Equipment Restriction. No commercial power equipment, hobby shops, or carpenter shops shall be maintained on the Project except with the prior approval of the Board.
- 5.8 Nuisance, Disturbance Restriction. No residential unit shall be used in such manner as to interfere with the enjoyment of occupants of other units or annoy them by unreasonable noises or otherwise nor shall any nuisance or illegal activity be committed or permitted to occur on any Residential Lot or in any residential unit. No noxious or offensive activity shall be carried on in the Common Area nor shall anything be done therein which may be or become an annoyance or nuisance to the neighborhood.
- 5.9 Owner's Liability for Damage. The Owner of each Residential Lot shall be liable to the Association for all damage to the Common Area or to any Improvements thereon or thereto, including but not limited to buildings, and landscaping caused by Owner, his guest, or any occupant of such Owner's unit; such liability shall be subject to either a reimbursement demand or monetary penalty, as herein defined, as may be appropriate.
- 5.10 Rules to Govern Use. No activity shall be carried on in the Project which shall be contrary to the duly adopted Rules and Regulations of the Board relating thereto.
- 5.11 Mining Restriction. No derrick or other structure designed for use in boring, mining, or quarrying for oil, minerals, natural gas, or precious metals shall ever be erected, maintained, or permitted upon the surface of any Lot in the Project, nor shall any boring, mining, quarrying or similar operations be performed within 500 feet of the surface except, however, that use by the Owner of any geothermal energy source shall not be prohibited by this paragraph.
- 5.12 Pet Restriction. No animals or birds other than a reasonable number of house pets of a kind approved by the Board in its discretion shall be maintained on any residential property, and then only if they are kept solely as household pets and not for



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- Commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. No exterior structure for the care, housing, or confinement of any such pets shall be allowed on the Common Areas of the Project except as may be permitted by Rules of the Association.
- 5.13 Prohibition Against Institutional Use. No residence in this tract may be used for a public boarding house, sanitarium, hospital, asylum, or institution of any kindred nature, or any use not permitted by local law.
- 5.14 Use of Common Area. The Common Areas of the Project shall be improved and used only for the following purposes:
- (a) Pedestrian access to and from and movement within the Project.
 - (b) Recreational use by Owners and occupants of residential property and their guests.
 - (c) Beautification of each unit and of the Project.
 - (d) Privacy for the Owners and occupants of residential property.
 - (e) Such other uses as shall be determined from time to time by the Board for the benefit of Members of the Association, following consultation with the Architectural Committee. Any structures necessary to effectuate such uses herein must be constructed a minimum of ten (10) feet from adjacent property lines of any Residential Lot.
- 5.15 Trash and Storage Restriction. All equipment, garbage cans, wood piles, or storage piles shall be kept screened and concealed from view of neighboring units, streets, and Common Areas. All rubbish, trash, or garbage shall be regularly removed from each unit and shall not be allowed to accumulate thereon or on the adjacent Common Areas, except in designated areas.
- 5.16 Owner's Duty of Maintenance. No building or structure upon any Residential Lot shall be permitted to fall into disrepair, and subject to the requirements herein as to approval by the Architectural Committee each such building or structure shall, at all times, be kept in good condition and adequately painted or otherwise finished. Exterior maintenance upon each Residential Lot and inside such residential unit shall be the financial responsibility of the Owner and shall include, but not be limited to: paint, repair, replacement, and care of roofs, gutters, trim, downspouts, exterior building surfaces, walls, fences, walks, and other exterior improvements upon his Lot, including trees, shrubs, and ground cover. All plant material within private yards shall be restricted to those types which are compatible with the size of the yard and shall be required to be maintained in a neatly trimmed manner.

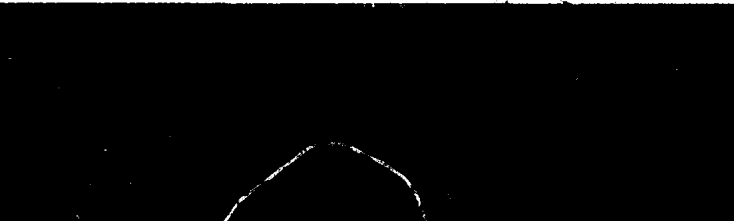


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- 5.17 Drainage. Each Owner of a Lot in the Project agrees that he will accept the burden of, and not in any way interfere with, the established drainage pattern over his Lot from adjoining or other Lots in said tract; or, in the event it is necessary to change the established drainage, that he will make adequate provisions for proper drainage over said Lot. For the purposes hereof, "established" drainage is defined as the drainage which occurred at the time the overall grading of the Project, including, if applicable, the landscaping of each Lot, was completed by Declarant.

