

# **COVENANTS, CONDITIONS AND RESTRICTIONS**

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## **LANTANA LODGE HOMEOWNERS' ASSOCIATION**

**IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 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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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LANTANA LODGE HOMEOWNERS ASSOCIATION**

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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
LANTANA LODGE HOMEOWNERS ASSOCIATION**



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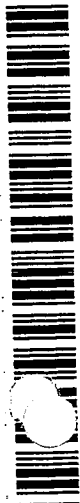


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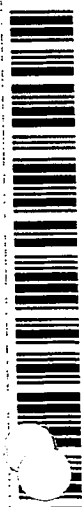
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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LANTANA LODGE HOMEOWNERS ASSOCIATION**

**RECITALS**

A. Declarants Edward G. Tizzard and Frances E. Tizzard were the original owners of that certain real property ("Property") located in the City of Palm Springs, County of Riverside, State of California, which is more particularly described as:

Lot 3 of the Joyce Tract, as shown by Map on file in  
Book 20, Page 66 of Maps, records of Riverside County, California.

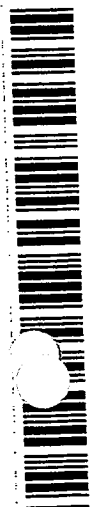
B. Declarant conveyed the Property subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the original declaration ("Original Declaration") recorded December 15, 1965, as Instrument No. 140557, Official Records of Riverside County, and amended by that certain Amendment to Covenants, Conditions, Restrictions, Reservations and Limitations recorded on January 16, 1967, as Instrument No. 3722, Official Records of Riverside County.

C. Declarant constructed on the Property a one story building of wood frame and stucco, and a parking lot. The building contains fourteen (14) Apartments and said parking lot contains fourteen (14) Parking Spaces. Each Apartment and each Parking Space is designated numerically. Each purchaser of an interest in the Property received an undivided fractional interest in the Common Area and the exclusive right to use and occupy, without limitation as to time, a certain designated Apartment in the building, and a certain designated Parking Space in the parking lot.

D. All of the easements, protective covenants, conditions, restrictions, reservations, liens and charges referred to above were and are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

E. It was the further intention of the Declarant to sell and convey the interests described above to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Property in furtherance of a plan of community apartment ownership as described in Section 1351(d) of the California *Civil Code*. Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities" be maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

F. On October 31, 2000, at least seventy-five percent (75%) of the beneficiaries of the first trust deeds of record as valid encumbrances against the Project approved amendment and restatement of the Original Declaration. On *February 14*, 2001, at least seventy-five percent (75%) of the Owners of the Property voted to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in the Original Declaration and in *Civil Code* Section 1355(a). It was the intention



of the Owners to replace the Original Declaration, as amended and in its entirety, with the recordation of this Declaration. The Owners' action to amend and restate the Original Declaration as set forth in this Declaration is attested by the execution of this Amended and Restated Declaration by a duly authorized officer of the Association, as required by California *Civil Code* Section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Project and shall be binding upon all parties having or acquiring any right, title or interest in the Project or any portion thereof, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

1.1 "Apartment" means an Apartment in the Property in which an owner has an exclusive right of occupancy. All 14 Apartments within the Lantana Lodge complex can be identified by their front-door access on the front common use area. (7/31/01 approved change.)

1.2 "Architectural Committee" means the committee created in accordance with Article V of this Declaration.

1.3 "Assessment" means any Regular, Utility, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Apartment in accordance with the provisions of Article IV of this Declaration.

1.4 "Association" means the Lantana Lodge Homeowners Association, a California nonprofit association, its successors and assigns. The Association is an "association" as defined in California *Civil Code* Section 1351(a).

1.5 "Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Section 3.7 of this Declaration, as the same may be in effect from time to time.

1.6 "Board of Directors" or "Board" means the Board of Directors of the Association.

1.7 "Bylaws" means the Bylaws of the Lantana Lodge Homeowners Association.

1.8 "City" means the City of Palm Springs and its various departments, divisions, employees and representatives.

1.9 "Common Area" means the entire Project except the Separate Interests, which are defined in Section 1.26. Unless the context clearly indicates a contrary intent, any reference to the "Common Areas" shall also include any Common Facilities located thereon.

1.10 "Common Expense" means any use of Common Funds authorized by Article IV of this Declaration and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association in carrying out its management, maintenance and administration responsibilities, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors, (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities and for nonpayment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance

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of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

1.11 "**Common Facilities**" means the apartment building, the swimming pool and apron area, fences and walls, utilities, lighting fixtures, parking areas and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

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

1.13 "**Declarant**" means the original developer of the Property, namely Edward G. Tizzard and Frances Tizzard and their successors and assigns.

1.14 "**Declaration**" means this instrument, as it may be amended from time to time.

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

1.16 "**Improvement**" includes, without limitation, the construction, installation, alteration, or remodeling of any awnings or screens, walls, decks, fences, patios, swimming pool, landscaping, landscape structures, skylights, solar heating equipment, spas, wiring, utility lines or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the interior of an Apartment and which do not involve the roof or any load bearing wall thereof.

1.17 "**Member**" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 15.6 of this Declaration.

1.18 "**Mortgage**" means any security device encumbering all or any portion of the Property, including any deed of trust. "**Mortgagee**" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

1.19 "**Owner**" means any person, firm, corporation or other entity that is a record owner of a fee interest in any Apartment, as shown by the Official Records of the Office of the County Recorder.

1.20 "**Owner of Record**" and "**Member of the Association**" include an Owner and mean any person, firm, corporation or other entity in which title to an interest in the Project is vested, as shown by the Official Records of the Office of the County Recorder.

1.21 "**Parking Space**" means a numbered parking space in the Property in which an Owner has an exclusive right of occupancy.

1.22 "**Party Wall**" shall mean any wall dividing any Apartments, which wall is commonly used by any such Apartment and the adjoining Apartment.

