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HOMEOWNERS ASSOCIATION, INC.

**AND WHEN RECORDED MAIL TO:**

KNIGHTEN & PARLOW PC
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PALM DESERT, CA 92211

# CERTIFICATION OF FIRST AMENDMENT TO THE 2018 RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PALM SPRINGS SUNDIAL HOMEOWNERS ASSOCIATION, INC.

This First Amendment to the 2018 Restated and Amended Declaration of Covenants, Conditions and Restrictions for Palm Springs Sundial Homeowners Association, Inc. is made as of September 14, 2022, by Palm Springs Sundial Homeowners Association, Inc. ("Association") for the residential planned development commonly referred to as Sundial, located in Palm Springs, California, and legally described as follows:

> Lots 1 through 49, inclusive, Lots 76 through 103, inclusive, Lots 147 & 148, Common Area Lots 203, 204, 207, 208, 209, 222, 223, & 224 and Street Lots D, E, F, H, I, J, K, Q, & a portion of C, of Amended Tract No. 10346 as shown on Map recorded in Book 97, Pages 72 to 81, inclusive of Maps, in the Office of the County Recorder of Riverside County.

Whereas, the 2018 Restated and Amended Declaration of Covenants, Conditions and Restrictions for Palm Springs Sundial Homeowners Association, Inc. ("Declaration") was recorded on May 15, 2018 as Document Number 2018-0189937 in the Official Records of Riverside County;

Whereas, at a meeting of the Board of Directors of the Association held on September 14, 2022, the Board of Directors exercised the authority granted to it by Civil Code section 4741(f) and approved this First Amendment;

**NOW, THEREFORE**, the Association hereby declares that the Declaration shall be and is amended pursuant to the this First Amendment to the Declaration as follows (~~strikethrough~~ indicates deletion; double underline indicates addition):

**SECTION 9.2 OF THE DECLARATION IS HEREBY AMENDED AS FOLLOWS:**

**Section 9.2. Leasing and Rentals. In order to maintain the unique residential character of the community, no individual room or rooms in any residence may be rented or leased except as required to be permitted by Civil Code section 4741. All rentals or leases shall be for the entire home except as required to be permitted by Civil Code section 4741. Additionally, no entire home (or portion of a home if required to be permitted by Civil Code section 4741) shall be leased or rented for a term less than ~~one hundred and eighty (180)~~ thirty (30) consecutive days. Nothing in this Section shall be construed to preclude or prevent the leasing of any home for any period longer than ~~one hundred and eighty (180)~~ thirty (30) consecutive days. All lease agreements must be in writing and the Association shall be given a copy of the agreement prior to the commencement of the rental or lease term. All tenants occupying leased premises must adhere to the Governing Documents of Palm Springs Sundial, and the owner Owner/Lessor is responsible for all violations by his or her tenants. Owners who are leading their homes must give a copy of the Association's Rules and Regulations to the tenants at the signing of the lease. Subleasing is prohibited.**

**CERTIFICATION OF PRESIDENT**

The undersigned, the President of the Association, hereby certifies that the above First Amendment to the Declaration was approved by the Board of Directors pursuant to the authority granted to the Board of Directors by Civil Code section 4741(f) at a meeting held on September 14, 2022.

PALM SPRINGS SUNDIAL
HOMEOWNERS ASSOCIATION, INC.
A California Nonprofit Mutual Benefit Corporation

By: Benjamin E. Koonse

Benjamin E. Koonse, President
Palm Springs Sundial
Homeowners Association, Inc.

**CALIFORNIA ACKNOWLEDGMENT** CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Riverside }

On 10-25-22 before me, S.M. Mach, Notary Public,
*Date* *Here Insert Name and Title of the Officer*

personally appeared Benjamin E. Koonse
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

S. M. MACH
Notary Public - California
Riverside County
Commission # 2405522
My Comm. Expires May 24, 2026

*Place Notary Seal and/or Stamp Above*

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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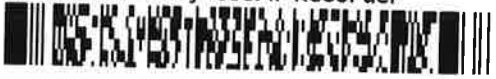
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# 2018 RESTATED AND AMENDED DECLARATON OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PALM SPRINGS SUNDIAL HOMEOWNERS ASSOCIATION, INC.

Title of Document

**TRA:**_____

**DTT:** _____

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Palm Spring Sundial Homeowners Association, Inc.
c/o Timothy P. Flanagan, Esq. (SBN 246974)
GREEN BRYANT & FRENCH, LLP
402 W. Broadway, Suite 1950
San Diego, CA 92101
Telephone: (619) 239-7900
Fax No.: (619) 239-7800

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# 2018 RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PALM SPRINGS SUNDIAL HOMEOWNERS ASSOCIATION, INC.

If this document contains any restriction based on race, color, religion, sex, gender, gender identify, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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**2018 RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PALM SPRINGS SUNDIAL HOMEOWNERS ASSOCIATION, INC.**

This 2018 RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on the day and year hereinafter written by Palm Springs Sundial Homeowners Association, Inc. ("Association") with reference to the following Recitals:

## RECITALS

A. Declarant was the Owner of that certain real property ("Properties") in the City of Palm Springs, County of Riverside, State of California, more particularly described as:

> **Lots 1 through 49, inclusive, Lots 76 through 103, inclusive, Lots 147, 148, Common Area Lots 203, 204, 207, 208, 209, 222, 223, 224, and Street Lots D, E, F, H, I, J, K, Q, and a portion of C, of Amended Tract No. 10346 as shown on Map recorded in Book 97, Pages 72 to 81, inclusive of Maps, in the Office of the County Recorder of Riverside County.**

B. A Declaration of Covenants, Conditions and Restrictions for Palm Springs Sundial was recorded on November 1, 1979 as Instrument No. 233274 in the Office of the County Recorder of Riverside ("Original Declaration"). The Original Declaration was thereafter amended by an Amendment to Declaration of Covenants, Conditions & Restrictions for Palm Springs Sundial, recorded on December 10, 1979 as Instrument No. 233274 in the Office of the County Recorder of Riverside. The Original Declaration was thereafter amended again by an Amendment to Declaration of Covenants, Conditions & Restrictions for Palm Springs Sundial recorded on September 19, 1980 as Instrument No. 171546 in the Office of the County Recorder of Riverside. The Original Declaration was thereafter amended again by an Amendment to Declaration of Covenants, Conditions & Restrictions for Palm Springs Sundial recorded on November 1, 1985 as Instrument No. 247296 in the Office of the County Recorder of Riverside. The Original Declaration was thereafter amended by an Amendment to Declaration of Covenants, Conditions & Restrictions for Palm Springs Sundial recorded on April 6, 1990 as Instrument No. 125906 in the Office of the County Recorder of Riverside.

C. Thereafter, the Original Declaration and its subsequent amendments was restated by the First Restated Declaration of Covenants, Conditions and Restrictions for Palm Springs Sundial recorded on November 19, 1997 as Instrument No. 423860 in the Office of the County Recorder of Riverside ("First Restated CC&Rs"). The First Restated CC&Rs were thereafter amended by the First Amendment to the First Restated Declaration of Covenants, Conditions & Restrictions for Palm Springs Sundial recorded on July 17, 2014 as Instrument No. 2014-0265874 in the Office of the County Recorder of Riverside.

D. Thereafter, the First Amendment to the First Restated CC&Rs and the First Restated CC&Rs were thereafter amended by a Correction in Legal Description to First Amendment to the First Restated Declaration of Covenants, Conditions & Restrictions for Palm Springs Sundial recorded on February 11, 2015 as Instrument No. 2015-0058396 in the Office of the County Recorder of Riverside.

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

F. The original Declarant has conveyed to Association title to the majority of all of the Common Area within the Property subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of Properties as a Planned Development, as defined in Section 4175 of the California Civil Code.

NOW, THEREFORE, the Association hereby declares that the Original Declaration, the First Restated CC&Rs and any other amendments, declarations, of other documents, recorded or unrecorded are hereby rescinded, supplemented, canceled and terminated in full. Said documents are to be completely superseded by this Declaration. As so amended and restated, the covenants, conditions and restrictions set forth in this Declaration shall serve as restrictions on the use and enjoyment of the Properties, shall be equitable servitudes enforceable against the Properties and run with the land and be binding on the Properties and Common Area, and shall be binding upon all parties having or acquiring any right, title, or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner, and their successors and assigns thereof. The provisions of this Declaration shall be effective as of the date this Declaration is recorded.

## ARTICLE I
## DEFINITIONS

**Section 1.01. "Architectural Committee"** shall mean and refer to the Committee provided for in Article VI hereof entitled "Architectural Control."

**Section 1.02. "Articles"** and **"Bylaws"** shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same from time to time to be duly amended.

**Section 1.03. "Association"** shall mean and refer to PALM SPRINGS SUNDIAL HOMEOWNERS ASSOCIATION, INC. a California nonprofit mutual benefit corporation, its successors and assigns.

**Section 1.04. "Association Rules"** shall mean the rules adopted by the Association pursuant to Article VII hereof entitled "Duties and Powers of the Association."

