

**FIRST RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

of

**PGA WEST RESIDENTIAL ASSOCIATION, INC.**

The Declaration of Covenants, Conditions and Restrictions for PGA WEST RESIDENTIAL ASSOCIATION, INC., a California non-profit mutual benefit corporation, and all amendments thereto, is hereby restated in its entirety as follows:

**RECITALS**

(A) A Declaration of Covenants, Conditions & Restrictions (“Original Declaration”) was recorded on January 22, 1986, as Instrument No. 15570 in the Official Records of Riverside County, California, which established the PGA WEST RESIDENTIAL ASSOCIATION, INC. to oversee, manage, maintain and operate the Properties within the development, as set forth in the Original Declaration. A First Amendment thereto was recorded on January 30, 1986, as Instrument No. 22073, and a Second Amendment thereto was recorded on September 29, 1992, as Instrument No. 364049.

(B) The Properties were originally conveyed subject to certain easements, protective covenants, conditions, restrictions, servitudes and easements, as set forth in the Original Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties, and all of which run with the Properties and are binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and inure to the benefit of each Owner. It was further intended that the Properties consist of both a “Planned Development Project” and a “Condominium Project,” as those terms are defined in Sections 1351(f) and (k) of the California Civil Code.

(C) The Association now desires to amend and restate the Declaration and replace it in its entirety with this First Restated Declaration, and that upon recordation of same, the Properties shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein.

## ARTICLE I

### DEFINITIONS

**Section 1.** “**Architectural Review Committee**” means any Committee appointed by the Board to review architectural alterations or improvements within the Properties, as set forth in Article VIII of this Declaration.

**Section 2.** “**Articles**” means the Articles of Incorporation for PGA WEST RESIDENTIAL ASSOCIATION, INC.

**Section 3.** “**Assessment**” means any Regular, Special or Reimbursement Assessment charged against an Owner and his or her Unit or Lot, as set forth in Article VI of this Declaration.

**Section 4.** “**Association**” means PGA WEST RESIDENTIAL ASSOCIATION, INC., a California non-profit mutual benefit corporation, as defined in California Civil Code Section 1351(a).

**Section 5.** “**Board of Directors**” or “**Board**” means the Board of Directors of the Association.

**Section 6.** “**Bylaws**” shall mean the Bylaws of the Association, as amended from time to time.

**Section 7.** “**City**” means the City of La Quinta.

**Section 8.** “**Common Area**” means all of the Properties, except the Units and individual Owner Lots, and shall include the Limited Common Area Property owned in common by the Owners in the Condominium Project, and the Property owned by the Association designated for the common use and enjoyment of the Owners, and including all improvements and structures in such Common Area.

**Section 9.** “**Condominium**” shall mean a real property interest consisting of a separate interest in the space within a Unit, and an undivided interest as a tenant in common in the Common Area of the Phase in which the Unit lies.

**Section 10.** “**Condominium Project**” shall mean the Condominium Units and the Common Area owned in common by such Owners.

**Section 11.** “**Condominium Plan**” shall mean the recorded Condominium Plan for each phase of the Condominium Project.

**Section 12.** “**County**” means the County of Riverside.

**Section 13.** “**Declaration**” means this First Restated Declaration of Covenants, Conditions & Restrictions.

**Section 14.** “**First Mortgagee**” means a mortgagee or beneficiary or holder of a note secured by a First Deed of Trust, and/or any assignees of such mortgagee, beneficiary or holder.

**Section 15.** “**Governing Documents**” means this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations, and any other policies and/or resolutions pertaining to the operation of the Association and its Members.

**Section 16.** “**Improvement**” includes, without limitation, the construction, installation, alteration, addition, or remodeling of any buildings, wall, deck, fence, swimming pool, spa, landscaping, patio, patio cover, skylights, solar heating equipment, antenna/satellite dish, or any other structure, addition, alteration or modification to a Lot or exterior of a Unit.

**Section 17.** “**Limited Common Area**” shall mean the space comprising the Limited Common Area adjacent to a Unit as approximately depicted on the recorded Condominium Plan for such Unit. The Limited Common Area shall include the space from the exterior walls of the building containing such Unit, to the as-built wall, fence, gate or other structures separating such area from other portions of the Condominium Project, or the area immediately adjacent to such Unit consisting of patios, courtyards, landscaping and walkways continuing to either the adjacent Lot line or enclosed by a wall, fence, gate, or other structure separating such area from other portions of the Common Area, including that portion of such wall, fence, gate, or other structure facing the Unit. The Owner of such Unit shall have an easement only over such area for use as Limited Common Area.

**Section 18.** “**Lot**” shall mean each Lot in the Planned Development Project, or any parcel of real property designated by a number on the subdivision map(s), or any portion of the Properties, excluding the Common Area. When appropriate, within the context of this Restated Declaration, the term “Lot” shall also include the Residence, and other Improvements constructed and/or to be constructed on a Lot.

**Section 19.** “**Map**” shall mean any tract map recorded covering any portion of the Properties.

**Section 20.** “**Master Association**” shall mean the PGA West Master Association, of which each Owner of a Lot or Unit shall be subject to, as defined in the Master Declaration of Covenants, Conditions & Restrictions as may be amended from time to time.

**Section 21.** “**Master Declaration**” shall mean the Declaration of Covenants, Conditions & Restrictions for PGA West Master Association.

**Section 22.** “**Member**” means every person or entity who is an Owner of a Lot or Condominium.

**Section 23.** “**Mortgage**” shall mean a mortgage or deed of trust encumbering a Lot or Condominium.

**Section 24.** “**Owner**” means the record Owner, whether one or more persons or entities, of fee simple title to a Condominium or Lot, excluding those having a security interest for the performance of an obligation.

**Section 25.** “**PGA West Association Property**” shall mean those portions of the Properties owned by the Association. This shall include, but not be limited to, private streets and perimeter landscaped lots.

**Section 26.** “**Planned Development Project**” shall mean the individual residential Lots.

**Section 27.** “**Product Types**” shall mean the various product types constructed, upon which the budget for the Planned Development Project and Condominium Project shall be based, as more fully set forth in Article VI of this Declaration.

**Section 28.** “**Properties**” means the real property described in Recital “A” to this Declaration, including Common Area, Lots and Condominiums, together with all buildings, structures, and utilities thereon.

**Section 29.** “**Residence**” means a residential dwelling constructed on a Lot or a residential Condominium, intended for use and occupancy by a single family.

**Section 30.** “**Unit**” shall mean the elements of a Condominium which are not owned in common with the other Owners. The boundaries of the Units in the Condominium Project are as shown and defined on the Condominium Plan with respect to each Phase which is part of the Condominium Project.

## **ARTICLE II**

### **DESCRIPTION OF PROPERTY**

**Section 1.** **Development Plan.**

(A) **Planned Development Project.** The Planned Development Project includes, but is not necessarily limited to, the following product types constructed on Lots: Masters, Model Complex Home, Master Custom Homes; Master Custom Lot, SRS2 Custom Homes, SRS2 Custom Lots, SRS1 Custom Homes, SRS1 Custom Lots, Shoal Creek Homes, and Shoal Creek Lots.

(B) **Condominium Project.** The Condominium Project includes, but is not necessarily limited to, the following product types constructed as Condominium Units: Champions, Classics, Fairways, Lake Fairways, Galleries, Greens, Highland, Legends, Lake Legends, Medalists, Tournaments, and Laurels.

(C) **Mixed Product Type Project.** The Mixed Product Type Project includes, but is not necessarily limited to, the following product types constructed as airspace envelopes, with individual Owners owning the land upon which the Unit is constructed and the airspace inside, with the Association assuming maintenance responsibilities as set forth herein: Montecitos.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

**Section 1. Membership.** Each Owner of Lot or Unit shall automatically, upon becoming the Owner, be a Member of the Association and the Master Association, and shall remain a Member until ownership ceases.

**Section 2. Transfer.** Membership in the Association shall not be transferred, pledged, or separated from ownership of a Lot or Unit, except upon the sale or conveyance of such Lot or Unit.