1.23 "**Project**" means the Property and the improvements located thereon which are intended to create a Community Apartment Project as described in California *Civil Code* Section 1351(d).



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1.24 **"Property"** means all of the real property described in recital A of this Declaration, together with the apartment building, structures, utilities, Common Facilities and other improvements located on the Property, and all appurtenances to the Property.

1.25 **"Regular Assessment"** means an Assessment levied on an Owner and his or her Apartment in accordance with Section 4.2 of this Declaration.

1.26 **"Separate Interest"** means the exclusive right to occupy an Apartment within the Project.

1.27 **"Residential Use"** means occupation and use of an Apartment for residential dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

1.28 **"Special Assessment"** means an Assessment levied on an Owner and his or her Apartment in accordance with Section 4.4 of this Declaration.

1.29 **"Special Individual Assessment"** means an Assessment made against an Owner and his or her Apartment in accordance with Section 4.5 of this Declaration.

1.30 **"Utility Assessment"** means an Assessment made against an Owner and his or her Apartment in accordance with Section 4.3 of this Declaration.

1.31 **"Utility Expense"** means the expenses incurred by the Association for electrical utility service to the individual Apartments.

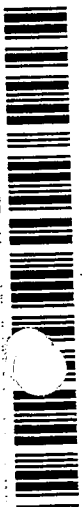
## ARTICLE II

### PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

2.1 **Elements of Ownership.** Ownership of an interest in the Project includes an undivided interest in the Common Area coupled with an exclusive right to occupy an Apartment and a Parking Space located on the Project. The term "Apartment" shall sometimes be used in this Declaration to mean and refer to an Owner's whole interest in the Project. Such undivided interest and exclusive right to occupy an Apartment cannot be altered or changed as long as the prohibition against severability of component interests remains in effect as provided in Article XIV of this Declaration. Each Owner's interest in the Project also includes a membership in the Association together with a right of way for ingress and egress to and from the Apartment and Parking Space, and also the right to use all other portions of the Property and the equipment therein, in common with the other Owners as described in this Declaration.

2.2 **Owners' Nonexclusive Easements of Enjoyment.** Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Property, including ingress and egress to and from his or her Apartment, which shall be appurtenant to and shall pass with the title to every Apartment, subject to the following rights and restrictions:

(a) The right of the Association to assign, rent, license, lease, charge reasonable admission and other fees for, and to otherwise designate and control the use of the Common Area and to charge reasonable admission and other fees or to limit the number of guests of Members who may use any recreational Common Facilities.



(b) The right of the Association to adopt Association Rules as provided in Section 3.7 of this Declaration, regulating the use and enjoyment of the Property for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the Common Facilities, other than Parking Spaces, by any Owner and/or the Owner's Tenants and guests, subject to compliance with the due process requirements of Section 15.6 of this Declaration.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money and in aid thereof to mortgage real or personal property of the Association.

(d) The right of the Association to grant easements, licenses or rights-of-way over any part of the Common Area to any public agency, authority or utility for purposes not inconsistent with the use of the Property as a residential development. No dedication shall be permitted that impairs the ingress and egress to any Apartment.

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

#### 2.4 Delegation of Use.

(a) Delegation of Use and Leasing of Apartments. Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's family or to the Owner's tenants, lessees or contract purchasers who reside in the Owner's Apartment, provided that no lease or rental shall be for a period less than thirty (30) days.

During any period when a Apartment has been rented or leased, the Owner-lessor, his or her family, guests and invitees shall not be entitled to use and enjoy the Common Areas or Common Facilities of the Property, or the Parking Space appurtenant to his or her Apartment, except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Apartment, provided that this restriction shall not apply to an Owner-lessor who is contemporaneously residing in another Apartment within the Property.

(b) Discipline of Lessees. In the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include suspension of the tenant's privileges to use any recreational Common Facilities or the imposition of fines and penalties against the Owner or tenant.

#### 2.5 Obligations of Owners. Owners shall be subject to the following:



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

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

(c) Discharge of Assessments Liens. Each Owner shall promptly discharge any assessment lien that may hereafter become a charge against his or her Apartment.

(d) Joint Ownership of Apartments. In the event of joint ownership of any Apartment, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (d) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

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

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

(g) Obligation To Permit Entry by Association Adjacent Owners. Each Owner shall be obligated to permit the Owners of adjacent Apartments or the representatives of such adjacent Owners to enter the Owner's Apartment for purposes of performing installations, alterations or repairs to mechanical or electrical services, including installation of television and related cables, which are reasonably necessary for the use and enjoyment of his or her Apartment, provided that requests for entry are made at least 24 hours in advance and that entry is at a time convenient to the Owner whose Apartment is being entered upon. Each Owner shall also honor the right of the Association and its agents to enter Apartments as provided in Section 3.6(b) of this Declaration.

### ARTICLE III

### HOMEOWNERS ASSOCIATION

3.1 Association Membership. Every Owner of an interest in the Project shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Separate Interest owned and the membership shall be appurtenant to such interest. Ownership of an interest in the Project shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of

the Association until all of his or her ownership interests in the Property cease, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in the Project merely as security for performance of an obligation are not Members until such time as the security holder comes into title interests through foreclosure or deed in lieu thereof.

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

3.3 Voting Rights of Members. Each Member of the Association shall be entitled to one vote for each Separate Interest owned by said Member. When more than one person holds an interest in any Apartment, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Apartment. Voting rights may be temporarily suspended under those circumstances described in Section 15.6 hereof.

3.4 Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Apartments within the Property and to enforce payment of such Assessments in accordance with Article IV of this Declaration. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

3.5 Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Apartment to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Apartment. In the case of an encumbrance of such Apartment, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Section 2.4 of this Declaration do not thereby become Members, although the tenant and Members of the tenant's family shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer is void. In the event the Owner of any Apartment should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Apartment, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

3.6 Powers and Authority of the Association.

(a) Powers Generally. The Association shall have the responsibility of managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners.