**Section 1.05. "Board"** or **"Board of Directors"** shall mean and refer to the Board of Directors of the Association duly elected and acting pursuant to its Articles of Incorporation and Bylaws, and this Declaration.

**Section 1.06. "Common Area"** shall mean and refer to all real property, together with all improvements constructed thereon located within the properties which is owned, leased or acquired from time to time by the Association for the common use and enjoyment of the owners, more particularly described as: Lots 203, 204, 207, 208, 209, 222, 223, 224, and Street Lots D, E, F, H, I, J, K, Q, and a portion of C, of Amended Tract No. 10346 as shown on Map recorded in Book 97, Pages 72 to 81, inclusive of Maps, in the Office of the County Recorder of Riverside County.

**Section 1.07. "Declarant"** shall mean and refer to the original Declarant for the Declaration as well as the developer of the Project. The Association is the "Subsequent Declarant" with respect to this Declaration.

**Section 1.08. "Declaration"** shall mean this 2018 Restated and Amended Declaration of Covenants, Conditions and Restrictions and any amendments thereto.

**Section 1.09. "Exhibit"** shall mean and refer to those documents so designated herein and attached hereto, and each of such Exhibits is by this reference incorporated in this Declaration.

**Section 1.10. "Governing Instruments"** or **"Governing Documents"** shall mean and refer to this Declaration, the Articles and Bylaws, together with the Association Rules and other such Governing Instruments.

**Section 1.11. "Lot"** shall mean and refer to any numbered plot of land shown upon any recorded final tract map or parcel map of the Properties (as hereinafter defined), with the exception of the Common Area.

**Section 1.12. "Member"** shall mean and refer to every person or entity who is an Owner and entitled to membership in the Association.

**Section 1.13. "Mortgage"** shall mean and refer to any duly recorded valid mortgage or deed of trust encumbering a Lot.

**Section 1.14. "Mortgagee"** as used herein shall mean and refer to any holder (beneficiary) of the first deed of trust which encumbers a Lot, which holder is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

**Section 1.15. "Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties (as hereinafter defined), including Declarant and contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.16. "Properties"** shall mean and refer to the real property generally described on Exhibit "A" attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, and more particularly described on the legal description attached hereto as Exhibit "A."

**Section 1.17. "Recreational Vehicle"** shall mean and refer to a transportation structure, self-propelled or capable of being towed by a passenger car, station wagon, van or small pickup truck, of such size and weight as not to require any special highway movement permits, and primarily designed or constructed to provide temporary, movable, living quarters for recreational, camping or travel use, or to carry such equipment. Included as recreational vehicles but not to the exclusion of any other types not mentioned in this section are: trailers, trailer coaches, camping trailer, motorhomes, buses, pick-up (slide-in) campers, unmounted campers, chassis mounts, converted vans, chopped vans, mini motorhomes, 5th wheel trailers of recreational vehicle construction, design and intent, boat trailers, with or without boats mounted thereon, unmounted boats, dune buggy trailers, with and without dune buggies mounted thereon, horse trailers, and truck caps, or any vehicle or vessel that is not licensed for self-propelled travel upon public roads.

## ARTICLE II
## RIGHTS IN THE COMMON AREA

**Section 2.1. Owners' Right of Enjoyment.** Every Owner and the family and guests of an Owner shall have a right of enjoyment in and to the Common Area, and such right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in the aid thereof, to mortgage said property, provided that the rights of such mortgages shall be subordinate to the rights of the Owners.

(b) The right of the Association to dedicate or transfer 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 Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the voting power of the membership has been recorded, agreeing to such dedication or transfer.

(c) The right of the Association to lease all or portions of the Common Area for uses consistent with the City of Palm Springs zoning ordinances.

(d) The right of the Association to reasonably limit the number of persons using the Common Area, including the right to restrict access to the Common Area.

(e) The right of the Association to establish and enforce reasonable rules and regulations pertaining to the use of the Common Area including the right of the Association to limit the use of facilities on the Common Area by persons not in possession of a Lot or guests of an Owner.

(f) The right of the Association to suspend rights of any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any Assessment, fine or monetary penalty, or as otherwise provided in the Governing Documents.

(g) The right of the Association to determine and maintain the landscaping and plantings and to perform brush management within the Common Area.

(h) The right of the Association to approve any proposed alteration of or modification to the Common Area.

(i) The right of the Association to prohibit any Owner from encroaching upon, constructing or placing any planting or improvement whatsoever in the Common Area.

**Section 2.2. Delegation of Use.** Any Owner may delegate, in accordance with the Declaration, his/her right to the Common Area to the members of his/her family or his/her tenants. An Owner who has sold his/her/its Lot to a contract purchaser or who has leased or rented the Lot shall be deemed to have delegated his/her/its rights to use and enjoy the Common Area to the contract purchaser or tenant who resides in the Owner's Lot, subject to reasonable regulations by the Board.

**Section 2.3. Waiver of Use.** No Member may exempt himself from personal liability for assessments fully levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area, or the abandonment of his/her Lot.

## ARTICLE III
## EASEMENTS

**Section 3.1. Owner's Rights and Duties: Utilities and Drainage Easement.** The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone, cable television, and drainage facilities are installed within the Properties, the Owners of any Lot served by said connections, lines or facilities shall have the right, and there if hereby reserved to Association an easement to the full extent necessary therefor, together with the right to grant and transfer the same to owners, to enter upon the lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

The Association may grant to third parties easements in, on and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or other purposes reasonably related to the operation of the Project, and each Owner, in accepting his/her/its deed to the Lot, expressly consents to these easements. However, no such easement may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his/her/its Lot.

(b) Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone or drainage facilities are installed within the properties, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his/her Lot.

In the event that an Owner or a public utility company serving such owners enters upon any Lot in furtherance of the foregoing, it shall be obligated to repair such Lot and restore it to its condition prior to such entry.

All utilities designed to serve multiple Lots, but located outside the boundaries of the Lots, are allocated exclusively to those particular Lots. The Owner of said Lot shall be entitled to reasonable access to the Common Area for the purpose of maintaining these utilities, and further subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.

**Section 3.2. Reservation of Utility and Drainage Easements.** Easements over the properties for the installation and maintenance of electric, telephone, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded tract maps of the properties are hereby reserved by Declarant, its successors and assigns, together with the right to grant and transfer the same.

**Section 3.3. Cable Television.** There is hereby reserved to Declarant, its successors and assigns over the properties, together with the right to grant and transfer the same, the right to place on, under or across the properties transmission lines and other facilities for a community antenna television system and thereafter to own and convey such lines and facilities and the right to enter upon the properties to service, maintain, repair, reconstruct and replace said lines or facilities, provided, however, that the exercise of such rights use and enjoyment of his/her Lot.

**Section 3.4. Drainage System.** Each Owner and the Association shall accept the established drainage pattern for the Lots and Common Areas (including roof drainage from adjacent Lots and Common Areas) as established by the completed final grading of the Property originally undertaken by Declarant. Neither the Association nor any Owner shall alter the established drainage pattern without the prior written approval of the Association and the Architectural Control Committee. Reasonable and adequate provisions for proper drainage shall be made by the Association and/or the Architectural Control Committee in the event it is later determined to be necessary to alter the drainage pattern.

**Section 3.5. Matters Having Priority Over Easements.** Each and every one of the easements established, reserved and/or now or later granted as contemplated in this Article shall be subject to:

(a) All general and special real property taxes, assessments and bonds, not delinquent;

(b) All covenants, conditions, restrictions, reservations, rights, rights of way and easements of record;

(c) Any and all reasonable rules and regulations pertaining to any such easement, as such rules and regulations may from time to time be established and promulgated by the Association.

**Section 3.6. Right of Entry.**

3.6.1 Association. The Association has the right to enter the Lots to inspect the Properties, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Lot under this Subsection may be made after at least three (3) days' advance written notice to the

Owner of the Lot except for emergency situations, which shall not require notice. Nothing in this Subsection limits the right of an Owner to exclusive occupancy and control over the portion of his Lot that is not Common Area. Any damage to a Residence or Lot caused by entry under this Subsection shall be repaired by the Association.

3.6.2. Owners. Each Owner shall permit other Owners, and their representatives, to enter his Lot to perform installations, alterations or repairs to the mechanical or electrical services to a Lot if (a) requests for entry are made in advance, (b) entry is made at a time reasonably convenient to the Owner whose Lot is to be entered; and (c) the entered Lot is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Lot caused by entry under this Subsection shall be repaired by the entering Owner.

## ARTICLE IV
## MEMBERSHIP AND VOTING RIGHTS

**Section 4.1. Membership.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association, Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment. Ownership of a Lot shall be the sole qualification for membership. Not more than one membership shall exist based upon ownership of a single Lot.

**Section 4.2. Transfer.** The membership held by any Owner shall not be transferred, pledged or alienated in any manner, except upon the conveyance or encumbrance of such Lot and then only to the purchaser or mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his/her name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association.