ARTICLE 6
ARCHITECTURAL CONTROL AND APPROVAL OF PLANS

- 6.1 Architectural Committee. Architectural control and approval of plans shall be vested in the Declarant, its successors in interest, or its assigns until the creation of an Architectural Committee, which shall be established by the Association within twelve (12) months following the issuance of the original Public Report for the first phase of the Project, and shall be comprised of no less than three (3) nor more than five (5) members some or all of whom may be members of the Board concurrently; provided, however, that Declarant reserves the power to appoint a majority of the members of the Committee, the remaining members to be appointed by the Board, until ninety percent (90%) of the Lots in the fully-annexed project shall have been sold or until the fifth (5th) anniversary of the original issuance of the Public Report for the first phase of the project, whichever first occurs. Thereafter, all members of the Committee shall be appointed by the Board. Members appointed to the Committee by Declarant need not be Members of the Association, but members appointed by the Board shall be from the membership of the Association.
- 6.2 Committee Approval. Before commencing any building, remodeling, or renovation operations or activities, written approval must be obtained from the Architectural Committee established herein (hereinafter referred to as "the Committee") covering building and plot plans for all structures erected, altered, renovated, remodeled, placed, assembled, or permitted to remain on any Lot, including garages and fences; except, however, that approval of the Committee shall not be required for building operations conducted by Declarant, its successors and assigns. The approval of said Committee shall include style, design, appearance, harmony of external design, including color scheme, with Declarant's general scheme, location of the proposed structure with respect to topography and finish grade elevation, and as to corner Lots, the street frontage thereof, but shall not be construed as modifying, altering, or waiving any of the provisions herein set out or established by law.
- 6.3 No Liability of Committee. Neither Declarant, nor the Committee, nor any member thereof shall be held responsible, or liable in any manner whatsoever, to any Owner of a Lot for any loss or damage due



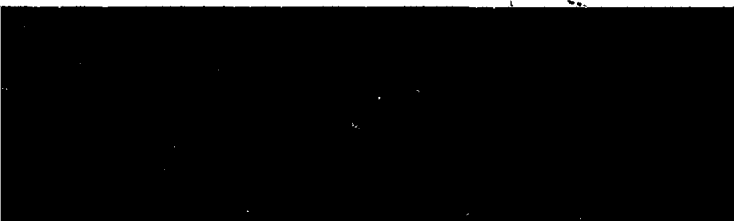
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to design concepts, aesthetics, errors or defects, patent or latent, shown or omitted, on any plans or specifications upon which it may pass, or any buildings or structures erected therefrom.

- 6.4 Committee Action Final. The decision of a majority of the Committee, or of a representative appointed by the majority thereof, acting in good faith in its sole discretion, upon any matters submitted or referred to it, shall be final; provided, however, that such decision may not violate any of the provisions set out in this Declaration. It is further provided that if no rejection shall have been sent by the Committee to an applicant within thirty (30) days from the date of receipt of a submittal such inaction shall be deemed approval. Any decision or approval by the Committee shall not relieve an applicant or Owner from complying with any requirement of a public authority having jurisdiction, and shall not constitute any representation or guaranty by the Committee or a member thereof of compliance of the submitted matter with any statute, ordinance, or regulation pertaining thereto.
- 6.5 Variance May Be Allowed. Declarant, its successors in interest, or its assigns, or the Architectural Committee may allow reasonable variances and adjustments of the provisions of this Declaration in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein, provided that this must be done in conformity with the intent and purposes thereof and also provided in every instance that such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood.
- 6.6 Conflicting Governmental Action. In the event there shall be any law or governmental action of any kind or nature which conflicts with or prevents works of construction or improvement in the manner described by these provisions, such circumstances shall be deemed to constitute practical difficulties within the meaning of the preceding paragraph.