(b) Association's Limited Right of Entry. The Association, and/or its agents shall have the right, when necessary, to enter any Apartment to perform the Association's obligations under this

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Declaration, including (i) exterior maintenance or repair obligations with respect to the Apartment building; (ii) obligations to enforce the architectural and use restrictions of Article V and Article VI of this Declaration; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, the Project or the Owners in common.

The Association's rights of entry under this subparagraph (b) shall be immediate in case of an emergency originating in or threatening the Apartment where entry is required, or any adjoining Apartments or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present. In all nonemergency situations, the Association or its agents shall furnish the Owner or his or her lessee with at least 24 hours' written notice of its intent to enter the Apartment, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Apartment.

### 3.7 Association Rules.

(a) Rule-Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners of Apartments within the Property. Such rules may concern, but need not be limited to (i) matters pertaining to the maintenance, repair, management and use of the Common Area and Common Facilities by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under Section 5.4 hereof; (iii) the conduct of disciplinary proceedings in accordance with Section 15.6 hereof; (iv) regulation and use of the parking areas and other matters subject to regulation and restriction under Article VI hereof; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other improvements located within areas of Owner maintenance responsibility and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members under the Governing Documents. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall be deemed to prevail.

(b) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available and open for inspection during normal business hours at the principal office of the Association.

3.8 Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XV hereof.

### 3.9 Limitation on Liability of Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties

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and responsibilities or for their failure to provide any service required under this Declaration or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No Released Party shall be responsible to any Owner or to any member of his or her family or any of his or her tenants, guests, servants, employees, licensees, invitees or any other person for any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person within any Apartment or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Property, or by any other cause, unless the same is attributable to his or her own willful or wanton act or gross negligence. It is the intent of this subparagraph to provide volunteer Directors and officers with protection from liability to the full extent permitted by California *Civil Code* Section 1365.7, or comparable superseding statute, and to the extent this provision is inconsistent with that Section, the *Civil Code* shall prevail.

## ARTICLE IV

### ASSESSMENTS

#### 4.1 Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of one or more Apartments, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, (iii) Special Individual Assessments and, (iv) if required under Section 4.3, Utility Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) Extent of Owner's Personal Obligation for Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Person who was the Owner of the Apartment at the time the Assessment was levied. Each Owner who acquires title to a Apartment (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Apartment so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Apartment and shall be a continuing lien upon the Apartment against which such Assessment is made.

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Any lien for unpaid Assessments created pursuant to the provisions of this article may be subject to foreclosure as provided in Section 4.10(b) hereof.

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

#### 4.2 Regular Assessments.

(a) Preparation of Annual Budget: Establishment of Regular Assessments. Not less than 45 nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a budget satisfying the requirements of *Civil Code* Section 1365.

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

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

(i) An extraordinary expense required by an order of a court.

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

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

(d) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against and charged to each Owner based on the proportionate fractional in the Common Area that each Apartment

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bears to the whole. The fractional interest in the Common Area of the respective Apartments shall be as designated in the attached Exhibit "A," which is incorporated into the Declaration by this reference.

(e) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.4(a)(i) for that year, shall be assessed against each Owner and his or her Apartment on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

(f) Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Apartment shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid by the 15th day after the Assessment is due.

#### 4.3 Utility Assessments.

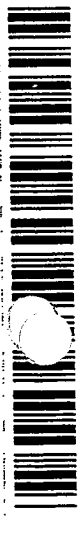
(a) Purpose of Utility Assessments. Utility Assessments are imposed to defray the cost of providing electrical service to the Apartments. Utility Assessments shall be levied on Apartments that are occupied on a full-time basis. An Apartment is occupied on a "full-time" basis after it is occupied for 31 consecutive days.

(b) Determination of Amount of Utility Assessments. The Board of Directors shall, at the time it estimates the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (Section 4.2(a)), prepare an estimate of the anticipated Utility Expenses attributable to the Apartments for the next succeeding fiscal year. The total annual cost of electricity shall become the aggregate Utility Assessment for the next succeeding fiscal year. The total estimated Utility Expense shall be allocated among, assessed against and charged to each Owner in accordance with the percentage use attributable to each Apartment as determined by an energy audit performed by Southern California Edison ("SCE") in June 2000 and as shown on the attached Exhibit "B" and incorporated into this Declaration by this reference. The Board shall obtain an energy audit from SCE, or any successor of SCE, at least once every three years.

(c) Adjustment of Utility Assessments. The Board of Directors shall have the discretion to increase or decrease the amount of the aggregate Utility Assessment at any time based on fluctuations in the cost of electrical service to the Apartments, and/or an increase in the number of Apartment occupants on a full-time basis, as defined in Section 4.3(a) above. The Board shall provide notice by first class mail to the Owners of any increase in the aggregate Utility Assessment not less than thirty (30) days nor more than sixty (60) days prior to the increase becoming due.

(d) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Utility Expenses for any fiscal year, then the Utility Assessment made for the preceding year shall be assessed against each Owner of an Apartment that is occupied full time (Section 4.3(a)) and his or her Apartment on account of the then current fiscal year, and installment payments (as herein after provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

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(e) **Installment Payment of Assessments.** The Utility Assessment levied against each owner and his or her Apartment shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Association's Board of Directors. Installments of Utility Assessments shall be delinquent if not paid by the fifteenth (15th) day after the Assessment is due.

#### 4.4 Special Assessments.

(a) **Purposes for Which Special Assessments May Be Levied.** Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Apartments for the following purposes:

(i) **Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, the Board of Directors shall levy and collect a Special Assessment for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations under this Declaration.

(ii) **Capital Improvements.** The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement and repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article X hereof.

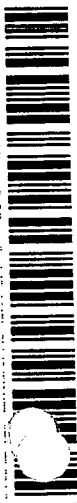
(b) **Special Assessments Requiring Membership Approval.** No Special Assessments described in (i) Section 4.4(a) of this Declaration, which in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied, shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in Section 4.2(c).