**Section 3. Voting.** Each Owner shall be entitled to one (1) vote for each Lot or Unit owned, subject to the cumulative voting provisions for elections of the Board as set forth in the Bylaws. If there is more than one record Owner of a Lot or Unit, one record Owner may vote on behalf of the other Owners. The Association reserves the right to disregard the vote for such Lot/Unit if multiple Owners vote inconsistently.

### **ARTICLE IV**

#### **PROPERTY RIGHTS AND EASEMENTS**

**Section 1. Owners' Nonexclusive Easements of Enjoyment.** Every Owner shall have the following rights and non-exclusive easement for use and enjoyment, in and to, and ingress and egress over the Common Area as follows:

- (A) Ingress and egress to and over the private streets, parking areas and driveways.
- (B) The easements described in the Master Declaration.
- (C) Subject to the prior written approval of the Architectural Review Committee, the right of Condominium Owners to enclose and lock the Limited Common Area and Common Area, as set forth in Article IV, Section 5.
- (D) Subject to Board approval, the right of the Association to allow minor extensions into the Common Area for hardscape and patio extensions.
- (E) The right of the Association to limit the number of guests using the Common Area.
- (R) The right of the Association to establish reasonable Rules and Regulations pertaining to the use of the Common Area.
- (G) The right of the Association to enforce the governing documents as set forth in Article XI and in the Bylaws.
- (H) The right of the Association to sell property, grant easements or licenses over and under the Common Area to public utilities or governmental entities, agencies or Owners.

(I) The right of the Association to charge reasonable fees for the use of any recreational facility on the Common Area.

(J) The right of the Association to grant licenses or easements over the Common Area to Members where the value of same is less than five percent (5%) of the Association's annual budgeted gross expenses. If such value exceeds this figure, said license or easement may only be granted with approval of at least a majority of a quorum of the membership.

**Section 2. Encroachment Easements.** If any part of any building or improvement in the Common Area shall, due to minor construction errors or minor settling or shifting, encroach upon any other Lot or Unit, an easement for such encroachment, and the maintenance thereof, shall exist as long as such encroachment continues in existence.

**Section 3. Water Rights and Utility Easements.** The rights and duties of the Owners with respect to utilities shall be as follows:

(A) **Utility Connections On Other Lots or Condominiums.** Whenever a sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air-conditioning conduits, ducts or flues are located or installed on or within a Lot or Condominium owned by an Owner other than the Owner served by said connections, the Owner served shall have the right to the full extent necessary, to enter upon the Lot or Condominium during reasonable times, after reasonable advance notice to the other Owner, to inspect, repair, replace, and maintain said connections.

(B) **Utility Connections Serving Owners.** Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air-conditioning conduits, ducts or flues are located or installed on or within a Lot or Condominium which serve more than one Lot, the Owner served by each such connection shall be entitled to the full use and enjoyment of such portions of connections serving his or her Lot or Condominium.

(C) **Disputes.** In the event of a dispute as to the repair, maintenance, replacement or use of utilities, or with respect to Owners sharing the cost thereof, upon written request of such Owners, the matter shall be submitted to the Board, which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

**Section 4. Association's Easements For Utilities and Maintenance.** The Association shall have easements over the Properties for the installation, inspection, repair, and maintenance of sanitary sewer, water, electric, gas, and telephone lines and facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping, which serve or are located within the Common Area, as is reasonably necessary to service the Properties, together with the right to transfer same.

**Section 5. Rights in Limited Common Area of the Condominium Project.**

(A) **Description.** The space comprising the Limited Common Area adjacent to a Unit is approximately depicted on the recorded Condominium Plan for each Unit. The actual space of the Limited Common Area shall include the space from the exterior walls of the building containing

such Unit, to the as-built wall, fence, gate or other structures separating such area from other portions of the Condominium Project, or the area immediately adjacent to such Unit consisting of patios, courtyards, landscaping and walkways continuing to either the adjacent Lot line or enclosed by a wall, fence, gate, or other structure separating such area from other portions of the Common Area, including that portion of such wall, fence, gate, or other structure facing the Unit.

(B) Maintenance. The Association will continue to maintain the Limited Common Area so long as both of the following conditions exist:

(i) The Owner provides the Association with access by the Master Key held by the Association.

(ii) Such Owner does not alter existing landscaping or otherwise construct improvements in the Limited Common Area so as to increase the Association's cost of maintenance.

(C) Enclosure of Limited Common Area. If an Owner elects to enclose and provide his or her own lock on the Limited Common Area, and maintain existing landscaping, such Owner shall immediately notify the Architectural Review Committee in writing of such election. No changes in the existing landscaping or construction of improvements shall be permitted unless Owner has submitted plans and obtained the prior approval of the Architectural Review Committee, as set forth in Article VIII of this Declaration.

(D) Termination of Association's Maintenance Obligations. If either of the conditions in Section (C) is not satisfied, the Association's maintenance obligations with respect to the Limited Common Area adjacent to such Unit shall terminate. The affected Owner shall not be entitled to any offset or reduction in assessments upon termination.

(E) Reinstatement of Maintenance Obligations. An Owner may apply to the Architectural Review Committee for the Association to reinstate maintenance of the Limited Common Area, which will be granted upon Owner providing access to such area and provided the then existing landscaping is in compliance with the standards of the Association, and does not unduly increase maintenance costs. The Architectural Review Committee shall have the right to inspect such area as part of its review.

(F) Irrigation. The irrigation systems originally installed in the Limited Common Area are connected to the water service of the adjoining Condominium. Each Owner shall be responsible to pay any utility charges for irrigation of the Limited Common Area, whether or not the Association is maintaining such Limited Common Area.

**Section 6. Reciprocal Easements for Partitions.** Each Lot Owner shall have a reciprocal easement in, to, over and across a strip of land no greater than one (1) foot in depth running along the common boundary of his or her Lot and the neighboring Lot, for the purpose of constructing and maintaining a wall, fence or other similar partition separating the Lots. Use of such easement is subject to the following conditions:

(A) An Owner desiring to construct a partition shall obtain the prior approval of the Architectural Review Committee as provided in Article VIII.

(B) The first of any two neighboring Lot Owners to obtain such approval shall have the sole right to exercise the easement provided for in this Section.

(C) No more than one-half the width of the partition shall be located on the neighboring Lot.

(D) The Owner building the partition shall not have a right to demand contribution from the neighboring Owner for the cost of installing the partition; however, such neighboring Owner shall be responsible for the cost of maintaining that portion of the partition located on the neighboring Lot.

## **ARTICLE V**

### **POWERS AND DUTIES OF THE ASSOCIATION**

**Section 1. Management and Control by the Board.** The Association, through its Board, except as otherwise provided, shall have the obligation, authority, and duty to manage, make decisions on behalf of, and carry out the business of the Association, all as more fully set forth in the Governing Documents, and as provided pursuant to California law. All such duties and powers shall be exercised by the Board, unless specifically reserved to the Members.

**Section 2. Duties of the Association.** In addition to any duties imposed under the Bylaws or by California law, the Board, on behalf of the Association, shall have the following duties:

(A) **Maintenance of Common Area.** The Board shall maintain and otherwise manage all of the Common Area and Association Property, including all facilities and improvements thereon. The Board shall also maintain the Limited Common Areas, subject to the provisions set forth in Article IV, Section 5.

(B) **Enforcement.** The Board shall have the power and duty to enforce the Declaration, Bylaws and Rules and Regulations, and all other policies of the Association, by all legal means available, including, but not limited to the methods set forth in Article XI.

(C) **Payment of Taxes.** The Board shall pay real or personal property taxes or other charges assessed against the Common Area, Limited Common Area or Association Property, if not separately assessed to the Owners.

(D) **Utilities.** The Board shall obtain for the common benefit of all Owners water, sewer, gas, electrical, refuse collection and gardening/landscaping service for the Common Area, Association Property and Limited Common Area, subject to Article IV, Section 5, and such other utilities as the Board may determine.

(E) **Insurance.** The Board shall contract for insurance and fidelity bonds on behalf of the Association, as provided in Article X of this Declaration.

(F) **Assessments.** The Board shall collect those assessments provided for in Article VI and those assessments payable by Owners to the Master Association.