**Section 4.3. Voting Rights.** The Association shall have one class of voting membership. Any Owner(s) of record, of a Lot within the Properties shall be a Member. When more than one person holds an interest in any Lot, all such persons shall be Members; provided the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

## ARTICLE V
## COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 5.1. Creation of the Lien and Personal Obligation for Assessments.** Each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agree to pay to the Association: (1) regular annual assessments; (2) special assessments, and (3) reimbursement assessments, such assessments to be established and all other charges duly levied by the Association pursuant to the provisions of this Declaration. The regular annual, special and reimbursement assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal

obligation for delinquency assessments shall not pass to his/her successors in title unless expressly assumed by them.

**Section 5.2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the owners and for the improvement and maintenance of the Common Area.

**Section 5.3. Maximum Regular Annual Assessment.** The regular annual assessment may be set by the Board of Directors at any amount which is not more than twenty percent (20%) greater than the regular assessment for the immediately preceding fiscal year without the vote or written assent of a majority of a quorum of the voting power of the Association with quorum being set at a majority (50% + 1) of the voting power of the Association.

**Section 5.4. Special Assessments.** In addition to the regular annual assessments authorized in Section 5.3 above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall have the vote or written assent of a majority of a quorum of all Owners with quorum being set at a majority (50% + 1) of the voting power of the Association.

**Section 5.5. Uniform Rate of Assessment.** Both regular annual assessments and special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**Section 5.6. Regular Annual Assessments.** Concurrently with preparation of the financial documents and budget as required in the Bylaws, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements, and reserves, with adjustments made for any expected income and surplus or deficit from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be allocated among, assessed against and charged to the Owners on an equal basis and shall be borne by the Owners in equal shares. Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

**Section 5.7. Reimbursement Assessment.** The Association may levy a reimbursement assessment upon an Owner(s) whenever the Association:

(a) Performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner.

(b) Incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner.

(c) Incurs any legal fees, legal costs or other out of pocket costs associated in any manner whatsoever in attempting to obtain or obtaining an Owner's compliance with the Governing Documents for the Association.

(d) Incurs any cost to rectify any damage or alteration caused by an Owner to any Association Open Space or any Common Area or any landscaping for which the Association has maintenance obligations in an easement area.

(e) Such reimbursement assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying such a reimbursement assessment, the Board shall provide the Owner with notice and a hearing. The notice and hearing regarding the levy of a reimbursement assessment may be combined with the notice and hearing regarding the underlying violation.

**Section 5.8. Costs, Late Charges, and Interest.** Late charges may be levied by the Association against an Owner for the delinquent payment of regular, special, reimbursement, and enforcement assessments. An assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If any assessment is delinquent, the Association may recover all of the following from the Owner:

5.8.1. Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.

5.8.2. A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars ($10.00), whichever is greater, or the maximum amount allowed by law. No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts delinquent, including the entire unpaid balance and any related costs described herein may be collected by the Association as provided below in Section 5.1.

5.8.3. Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the assessment becomes due.

**Section 5.9. Certificate of Payment.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or authorized agent of the Association setting forth whether the assessment on a specified Lot has been paid; such certificate shall be conclusive evidence of such payment upon any third party relying thereupon in good faith.

**Section 5.10. No Offsets.** All assessments shall be payable in the amount specified by the assessment and no offsets against such amount shall be permitted for any reason whatsoever, including without limitation, a claim that the Association is not properly exercising its duties of enforcement.

**Section 5.11. Reserves.** The regular annual assessments shall include amounts as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Area. All amounts collected as reserves shall be deposited 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 comingled with any other funds of the Association.

**Section 5.12. Effect of Nonpayment of Assessments and Remedies of the Association.** Any assessment provided for in this Declaration which is not paid when due shall be delinquent and subject to a late charge in an amount as determined by the Association from time to time. If such assessment is not paid within thirty (30) days after the due date, it shall bear interest from the due date at the rate of twelve percent (12%) per annum. In the event of a default or defaults in payment of any such assessment or assessments, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation by proceeding as set forth:

(a) Unless California law provides otherwise, a delinquent regular, special, enforcement or reimbursement assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), penalties, and interest assessed in accordance with this Article 5 shall become a lien upon the Residential Lot when a Notice of Assessment Lien is duly recorded as provided in California Civil Code Section 5675 or other applicable statute. The Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Residential Lot, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any officer or director of the Association, or any attorney, employee, or agent of the Association authorized to do so by the Board.

Unless the Board considers the immediate (without notice) recording of the Notice of Assessment Lien to be in the best interests of the Association, the Notice of Assessment Lien may not be recorded until thirty (30) calendar days after the Association has mailed a written demand for payment to the delinquent Owner in accordance with California law (pay or lien letter). If the delinquent assessment or installment and related charges are paid or otherwise satisfied in accordance with the demand for payment, the Association shall not record the Notice of Assessment Lien.

Any lien described herein may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to Section 2934(a) of the California Civil Code, in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the California Civil Code.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or non-judicial foreclosure, the Association shall (i) record a notice of satisfaction and release of lien, and (ii) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.

The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien and said Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

(b) As in the case of a power of sale contained in a mortgage or deed of trust, any person designated by the Association in writing, shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the same is conducted. The Association, on behalf of the Owners, shall have the power to bid on the Lot at the foreclosure sale and to thereafter sell, lease, hold and mortgage the same.

(c) The right of the Association to suspend the voting and Membership rights of any Owner, and the rights of any Owner, and the Persons deriving rights of or from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any Assessment, fines or monetary penalties, or as otherwise provided in the Governing Documents.

**Section 5.13. Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 5.14. Waiver of Exemptions.** Each Owner does hereby waive, to the extent of any liens created pursuant to this Article V, the benefit of any homestead or exemption laws of the State of California, including Code of Civil Procedure Sections 704.10-704.650, or any similar section which may be in effect at the time any assessment, or installment thereof, becomes delinquent or any lien is imposed pursuant to the terms hereof.

## ARTICLE VI
## ARCHITECTURAL CONTROL

**Section 6.1. Architectural Committee (ARC).** The Board of Directors shall establish an Architectural Committee (hereinafter the "ARC") to evaluate architectural change applications of Owners. The ARC shall be composed of three (3) Members appointed by the Board to serve for a term of one (1) year. With Board approval, the ARC may procure the services of an outside consultant to provide advice on any or all architectural applications. The Association will cover the costs of such consultants. The Board shall make all appointments to the Architectural Committee. If the Board fails for any reason to appoint an Architectural Committee, then the Board shall act as the Committee and any reference made herein to the "ARC" shall apply equally to the Board.

**Section 6.2. Architectural Approval.** No building, out-building fence, wall or other structure/improvement (including patio covers) shall be commenced, erected, modified, remodeled, or installed upon a Lot or the Properties, nor shall any exterior addition to or change or alteration therein, be made upon any Lot until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same with respect to Lot property lines shall have been submitted in hard copy and/or electronic form to the Association and approved in writing as to: a) harmony of external designs, location and color in relation to surrounding structures and topography, b) preservation of the view from other Lots, and c) compliance with the covenants, conditions, and restrictions contained in this Declaration.

**Section 6.3. Landscaping Approval.** Any material change in the landscaping, such as transition from irrigated trees and shrubs and grass to xeriscape or low water consumption, or major landscaping changes (i.e., changes to more than twenty-five percent (25%) of the landscaping) shall require approval by the Board of Directors. The Board of Directors shall have the right to require any Member to remove, trim, top, or prune any existing tree, or shrub, which is determined by the ARC that such landscaping does substantially impair the view from any Lot, encroaches on sidewalks, or poses a potential safety threat to a neighboring Lot or sidewalk traffic. However, this Section shall not be interpreted to create a right of view protection on behalf of any Owner within the Project, rather views are simply a factor to be considered when reviewing and approving landscaping applications. Owner's refusal to comply shall be considered a violation of the ARC Guidelines and shall be dealt with as specified within the Guidelines.

**Section 6.4. Improvements That Do Not Require ARC Approval.** An Owner is not required to obtain ARC approval of any repair, re-painting, or maintenance of any structure with the same color and material that has been previously approved and is still in compliance with current ARC Guidelines.

**Section 6.5. Maintenance of Non-Compliant Improvements.** Any existing structure, wall, fence, improvement or landscaping that is not in compliance with current ARC Guidelines or was previously approved under a variance from the ARC Guidelines in force at the time, or was not approved by the ARC at the time of installation, cannot be repaired, replaced or repainted without the prior written approval of the ARC and an architectural application.

**Section 6.6. Procedure for Obtaining Approval of Architectural Changes.** The procedure for obtaining approval of any architectural change shall be as follows:

6.6.1. Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed improvements, alterations or landscaping with respect to Lot property lines, as well as the proposed contractor and any other information as required by the Board, shall be prepared by the requesting Owner and submitted to the Association's Management company in hard copy and electronic format.

6.6.2. The ARC shall review the submission and provide a written approval or disapproval of any such submission, including the reasons for any disapproval, to the requesting Owner within sixty (60) days of receipt of such submission.