#### 4.5 Special Individual Assessments.

(a) **Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with Section 4.4 above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 4.5 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 15.6 of this Declaration, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) **Damage to Common Area or Common Facilities.** In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any

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portion of the Apartment which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses to accomplish (A) any repair, maintenance or replacement to any portion of the Property that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (B) to otherwise bring the Owner and/or his or her Apartment into compliance with any provision of the Governing Documents, the amount incurred by the Association (including title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance on Apartments. As more particularly provided in Section 3.6(b) (and without limiting the generality of that subparagraph), if any Apartment is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash or junk, the Association shall have the right to enter the Apartment, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in this Section 4.5, notice of such Special Individual Assessment shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

4.6 Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Property; (b) to promote the enjoyment and use of the Property by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Apartment against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

4.7 Exemption of Certain of the Property From Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Property dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Apartment owned by the Association.



4.8 Maintenance of Assessment Funds Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors which has offices located within the State of California, County of Riverside. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California *Civil Code* Section 1365.5. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b) below.

4.9 Collection of Assessments; Enforcement of Liens.

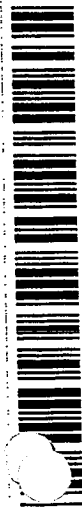
(a) Delinquent Assessments. If any installment payment of a Regular Assessment, Utility Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within 15 days after the same becomes due, such payment shall be delinquent. If an assessment is delinquent, the Association may recover all of the following: (i) reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorneys' fees; (ii) a late charge in the sum of ten dollars (\$10.00); (iii) interest on all sums imposed in accordance with this paragraph, including the delinquent Assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed twelve percent (12%) interest, commencing thirty (30) days after the Assessment becomes due.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided in California *Civil Code* Section 1367 or comparable superseding statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Apartment of the Owner so assessed only when the Association causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this Article IV and California *Civil Code* Section 1366, (B) the legal description of the Owner's Apartment against which the Assessments and other sums are levied, (C) the name of the Owner of Record of such Apartment, (D) the name and address of the Association, and (E) the name and address of the trustee authorized by the Association if the lien is to be enforced by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien.

(ii) Remedies Available to the Association to Collect Assessments. The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Apartment or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure by

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the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California *Civil Code* Section 2934a. Any sale of an Apartment by a trustee acting pursuant to this Section 4.8 shall be conducted in accordance with California *Civil Code* Sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages or deeds of trust.

(iii) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Association by recording in the Office of the County Recorder a Notice of Default, which notice shall state all amounts which have become delinquent with respect to the Owner's Apartment and the costs (including attorneys' fees), penalties and interest that have accrued thereon, the amount of any Assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall state the election of the Association to sell the Apartment or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under California *Civil Code* Section 2924c, or comparable superseding statute.

The Association shall have the rights conferred by California *Civil Code* Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

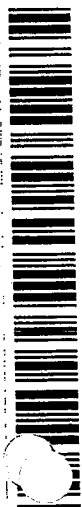
(iv) Actions for Money Judgment. In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided in this Declaration or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

4.10 Transfer of Apartment by Sale or Foreclosure. Except as otherwise provided herein, the sale or transfer of any Apartment shall not affect any Assessment lien duly recorded with respect to such Apartment prior to the sale or transfer. However, the sale or transfer of any Apartment pursuant to the foreclosure of any first Mortgage or other mortgage or lien recorded prior to the Association's Assessment lien (collectively "prior encumbrance") shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer of an Apartment as the result of foreclosure, exercise of a power of sale or otherwise shall relieve the new Owner of such Apartment, whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party from liability for any Assessments thereafter becoming due or from the lien thereof.

Where the first Mortgagee or other purchaser of an Apartment obtains title to the same as a result of foreclosure of any such first Mortgage or other prior encumbrance or exercise of a power of sale contained therein, the person acquiring title, his or her successors and assigns, shall not be solely liable for the Assessments chargeable to such Apartment which became due prior to the acquisition of title. Furthermore, foreclosure shall not affect the Association's right to maintain an action for the collection of delinquent Assessments against the foreclosed party personally.

4.11 Priorities. When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Apartment prior and superior to all other liens or encumbrances recorded

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subsequent thereto, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance.

4.12 Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Apartments, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.2 and, if necessary, a Special Assessment may be levied against the Apartments in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

4.13 Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Apartment owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section 4.13 shall be subordinate to the rights of any First Mortgagee.

4.14 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article IV, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Apartment.

## ARTICLE V

### ARCHITECTURAL COMMITTEE

5.1 Improvements in General; Establishment of Architectural Committee. No "Improvement" (as defined in Section 1.16) of any kind shall be commenced, erected or maintained within the Property, nor shall any exterior addition to or change or alteration be made to any Apartment until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same shall have been submitted to and approved in writing by the Association's Architectural Committee as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography and finished grade elevation.

5.2 Appointment of Architectural Committee. The Board of Directors may appoint an Architectural Committee composed of not less than three members. Committee members appointed shall be from the membership of the Association. The Board of Directors may serve as the Architectural Committee in lieu of appointing a separate body. In such case, the Board shall have the same authority and obligations as set out in this Article V for the Architectural Committee.



In the event of the death or resignation of any member of the Architectural Committee, a successor shall be appointed by the Board. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto.

5.3 Submission of Plans. Plans and specifications for the proposed Improvement shall be submitted to the Architectural Committee by personal delivery or certified mail to the secretary of the Association or the chairman of the Architectural Committee.

In the event the Committee fails to approve or disapprove such design and location within 45 days after said plans and specifications have been submitted to it, the request shall be deemed approved. Approval of the Board or Committee may contain conditions or requests for modification of particular aspects of the Owner's plans and specifications.