(G) Budgets. The Board shall cause budgets and financial documents to be prepared, as set forth in the Bylaws, Article VI, Section 6.

(H) Records. The Board shall keep books and records of account, minutes of the proceedings of the Board, Members and Committees, and a list of addresses and names and voting rights of the Members, as set forth in Corporations Code Section 8320.

### **Section 3. Powers and Authority of the Association.**

(A) Adoption of Rules and Regulations. The Board may, from time to time, adopt reasonable Rules and Regulations governing the use of the Common Area, Association Property, Limited Common Area, and Lots and Units, including, but not limited to, parking, storage of boats, trailers, bicycles, disposal of garbage, window coverings, pets, and the use, occupancy or maintenance of the Properties, or with respect to any activity which offends, annoys, endangers, or may have a detrimental effect on the Properties. A copy of such Rules and Regulations shall be kept at the manager's office, and be available for inspection at all reasonable times, and provided to each Owner upon any amendment being adopted.

(B) Power to Grant Licenses, Permits and Easements. The Board may grant permits, licenses, utility easements, and other easements, permits, or licenses to third parties as necessary or appropriate for the proper maintenance or operation of the Properties, as set forth in this Declaration. The Board may grant a license to Owners within the Association over portions of the Common Area for limited purposes as established in the sole discretion of the Board, where the value of the property affected does not exceed five percent (5%) of the budgeted annual gross expenses of the Association. If such conveyance exceeds 5% of such value, the Board shall obtain approval of a majority of a quorum of the membership.

(C) Maintenance of Adjacent Areas. The Board may maintain such other areas adjacent to the Properties as the Board shall determine from time to time to be desirable, in order to enhance the appearance of the Properties, or as may be required by the City, County or other governmental agencies.

(D) Delegation. The Board may delegate its powers to committees, officers or employees as it deems fit, or as permitted by law.

(E) Management Contract and Other Vendors. The Board may employ a manager, independent contractor, or other vendors or employees as it deems appropriate, to carry out its duties.

(F) Borrow Money. The Board may borrow money and incur indebtedness for purposes of the Association, and to execute promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and security therefor;

(G) Right of Entry. The Association and its representatives may, after at least twenty-four (24) hours notice to the Owner, enter any Lot or Unit at reasonable hours for the purpose of maintaining or repairing the Common Area, Association Property, Limited Common Area, or to enforce by peaceful means any of the provisions of the Governing Documents upon an Owner failing to comply with the Governing Documents, or for any other purpose reasonably related to the

performance of the Board's duties under the Governing Documents. In the event of an emergency, the Association or its agents may enter a Residence where safety to persons or substantial property damage is threatened or occurring; however, prior to entering the Residence, all reasonable attempts will be made to notify the occupant and the Owner prior to entry.

(H) Other Powers. The Board shall have any additional powers afforded under non-profit corporation law, or which are incidental to or implied within such express powers, including but not limited to, the power to perform such acts as may be reasonably necessary to enforce the provisions of the Governing Documents or the Master Association Governing Documents, and to take action to protect the health, safety and welfare of the Owners and the Properties.

**Section 4. Limitations on Power.** The Board may not take any of the following actions except with the vote or written consent of a majority of a quorum of the Members:

(A) Capital Improvements. Incurring aggregate expenditures for capital improvements to the Common Area which exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

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

**Section 5. Limitation of Liability.** No Member of the Board of Directors shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities, unless he or she fails to act in accordance with the standards of conduct set forth under California law for directors of non-profit mutual benefit corporations. It is the intent of this Section to provide volunteer directors and officers with protection from liability to the full extent permitted by California law.

## **ARTICLE VI**

### **ASSESSMENTS**

**Section 1. Creation of Lien and Personal Obligation for Assessments.** Each Owner, by acceptance of a deed or conveyance of any Lot or Unit, whether or not it shall be so expressed in such deed or conveyance, shall be obligated to pay the Association: (i) Regular Assessments; (ii) Special Assessments, as established and collected as hereinafter provided; and (iii) any Reimbursement Assessments charged as provided herein. All such Assessments, together with late charges, interest, costs, and all attorney's fees reasonably incurred for the collection thereof, shall

be a debt and personal obligation of the Owner at the time the Assessment was levied, and shall be a charge and a continuing lien upon each Lot and Unit.

Each Owner of a Lot or Unit shall be jointly and severally liable for the entire assessment coming due while he or she is an Owner.

Each Owner shall also be obligated to pay Master Association Assessments, to be collected by the PGA West Residential Association, as set forth in the Master Declaration.

**Section 2. Purpose of Assessments.**

(A) Purpose of Assessments. Assessments shall be charged by and paid to the Association, and used to cover the Project Budget and Association Budgets, as defined in this Article, and for the purpose of providing for and promoting the pleasure, recreation, health, safety, welfare, and enjoyment of the Owners and occupants of the Lots and Units, including the enhancement of the value, desirability and attractiveness of the Common Area, Limited Common Area and Association Property, and to discharge any obligation or exercise such power of the Association, as provided for in the Association's Governing Documents.

(B) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Unit or other property owned by him or her from the liens and discharges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Unit or any other portion of the Project or due to the Association's failure to perform services.

**Section 3. Regular Assessments.**

(A) Preparation of Annual Budget for Regular Assessments. Not less than forty five (45) nor more than sixty (60) days prior to the beginning of the Association's fiscal year, the Board shall adopt the following budgets:

(i) Product Budget. A budget shall be prepared for each one of the Product Types and shall include estimated amounts required to be paid by the Association for maintenance, reserves and other responsibilities of the Association with respect to the Common Area, Limited Common Area and Association Property for the phase within which such Product Types are located. The amounts budgeted shall be assessed equally among all Owners of the appropriate Product Type.

(ii) Association Budget. This budget shall include estimated amounts required to be paid by the Association for: (a) Dues and assessments owing to the Master Association; and (b) amounts for maintenance, reserves and other responsibilities of the Association attributable to the Properties, but not attributable to particular phases for particular Product Types. The amounts budgeted shall be assessed equally to all Owners within the Association.

The budgets shall satisfy the requirements of Civil Code Section 1365(a) or successor statute. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year

unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association.

(B) Installment Payment of Assessments. Regular Assessments shall be due and payable in equal monthly installments, on the first day of each month, or on such other date established by the Board. Regular Assessments shall be delinquent if not paid by the 15th day of the due date established by the Board of Directors. The full annual assessment may be deemed due and payable, should any monthly installment be delinquent, as determined by the Board.

(C) Increase of Regular Assessments. Except as provided in this Article, or by California law, the Board of Directors may not impose a Regular Assessment that is more than 20 percent (20%) 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. For purposes of this Section, pursuant to Civil Code Section 1366(b), "quorum" means more than fifty percent (50%) of the Owners.

Prior to raising regular assessments at any time during the fiscal year up to the twenty percent (20%) limitation, the membership shall be given at least thirty (30), but no more than sixty (60) days notice of such increased assessment becoming due.

(D) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent (20%) of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. An emergency situation is any of the following, or as otherwise defined in Civil Code Section 1366(b):

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

(ii) An extraordinary expense necessary to repair or maintain the Common Area or portions of Lots for which the Association is responsible.

(iii) An extraordinary expense necessary to repair or maintain the Common Area/portion of Lot, and/or Unit, that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subparagraph (A) above, provided that 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.

(E) Failure to Make Estimate. If, for any reason, the Board of Directors fails to prepare and distribute the Budgets described in subparagraph (A) for any fiscal year, then the Regular Assessment set for the preceding fiscal year shall be assessed.

(F) Priority of Payments. Any payments made by an Owner toward any of the charges levied as set forth herein shall be first applied to the principal owed, and then to interest, late charges, costs, attorneys fees and other fines/charges levied.

**Section 4. Special Assessments.** The Board may levy Special Assessments for the purpose of defraying the cost of any reconstruction, repair or replacement of existing improvements, construction of capital improvements upon the Common Area, Limited Common Area or Association Property, or for any other action on behalf of the Association as determined by the Board of Directors. Any Special Assessment which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment is levied, may not be levied unless approved by the vote or written approval of members, constituting a quorum, casting a majority of the votes in a meeting or election of the Association. For purposes of this Section, as provided in Civil Code Section 1366(b), “quorum” shall mean more than fifty percent (50%) of the Owners.