ARTICLE 7
WALLS AND FENCES

- 7.1 Definitions. Each wall or fence which is built as a part of the original construction of the Project, including the footings thereof, and placed on the dividing line between the Lots, including the dividing line between a Residential Lot and the Common Area, shall constitute a party wall. To the extent not inconsistent with the provisions of this Article the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions, shall apply thereto.
- 7.2 Maintenance and Upkeep. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Repair and maintenance of walls and fences on the dividing line between a Lot and the



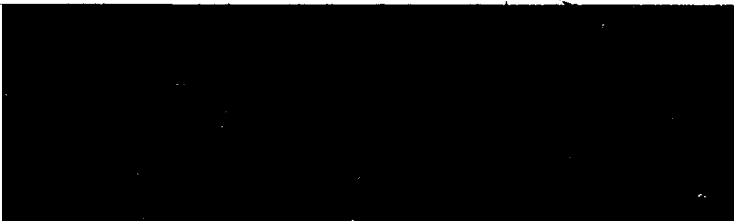
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Common Area, if any, shall be the responsibility of the respective Owner. Standards of maintenance and upkeep shall be specified by the Association, and subject to enforcement through any mechanism provided in this Declaration.

- 7.3 Right to Contribution. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- 7.4 Negligence of Owner. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 7.5 Arbitration of Disputes. In the event of any dispute arising concerning a party wall or under the provisions of this Article, either party to the dispute may submit the issues to the Board, or a subcommittee thereof consisting of not fewer than three (3) Members, and the decision of a majority shall be final.

ARTICLE 8
FIRST LIEN HOLDERS' RIGHTS

- 8.1 Rights Upon Foreclosure. No breach of the provisions herein contained nor enforcement of any lien provisions herein, shall defeat or render invalid the lien of any first mortgage as herein defined made in good faith and for value, but all of said provisions shall be binding on and effective against any Owner whose title is derived through foreclosure, trustee's sale, or otherwise. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage upon any Residential Lot. Sale or transfer of any Residential Lot shall not affect the assessment lien. However, the sale or transfer of any Residential Lot pursuant to judicial or nonjudicial foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first mortgage of record or other purchaser of a Residential Lot obtains title to the same pursuant to the remedies provided in the Mortgage, or as a result of foreclosure, such acquirer of title, his successors, and assigns, shall not be liable for the share of the Common Expenses, dues, charges, or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Delinquent



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assessments extinguished pursuant to this paragraph shall be reallocated and assessed to all unit estates as a Common Expense.

8.2 Notice to Mortgagees. Upon giving notice as provided in this paragraph, a mortgage holder, insurer, or guarantor shall become an "eligible" mortgage holder, insurer, or guarantor for purposes of receiving notice as provided by this Article 8. Upon written request to the Association, identifying the name and address of the requestor and the unit estate number or address, any such first mortgage holder, insurer, or guarantor will be an eligible requestor entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any unit estate on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;
- (b) Any default in the performance of any obligation under the project constituent documents, including any delinquency in the payment of assessments or charges owed, by an Owner of a unit estate subject to a first mortgage held, insured, or guaranteed by such eligible holder or eligible insurer, or guarantor, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed termination of the Project;
- (e) Any proposed amendment of the Project constituent documents effecting a change in:
 - (1) the boundaries of any Lot or any exclusive easement rights pertaining thereto,
 - (2) the interests in the general or limited common elements appertaining to any unit or the liability for Common Expenses appertaining thereto,
 - (3) the number of votes in the Association appertaining to any unit, or
 - (4) the purposes to which any Lot or the Common Area are restricted.
- (f) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in the following paragraph.

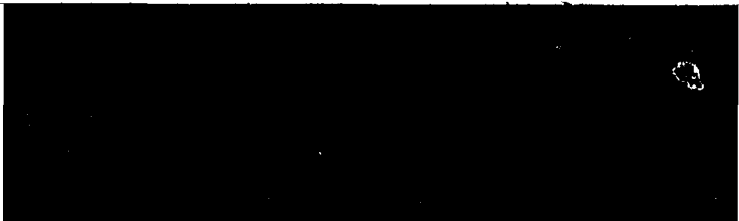
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8.3 Mortgagees' Right to Approve.