5.4 Architectural Rules. The Architectural Committee may, subject to review by the Board of Directors, from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended for use within the Property, provided that such rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail. Owners shall be responsible to comply with any local ordinances and codes, and to obtain any necessary permits and approvals from the City of Palm Springs.

5.5 Variances. The Architectural Committee shall be entitled to allow reasonable variances with respect to this Article V or any Architectural Rules in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

## ARTICLE VI

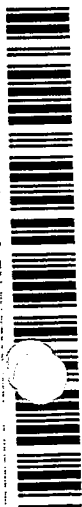
### USE OF PROPERTY AND RESTRICTIONS

In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Apartments, Common Areas and Common Facilities.

6.1 Residential Use. The use of the Apartments within the Property is hereby restricted to Residential Use, as defined in Section 1.27 of this Declaration. In no event shall an Apartment be occupied by more individuals than permitted by applicable zoning laws or governmental regulations. An Owner is permitted to lease or rent his or her Apartment, subject to the provisions of Section 2.4 ("Delegation of Use") of this Declaration.

6.2 Interior Improvements. No Owner shall at his or her expense or otherwise make any alterations or modifications to the exterior of the buildings without the prior written consent of the Association or the Architectural Committee. Furthermore, no structural alterations to the interior of or Common Area surrounding any Apartment shall be made by any Owner without the prior written consent of the Association. Under no circumstances shall any Owner undertake any activity or work with respect to the Owner's Apartment that will impair the structural soundness or integrity of another Apartment or

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impair any easement or hereditament, or do any act or allow any condition to exist in or around the Owner's Apartment which will adversely affect any other Apartments or their occupants.

Each Owner shall be liable to the remaining Owners for any damage to the Common Area and Common Facilities that may be sustained by reason of the negligence or willful act of that Owner, that Owner's family members, contract purchasers, tenants, guests or invitees.

6.3 Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Apartment or Common Area nor shall anything be done within the Property which is or could become an unreasonable annoyance or nuisance to neighboring property Owners.

6.4 Noise. No Owner shall make, continue, or cause to be made or continued, within the Property, any loud, unnecessary or unusual noise which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the Property. Without limiting the foregoing, no Owner shall permit any loud, unnecessary or unusual noise, including but not limited to the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles, motor vehicle radio or sound systems or power tools, to emanate from an Owner's Apartment or from activities within the Common Area.

6.5 Household Pets. The following restrictions regarding the care and maintenance of pets within the Property shall be observed by each Owner and resident:

(a) A reasonable number of common household pets may be kept within an Owner's Apartment so long as the same are not kept, bred or maintained for commercial purposes.

(b) Dogs shall be allowed on the Common Area only when they are leashed and are otherwise under the supervision and restraint of their Owners.

(c) No household pet shall be left chained or otherwise tethered in front of an Apartment or in the Common Area. Pet owners shall be responsible for the prompt disposal of pet wastes deposited by their pets in the Common Area.

(d) Each person bringing or keeping a pet on the Property shall be solely responsible for the conduct of the pet. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(e) The Board of Directors shall have the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets in, upon and around the Property to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and residents.

6.6 Signs. No advertising signs or billboards shall be displayed on the building containing Apartments, or posted within or upon any portion of the Common Area, except that Owners may post any signs required by legal proceedings, a single security service sign and a single "For Rent," "For Lease" or "For Sale" sign on or in areas designated by the Board from time to time. "For Rent," "For Lease" and "For

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Sale" signs shall be of moderate size and shape and in conformance with the City sign ordinance regulating the size and color of such signs.

6.7 Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Apartment, provided that the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this Section 6.7 shall be construed in such a manner so as to prohibit any Owner from (a) maintaining his or her personal library in his or her Apartment, (b) keeping his or her personal business records or accounts therein, (c) handling his or her personal or professional telephone calls or correspondence therefrom, (d) leasing or renting his or her Apartment in accordance with Section 2.4 hereof, or (e) conducting any other activities within the Owner's Apartment otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use of the Apartment and not in violation of this Section 6.7.

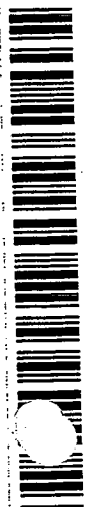
6.8 Garbage. No rubbish, trash, or garbage shall be allowed to accumulate outside of any Apartment. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Property by the Owner or tenant at his or her expense. Owners shall dispose of trash in the bin provided by the Association. Cardboard boxes shall be collapsed before being placed in the bin. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this Section.

6.9 Storage. Storage of personal property within any Apartment or patio shall be entirely within enclosed storage areas. The Association shall have the right to establish and maintain on the premises appropriate storage areas for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, gardens and other Improvements within the Common Areas which the Association is obligated to repair and maintain. Bicycles and other recreational equipment may not be tethered to the fence along the front of the Property.

6.10 Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no visible drying or laundering of clothes, swim wear, beach towels or other such articles on the patio or balcony of any Apartment, on any trees or shrubbery or anywhere within the Common Area.

6.11 Antennas and Similar Devices. Subject to any applicable federal, state or local statute, rule or ordinance, no Owner, resident or lessee shall, at his or her expense or otherwise, place or maintain any objects, such as masts, towers, poles, wiring, television and radio antennas or television satellite dishes on or about the exterior of the building within the Project without the prior written approval of the Board or Architectural Committee. The Board may adopt reasonable guidelines for the installation of direct broadcast satellite dishes, wireless cable and television aerial antennas. For purposes of such guidelines, the term "reasonable" means that the guidelines will not impose unreasonable expense or delay or preclude reception of an acceptable quality signal.

6.12 Diseases and Pests. No Owner shall permit any thing or condition to exist in his or her Apartment, which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.



6.13 Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Property:

(a) Each Owner has one assigned Parking Space. No owner or resident may use another Owner's Parking Space without the other Owner's permission.

(b) Vehicles must be parked "head in."