Such approval shall not apply to a Special Assessment levied to address “emergency situations” as defined in Section 3(D) above. Special Assessments shall be levied on the same basis as Regular Assessments, as set forth in Section 3(A), except those imposed to rebuild major components after damage or destruction as provided in Article XIII.

**Section 5. Reimbursement Assessments.**

(A) Circumstances Giving Rise to Reimbursement Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4, above, the Board of Directors may impose Reimbursement Assessments against an Owner in any of the circumstances described, without limitation, in Subparagraphs (1) through (3) below, provided that no Reimbursement Assessment may be imposed against an Owner pursuant to this Section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Civil Code Section 1363(h) and Corporations Code Section 7341, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association’s Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Reimbursement Assessments include the following:

(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 portion of the Lot/Unit which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any Member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

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

(iii) Required Maintenance on Lots/Units. As more particularly provided in Article VII, Section 12, and without limiting the generality of that subparagraph, if any Lot/Unit is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash or hazardous material therein, the Association shall have the right to enter said Unit, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Reimbursement Assessment against the offending Owner.

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

**Section 6. Certificate of Assessments.** The Association shall, upon request of a Member, and for a reasonable charge, furnish a certificate signed by an officer or other agent of the Association setting forth whether the assessments of a specified Lot or Unit have been paid.

**Section 7. Exemption of Certain of the Properties From Assessments.** The following real property shall be exempted from the Assessment obligation:

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

**Section 8. Remedies of the Association for Non-Payment of Assessments.** The Association shall have the power to impose Assessments as provided in the Governing Documents. Such Assessments are the personal obligation of the Owner against whom they are assessed and are a lien against that Lot/Unit. The Association shall have the authority to create and enforce a lien with the power of sale on each separate Lot/Unit to secure payment of the amount of any Assessment, to the full extent permitted by applicable law. The obligation and the lien for Assessments may also include: a late or delinquency charge in the amount of ten dollars (\$10.00) or ten percent (10%) of the amount of each Assessment or installment not paid when due, whichever is greater, or such higher amount as may be authorized by the laws of the State of California; interest on each Assessment or installment not paid when due and on any delinquency fee or late charge pertaining thereto commencing thirty (30) days after the date the charge was first due and payable at the rate of twelve percent (12%) per annum, or such higher rate as may be authorized by the laws of the State of California; the costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot/Unit, and reasonable attorney's fees actually incurred; and the fair rental value of the Lot/Unit from the time of institution of suit until the sale at foreclosure or other satisfaction of any judgment.

**Section 9. Effect of Non-Payment of Assessments.** As set forth in California Civil Code Section 1367, or other law, the Association shall notify the Owner, in writing, via certified mail, of the delinquency, and provide an itemized breakdown of all assessments, late charges and the method

of calculation, interest, costs and attorneys fees owed, any fee or penalty procedures, and the Association's collection policies/procedures.

If such charges are not paid by the date set forth in such letter, the Association may file for recording in the Office of the County Recorder a Notice of Delinquent Assessment ("lien") against such Lot or Unit, which notice shall state all amounts which have become delinquent and the costs (including attorney's fees), late charges and interest which have accrued thereon. Said lien shall include a legal description of the Lot or Unit, and the name of the record or reputed record Owner, and name and address of any trustee authorized to enforce the lien on behalf of the Association. The lien shall be signed by the trustee or other person designated by the Board. The Association shall be entitled to employ the services of a law firm or other entity authorized to serve as a trustee in non-judicial foreclosure proceedings.

Immediately upon the recording of any lien, all delinquent sums, together with the costs (including attorney's fees), late charges and interest accruing thereon, shall be a lien upon the Lot or Unit, which shall also secure all other payments and/or assessments which become due and payable after the recording date. Said lien shall continue until all amounts secured thereby are fully paid or otherwise satisfied. Upon payment or satisfaction of the delinquent charges, the Board shall record a notice of Release and Satisfaction of the lien.

(A) Mailing of Lien. The Association shall mail a copy of the recorded lien to all record Owners of the property or the successor-in-interest which is the subject of the delinquency, no later than ten (10) days after the date of recording. Owner shall have the right to elect to pay all sums owed as set forth in said lien under protest if Owner notifies the Association in writing of his or her desire to do so, no later than thirty (30) days after the recording date of the lien, in accordance with Civil Code Section 1366.3, or successor statute. The Association shall then inform Owner of his or her right to resolve the dispute through Alternative Dispute Resolution (ADR) as set forth in Civil Code Section 1354, civil action, or other procedures to resolve the dispute that may be available through the Association.

**Section 10. Assignment of Rents**. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot or Unit 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 rental monies, whether past due and unpaid or current. The Association's rights under this Section 10 shall be subordinate to the rights of any First Mortgagee.

**Section 11. Foreclosure of Assessment Lien**. Upon an Owner failing to satisfy the above-referenced lien, the Association may commence non-judicial foreclosure, by recording in the office of the County Recorder a Notice of Default and Election to Sell, which notice shall state all amounts which have become delinquent with respect to the Lot/Unit, and the costs, including attorney's fees,

late charges and interest that have accrued thereon, and shall meet all other requirements set forth in California Civil Code Section 2924(c), or successor statute. The Association shall further have the right to record a Notice of Sale, as provided in Civil Code Section 2924, et seq.

**Section 12. Subordination of Lien.** The lien provided for herein shall be subordinate to the lien of any First Mortgage of record made in good faith and for value upon any Lot/Unit, provided that such subordination shall apply only to the assessments which have become due and payable prior to the transfer of such property, pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such First Mortgage. Otherwise, sale or transfer of any Lot/Unit shall not affect the lien for delinquent assessments.

## **ARTICLE VII**

### **USE RESTRICTIONS**

For purposes of this Article, Lot and Unit shall be collectively referred to as Property.

**Section 1. Residential Use.** Each Property shall be used for single family residential purposes only, and no trade or business, commercial or industrial use shall be conducted on such Property, which involve clients or employees traveling to and from the residence, commercial deliveries, or storage in the garage so as to prevent use of the garage to its maximum capacity for parking of vehicles, or other criteria which may be adopted by the Board to preserve, protect and maintain the residential character of the Project, and does not otherwise result in expense to the Association, Common Areas, or negatively impact other affected Property.

**Section 2. Timeshare Prohibition.** Time-share projects, time-share estates, unless approved by two-thirds (2/3) of the Board, time-share programs and time-share uses as defined pursuant to Business & Professions Code Section 11003.5, or successor statute, are prohibited.

“Time share program” shall include but not be limited to any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy-in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, where a time-share interval is created and whereby the use, occupancy or possession of an accommodation, Lot, Unit, or Property circulates among purchasers of such interval according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of one (1) year in duration.

“Time-share use” shall include, but not be limited to, any contractual or other right of exclusive occupancy, whether fixed for a specific time or not, vacation license, pre-paid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

Multiple ownership of Property as tenants in common, joint tenancy or other form of multiple ownership greater than four (4) persons or entities is prohibited.

**Section 3. Lease Restrictions.** Each Owner shall have the right to lease his or her Property, provided that such lease is in writing and provides that each tenant shall be bound by and obligated to the provisions of the Association’s Governing Documents. Any violation of the Association’s governing documents shall constitute a default under the lease. Owners shall be responsible for any

costs, fees, or charges incurred by the Association as a result of the conduct of occupants of Owner's Property. Notwithstanding anything to the contrary contained in this Declaration, including but not limited to, Article XII, Section 1, Article VII, Section 3 shall not be amended absent a vote or written assent of seventy-five percent (75%) of the total voting power of the Association.

**Section 4. Landscaping.** The landscaping on any Lot shall be maintained by the Owner or resident in an attractive, neat, cultivated and trimmed condition, and in such a manner as to reduce the risk of fire and erosion of soils. Owners of Lots along the golf courses shall comply with any additional standards imposed by the Board.