6.6.3. In the event the ARC fails to provide a written response to the submitting Owner within sixty (60) days of Management Company receipt of the request from the Owner, approval will not be required and the related covenants shall be deemed to have been fully satisfied. The ARC shall have the right to extend this sixty (60) day time line for an additional thirty (30) days upon written notice submitted to the Owner within the first sixty (60) day time-frame.

6.6.4. If the ARC denies an Owner's architectural request, the requesting Owner shall have a period of thirty (30) days to appeal the denial by the ARC to the Board of Directors, in which case the Board of Directors shall review the requesting Owner's architectural submission within forty-five (45) days of receipt of the request. The failure of the Board to render a written decision within said

forty-five (45) day period shall be deemed a decision in favor of the appellant. There shall be no right of appeal if the Board acted as the Committee and issued the original denial.

6.6.5. Once an Owner has obtained written approval for an architectural submittal, work on such approved submittal shall be completed within one hundred eighty (180) days from the date of approval by the ARC. Any Owner that fails to complete an approved improvement(s) within this time frame may for good cause, seek an extension of time from the ARC, which may not be authorized by the ARC. Owners that fail to complete any approved work on the schedule approved by the ARC may be subject to fines on a daily or monthly basis in amounts consistent with the Association's fine policy.

6.6.6. Approvals may require an Owner to secure in advance and maintain a Performance Bond to secure compliance with the Declaration, Architectural Standards and/or the Architectural Rules/Guidelines. Said bond shall name Association as the obligee or as an additional obligee. Owner shall pay the premium of any such bond.

6.6.7. Approvals must be in writing. Oral approvals from the Board of Directors, the ARC, the Association management company or Members of the Association shall have no force or effect.

**Section 6.7. Inspection of Work.** The Board requires that the ARC perform a final inspection confirming that the work in the ARC application was completed consistent with the approved application. After such inspection, the ARC shall provide the Owner with written notice of either a letter of completion or a letter of noncompliance, setting forth either:

6.7.1. All improvements made and other work completed by said Owner complies with the application and Governing Documents, or

6.7.2. Such improvements or work do not so comply, in which event the Notice shall identify the non-compliance improvements or work and set forth with particularity the basis of such non-compliance and a date by which the Owner shall bring the work into compliance. In the event the work is found not to comply with the Governing Documents, the Owner shall promptly correct such deficiency and reapply for another inspection, or shall remove the proposed improvement and return the area to its original condition within the timescale specified by the ARC.

**Section 6.8. Powers.**

6.8.1. Approval of said plans and specifications may be withheld because of non-compliance with any of the specific conditions, covenants, and restrictions contained in this Declaration, but also by reason of the reasonable dissatisfaction of the ARC with the plan, the color scheme, finish, design, proportions, architecture, shape, height, style and appropriateness of the proposed structures or altered structures, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon, or because of its reasonable dissatisfaction with any or all other matters or things which, in the reasonable judgment of the ARC, will render the proposed improvement of the properties or with the improvements erected on other Lots; of which would substantially impair the view from other Lots.

6.8.2. The ARC shall have the authority to order an abatement or modification of any construction, alteration, or landscape change which, in the opinion of the ARC, is inconsistent with the original architectural application by the Owner or for which no ARC approval was obtained.

6.8.3. The ARC shall have the authority to evaluate all Lots within the Association for compliance with then current Guidelines, and issue notices of violations and penalties, as specified in the then current ARC Guidelines for the Association. This does not apply to improvements that may have been made previously and were in compliance with Guidelines at the time of the improvements.

**Section 6.9. Architectural Rules.** The Board may, in its sole discretion, adopt, amend and repeal by unanimous vote of the Board and after a period of at least thirty (30) days for comment to the Board from the Association Members on the proposed rules and regulations, to be known as Architectural Guidelines. Said Architectural Guidelines shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and ARC for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Association. However, that said Architectural Guidelines shall not be in derogation of the standards required by this Declaration.

**Section 6.10. Standards For Architectural Review.** An architectural application made by an Owner shall be reviewed for conformity with the Architectural Guidelines. Additional factors to be considered include, but are not limited to, the quality of proposed workmanship, the design, and harmony of the improvement with existing structures, the location of the improvement in relation to surrounding structures, topography, and finish grade elevation, and Owner compliance with governmental permit requirements.

**Section 6.11. Owner's Duty to Obtain Approval from Governmental Agencies.** Prior to commencing any alteration or improvements approved by the Association, the Owner shall comply with all appropriate governmental laws and regulations. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Association shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to completely satisfy the requirement of Association approval. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Association, which penalties shall be the responsibility of such Owner.

**Section 6.12. Approval Not Waiver.** The approval by the ARC of any plans or specifications submitted for approval for use on any Lot shall not be deemed to be a waiver by the ARC of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. Neither Declarant nor the ARC nor a member thereof shall be liable to anyone by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval, disapproval or the failure to approve or disapprove any plans.

## ARTICLE VII
## DUTIES AND POWERS OF THE ASSOCIATION

**Section 7.1. General Duties and Powers.** The powers and duties of the Board of Directors of the Association shall include, but not be limited to the following;

(a) Enforcement of the provisions of the Declaration, Articles, Bylaws, Association rules, and other instruments for the ownership, management and control of the properties.

(b) Payment of taxes and assessments which are or could become a lien on the Common Area or a portion thereof.

(c) Delegation of its powers to committees, officers or employees of the Association as expressly authorized by the Governing Documents.

(d) Contracting for goods and/or services for the Common Area, facilities and interests, or for the Association subject to the limitations set forth.

(e) Contracting for casualty, liability and other insurance on behalf of the Association.

(f) Ownership, maintenance and management of the Common Area and slope easement areas and landscaping thereon, and all other property acquired by the Association.

(g) Obtaining for the benefit of the Common Area, all necessary utility services.

(h) Granting of easements where necessary for utilities and sewer facilities over the Common Area to serve the properties.

(i) Establishment and maintenance of a working capital and contingency fund in an amount to be determined by the Board.

(j) Maintenance of architectural control over the properties and appointment of an Architectural Committee in connection therewith, pursuant to Article VI hereof entitled "Architectural Control".

(k) Borrowing of money and incurring of indebtedness for the purpose of maintenance of the Association's property and executing and delivering therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges or other evidences of debt and security therefor.

(l) Preparation of budgets and financial statements for the Association as prescribed in the governing instruments.

(m) Formulation of rules of operation of the Common Area and facilities owned or controlled by the Association.

(n) Initiation and execution of disciplinary proceedings against members of the Association for violations of provisions of the governing instruments in accordance with procedures set forth in the Governing Documents.

(o) Entering upon any Owner's Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Area of the Owners in common.

(p) Election of officers of the Association.

(q) Filling of vacancies on the Board of Directors except for a vacancy created by the removal of a director.

(r) Adoption and use of a corporate seal.

**Section 7.2. Right to Impose Monetary Penalties.** On behalf of the Association, the Board of Directors shall have the right to impose monetary penalties, temporary suspensions of an Owner's rights as a Member of the Association or other appropriate discipline for failure to comply with the Governing Documents after notice and hearing. Notwithstanding the foregoing, the Association has no power to cause a forfeiture or abridgement of an Owner's rights to the full use and enjoyment of his/her individually-owned Lot on account of a failure by the Owner to comply with provisions of the Governing Documents or of duly-enacted rules of operation for Common Area and facilities except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

**Section 7.3. Limitations on Powers.** The Board of Directors of the Association shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority (50% + 1) of the Members of the Association:

(a) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:

(i) A management contract.

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(iii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(b) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

(c) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(d) Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board of Directors may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

**Section 7.4. Association Rules.** The Association shall also have the power pursuant to the procedures set forth in the Bylaws, to adopt, amend, and repeal such rules and regulations as it deems reasonable. The Association rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area and architectural and landscaping approval, provided, however, that the Association rules may not discriminate among Owners, and shall be consistent with this Declaration, the Articles and Bylaws. A copy of the Association rules as they may from time to time be adopted, amended or repealed, shall be mailed, emailed or otherwise delivered to each Owner. Upon such mailing or delivery, said Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration. Notwithstanding the above, the Association shall insure that the Association rules, as adopted, amended or repealed, shall be available to each Owner upon request. In the event of any conflict between any such Association rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of such inconsistency.

**Section 7.5. Delegation of Powers.** The Association shall have the rights to delegate any of its powers under this Declaration, the Articles and Bylaws; provided, however, no such delegation, whether to a professional management company or otherwise shall relieve the Association of its responsibility to perform such delegated duty.

## ARTICLE VIII
## INSURANCE

**Section 8.1. Types.** The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

(a) A comprehensive policy of public liability insurance covering the Common Area with a limit of not less than One Million Dollars ($1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence and at least Three Million Dollars ($3,000,000.00) coverage in the aggregate, such coverage to include protection against water damage liability, liability for non-owned and hired automobile and liability for property of others, and such other risks as shall customarily be covered with respect to similar planned residential developments in the area of the properties, and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligence acts or omissions of the Association or other Owners;

(b) The Association shall obtain and maintain a policy of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of all of the improvements in

the Common Area. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association.