(c) No motor vehicle shall be constructed, reconstructed or repaired within the Property and no dilapidated or inoperable vehicles, or vehicles with expired license plates, including vehicles without wheel(s) or an engine, shall be stored on the Property; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs.

(d) The Board shall have the authority to tow, at the Owner's expense, any vehicle parked or stored within the Common Area in violation of this Section (including without limitation subpart (a) above) or the Rules adopted by the Board. The Board shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision.

(e) Recreational vehicles, campers, boats, trailers, and trucks in excess of one ton are not to be parked within the Property except for periods not to exceed eight (8) hours for the purpose of loading and unloading.

(f) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles within the Property as may be deemed prudent and appropriate.

6.14 Activities Affecting Insurance. Nothing shall be done or kept within any Apartment or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association (see Article X below) without the prior written consent of the Association and no Owner shall permit anything to be done or kept within his or her Apartment or within the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Apartment or any part of the Common Area.

6.15 Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article VI, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration.

6.16 Enforcement of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 15.6 of this Declaration, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncompliance and request that the Owner or tenant correct the condition within a reasonable time specified in the notice.



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## ARTICLE VII

### MAINTENANCE RESPONSIBILITIES

7.1 Association Maintenance Responsibilities. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. No person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association. Without limiting the foregoing, the Association shall be responsible for:

(a) Except as provided in Section 7.2 of this Declaration, the repair, reconstruction, replacement, or refinishing of any Common Facility or other Improvements located within or constructed upon Common Area as necessary in accordance with the original design, finish or standard of construction of such Improvement, including, without limitation, the swimming pool and apron area; pool equipment, heater and motor; roof, gutters, downspouts, and exterior walls of the apartment building; the foundations and beams; and all pipes, ducts, flues, chimneys, wires, cables and other utility equipment and installations within the walls of the apartment building. The Association shall not be responsible for the maintenance, repair, upkeep and replacement of window or door glass, the sliding glass doors, exterior doors, screens, screen doors and related hardware of the Apartment.

(b) The repair and maintenance of the Common Area occasioned by the presence of wood-destroying pests and organisms.

(c) The construction, reconstruction, replacement and refinishing of the Parking lot.

(d) The replacement of trees or other vegetation and the planting of trees, shrubs and ground cover on the Common Area.

(e) The laundry room and facilities and equipment in the laundry room.

(f) The mail box.

(g) The placement and maintenance of such signs as the Association may deem necessary for the identification of the development and of streets, the regulation of parking, the regulation and use of Common Area and Common Facilities and for the health, welfare and safety of Owners, tenants and guests.

7.2 Owner Maintenance Responsibilities.

(a) Each Owner of an Apartment shall be responsible for maintaining his or her Apartment, including the utility lines, pipes and equipment fixtures within the Apartment, the interior walls and ceilings and the window glass of the owned Apartment, the sliding glass door, and screens and screen doors and related hardware of the Apartment, in a clean, sanitary, workable, and attractive condition. Provided, however, that before replacing any exterior improvement or fixture, the Apartment Owner shall obtain the prior written consent of the Board or Architectural Committee. Each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating, except that windows can be covered only by drapes, shutters, or shades and cannot be painted or covered by foil, cardboard or other

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similar materials. Each Owner shall be responsible for repairing and replacing and cleaning of the windows and glass of his or her Apartment, both interior and exterior.

(b) Each Owner shall be responsible for maintaining, repairing and replacing the heating and central air conditioning unit and compressor serving the owned Apartment, wherever located.

(c) Each Owner shall be responsible to repair and maintain the surface of the rear patio of his or her Apartment.

### 7.3 Recovery of Costs of Certain Repairs and Maintenance.

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.5 hereof.

(b) In the event that an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.6(b) to enter the Owner's Apartment and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 15.6 hereof.

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

## ARTICLE VIII

### PARTY WALLS

8.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Apartments within the Property and placed on the dividing line between the Apartments shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

## ARTICLE IX

### EASEMENTS

9.1 Encroachment Easements. If any portion of the Common Area encroaches on any Apartment or if any portion of an Apartment encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Apartments and the Common Area are made subject to such easements. If any structure containing an Apartment is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Apartments and the Common Area are made subject to such easements.



9.2 Street Easements. Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the private streets and alleys within the Property, subject to the rights and restrictions set forth in this Declaration.

9.3 Blanket Utility Easement. There is hereby created a blanket easement on, across, over and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephones and electricity and any master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the utility companies to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on the Property except as approved by the Association's Board of Directors. The easements provided for in this Section 9.3 shall in no way effect any other recorded easement on the Property.

9.4 Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area and any Apartment to perform the duties of maintenance and repair of the Apartments, Common Area or Common Facilities, provided that any entry by the Association or its agents into any Apartment shall only be undertaken in strict compliance with Section 3.6(b).

## ARTICLE X

### INSURANCE

10.1 Types of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:

(a) Fire and Casualty Insurance. The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, for the full insurable value of all the Common Area and the Common Facilities. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis.

Depending on the nature of the insured property, the policies maintained by the Association pursuant to this Section shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall provide amounts or coverage as shall be determined by the Board and shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 10.5 below.

(b) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, the Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Apartments, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association-owned or maintained real or personal property and including, if obtainable, a cross-liability or severability of interest endorsement insuring each

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insured against liability to each other insured. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence and shall in no event be less than the minimum amount set forth in *Civil Code* Section 1365.9, as that statute, or any comparable superseding statute, is amended from time to time. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) Directors and Officers Liability Insurance. The Board shall purchase and maintain a policy of Directors and officers liability insurance naming as parties insured the Association, each member of the Board of Directors, each officer of the Association, any manager and any other person as the Board may determine. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000.00) per occurrence.

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section, demolition insurance, flood insurance, earthquake and workers' compensation insurance. The Board shall also purchase and maintain such insurance on personal property owned by the Association and any other insurance that it deems necessary or desirable.