- (a) Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on unit estates which have at least fifty-one percent (51%) of the votes of unit estates subject to eligible holder mortgages.
- (b) Any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project property must require the approval of the eligible holders holding first mortgages on unit estates to which at least fifty-one percent (51%) of the votes of units subject to Mortgages held by such eligible holders are allocated.
- (c) Unless the formula for reallocation of interests in the Common Areas after a partial condemnation or partial destruction of the Project is fixed by law, no reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of such Project may be effected without the prior approval of eligible holders of units to which at least fifty-one percent (51%) of the votes of units subject to Mortgages held by such eligible holders are allocated.
- (d) When professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity became an eligible mortgage holder or eligible insurer or guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of unit estates to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible holders holding Mortgages on unit estates which have at least fifty-one percent (51%) of the votes of unit estates subject to eligible mortgage holders.

8.4 Mortgagee Approval of Project Changes. The following provisions do not apply to amendments to the constituent documents or termination of the Project status made as a result of destruction, damage, or condemnation, or to a reallocation of interests in the Common Areas which might occur pursuant to any plan of expansion or phased development contained in the original constituent documents.

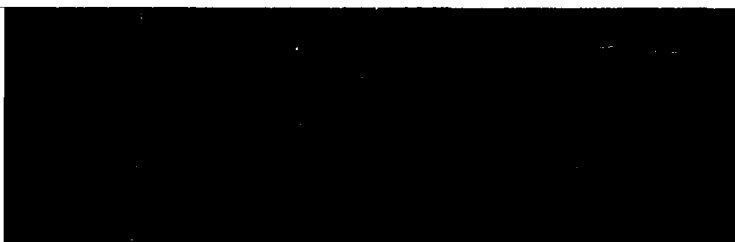
- (a) In addition to the consent of Owners of Residential Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, the approval of eligible holders holding Mortgages on unit estates which have at least sixty-seven percent (67%) of the votes of unit estates subject to eligible mortgage holders shall be required to terminate the legal status of the Project as a planned development.



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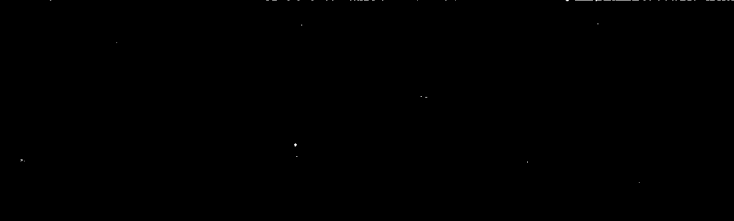
- (b) In addition to the consent of the Owners of Residential Lots obtained in the manner required in Article 9, the approval of eligible holders holding mortgages on unit estates which have at least fifty-one percent (51%) of the votes of unit estates subject to eligible mortgage holders, shall be required to add or amend any material provisions of the constituent documents of the Project, which establish, provide for, govern, or regulate any of the following:
- (1) Voting;
 - (2) Assessments, assessment liens, or subordination of such liens;
 - (3) Reserves for maintenance, repair, and replacement of the Common Areas (or units if applicable);
 - (4) Insurance or fidelity bonds;
 - (5) Rights to use of the Common Areas;
 - (6) Responsibility for maintenance and repair of the several portions of the Project;
 - (7) Boundaries of any unit;
 - (8) The interests in the general or limited Common Areas;
 - (9) Convertibility of units into Common Areas or of Common Areas into units;
 - (10) Imposition of any right of first refusal or similar restriction on the right of any unit estate owner to sell, transfer, or otherwise convey his or her unit estate;
 - (11) Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages on unit estates.
- (c) An addition or amendment to this Declaration shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

8.5 Restrictions on Certain Changes. Unless at least sixty-seven percent (67%) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) of the individual units in the Project have given their prior written approval, the Association shall not be entitled to:



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- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by the Association for the benefit of the units in the Project (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Project shall not be deemed a transfer with the meaning of this clause);
 - (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against a Residential Lot owner;
 - (c) by act or omission change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of the common property walks or common fences and driveways, or the upkeep of lawns and plantings in the Project;
 - (d) fail to maintain fire and extended coverage on insurable Project common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
 - (e) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement, or reconstruction of such Common Area.
- 8.6 Right of Reimbursement. First mortgagees of Project units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Project common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement in favor of all first mortgagees of units in the Project is established by this Declaration, to which the Association is bound.
- 8.7 No Right of First Refusal. Sale or resale of any units in this planned development shall not be subject to a right of first refusal in either Declarant or the Association.
- 8.8 Examination of Books and Records. The holders, guarantors, or insurers of first mortgages shall have the right to examine the books and records of the Association, including the Declaration, Bylaws, Articles, Rules, and amendments thereto. Upon request of a holder guarantor or the insurer of a first mortgage the Board shall furnish, free of charge, an audited financial statement of the preceding fiscal year.
- 8.9 Taxes, Assessments, and Charges. To the extent allowed by law, all taxes, charges, and assessments, which may become liens prior to

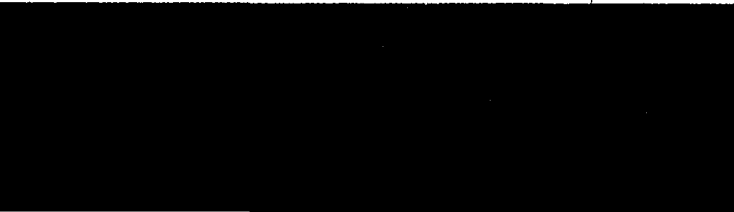


first mortgages under local law, shall relate only to the individual Lots and not to the Project as a whole.

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- 8.10 Reserves for Replacement. An adequate reserve fund for maintenance, repairs, and replacement of the Common Area facilities must be established by the Association and must be funded by regular monthly assessments rather than by special assessments.
- 8.11 No Priority Over Rights of First Mortgagees. No provisions herein shall give a Lot Owner, or any other party, priority over any rights of first mortgagees of Lots pursuant to their Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or the Common Area.
- 8.12 Conflict. If there is any conflict between the provisions of this Article and any other provisions of this Declaration or the Association Bylaws, the provisions contained in this Article shall control.

ARTICLE 9
MISCELLANEOUS

- 9.1 Term. This Declaration shall run with and bind the land and shall continue in full force and effect for a term of thirty (30) years from the date of this Declaration, after which time the same shall be automatically extended for successive periods of ten (10) years, unless terminated at any time after the first thirty (30) years by a written Declaration of Termination executed by the Owners of not less than sixty-seven percent (67%) of the Residential Lots included in the Project and by approval of eligible holders, insurers, or guarantors of first mortgages pursuant to Article 8 of this Declaration.
- 9.2 Amendments. Prior to the close of the first escrow, Declarant shall have the right to amend this Declaration, by executing and recording, with the consent of Mortgagees of all trust deeds then of record, the desired amendment, after receiving the prior written approval of the California Department of Real Estate and any other state administrative agency then having regulatory jurisdiction over the Project; the recording of said amendment shall be presumed to be valid as to anyone relying thereon in good faith. Subsequent to the close of the first escrow, and subject to rights of any holders, insurers, or guarantors of first mortgages as may be established in Article 8 herein, each and all of the covenants, conditions, and restrictions contained herein may be modified, amended, augmented, or deleted by the execution of either an amended Declaration or amendment to this Declaration, duly executed and acknowledged by sixty-seven percent (67%) of the total voting power of the Association, and at least a bare majority of the votes of members other than Declarant; provided, that the percentage of the voting power necessary to amend a specific clause or provision



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shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. For example, if the Declaration expressly states that seventy-five percent (75%) of the voting power must agree to an increase in the maximum annual assessment, then seventy-five percent (75%) of the voting power is necessary to amend this provision regardless of the percentage above prescribed. Said amended Declaration or amendment to this Declaration shall not be effective for any purpose, unless and until recorded in the Office of the County Recorder, but shall thereafter be conclusive and presumed to be valid as to anyone relying thereon in good faith.