(c) The Association shall also purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If there is a management agent who handles Association funds, such agent shall also be covered by a fidelity bond. As long as commercially available for a reasonable price, the Association shall procure a fidelity bond of at least $100,000.00, and the Board may, in its sole discretion, obtain a greater bond amount if good cause exists to do so. The bonds must contain a provision that they may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

(d) Flood insurance to the extent necessary to comply with any applicable law.

(e) Worker's compensation insurance to the extent necessary to comply with any applicable law.

**Section 8.2. Waiver by Owner.** As to each of said policies which will not be voided or impaired thereby, the owners hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

**Section 8.3. Other Insurance; Annual Review.** The Association may purchase such other insurance as it may deem necessary. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Area in light of increased construction costs, inflation, practice in the area in which the properties are located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

## ARTICLE IX
## USES PROHIBITIED AND PERMITTED

**Section 9.1. General Restrictions on Use.** In exercising the right to occupy or use a Lot, the Common Area, and their related improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not do any of the following:

9.1.1. Use a Lot for any purpose other than single family residential.

9.1.2. Explore for, to refine, or to remove, by means of surface entry, oil, or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance, permit any derrick, oil well, shaft or other such device or excavation.

9.1.3. Attempt to further subdivide a Residential Lot without obtaining the prior approval of the Association.

9.1.4. Permit anything to obstruct access to the Common Area.

9.1.5. Store any materials, plantings or personal possessions in the Common Area, or use the Common Area to access a Lot during construction or maintenance of any private Lot without the explicit written approval of the Association and providing indemnification to the Association.

9.1.6. Allow irrigation overspray, irrigation, irrigation drainage, and pool or spa drainage to enter any Common Area.

9.1.7. Rent less than the entire Lot/residence to any third party.

**Section 9.2. Leasing and Rentals.** In order to maintain the unique residential character of the community, no individual room or rooms in any residence may be rented or leased. All rentals or leases shall be for the entire home. Additionally, no entire home shall be leased or rented for a term less than one hundred and eighty (180) consecutive days. Nothing in this Section shall be construed to preclude or prevent the leasing of any home for any period longer one hundred and eighty (180) consecutive days. All lease agreements must be in writing and the Association shall be given a copy of the agreement prior to the commencement of the rental or lease term. All tenants occupying leased premises must adhere to the Governing Documents of Palm Springs Sundial, and the Owner/Lessor is responsible for all violations by his or her tenants. Owners who are leasing their homes must give a copy of the Association's Rules and Regulations to the tenants at the signing of the lease. Subleasing is prohibited.

9.2.1. Assignment of Rents. Each Owner assigns to the Association, absolutely and regardless of possession of the property, all money now due or to become due under any agreement for the use or occupation of any part of any Lot, now existing or hereafter made, for the purpose of collecting all Assessments and costs and expenses due the Association which are in default. The Association confers on each Owner the authority to collect and retain money due under any agreement for the use or occupation of any part of any Unit, provided that the Association may revoke the authority at any time by written notice of a default in the payment of any Assessments. Upon revocation, the Association may collect and retain the money until the delinquent Assessments and related charges are satisfied, whether the money is past due and unpaid or current. The Association's rights under this provision are subordinate to the rights of any First Mortgagee.

9.2.2. Delegation of Right to Evict. Owners hereby delegate and assign to the Association the power and authority of enforcement against Tenants for breach of a lease resulting from violations of the Governing Documents, including the power and authority to evict the Tenant on behalf of and for the benefit of the Owner. The Association must give the Owner and the Tenant thirty (30) days' written notice prior to initiating eviction proceedings. If the Association proceeds to evict a Tenant, all costs, including attorneys' fees and court costs associated with the eviction may become a Reimbursement Assessment payable by the Owner of the Lot.

**Section 9.3. Parking and Vehicle Restrictions.** The Board of Directors shall have the right to promulgate rules and regulations related to vehicles and parking within the Properties as it deems necessary from time to time in order to maintain the aesthetic environment of the Association and maintain property values. Unless otherwise expressly permitted by the Board:

9.3.1. No recreational vehicle, trailer, boat, camper, van, trailer coach, house camp cars, motor homes, large truck, bus, off-road vehicles, or any similar type of vehicle modified with specific equipment, may be parked or stored on any Lot or street for more than twenty-four (24) hours and only for the purposes of loading, unloading, washing or polishing the vehicle.

9.3.2. No commercial vehicles may be parked or stored on any Lot or street at any time. Notwithstanding the above restriction, commercial vehicles may be parked on the Lot or on the street for reasonable periods of time for deliveries and/or construction purposes.

9.3.3. Garages shall be used for the parking of passenger vehicles and for storage purposes only and shall not be converted for living or recreational activities. Garage doors shall remain closed at all times except to enter or exit.

9.3.4. No vehicle shall be repaired or painted on any Lot or street in such a manner as will be visible from neighboring property or the Common Area.

9.3.5. Any vehicle parked in a fire lane, within fifteen (15) feet of a fire hydrant, in a disabled designated parking space with the proper authority, or in a manner which interferes with any entrance to or exit from the development or any Lot, parking space or garage may be removed in accordance with the *California Vehicle Code.*

9.3.6. Owners are responsible for making sure their tenants, guests, and their tenants' guests adhere to and abide by these parking rules, and any other parking rules promulgated by the Association's Board of Directors, as the same may be amended from time to time.

**Section 9.4. Signs.** No signs, posters or displays shall be shown or displayed on a Lot excepting one sign of customary and reasonable dimensions, or as otherwise allowed by law, which states that the premises are for sale or rent, as well as temporary signs and flags customarily used by real estate offices to advertise an open house, and such signs as may be required by legal proceedings, and temporary signs for political freedom of speech.

**Section 9.5. Outside Installations.** No radio or television signals nor any other form of electromagnetic radiation shall be permitted to originate from any Lot, which interferes with the reception of television or radio received upon any other Lot. No outside antenna or satellite dish shall be constructed, erected or maintained at any time on any Lot, without first submitting an architectural application to the Architectural Committee and receiving written approval as provided for at Article VI hereof entitled "Architectural Control."

**Section 9.6. Landscape Control.** Owner shall maintain the landscaping in a manner to prevent flow of soil or dirt from his/her Lot onto any adjacent sidewalk, street, parkway, Lot or Common Area.

9.6.1. Owner shall maintain trees, shrubs or other plants of any kind in a manner so as to prevent overhang or encroachment upon any sidewalk or other pedestrian way, from ground level to a height of six (6) feet.

9.6.2. Each Owner shall maintain all shrubs, trees, grass and plants of every kind, and neatly trim, properly cultivate, and remove trash, weeds and other unsightly material from their Lot, and the planted areas between adjacent sidewalks and the street curb, if applicable.

9.6.3. Each Owner has the responsibility to maintain the appearance and integrity of any fence or wall on his/her Lot or bordering his/her Lot.

**Section 9.7. Drainage.** Each Owner agrees for himself/herself and his/her successors in interest that he will not in any way interfere with the established drainage pattern over his/her Lot from adjoining or other Lots, or that he/she will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his/her Lot. Pursuant for the purposes here, "established" drainage is defined as the drainage which occurred at the time the overall grading of the Properties was completed by Declarant.

**Section 9.8. Animals.** No animals or birds, including poultry, other than two (2) of generally recognized house or yard pets shall be maintained on any Lot, and then only if they are kept, or raised thereon solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal or bird (i.e., dog houses, or dog runs) shall be constructed on any Lot without prior approval of the ARC.

**Section 9.9. Screen Doors and Windows.** No Owner shall be permitted to install a screen door or metal security door on the front or main entrance door or doors, nor shall any aluminum or metal awnings, or covers, be installed over windows, nor shall the windows be covered with aluminum foil, paint, or highly reflective coatings or similar unsightly material without first receiving approval by the ARC.

**Section 9.10. Business or Commercial Activity.** Owners may operate a business within the Lot (hereinafter "home occupation") provided that the home occupation is specifically limited to the use of the Lot through the means of telephone, telephone modem, internet and reasonable mail, or child-care services which operate pursuant to the Health & Safety Code. Any activity conducted in compliance with Owner's home occupation shall not be visible from the exterior of the structure, or through any modification to the Lot. No business/commercial sign or advertising is allowed on the Lot. Conduct of the home occupation shall require approval by the City of Palm Springs.

**Section 9.11. Nuisance.** No noxious or offensive activities (including, but not limited to, the outdoor repair of motor vehicles) shall be carried on upon the Properties. Without limiting the generality of the foregoing, no horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Lot and improvements located thereon, shall be placed or used on any such Lot or improvements. No exterior lighting shall be placed or maintained upon any Lot so as to cause an unreasonable glare or illumination upon any other Lot. No exterior entertainment system (radio, TV, stereo or other such device) shall have its sound directed toward neighboring Lots, nor shall they be located within six (6) feet of the property line.