10.2 Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 10.1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage, as more particularly set forth in *Civil Code* Section 1365.

10.3 Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

10.4 Individual Fire and Casualty Insurance Limited. Except as provided in this Section, no Owner can separately insure his or her Apartment or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 10.1(a). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 10.1(a) that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. An Owner should insure his or her personal property, including without limitation, floor, window and wall coverings, against loss. In addition, any Improvements made by an Owner within his or her Apartment shall be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's Improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional first Mortgagee of such Apartment.

10.5 Trustee. All insurance proceeds payable under this Article X may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank or other institution with trust powers within the County that agrees in writing to accept such trust. If repair or





reconstruction is authorized pursuant to Article XI below, the Association and any duly appointed trustee shall have the duty to contract for such work as provided in Section 11.5.

10.6 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Article X. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

10.7 Payment of Insurance Deductibles. In the event of a loss covered under the Association's blanket insurance carried under Section 10.1(a), any deductible that is payable shall be paid by the Association if the cause of the covered loss originated in an area or component of the Property within the maintenance responsibilities of the Association, or if the loss was caused by the activities of the Association. Conversely, if the loss originated in an area or component of the Property within the maintenance responsibilities of the affected Owner, or was caused by the activities of the Owner, then the deductible shall be paid by the affected Owner.

## ARTICLE XI

### DAMAGE OR DESTRUCTION

11.1 Destruction; Proceeds Exceed 85 Percent of Reconstruction Costs. If there is a total or partial destruction of the improvements in the Project, and if the available proceeds of the insurance carried pursuant to Article X are sufficient to cover not less than 85 percent of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within 90 days from the date of destruction, Owners then holding at least 75 percent of the total voting power present and entitled to vote, in person or by proxy, at a duly constituted meeting or voting by written ballot, determine not to rebuild. If rebuilding is to take place, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans. If repair and reconstruction is to take place, the Association shall be required to execute, acknowledge and record in the office of the County Recorder of the County not later than 120 days from the date of destruction, a certificate declaring the intention of the Owners to rebuild.

11.2 Destruction; Proceeds Less Than 85 Percent of Reconstruction Costs. If the proceeds of insurance carried pursuant to Article X are less than 85 percent of the costs of repair and reconstruction, the improvements shall be promptly rebuilt, unless within 90 days from the date of destruction, Owners then holding at least 67 percent of the total voting power present and entitled to vote, in person or by proxy, at a duly constituted meeting or by written ballot, determine that repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall execute, acknowledge, and record in the office of the County Recorder of the County not later than 120 days from the date of destruction a certificate declaring the intention of the Owners to rebuild.

11.3 Apportionment of Assessments. If the Owners determine to rebuild, pursuant to Sections 11.1 and 11.2 above, the Association shall levy a Special Assessment such that each Owner shall be obligated to contribute his or her share of the cost of reconstruction or restoration over and above the available insurance proceeds.



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11.4 Rebuilding Contract. If the Owners determine to rebuild, the Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee, if any, shall be disbursed to this contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

11.5 Rebuilding Not Authorized. If the Owners determine not to rebuild, then, subject to the rights of Mortgagees, any insurance proceeds then available for such rebuilding shall be distributed to each Owner according to the relative fair market values of their Apartment. The Board shall select an independent appraiser who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraisers' organization and who shall determine such relative values in accordance with the standards of such organizations as of a date immediately prior to such destruction. The Association shall have the duty, within 120 days from the date of destruction, to execute, acknowledge, and record in the office of the County Recorder of the County, a certificate declaring the intention of the Owners not to rebuild.

11.6 Revival of Right To Partition. On recordation of a certificate described in Section 11.5, above, the right of any Owner to partition through legal action as described in Article XIII shall revive immediately. In addition, each owner, by accepting a deed to an interest in the Project, grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration, and to dissolve the Association. The net proceeds following sale of the Project and dissolution of the Association shall be distributed to the Owners in the same manner that insurance proceeds are distributed under Section 11.5, above.

## ARTICLE XII

### CONDEMNATION

12.1 Sale by Unanimous Consent. If an action for condemnation of all or a portion of the Property is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all the Owners and after notice to all Mortgagees, the Property, or a portion of it may be sold by the Board acting as irrevocable attorney-in-fact of all of the Owners for a price deemed fair and equitable by the Board, but in no event less than the aggregate unpaid balance of all First Mortgages encumbering Apartments within the Property.

12.2 Distribution of Proceeds of Sale. If a sale occurs under Section 12.1, and the agreement of sale does not by its terms apportion the sale proceeds among the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the Apartments affected by the sale, in accordance with SREA standards. The sale proceeds shall then be apportioned among the Owners, and their respective Mortgagees according to such relative values.

12.3 Distribution of Condemnation Award. If the Property, or a portion of it, is not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees.

12.4 Appraisal If Condemnation Award Not Apportioned. If the judgment of condemnation does not by its terms apportion the award among the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the

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Apartments affected by the condemnation, in accordance with SREA standards. The award shall then be apportioned among the Owners, and their respective Mortgagees, according to such relative values.

## ARTICLE XIII

### PARTITION OF COMMON AREA

13.1 Suspension or Right of Partition. Except as expressly provided in this Article XIII, an Owner shall have no right to partition or divide his or her ownership of the Project. Partition can be had on a showing that the conditions to such partition as stated in Article XI (relating to damage or destruction) or in Article XII (relating to condemnation) or in California *Civil Code* Section 1359 have been met. Nothing in this Declaration shall prevent partition of a cotenancy within an Apartment.

13.2 Distribution of Proceeds Upon Partition. Proceeds of property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Apartment bears to the fair market value of all Owners' Apartments determined by appraisal as provided in Section 11.8, but as of a date immediately prior to the event giving rise to the right of Owners to partition the Project.