**Section 5. Subdivision of Lots and Temporary Structures.** No Lot may be subdivided into a smaller Lot and no Lot Owner shall erect or use any structure of a temporary character, trailer, tent, shack, carport, garage, barn, or other outbuilding on any portion of the Lot at any time, either temporarily or permanently, except as approved by the Board.

**Section 6. Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the development, except that dogs, cats or other household pets may be kept within a Residence, provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers. Animals may not be kept, bred, or maintained for any commercial purpose, and shall not endanger the health or safety of, or unreasonably disturb, the residents of any Lot or Unit so as to constitute a nuisance. All pets shall be kept on a leash by a person capable of controlling the animal while in the Common Area. All persons shall clean up after his or her pet immediately on the Common Area, and on a regular basis with respect to his or her Lot or Unit. The Association shall have the right to adopt further Rules and Regulations pertaining to pets. Upon violation of these provisions, the Board may restrict or have the pet removed from the Common Area or from a Lot or Unit.

**Section 7. Signs.** No signs shall be displayed on any Lot, Unit or on the Common Area, except that an Owner may place a "For Rent/Lease" or "For Sale" sign on his or her Property and another's Property with such person's permission. The Board shall have the right to adopt rules restricting the location, number, material, color and size of open house, sale/lease signs and other similar directional signs. Signs indicating existence of a security system may also be placed in front windows or other locations approved by the Board. The Board or its agents shall have the right to remove signs which do not comply with these restrictions or additional rules adopted by the Board.

**Section 8. Antennas and Similar Devices.** Antennas and Satellite dishes that are one (1) meter or less in diameter may be installed within an Owner's Unit without approval of the Association. However, no such dish may be installed on the Common Area, including attaching them to roofs and sides of buildings, without prior written approval of the Association. The Association may require reasonable screening, establish preferred locations, and impose other restrictions as permitted by applicable federal and state law, provided they do not preclude an acceptable signal or unreasonably increase the cost or cause unreasonable delay in the installation of same. These restrictions are subject to change based on federal and state law.

**Section 9. Vehicles, Parking and Use of Garages.** Each Resident shall comply with all rules adopted by the Master Association regarding parking of vehicles, and the restrictions contained in

this Declaration regarding parking, of vehicles. The Board shall have the right to adopt further rules regarding vehicles which do not conflict with the rules of the Master Association.

No trailer, camper, mobile home, commercial vehicle, truck (other than a standard size pick-up truck), boat, inoperable vehicle, or similar vehicles or equipment shall be permitted to remain upon any area within the Property, other than temporarily for loading and unloading, unless placed or maintained within an enclosed garage. Commercial vehicles shall not include sedans or standard size pick up trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

The garage shall be used to its maximum capacity for parking. No storage is permitted in the garage where it prevents the garage being used to its maximum capacity for parking of vehicles. No vehicles may be parked so as block or obstruct passage on sidewalks.

No parking is permitted in fire lanes. No noisy or smoky vehicles, or vehicles which leak oil, shall be operated on the Property. Vehicles in an otherwise dilapidated condition shall be garaged. No major repairs of vehicles shall performed on any Lot or the Common Area. Driveways shall be kept free of oil, grease, paint and other unsightly substances.

No motorcycles, mopeds or other motorized vehicles having less than four wheels may be kept, operated or permitted on or in any part of the Property, except for purposes of traveling directly between the entrance to the Property and the vehicle Owner's residence.

The Board shall have the right to adopt additional rules and regulations regarding use and parking of vehicles.

**Section 10. Drainage/Slopes.** Each Owner of a Lot agrees that Owners of adjacent or adjoining Lots may access slopes or drainageways located on his or her Lot which affect the adjacent Lot, where necessary to maintain the permanent stabilization of such slopes or for the protection and use of such Lots. No structure or building shall be erected or maintained in whole or in part within any slope area without approval of the Architectural Review Committee. No Owner may interfere with the established drainage pattern over his or her Lot, which shall mean the drainage provided for at the time overall grading of each Lot was completed. For purposes of this Section, "established drainage pattern" shall mean that existing at the time the Property was originally constructed, or as changed and approved by the Architectural Review Committee.

**Section 11. Rubbish, Trash, and Garbage.** All rubbish, trash, weeds, and garbage shall be removed from the Property, in sanitary waste containers. The Board shall have the right to make reasonable rules regarding placement, screening and storage of trash containers, woodpiles and debris.

**Section 12. Nuisance.** No noxious, illegal, or offensive activities shall be carried out or conducted upon any part of the Property, nor shall anything be done which unreasonably interferes with any other resident's right to quiet enjoyment of his or her Property, or which endangers the health or annoys or disturbs, or is offensive to such residents, or which is unsightly.

**Section 13. Dangerous Use of Lots.** No part of the Property shall be occupied or used in a manner which shall cause such Property to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies to be canceled or suspended, or for renewal to be refused.

**Section 14. Use of Common Area.** No part of the Common Area shall be obstructed so as to interfere with its use for the purposes stated in this Declaration, nor shall any part of the Common Area be used for storage purposes, except as otherwise approved by the Board. No Owner shall make any alteration or improvement to the Common Area, or remove any plants, structures, furnishings or other objects in such area, except with the prior written consent of the Board. Each Owner shall be responsible for any damage or additional maintenance to the Common Area made necessary due to the activities of Owner, his or her family members, guests, tenants, contractors or invitees.

**Section 15. Window Covers.** Curtains, drapes, shutters, blinds or similar material in colors which are in harmony with the Project, as determined by the Board, may be installed as window covers. No window shall be covered with aluminum foil or similar material. The Board shall have the power to make reasonable rules regarding window coverings which are visible from the exterior of the Residence.

**Section 16. Exterior Clotheslines.** No exterior clotheslines, refuse containers, wood piles, machinery or equipment shall be erected or maintained on the Property, unless screened from view of adjoining Properties, as determined by the Architectural Review Committee.

**Section 17. Machinery and Equipment.** No machinery or equipment of any kind, or well for the production of water, oil or gas, shall be placed, operated or maintained upon or adjacent to any Lot, except as is usual or customary in connection with the use or maintenance of a private Residence.

**Section 18. Diseases and Pests.** No Owner shall permit anything or condition to exist on the Property which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

**Section 19. Swimming, Fishing and Boating.** Swimming, wading, boating, or similar activity in the lakes located on the Property shall be prohibited. Limited, non-commercial fishing may be permitted as set forth in the Rules and Regulations.

## **ARTICLE VIII**

### **ARCHITECTURAL CONTROL**

#### **Section 1. Architectural Control**

(A) **Architectural Review Committee.** The Board may appoint an Architectural Review Committee, or Committees (the "Committees") each of which consists of at least three (3) members, none of whom shall be required to meet any particular qualifications, except that members appointed

to the Committees by the Board shall be from the membership of the Association, or a qualified architect or consultant.

(B) Resignation, Vacancies, Term of Office. Any member of a Committee may at any time resign from such Committees upon written notice delivered to the Board. Vacancies on a Committee, however caused, shall be filled by the Board. Each member shall serve the length of his or her respective term unless he or she has resigned or has been removed from office. The terms of all members of a Committee shall be one (1) year. Any new member appointed to replace a member who has resigned or has been removed by the Board shall serve the unexpired term of the member having resigned or having been removed. Members who have resigned, been removed or whose terms have expired may be reappointed.

(C) Purpose/Duties of Architectural Review Committees. The Architectural Review Committee(s) shall establish, among other things, architectural standards and guidelines, design control criteria, procedures for the review, interpretation, inspection, recommendation, approval, conditional approval and/or disapproval of all matters, applications, requests or proposals relating to architectural matters, setbacks, locations, elevations, designs, color schemes, landscaping, exterior finishes and materials and the quality thereof. This includes all new construction and the modification, additions, or alterations of existing structures.

It shall be the duty of the Committees to consider and act upon any and all proposals, applications, requests and/or plans and specifications submitted to it for approval pursuant to the terms hereof, to assure that any improvements constructed on the Property conform with plans, specifications, schedules, standards, conditions and design criteria as may have been approved by a Committee, to adopt Architectural Guidelines, and to perform other duties imposed on it by this Declaration.