**Section 9.12. Trash Removal.** All garbage and trash shall be placed and kept in sanitary, covered containers. In no event shall such containers be maintained so as to be visible from neighboring property except when set out for a reasonable period of time before and after scheduled trash pick-up times. No Owner of a Lot shall permit any condition to exist upon his/her Lot which shall induce, breed or harbor infectious plants, diseases, rodents or noxious insects.

**Section 9.13. Clothes Drying Facilities.** Outside clothes lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot, unless they are erected, placed and maintained so as not to be visible from neighboring property and approved in writing by the ARC.

**Section 9.14. Building and Lot Maintenance.** Pursuant to and consistent with the Maintenance Matrix attached hereto as Exhibit "B," each Owner shall be responsible for the maintenance, repair and replacement of the Lot and all improvements located thereon, to ensure that such does not pose a threat to the health, safety or welfare of other Owners. No building shall be permitted to fall into disrepair, and each such building shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

**Section 9.15. Rooftop Appliances.** Appliances or installations upon the roofs of structures, shall not be permitted, except for solar panels which have been properly submitted to the Architectural Committee and have received written approval to install same, as provided for at Article VI hereof entitled "Architectural Control."

**Section 9.16. Compliance with Laws.** Each Owner shall promptly comply with all laws, statutes, ordinances, rules and regulations of Federal, State and municipal governments or authorities applicable to use and occupancy of, and construction and maintenance of improvements upon the Lots and any additions thereto.

## ARTICLE X
## DISPUTE NOTIFICATION / RESOLUTION PROCEDURES / IDR / MEMBER DISCIPLINE HEARINGS

**Section 10.1. Application.** This Article X applies to a dispute between the Association and an Owner involving their rights, duties or liabilities under California Civil Code section 5900 and any amendments thereto, or under the Governing Documents of the Association. This procedure referenced in this Article X shall be initiated prior to initiating the dispute resolution procedure referenced in Article XI below, if applicable. This process called for by this Section 10.1 and Civil Code Section 5900, et seq., shall be referred to as "Internal Dispute Resolution" or "IDR."

**Section 10.2. Procedure.** Either party to a dispute within the scope of Civil Code section 5900, et seq., or amendments thereto, may invoke the following procedure:

(a) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(b) An Owner may refuse a request to meet and confer; however, the Association may not refuse a request to meet and confer.

(c) The Board shall designate a member of the Board or a person of their choosing to meet and confer.

(d) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.

(e) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.

**Section 10.3. Enforceable Agreement.** An agreement reached under this Article binds the parties and is judicially enforceable if both of the following conditions are satisfied: (1) The agreement is not in conflict with law or the Governing Documents of the Association; and (2) the agreement is either consistent with the authority granted by the Board to its designee or the agreement is ratified by the Board.

**Section 10.4. Fees.** Unless otherwise stated by California law, an Owner may not be charged a fee to participate in the process described in this Article X.

**Section 10.5. Hearings.** No penalty or temporary suspension of rights shall be imposed unless the Owner alleged to be in violation is given at least fifteen (15) days' prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least five (5) days before the effective date of the proposed disciplinary action.

(a) Notwithstanding the foregoing, under circumstances involving conduct that constitutes (1) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners, (2) a traffic or fire hazard, (3) a threat of material damage to or destruction of, the Common Area, or (4) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

(b) If the Association acts on its own initiative to schedule a hearing, notice of this date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefore shall be delivered to the Association no later than five (5) days following the date when the fine is levied. The hearing shall be held no more than fifteen (15) days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

**Section 10.6. Hearing Notices.** Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Documents provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

**Section 10.7. Rules Regarding Disciplinary Proceedings.** The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

## ARTICLE XI
## ALTERNATIVE DISPUTE RESOLUTION
## (MEDIATION / ARBITRATION)

**Section 11.1. Subsequent Prelitigation Procedure.** After the Internal Dispute Resolution procedure set forth in Article X is completed and complied with, the Alternative Dispute Resolution ("ADR") procedure set forth in this Article XI shall be initiated before litigation is commenced, provided this Article is applicable.

**Section 11.2. Applicable Disputes.** Association or an Owner may not file an enforcement action in the Superior Court unless the parties have endeavored to submit their dispute to alternative dispute resolution, consistent with California Civil Code section 5925, et seq., and amendments thereto, and other successor California statutes and law. This Article applies to enforcement actions in the Superior Court solely for (1) declaratory relief; (2) injunctive relief; (3) writ relief; and (4) relief in conjunction with a claim for monetary damages not in excess of five thousand dollars ($5,000.00). This Article does not apply to Small Claims actions and assessment disputes.

**Section 11.3. Request for Resolution.** Any party to a dispute may initiate Alternative Dispute Resolution under this Article by serving on another party to the dispute a Request for Resolution. Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the Request. The Request for Resolution must include:

(a) A brief description of the dispute between the parties.

(b) A request for alternative dispute resolution.

(c) A notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt of the request, or it will be deemed rejected.

**Section 11.4. Response to Request for Resolution.** The party receiving a Request for Resolution has thirty (30) days following receipt to accept or reject alternative dispute resolution. If not accepted within thirty (30) days the Request may be deemed rejected. If alternative dispute resolution is

accepted, it must be completed within ninety (90) days of the date of receipt of the acceptance by the party initiating the Request, unless extended by written stipulation signed by both parties.

**Section 11.5. Certificate of Completion.** At the time of filing a civil action, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with California Civil Code section 5950, and amendments thereto and these CC&Rs. Failure to file a certificate may be grounds for a demurrer or motion to strike unless the Court finds that dismissal of the action for failure to comply with this Article would result in substantial prejudice to one of the parties pursuant to Section 430.10 of the California Code of Civil Procedure, and amendments thereto.

**Section 11.6. Cost of Alternative Dispute Resolution.** The cost of the alternative dispute resolution hearing must be borne equally by the parties. Refusal to share costs equally constitutes rejection of alternative dispute resolution, regardless of prior acceptance.

**Section 11.7. Failure to Comply.** Failure of a Member to comply with the pre-filing requirements of these CC&Rs and California Civil Code section 5925, et seq. and amendments thereto may result in the loss of a party's right to pursue another Member or Association regarding enforcement of the Governing Documents.

## ARTICLE XII
## ANNEXATION OF ADDITIONAL PROPERTY

**Section 12.1. Annexation Pursuant to Approval.** The annexation of additional residential Lots and Common Area property, and the subjecting of it to the jurisdiction of the Association can only be accomplished upon the affirmative vote, by ballot or at a special meeting duly called for this purpose, of two-thirds (2/3) of the total votes residing in Association Members.

**Section 12.2. Declaration of Annexation.** Annexation shall be accomplished by a duly recorded Declaration of Annexation. The Declaration of Annexation shall describe the property annexed, any additional Common Areas, and any additional slope easement areas, and state that it is made pursuant to the terms of this Article XII for the purpose of annexing the property so described to the properties and extending the jurisdiction of the Association to cover the same. If the annexation occurs after a meeting of the Members pursuant to Section 12.1 hereof, it shall so state, including a statement of the time and place of the meeting, the date of notice, the number of members present, the number of members who voted in favor of the annexation, and the Declaration of Annexation shall be executed, verified and acknowledged by two or more members of the Board of Directors. Any Declaration of Annexation recorded in accordance with the terms hereof shall be conclusive in favor of all persons who rely thereon in good faith. From and after annexation, the property annexed shall be subject to the provisions of this Declaration and the jurisdiction of the Association pursuant to the terms hereof, and its Articles of Incorporation and Bylaws, except that assessments shall commence as provided in Section 5.6 of Article V hereof entitled "Covenant for Maintenance Assessments."

**Section 12.3. Declaration of Annexation - Optional Provisions.** Such Declaration of Annexation contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration may be necessary to reflect the

different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Declaration of Annexation revoke, modify or add to the covenants established by this Declaration within the existing properties.

**Section 12.4. Expansion of Association Membership.** Membership in the Association shall be expanded to include Owners within annexed phases of development.

**Section 12.5. No Obligation to Annex.** Notwithstanding any provisions of this Declaration expressly or impliedly to the contrary, the Association shall have no obligation whatsoever to annex any real property hereto

**Section 12.6. Development.** Improvements constructed on Lots within future phases of development must be of a style, quality, size and cost comparable to improvements constructed on existing Lots in the development.

## ARTICLE XIII
## EMINENT DOMAIN

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Area, the members hereby appoint the Board and such persons as the Board may delegate to represent all of the members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area. In the event of a total taking, the Board may in its sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the members, subject to the prior rights of mortgagees who are entitled to receive an Owner's portion of such award pursuant to the terms of their mortgages.