13.3 Power of Attorney. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under *Civil Code* Section 1359 and under the circumstances authorizing partition under this Declaration. The power of attorney shall (a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of 75 percent of the Owners; and (c) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under *Civil Code* Section 1359. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

## ARTICLE XIV

### NONSEVERABILITY OF COMPONENT INTERESTS

14.1 Severance Prohibited. An Owner shall not be entitled to sever his or her separate interest in the Project from his or her membership in the Association, and shall not be entitled to sever his or her exclusive right to occupy an Apartment or garage or his or her membership from the Owner's undivided interest in the Project for any purpose. None of the component interests in the Project can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with; and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to his or her Apartment over the Common Area from the Owner's interest in the Project and any attempt to do so shall be void. The suspension of such right of severability will not extend beyond the period set forth in Article XIII respecting the suspension of partition.

14.2 Limitation on Interests Conveyed. Any conveyance of an Apartment or any portion of it by an Owner shall be presumed to convey the Owner's entire interest in the Project. However, nothing contained in this Section 14.2 shall preclude the Owner of any interest from creating an estate for life or

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an estate for years or from creating a cotenancy or joint tenancy in the ownership of the Apartment with any other person or persons.

## ARTICLE XV

### BREACH AND DEFAULT

15.1 Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Apartment, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

15.2 Nuisance. Without limiting the generality of the foregoing Section 15.1, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

15.3 Costs and Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to any party in any such action such attorneys' fees and other costs as the court deems just and reasonable.

15.4 Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

15.5 Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

15.6 Rights and Remedies of the Association.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section 15.6.

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The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of the California *Civil Code* Section 1354 or otherwise by law.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate.

(c) Definition of "Violation." A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least 15 days prior notice of the proposed penalty or temporary suspension and of a hearing 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 5 days before the effective date of the proposed disciplinary action. The notice shall contain, at a minimum, the date, time and place of the hearing, the nature of the alleged violation and a statement that the member has a right to attend the hearing and may address the Board at the meeting. If the Board imposes discipline, the Board shall provide a notification of the disciplinary action by either personal delivery or first class mail to the member within ten (10) days following the action.

(e) 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 XVI

### NOTICES

16.1 Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Apartment or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association: Lantana Lodge Homeowners Association, at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

16.2 Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Apartment, to any general partner of a partnership which is the Owner of Record of the Apartment, or to any officer or agent for service of process of a corporation which is the



Owner of Record of the Apartment, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

16.3 Deposit in United States Mail. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four days after deposit in the United States mail in Riverside County, California.

## ARTICLE XVII

### NO PUBLIC RIGHTS IN THE PROPERTY

17.1 Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Property to the general public or for any public use or purpose whatsoever.

## ARTICLE XVIII

### AMENDMENT OF DECLARATION

18.1 Amendment in General. This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of not less than fifty-one (51%) of the voting power of the Association and seventy-five percent (75%) of the beneficiaries of first trust deeds of record as valid encumbrances against the project. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

18.2 Effective Date of Amendment. The amendment will be effective upon the recording in the Office of the Recorder of Riverside County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 18.1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment.

18.3 Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## ARTICLE XIX

### GENERAL PROVISIONS

19.1 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Apartments and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 60 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by Owners holding at least seventy-five percent (75%) of the voting power of the Association terminating the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of Riverside County, California.

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19.2 Construction of Declaration.

(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

**OFFICER'S CERTIFICATE**

The undersigned, President of the Lantana Lodge Homeowners Association, hereby certifies under penalty of perjury that the above Amended and Restated Declaration of Covenants, Conditions and Restrictions was approved by at least seventy-five percent (75%) of the Owners within the Project, and by at least seventy-five percent (75%) of the beneficiaries of first trust deeds of record that are valid encumbrances against the Property, evidence of which is on file in the office of the Association.

Dated: 2/14, 2001

LANTANA LODGE  
HOMEOWNERS ASSOCIATION

BY: R. Randall Smith  
R. Randall Smith President



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ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On 02/14/01 before me, \*JAMISON E MCMAHON\* notary public, personally appeared \*R RANDALL SMITH\*

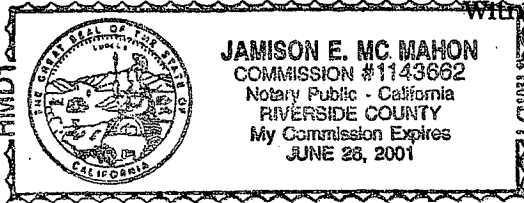
personally known to me

-or-

proved to me on the basis of satisfactory evidence

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

Witness my hand and official seal.



Signature of Notary:

[Handwritten Signature]

Official Notary Seal

OPTIONAL

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
CORPORATE OFFICERS (checked) Title(s): PRESIDENT
PARTNER(S) LIMITED
GENERAL
ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER:

SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Title Or Type Of Document: CC & R'S OFFICERS CERTIFICATE

Number Of Pages:

31

Date Of Document:

02/14/01

Signer(s) Other Than Named Above:

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED





FRACTIONAL INTEREST

<u>UNIT</u>	<u>FRACTIONAL INTEREST</u>
01	149/1576
02	109/1576
03	109/1576
04/05	238/1576
06	89/1576
07	109/1576
08	89/1576
09	89/1576
10	139/1576
11	109/1576
12	109/1576
14	109/1576
15	149/1576



PERCENTAGES USED TO CALCULATE ENERGY RATE FOR UNITS

Southern California Edison performed an "Energy Audit" for the Lantana Lodge Homeowners' Association in June, 2000, producing the percentages shown below. They will be used to calculate the energy surcharge assessment until the next energy audit is taken. The Board will include an estimate of electricity expenses in its annual budget and the SCE percentages will be applied for each unit.

<u>UNIT</u>	<u>SCE %</u>	
1	14	
2	7	
3	7	
4/5	17	
6	3*	* Only applicable when the unit is occupied on a full-time basis.
7	3*	
8	3	
9	6	
10	10	
11	6	
12	9	
14	7	
15	10	

EXHIBIT "B"