(D) Committee Meetings and Compensation. Each Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the Committee Members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee(s) shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. No member of the Committee (except for a retained architect or consultant) shall receive compensation for services rendered other than reimbursement for actual expenses incurred by them in the performance of their duties hereunder.

(E) Architectural Guidelines. Each Committee may, from time to time, and in its sole and absolute discretion, adopt, amend and repeal, by vote or written consent, rules and regulations, to be known as "Architectural Guidelines." The Architectural Guidelines shall interpret and implement this Restated Declaration by setting forth the standards and procedures for Committee review, the guidelines for design and placement of improvements and/or alterations, as well as other rules designed to implement the Committee's discharge of its duties hereunder.

(F) Waiver. The approval by a Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of a Committee shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

(G) Liability. Neither the Association, the Master Association, the Committee, nor the members or designated representatives thereof shall be liable for any damages to anyone submitting plans or specifications to them for approval, or to any Owner, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or for any defect in any structure constructed from such plans and specifications. Neither the Association, the Master Association, the Committee, nor the members or designated representatives thereof shall have any responsibility for approval or disapproval of plans or specifications with respect to engineering or structural design, integrity or accuracy. Each Owner, by acceptance of a deed to a Lot or Condominium, shall be deemed to covenant and agree not to bring any action or suit against the Association, the Master Association, the Committee or any of the members or designated representatives thereof to recover any such damages. All members of a Committee shall be covered by appropriate errors and omissions insurance.

(H) Compliance with Legal Requirements. No approval by a Committee shall be deemed to excuse an owner from compliance with any and all applicable laws, ordinances, rules, codes or regulations of all governmental agencies having jurisdiction. Approval by a Committee shall not constitute a representation by the Committee that the proposed improvements comply with laws, ordinances, rules, codes or regulations and it shall be the responsibility of each owner to determine such compliance and to take all steps and acquire all permits at the Owner's sole expense as may be required to properly and legally complete such improvements.

(I) Compliance with Declaration. In addition to the rights of the Association under this Article, the Committee may, subject to prior written approval by the Board of Directors, in its own name or on behalf of the Association, exercise all available legal and equitable remedies to prevent or remove any unauthorized or unapproved construction or alteration of improvements on the Property.

(J) Certificate of Committee. Any approval, disapproval, designation, action or consent by either the Committee under this Article, shall be by letter stating such approval, disapproval, designation, action or consent as having been joined in and consented to by at least a majority of the members of the Committee. Such certificate shall be deemed to be and shall be the action of the Committee. Said certificate shall be promptly delivered to the party submitting the plans and specifications or other matter.

(K) Architectural Review Committee Approval of Improvements. Notwithstanding anything contained in this Declaration, expressly or impliedly to the contrary, no building, fence, wall, patio, enclosure, sign, other structure, interior structural change affecting the Common Area, or exterior addition to or change or alteration thereof (including painting) or landscaping shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the Project, or any part thereof, including patio covers and antennas, until the plans and specifications shall have been submitted to and approved by the Architectural Review Committee(s). Such plans and specifications shall be prepared by a duly licensed architect or other person approved by the Architectural Review Committee(s) and shall include, where appropriate, the following:

(i) Plot plans, showing the location of all structures and showing grade elevations and drainage;

(ii) Building plans, including floor, foundation and roof plans, with all materials therefor;

(iii) Other detail showing the nature, shape, dimensions, materials, and location of the items requested;

(iv) Exterior elevations and surfaces, and sections, structural design and salient exterior details;

(v) Exterior color schemes;

(vi) Landscaping plans showing irrigation and lighting, type, location and elevation of all trees, bushes, shrubs, plants, hedges, rock formations and fences; and

(vii) Plans for the installation of any temporary buildings or other facilities during the course of construction

(L) All such plans and specifications shall be submitted in writing over the signature of the Owner or such Owner's authorized agent. Approval shall be based, among other things, on:

(i) Adequacy of site dimensions;

(ii) Adequacy of structural design and material conformity and harmony of external design with neighboring structures;

(iii) Effect of location and use of improvements and landscaping on neighboring property, improvements, landscaping, operations and uses;

(iv) Relation of topography, grade and finished ground elevation of the Lot being improved to that of neighboring Lots;

(v) Proper facing of elevations with respect to nearby streets;

(vi) Preservation of views and aesthetic beauty;

(vii) Assurance of adequate access for the Association in connection with the performance of its duties and the exercise of its power hereunder;

(viii) Conformity with such standards, rules, and regulations as may be adopted by the Committee; and

(ix) Conformity of the plans and specifications as to the purpose and general plan and intent of this Declaration.

(M) Patio Furniture/Window Treatment. All patio or other outdoor furniture placed by an Owner in his patio, the Limited Common Area adjacent to a Unit, or other area visible to the outside, all window treatments and protective coverings shall either be in accordance with criteria

established by rules adopted by the Architectural Review Committee, or approved in writing by such Committee as to color, design and condition.

(N) Roof and Size of Buildings. All buildings shall be constructed with roofs of noncombustible materials to the satisfaction of the Riverside County Fire Department or any other governmental agency having jurisdiction. In no event shall there be constructed any building with an exposed rock roof. In addition, in no event shall there be erected or placed on any Lot any dwelling or other building having a net living area of less than 3,000 square feet, exclusive of garage areas, outside patios, porches and balconies. All roof and pad drainage shall be conducted to the street in a manner acceptable to the City of La Quinta.

(O) Review of Application. The Architectural Review Committee shall approve or disapprove plans submitted to it within sixty (60) days. In the event a Committee fails to approve or disapprove the submitted plans within sixty (60) days, the applicant may send written notice, via certified mail, to the Committee advising the Committee that the plans will be deemed approved if not disapproved ninety (90) days from receipt of said certified letter if said Improvements conform and are in harmony with the overall design and style of the Association.

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

(Q) No Approval of Single. There shall be no approval of plans and specifications by any single Committee Member. In the event a single Committee Member approves architectural plans and specifications, such approval shall not be relied upon and shall not be deemed approval by the Architectural Review Committee.

(R) Easements and Licenses. The Architectural Review Committee must have approval of the Board of Directors to grant licenses or easements over the Common Area for purposes consistent with this Article.

(S) Construction of Approved Improvements. Any Owner shall, as soon as practical following the receipt of approval from the Architectural Review Committee, satisfy all conditions imposed upon the approval and diligently proceed to commence and complete all construction, alteration and other work authorized and/or required by the approval. The approval of any such work shall be deemed conditional upon the commencement and completion of such work within such time period as shall have been specified by the Architectural Review Committee at the time of its approval. If such owner shall fail to commence or complete work within such time period, any approval given hereunder shall be deemed revoked unless the Architectural Review Committee upon written request of Owner made prior to the expiration of said time period, extends in writing the time for such commencement or completion. No such extension of time shall be granted except

upon a finding by the Architectural Review Committee that there has been no change in the circumstances upon which the original approval was granted.

(T) Inspection of Work. Upon the completion of any construction, reconstruction or the alteration or refinishing of the exterior of any improvement, or upon the completion of any work for which approved plans and specifications are required under this Article 13, the Owner shall give written notice of completion to the Architectural Review Committee. Within sixty (60) days after receipt of such notice, the Architectural Review Committee may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Architectural Review Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particulars of non-compliance, and shall require the Owner to cure such non-compliance. If, upon the expiration of sixty (60) days from the date of such notification, the Owner shall have failed to cure such non-compliance, the Architectural Review Committee shall notify the Board in writing with a copy to such Owner) of such failure and of the estimated cost of correcting same. If said Owner shall thereafter fail to cure the non-compliance within a period of not more than forty-five (45) days from the date of referral to the Board, the Board may, at its option, cause the noncomplying improvement to be removed or the non-compliance to be cured and said Owner shall, upon demand, reimburse the Association for all expenses incurred in connection therewith. Such Owner shall be personally liable for all costs and expenses incurred by the Architectural Review Committee in taking such corrective acts, plus all costs incurred in collecting the amounts due including reasonable attorneys' fees and costs. If for any reason the Architectural Review Committee fails to notify the Owner of any non-compliance within thirty (30) days after receipt of written notice of completion from said Owner pursuant to this Paragraph, the improvements shall be deemed to be in accordance with the plans and specifications approved by the Architectural Review Committee if said Improvements conform and are in harmony with the overall design and style of the Association.