## ARTICLE XIV
## DESTRUCTION OF IMPROVEMENTS

In the event of partial or total destruction of improvements upon the Common Area, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of mortgagees whose interest may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five percent (85%) of the estimated cost of restoration and repair, a special assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored unless a majority of the voting power of the Association agrees in writing to such replacement or restoration. In the event of a

determination by vote, as provided above, not to replace or restore the improvements on the Common Area, the Common Area shall be cleared and landscaped for community park use (as long as so approved by the City of Palm Springs) and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by special assessment in an amount determined by the Board of Directors of the Association. In the event any excess insurance proceeds remain, the Board of Directors of the Association, in its sole discretion, may retain such sums in the general funds of the Association, or distribute pro rata all or a portion thereof to the members, subject to the prior rights of mortgagees whose interest may be protected by said insurance policies or who are entitled to receive such proceeds under the terms of their mortgages.

Notwithstanding the foregoing, unless at least seventy-five percent (75%) of the first mortgagees based on one (1) vote for each mortgage have given their prior written approval, the Association shall not be entitled to use hazard insurance proceeds for losses to any common area for other than the repair, replacement or reconstruction of such improvement.

## ARTICLE XV
## RIGHTS OF MORTGAGEES

**Section 15.1. Applicability.** Notwithstanding any and all provisions hereof to the contrary, mortgagees shall have the rights set forth in this Article XV.

**Section 15.2. Notification of Default to Lender.** A "first mortgagee" (meaning herein a mortgagee under a mortgage encumbering a Lot with priority over other mortgages encumbering such Lot) at its written request is entitled to written notification from the Association of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under the "enabling documents" (meaning collectively the within instrument, the Articles, Bylaws, Association Rules and Board resolutions) which is not cured within sixty (60) days.

**Section 15.3. Exemption from any "Right of First Refusal."** Any first mortgagee who comes into title or possession of a Lot pursuant to the remedies provided in the mortgage, or by foreclosure of the mortgage, shall be exempt from any "right of first refusal."

**Section 15.4. Exemption from Unpaid Assessments.** Any first mortgagee who comes into title or possession of a Lot pursuant to the remedies provided in the mortgage, or by foreclosure of the mortgage, or as may otherwise be provided in this Declaration, shall take the property free of any claims for, and shall not be liable for, unpaid assessments or charges against the mortgaged Lot which accrued prior to the time such first mortgagee came into title or possession of the Lot.

**Section 15.5. Prohibited Actions Without Owner Approval.** Unless at least seventy-five percent (75%) of first mortgagees of Lots have given their prior written consent, the Association and the Owners shall not be entitled to:

(a) By act or omission seek to abandon, partition, release, subdivide, encumber, sell or transfer the Common Area or any improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for public utilities or for other public purposes consistent with

the intended use of the Common Area by the Association shall not be deemed a transfer within the meaning of this provision.

(b) Change the method of determining the obligations, assessments (whether annual or special), dues or other charges which may be levied against an Owner of his/her Lot.

(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 improvements constructed upon lots, the exterior maintenance of such improvements, or the maintenance and upkeep of the Common Area, including improvements, lawns and plantings located thereon.

(d) Fail to maintain fire and extended coverage on insurable portions of the Common Area 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 improvements of the Common Area for other than the repair, replacement or reconstruction of such improvements.

**Section 15.6. Right to Operating Information.** First mortgagees of lots shall be entitled to inspect the books and records of the Association during normal business hours.

**Section 15.7. Priority Rights of Lenders.** Nothing in the enabling documents shall be construed as giving any Owner or any other party priority over any rights of first mortgagees of lots pursuant to their respective mortgages in the case of a distribution to owners or the Association of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area.

**Section 15.8. Damage, Destruction.** If any Lot or portion thereof or the Common Area or any portion thereof is substantially damaged or destroyed or is made the subject matter of any condemnation or eminent domain proceedings, or is otherwise sought to be acquired by condemning authority, the Association shall promptly notify all first mortgagees affected by such destruction, taking or threatened action.

**Section 15.9. Payment of Delinquent Taxes and Charges.** First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, covering the Common Area, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. In this regard, the Association, acting by and through its Board, is hereby expressly empowered and authorized to enter into an agreement in favor of all first mortgagees respecting such reimbursement, and, by the recordation of this Declaration, shall be deemed to have agreed to such reimbursement of all first mortgagees.

**Section 15.10. Reserve Fund.** Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those improvements constructed upon the common area which

must be replaced on a periodic basis, and such reserve must be funded by regular assessments collected on a monthly basis rather than by special assessments.

**Section 15.11. Insurance.** The Association shall continuously maintain in effect casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by FHLMC, FNMA and the Government National Mortgage Association ("GNMA") so long as any one of the foregoing is a mortgagee or Owner of a Lot within the Properties, except to the extent such coverage is not available or has been waived in writing by FHLMC and by FNMA or GNMA.

**Section 15.12. Effect of Breach.** No breach of the covenants, conditions or restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any mortgage or deed of trust made in good faith and for value encumbering any Lot, but this Declaration hall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot, except as otherwise provided in this Article.

## ARTICLE XVI
## GENERAL PROVISIONS

**Section 16.1. Enforcement.** The Association, as well as any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, or the Articles or Bylaws, or any amendments thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens and Association rules, the Association shall have the exclusive right to the enforcement thereof. Failure of the Association or by any Member to enforce any covenant, condition, or restriction herein contained in any certain instance or on any such future breach of the same covenant, condition or restriction.

**Section 16.2. Severability.** Invalidation of any one of those covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

**Section 16.3. Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the properties and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for a successive period of ten (10) years, unless prior to said automatic renewal date an instrument, signed by a majority of the then owners has been recorded, agreeing to terminate or to change said covenants, conditions and restrictions in whole or in part.

**Section 16.4. Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community or tract and for the maintenance of the properties and the Common Area. The Article and Section headings have

been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation of construction.

**Section 16.5. Amendment.** This Declaration may be amended at any time and from time to time by an amendment approved by a majority of the voting power of the Association (i.e., 50% + 1 of the members entitled to vote). Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Office of the Riverside County Recorder.

**Section 16.6. Singular Includes Plural.** Whenever the context of this Declaration required same, the singular shall include the plural and the masculine shall include the feminine.

**Section 16.7. Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative and not exclusive.

**Section 16.8. Attorneys' Fees.** In the event a legal action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, actual attorneys' fees reasonably incurred and costs of suit. In the event the Association is the prevailing party in such action, the amount of such attorneys' fees and costs shall also be a Reimbursement Assessment with respect to the Lot involved in the action.

**Section 16.9. Notices.** In each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice to one or more co-owners shall be deemed delivery to all the co-owners, or such notice may be delivered by United States mail, postage prepaid, to the Owner at the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot, and any notice so deposited in the mail within Riverside County, California, shall be deemed delivered forty-eight (48) hours after such deposit.

**Section 16.10. Easement Reservations and Grants.** Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a conveyance of any Lot.

**Section 16.11. Effect of Declaration.** This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the properties and each and every Lot and portion thereof. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

**Section 16.12. Personal Covenant.** To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant or other Owners, such

personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

**Section 16.13. Nonliability of Officials.** To the fullest extent permitted by law, neither the Board, the Architectural Committee, any Committee of the Association or any member of such Board or Committee shall be liable to any member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

**Section 16.14. Technical Errors Associated With Restatement Process.** The Board of Directors shall have the power via unanimous Board vote to amend and re-record this Declaration to correct any technical or drafting errors associated with the restatement process.

**Section 16.15. Heirarchy of Governing Documents.** To the extent that there may be a conflict between the Association's Governing Documents, the following represents the order in which to determine which document shall prevail: 1) Declaration; 2) Articles of Incorporation; 3) Bylaws; and 4) Rules.

**EXHIBIT "A"**
**LEGAL DESCRIPTION**

Lots 1 through 49, inclusive, Lots 76 through 103, inclusive, Lots 147, 148, Common Area Lots 203, 204, 207, 208, 209, 222, 223, 224, and Street Lots D, E, F, H, I, J, K, Q, and a portion of C, of Amended Tract No. 10346 as shown on Map recorded in Book 97, Pages 72 to 81, inclusive of Maps, in the Office of the County Recorder of Riverside County.