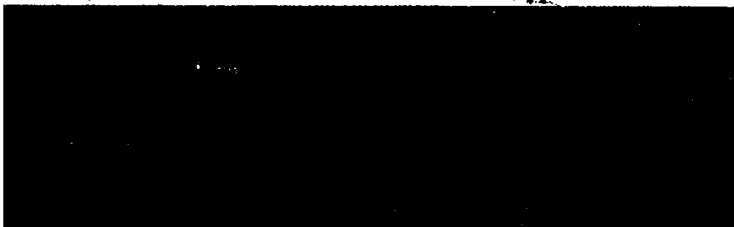
- 9.3 Cumulative Remedies. Each remedy provided by this Declaration is cumulative and not exclusive, and all of the provisions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Project, as set forth herein. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.
- 9.4 Notices. Any notice or other document relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy thereof shall have been deposited in the United States mail, postage prepaid, and addressed to the address of record of the applicable party.
- 9.5 Number and Gender. The singular shall include the plural and the plural the singular and the masculine, feminine, or neuter each shall include the other, all as the context may require.
- 9.6 Private Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Failure by the Association, Declarant, or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Every act or omission whereby any of the said provisions is violated in whole or in part is hereby declared to be and constitutes a nuisance, and every civil remedy allowed by law or equity against a nuisance, either public or private, shall be applicable.
- 9.7 Common Area Casualty. If any portion of the Common Area is damaged or destroyed by fire or other casualty, then; subject to rights of any holders, insurers, or guarantors of first mortgages as may be established in Article 8:
- (a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than fifteen percent (15%), the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially



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in accordance with the original plans and specifications unless a majority of the Owners vote at a special meeting called for that purpose not to rebuild, in which event the distribution procedures in the following paragraph shall apply.

- (b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than fifteen percent (15%) and if the Owners holding in aggregate more than fifty percent (50%) interest in the Common Area agree to the repair or restoration of the Project, then the Board shall contract as provided above. If said Owners elect not to repair or rebuild, then the insurance proceeds received by the Association on account of the destruction of the Common Area shall be distributed by the Association among Owners of Residential Lots and their respective, as their interests may require, Mortgagees proportionately according to the appraised value of the unit as carried on records of the County Tax Assessor.
 - (c) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment in proportion to that which has been damaged or destroyed to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding. Such special assessment shall be levied upon the basis of the appraised value of the unit as carried on the records of the County Tax Assessor.
- 9.8 Condemnation. If any portion of the Project is taken through condemnation by any governmental agency having the power of eminent domain, or any proceeding in lieu thereof, then in the event of such taking the Owners of the Residential Lots and their Mortgagees shall be entitled to receive the award for such taking in proportion to the appraised value of the Owner's total interest in the Project as carried on the records of the County Tax Assessor, or otherwise apportioned by judgment in the matter. Said award may be paid to the Association as trustee for the Owners and mortgagees as their respective interests may appear. The Association is hereby granted irrevocable power of attorney for all Owners to represent the Owners in said condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority and to convey title to said Common Area in lieu of condemnation when such conveyance is approved by fifty-one percent (51%) of the Members other than Declarant.
- 9.9 Attorneys' Fees. In the event the Association, the City, Declarant, or any Owner shall commence litigation to enforce any of the provisions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the court may adjudge reasonable and proper. The



"prevailing party" shall be the party in whose favor a final judgment is entered.

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9.10 Enforcement of Bond. In the event that the Improvements to be installed by Declarant to the Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Project, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such Improvements, then;

(a) if such Improvements have not been completed and a notice of completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such Improvement, then the Board shall consider and vote on said question if such Improvements have not been completed and a notice of completion filed within thirty (30) days after the expiration of the extension period.

(b) In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition.

(c) At said meeting a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

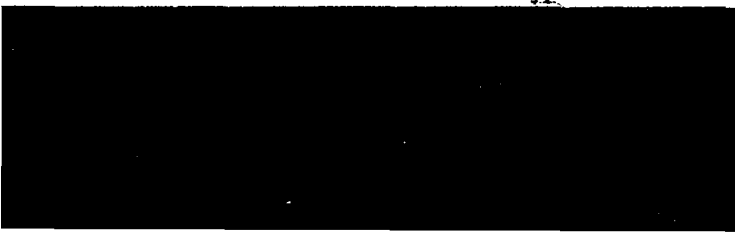
9.11 Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential dwellings and incidental Improvements upon the Project. The completion of that work, and the sale, rental, and other disposal of said dwellings is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:



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- (a) Prevent Declarant, its contractors, or subcontractors from doing on the Project, including the Common Area, or any Residential Lot, whatever is reasonably necessary or advisable in connection with the completion of said work; or
- (b) Prevent Declarant or its representatives from erecting, constructing, and maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Project as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or
- (c) Prevent Declarant from conducting on any part of the Project its business of completing said work, and of establishing a plan of ownership and of disposing of the Project in dwellings by sale, lease, or otherwise; or
- (d) Prevent Declarant from maintaining such sign or signs on any of the Project as may be necessary for the sale, lease, or disposition thereof; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Lot or the Common Areas.
- (e) Subject to a concomitant obligation to restore, Declarant and its sales agents, until completion of original sales in the last phase to be annexed to the Project, shall have:
 - (1) Non-exclusive easements over the Common Area for construction and common driveway purposes including access, ingress, and egress, as well as for drainage, encroachment, and reasonable use related to construction activities on the properties subject to annexation as identified herein and for making repairs to the Common Areas or to the residences;
 - (2) The right to the non-exclusive use of the Common Area for the purpose of maintaining model homes, sales offices, and signs reasonably necessary to market the Residential Lots, until completion of the sale of all units within the properties. The use of the Common Areas by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association.

This Paragraph 9.11 may not be modified, terminated, or otherwise amended or altered without written approval by Declarant until the earlier of six (6) months following close of escrow for the last Lot sold in the fully annexed Project, or seven (7) years from issuance of first Public Report for the Project, after which time it shall terminate and be of no further force and effect. Any act attempting or purporting to effect such change, or to adversely affect the rights granted to or reserved by Declarant hereunder, shall be void and of no force or effect.



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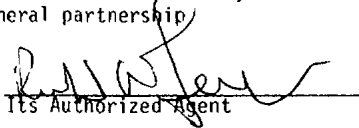
- 9.12 Invalidation of a Provision. Invalidation of any one of these covenants, conditions, or restrictions, by judgment or court order, shall in no way affect other provisions hereof which shall remain in full force and effect.
- 9.13 Liberal Construction of Provisions. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a planned development community and for the maintenance of community recreational facilities.
- 9.14 No Liability for Unenforceable Provisions. Each owner, by acceptance of a deed shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision thereof having been held to be unenforceable in whole or in part.
- 9.15 Conflicts. If there are any conflicts or inconsistencies between the provisions of the Articles of Incorporation, the Bylaws, and this Declaration, the terms and provisions of the Declaration shall control.
- 9.16 Unsegregated Real Estate Taxes. Until such time as real property taxes have been segregated by the County Assessor of the County, and levied on the individual Lots, they shall nevertheless be paid by the respective Owners of Lots. The proportionate share of the taxes for a particular Lot shall be determined by dividing the initial sales price or offered initial sales price of the Lot by the total initial sales prices or offered initial sales prices, as appropriate of all Lots (the term "offered initial sales price" means the price at which an unsold Lot is then being offered for sale by Declarant). If, and to the extent, that taxes are not paid by any Owner of a Lot and are allowed to become delinquent, they shall be collected from the delinquent Owner by the Association.

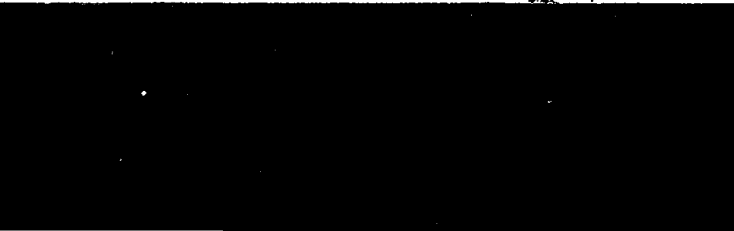
IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first hereinabove written.

"Declarant"

LEWIS HOMES OF CALIFORNIA,
a general partnership

By


Its Authorized Agent



DECLARATION OF RESTRICTIONS OF
THE COVE AT INDIAN WELLS PLANNED DEVELOPMENT

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STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN BERNARDINO

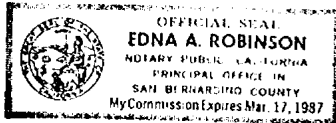
On January 21, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard A. Lewis, personally known to me (or proved to me on the basis of satisfactory evidence) to be the agent of LEWIS HOMES OF CALIFORNIA, the partnership that executed the within instrument, and acknowledged to me that he executed the same for and on behalf of said partnership and that said partnership executed the same.

WITNESS my hand and official seal.

Edna A. Robinson

Notary Public

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