(U) Notice of Non-Compliance or Non-Completion. Notwithstanding anything to the contrary contained herein, after the expiration of the later of: (i) eighteen (18) months from the date of issuance of a building permit by municipal or other governmental authority for any improvements; or (ii) eighteen (18) months from the date of the completion of construction of any improvements, such improvements shall be deemed, in favor of purchasers and encumbrancers in good faith and for value, to be in compliance with all provisions of this Article, unless legal proceedings shall have been instituted to enforce compliance or completion.

(V) Preliminary Approvals. Any Owner wishing to obtain approval of any construction, reconstruction or the alteration or refinishing of the exterior of any improvement may apply to the Architectural Review Committee for preliminary approval by submission of such preliminary drawings of any such improvement in accordance with the then existing Architectural Guidelines. It is intended that this preliminary approval procedure allow any Owner an opportunity to obtain guidance concerning the design considerations before expending substantial sums for plans, specifications and other exhibits or materials required for application for a final approval. The Architectural Review Committee from time to time may in its sole discretion, adopt, issue and amend its rules to implement such preliminary approvals; provided, however, that in no event shall

any preliminary approval be deemed to be a final approval authorizing the commencement of any construction, reconstruction or the alteration or refinishing of the exterior of any improvement.

(W) Variances. The Architectural Review Committee(s) shall be entitled to allow reasonable variances with respect to this Article in order to overcome practical difficulties, avoid unnecessary hardships, provided that the following conditions are met:

(i) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Committee may conduct a hearing on the proposed variance after giving at least ten (10) days prior written notice to the Board and to all Owners within one hundred (100) feet of the property for which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty (30) day comment period has expired.

(ii) The Committee must make a good faith determination that:

(a) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Project or from any restriction contained herein or that the proposal allows the objectives of the violated requirements to be substantially achieved despite noncompliance; or

(b) the variance relates to requirements hereunder, that it is unnecessary and burdensome under the circumstances; or

(c) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Resident, Common Area, or Owner within the Project.

(X) Landscaping Control. Any Owner desiring to construct any improvements on a Lot shall concurrently with the submission of plans to the Architectural Review Committee, submit landscaping plans for such Lot which shall include the size, type and location of all plants, materials, lighting and sprinkler systems. Such landscaping plans must be approved prior to commencement of construction or preparation for construction of any improvements. Within forty-five (45) days after completion of a Residence on any Lot, the Owner shall fully complete all landscaping contemplated by his or her approved landscaping plans. Such landscaping thereafter shall be maintained in a neat and orderly condition at all times after installation so as to represent a pleasing appearance to the Owners and occupants within the Project. No fence, hedge, tree or other landscaping shall be planted, or maintained on any Lot in such location or of such height so as, in the opinion of the Architectural Review Committee, to unreasonably obstruct the view from any Lot. No tree, shrub or other planting of any kind shall be allowed to overhang or otherwise to encroach upon any sidewalk or other pedestrian way. Either prior to, or subsequent to, the installment of landscaping, no weeds, rubbish, debris or other material shall be placed or permitted to accumulate upon any portion of the Lot in a manner which, in the opinion of the Committee, renders the Lot unsanitary, unsightly, offensive or a fire hazard. If any Owner fails to install and maintain landscaping in conformance with the Architectural Guidelines, or allows his or her landscaping to

deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, upon thirty (30) days' prior written notice to such Owner, shall have the right either to seek any remedies at law or in equity which it may have or to correct such condition and, after notice and hearing, to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a reimbursement assessment enforceable in the manner as set forth in this Declaration.

(Y) Review Fee. An application fee in an amount to be determined by the Board shall be established for the Committee to cover its internal costs and expenses in connection with the review of the application. In addition hereto, the Committee may hire the services of an engineer or an architect to review any submitted plans, and the submitting Owner shall pay all reasonable costs in connection therewith.

(Z) Address. All plans and specifications required by this Article shall be submitted in writing for approval together with the review fee. The address of the Architectural Review Committee is set forth in the Architectural Guidelines, as such address may from time to time be changed by the Committee. Such address shall be the place for the submittal of plans and specifications and the place where the current rules and regulations of the Committee shall be kept.

(AA) Appeal. In the event plans and specifications submitted to the Architectural Review Committee are disapproved, then the Owner may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Review Committee. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. Failure of the Board to render a decision within the sixty (60) day period shall be deemed a decision in favor of the applicant.

(BB) Review by Board. Notwithstanding anything to the contrary in this Article, the Board shall have the right, but not the duty, to review any final determination made by an Architectural Review Committee. Based on this review, the Board shall have the sole discretion and authority to overrule any final determination made by an Architectural Review Committee.

## ARTICLE IX

### MAINTENANCE RESPONSIBILITIES

**Section 1. Association Maintenance Responsibilities.** The Association shall be exclusively responsible for all maintenance, repair, upkeep and replacement of the Common Area, Association Property, and the Limited Common Area unless maintained by the Owner as set forth in Article IV, Section 5, and any facilities, landscaping, and structures located within such areas. The obligation of the Association with respect to those buildings within the Condominium Project which contain the Units shall be limited to the following: painting, maintaining, repairing and replacing roofs, gutters, downspouts, and painting, weatherproofing and restucco of the exterior stucco building surfaces, when and if required by reason of normal wear and tear or deterioration. Such exterior maintenance shall not include repair or maintenance or replacement of any of the following:

(A) Air conditioning units and related equipment;

(B) Any Limited Common Area enclosed and locked by the Owner, pursuant to Article IV, Section 5; if not so locked and enclosed, the Association shall maintain the Limited Common Area including walls delineating such area;

(C) Glass surfaces and sliding glass doors and windows, including window frames, due to errant golf balls, tennis balls, or otherwise, except that skylights installed by Association within the roof of a Condominium shall be maintained by the Association, at Owner's sole expense;

(D) Maintenance, repair of damage or replacement arising out of the willful or negligent act of an Owner, his or her guest, tenant, or invitee. Such shall be the responsibility of the Owner.

The Association shall have no obligation to maintain, repair or replace any portion of any improvement within a Lot in the Planned Development Project.

**Section 2. Lot Owners' Maintenance Responsibilities.** Each Owner of a Lot shall be responsible for the maintenance, repair and replacement of all improvements within his or her Lot, including but not limited to the residence, fences, walls, and landscaping, and any and all other improvements. Each Owner shall regularly paint, repair and maintain the Residence in an attractive manner and in good repair, and irrigate, fertilize, trim and maintain landscaping in a neat, attractive, cultivated, fertilized, and trimmed condition, as determined by the Board. Each Owner shall also be responsible for maintenance, repair and replacement of all plumbing, electrical, heating, air conditioning and gas lines, conduits, and other utilities and related equipment servicing his or her Lot. Each Owner shall also be responsible for ensuring adequate soil stabilization methods are employed on any Lot to prevent erosion or run-off or excessive dust from such Lot.

The cost of maintenance or repair of any wall or fence dividing two Lots shall be shared among Owners of such adjacent Lots.

**Section 3. Condominium Owners' Maintenance Responsibilities.** Each Condominium Owner shall be responsible for all portions of the Condominium Building which are not designated as the Association's responsibility as set forth in Section 1 of this Article. Each such Owner shall also be responsible for the interior of the Residence, including but not limited to, interior and structural walls, windows, glass, ceilings, floors, fixtures and appurtenances in a clean, safe, sanitary and attractive condition.

**Section 4. Failure of Owner to Carry Out Maintenance Responsibilities.** In the event an Owner fails to maintain any item for which the Owner is responsible under this Declaration, in accordance with the emergency standards set forth herein, the Association may give thirty (30) days written notice requesting such work to be performed. If the Owner refuses or fails to perform such work within such time, the Association or its agents shall have the right, but not the obligation, to enter the Owner's Lot or Unit, or Limited Common Area, and perform the work at Owner's expense, and such charge shall be a Reimbursement Assessment against the Lot or Unit.