## EXHIBIT "B"

## ASSOCIATION/OWNER MAINTENANCE, REPAIR, & REPLACEMENT MATRIX

The following is a listing of the items within the development, the maintenance, repair and replacement duty for which Owners and the Association are responsible per this exhibit to the Declaration of Covenants, Conditions and Restrictions. The purpose of the matrix is to identify the responsibilities of the association and owners to maintain property as needed under conditions of normal wear and tear and does not reflect maintenance of components that were negligently or intentionally damaged. This does not eliminate the Owner's responsibility to request and receive architectural approval pursuant to the Governing Documents or supersede the Owner's obligations under the Governing Documents. Unless otherwise noted, the assignment of a component to either the Owners or the Association includes all cleaning, maintenance, repairs, replacements, and removal. To the extent this Matrix is inconsistent with any provisions in the Governing Documents, the matrix shall prevail and control.

| COMPONENTS | OWNER | ASSN. |
|---|---|---|
| Air Conditioning | X | |
| Appliances | X | |
| Carpeting | X | |
| Caulking – Exterior | X | |
| Caulking – Interior | X | |
| Ceilings | X | |
| Clubhouse | | X |
| Common Area and Common Area Facilities | | X |
| Dewatering pumps | | X |
| Doorbell – Exterior Components/Button Switch | X | |
| Doorbell – Interior Components; Wiring | X | |
| Doors – Entry – Locks and Hardware | X | |
| Doors – Entry – Painting – Interior Surface | X | |
| Doors – Entry – Weather stripping/Waterproofing | X | |
| Doors – Interior | X | |
| Drainage Systems (e.g., ditches, catch basins) | | X |
| Drains – Bathtubs, Showers, Sinks (Up to the Point where they connect with a common line or leave Lot boundaries) | X | |
| Drains – Curb | | X |
| Drains – Patio/Deck | X | |
| Driveways | X | |
| Dryer Vents | X | |
| Drywall – Damage Repairs (e.g., cracks, inside minor localized water damage, dents, holes, etc.) | X | |
| Drywall – Interior – Replace | X | |
| Electrical Panel/Circuit Breakers – Unit | X | |
| Electrical Switches, Sockets, Wall Plates – Unit | X | |
| Exhaust Fans – Units | X | |

| COMPONENTS | OWNER | ASSN. |
|---|---|---|
| Exterior Building Surface | X (Maintain, Repair and Replace surfaces) | X (Painting Only) |
| Exterior Faucets, Handles, Washers except those on Patio/Deck | X | |
| Fences – Perimeter Wall (Common Area) | | X |
| Fences – Shared/Party Fence (Between Lots, Between Lot and Common Area, and Between Lot and outer boundary of development) | X | |
| Fireplace – Chimney – Exterior and Spark Arrestor | | X |
| Fireplace – Chimney Flue | X | |
| Fireplace – Chimney – Interior – Cleaning | X | |
| Fireplace – Fire Brick (firebox, ceramic brick walls of fireplace) | X | |
| Fireplace – Mantelpiece, Trim and Facing | X | |
| Fire Hydrants | | X |
| Floor Surfaces | X | |
| Floor Covering (i.e., carpet, tile, vinyl, wood, etc.) | X | |
| Foundation | X | |
| Front Entry Landings | X | |
| Furnace – Unit Systems | X | |
| Garage | X | |
| Garage Door – Replacement | X | |
| Garbage Disposal | X | |
| Gas Lines – Within the Lot to the point where it connects to main line or enters neighboring Lot. | X | |
| Gas Lines – Within the Common Area and servicing more than one Lot | | X |
| Gate | | X |
| Glass – Unit Windows/Doors, including frame and tracks | X | |
| Gutters and Downspouts | X | |
| Hose Bibs | X | |
| Insulation – Unit | X | |
| Landscaping – Common Area (See Addendum Below) | X | X |
| Landscaping –Lot (See Addendum Below) | X | X |
| Lighting Fixtures (Common Area) | | X |
| Lighting Fixtures – Inside Units | X | |
| Lighting Fixtures – Outside – Front (Homeowner controlled) | X | |
| Mailbox – Lock | X | |
| Mailbox – Structures | | X |
| Monument Sign | | X |
| Painting – Common Area Facilities and Exterior of Buildings | | X |
| Painting – Interior of Unit | X | |

| COMPONENTS | OWNER | ASSN. |
|---|---|---|
| Parking Spaces – Common Area | | X |
| Patio/Deck Railings | X | |
| Patio/Deck Cleaning and Maintenance | X | |
| Plumbing Fixtures – Interior (toilets, tubs, sinks, faucets, etc.) | X | |
| Plumbing Lines – Within the Lot to the point where it connects to main line or enters neighboring Lot. | X | |
| Plumbing Lines – Within the Common Area and servicing more than one Lot | | X |
| Pools, Spas and Related Equipment | | X |
| Pressure Regulators – Common Area | | X |
| Pressure Regulators – Unit | X | |
| Recreation Rooms – Common Area | | X |
| Roof Shingles/Tiles | X | |
| Roof Underlayment | X | |
| Roof Vents | X | |
| Security Lighting (Common Area) | | X |
| Sewer Lines – Common Area or those serving more than one Lot | | X |
| Sewer Lines – Exclusively Serves One Lot to the point where it connects to main sewer line | X | |
| Sidewalks – Common Areas | | X |
| Slab | X | |
| Sliding Patio/Deck Door Flashing/Waterproofing | X | |
| Sliding Patio/Deck Door Frames and Tracks | X | |
| Sliding Patio/Deck Door Hardware | X | |
| Sliding Patio/Deck Doors/Screens | X | |
| Spraying for Household Pests (ants, fleas, etc.) on the exterior of the building | | X |
| Street | | X |
| Stucco Repair and Replacement | | X |
| Tennis Courts | | X |
| Termites – Structural | X | |
| Trim – Wood – Exterior – Maintenance and Replacement | X | |
| Trim – Wood – Exterior – Painting | | X |
| Walls – Bearing, Studs, Frames, Tiedowns, Other Structural Items | X | |
| Wallpaper/Paneling | X | |
| Water Heater – Common Area Pool/Recreation Room | | X |
| Water Heater – Unit | X | |
| Windows and Screens | X | |
| Window Flashing, Frames, and Hardware | X | |
| Wiring – Electrical – Common Area (After meter to outside electrical lines) | | X |
| Wiring – Electrical – Solely serving one Lot wherever located (inside home up to the meter) | X | |
| Wiring – Telephone, Cable TV, Satellite, etc. for Lot | X | |

| COMPONENTS | OWNER | ASSN. |
|---|---|---|
| Wood Structure on Lot | X | |

## ADDENDUM TO EXHIBIT "B"

## ASSOCIATION/OWNER MAINTENANCE, REPAIR, & REPAIR MATRIX FOR LANDSCAPING

**ASSOCIATION RESPONSIBILITY**

1) **Landscaping Water Irrigation System – Common Area and Lot**

2) **Landscaping – Common Area**

The unique architectural design of the entrances of specific addresses within Sundial have side entrance doors or broad landscaped walkway entrances that essentially have common area landscape as part of the design. The entrances of the following numbered addresses fall into this unique design category for which the Association will be responsible for landscape plants, care and maintenance:

181, 182, 183, 184, 185, 187, 210, 211, 220, 281, 287, 321, 351, 391, 398, 464, 466, 481, 500, 648, 656, 658, 666, 668, 672, 674, 676, 678, 681, 683, 685, 687, 691, 693, 695, 697, 699.

**OWNER RESPONSIBILITY**

**Landscaping – Lot**

Designated as Owner Responsibility are the following numbered addresses that share narrower walkway entrances with more confined strips of open planting area flanking the sidewalk leading from the gas meter to the front door and a landscape space at the top between front entrance doors:

212, 213, 214, 215, 216, 217, 218, 219, 283, 285, 323, 325, 327, 329, 353, 355, 357, 359, 386, 388, 390, 392, 393, 394, 395, 396, 397, 399, 483, 484, 485, 486, 487, 489, 490, 494, 496, 498, 640, 642, 644, 646

**CERTIFICATION AND CERTIFICATE OF AMENDMENT**
(California Civil Code Section 4270)

We, the undersigned, do hereby certify the following:

1. That we are the duly elected and acting President and Secretary of Palm Springs Sundial Homeowners Association, a California non-profit mutual benefit corporation;

2. That we have counted the ballots to the 2018 Restated Declaration of Covenants, Conditions and Restrictions for Palm Springs Sundial Association, and they conform and are of the necessary number for amending said Declaration pursuant to Article XIV, Section 1 of the Declaration.

Executed this 30th day of April, 2018, in the City of Palm Springs, County of Riverside, State of California.

**PALM SPRINGS SUNDIAL HOMEOWNERS ASSOCIATION,**
a California nonprofit mutual benefit corporation

By: Jaak Juhkentaal

Print Name: JAAK JUHKENTAAL

Title: PRESIDENT

By:

Print Name: ANTHONY J. TOIA

Title: SECRETARY

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** **CIVIL CODE §1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California ) ss.

County of Riverside )

On April 30th, 2018 (Date), before me, Miguel Angel Arballo, Notary Public (Here Insert Name and Title of the Officer),
personally appeared Jaak Juhkentaal (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

MIGUEL ANGEL ARBALLO
Commission No. 2175127
NOTARY PUBLIC-CALIFORNIA
RIVERSIDE COUNTY
My Comm Expires DECEMBER 10, 2020

Signature of Notary Public

Notary Seal

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** **CIVIL CODE §1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California ) ss.

County of Riverside )

On April 30th, 2018, before me, Miguel Angel Arballo, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Anthony J. Toia,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

MIGUEL ANGEL ARBALLO
Commission No. 2175127
NOTARY PUBLIC-CALIFORNIA
RIVERSIDE COUNTY
My Comm Expires DECEMBER 10, 2020

Miguel Arballo
Signature of Notary Public

Notary Seal