**Section 5. Cooperative Maintenance Obligations.** To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, Owners and any occupants of Owner's Property shall cooperate with the Association and its agents and maintenance personnel in the execution of its work, and said Owners shall be responsible for any costs, including attorneys

fees, incurred to enforce such obligation. Owners shall cooperate with the Association to ensure that all electrical power and utilities are maintained as necessary and in a condition sufficient to allow the Association to accomplish its maintenance obligations. For purposes of this section, the term “sufficient” shall be determined in the sole discretion of the Board of Directors.

## ARTICLE X

### INSURANCE

**Section 1. Types of Insurance Coverage.** The Association shall obtain and continue in effect the following insurance:

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

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

The policy shall contain an agreed amount endorsement or its equivalent, and increased cost of construction endorsement, or a contingent liability from operation of building laws endorsement or their equivalent, an extended coverage endorsement, vandalism and malicious mischief coverage for the Common Area only, a special form endorsement, and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild.

All such insurance shall contain loss payable clauses naming Institutional Holders which encumber a Condominium by a first mortgage, as their interests may appear. Each policy shall meet the requirements of any Eligible Holder and the guarantor or insurer of same.

(i) Reduction In Coverage. The Association reserves the right to eliminate all coverages for Fire, Casualty and other property damage claims which afford coverage for individually owned or maintained items, including but not limited to individually owned Units, as defined by the Condominium Plan and delineated within this Declaration.

(B) General Liability. General liability insurance with full extended coverage, including public liability with a cross-liability endorsement. The limits of such insurance shall not be less than \$3,000,000.00 for death or injury to any one person and \$3,000,000.00 for death or injury to more than one person in any one occurrence, and at least \$1,000,000 in property damage, or other minimum amount required by statute, in any one occurrence or any amount greater as determined by the Board from time to time.

(C) Fidelity Coverage. Fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, employees, volunteers, and employees of any manager or managing agent responsible for handling funds belonging to or administered by the Association, and such coverage shall name the Association as obligee and written in an amount not less than one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, in the custody of the Association or management agent at any given time during the term of such coverage. However, the bond/coverage shall not be less than a sum equal to three (3) months aggregate assessments on all Condominiums plus reserves. Persons serving without compensation shall be covered by endorsement to such policy if not otherwise covered.

(D) Directors and Officers Insurance. The Board shall purchase and maintain insurance covering errors and omissions for officers and directors, and committee members, in an amount equal to at least \$3,000,000.00 or other statutory minimum.

(E) Workers Compensation. Workers Compensation coverage in and for amounts satisfactory to the Board, to the extent required by law for employees of the Association, if any.

(F) Other Insurance. The Board may, and shall as required by any Institutional Holder or as required by law, purchase and maintain any other insurance, such as earthquake or flood insurance, as it deems prudent and appropriate.

(G) Proceeds. If any of the insured improvements are damaged by fire or other casualty, insurance proceeds payable to the Association shall be used to rebuild or repair such damage substantially in accordance with the original plans and specifications, as more fully set forth in Article XIII.

(H) Deductible. To the extent that any insurance proceeds paid to the Association for a loss or any claim under this Article which provides coverage for individual owned or maintained items, the individual Owner shall bear the responsibility of any deductible for such policies.

**Section 2. Insurance Premiums.** Insurance premiums for such policies shall be a common expense to be included in the Assessments levied by the Association. Each Owner shall be responsible for payment of any deductible amount for any loss to his or her Unit. In the event the claim involves both Association and individual owner maintained property, the deductible shall be apportioned pro-rata based upon the amount of coverage provided.

**Section 3. Authority of Board.** The Board is appointed attorney in fact or trustee by each Owner to receive proceeds, and negotiate and agree on the value and extent of any loss under any policy carried by the Association. First Lenders who wish to participate in such negotiations shall file written requests as to such desire. The Board is granted full right and authority to compromise and settle any claim or endorse any claim by legal action or otherwise and to execute releases in favor of any insurer. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried as provided herein. Any two officers may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

**Section 4. Rights of Institutional Holders.** Any Institutional Holder has the option to apply insurance proceeds payable on account of a condominium, in reduction of the obligations secured by a mortgage. The Board shall have the exclusive right to bind the Association and Owners with respect to all matters pertaining to insurance, including settlement of a loss claim and the surrender or cancellation of such insurance, in a manner satisfactory to 75% of said Institutional Holders who have filed requests under this Article, to the extent said Lenders desire to participate.

**Section 5. Review by Board.** The Board shall determine at least every three (3) years whether the amounts and types of insurance it has obtained provide adequate coverage for the Project, Owners, Mortgagees and Association, and shall increase or obtain additional insurance as it deems appropriate.

**Section 6. Notice of Cancellation.** Any policy obtained by the Board must provide that it may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and to each eligible Mortgage Holder listed as a scheduled holder of a first Mortgage in the policy.

**Section 7. Owner's Obligation To Insure.** Each Owner shall separately insure his or her "Unit" as defined by the Condominium Plan, and all personal property and other property and improvements within said Unit and any other item that the Association is not obligated to maintain or repair. No Owner may separately insure his or her Condominium building or any part thereof against loss by fire or other casualty covered by any insurance required to be carried by the Association. Nothing herein shall preclude any Owner from carrying public liability insurance as necessary to cover his or her individual liability for damage to persons or property occurring inside his or her individual Unit or elsewhere upon the Project. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any Institutional Holder of a first Mortgage, against the Association, its directors, officers and other Owners. Such other policies shall not adversely affect or diminish any liability under any insurance obtained by the Association, and copies of said policies shall be provided at the Association's request.

If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by Owner, such Owner shall assign the proceeds of such insurance carried to the Association, to the extent of the reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

To the extent damage to those items maintained by Owners is covered by any insurance policy of the Association, Owner shall be responsible to pay for such deductible. If the Association is determined to be wholly or partially responsible for damage to those items maintained by Owners, the Association is responsible for its pro rata share of the deductible.

(A) **Property NOT Covered Exclusion Endorsement.** Notwithstanding any other provision, the following items may be excluded from coverage under the Association's insurance policies including, but not limited to, the Association's Fire and Casualty Insurance policy: Any and all floor coverings, ceiling coverings and/or wall coverings, and any other item that is part of the Unit, Exclusive Use Common Area, or any other area as deemed by the Association. In such case it shall be the individual Owners' responsibility to obtain insurance coverage for these items.

**Section 8. Required Waiver.** All policies of hazard and physical damage insurance shall provide for waiver of the following rights, to the extent the respective insurers would have such rights without such waivers:

- (A) Subrogation of claims against the tenants of the Unit Owners;
- (B) Any defense based on co-insurance;
- (C) Any right of offset, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (D) Any invalidity, other adverse effect or defense on account of breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured, or the respective agents, contractors and employees of any insured;
- (E) Any right of the insurer to repair, rebuild or replace, and in the event the building is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured or the fair market value thereof;
- (F) Notice of the assignment of any Owner of its interest in the insurance by virtue of conveyance of any Unit; and
- (G) Any right to require any assignment of any mortgage to the insurer.

**Section 9. Waiver of Claims Against Association.** As to each policy of insurance maintained by the Board, the Owners hereby waive and release all claims against the Association, its directors, officers, representatives, and successors, except as to the insurance proceeds available to the Owners, whether or not the damage or injury is caused by those persons' negligence or breach of an obligation.

**Section 10. Conflicts With Supplementary Declarations.** In the event the requirements for insurance set forth in this Declaration conflict with any Supplementary Declaration, this Declaration shall prevail. Specifically, the Association is not obligated to provide insurance coverage under its Master Policy above the minimum requirements set forth in this Article. Notwithstanding, the foregoing, the Association may attempt to comply with the additional requirements set forth in a Supplementary Declaration. All additional expense will be borne by the benefitted properties set forth in said Supplementary Declaration.

## **ARTICLE XI**

### **ENFORCEMENT AND MEMBER DISCIPLINE**

**Section 1. Member Discipline.** The Association shall have the right to enforce violations of the Governing Documents by any method permitted by law and the Governing Documents, including but not limited to:

(A) Suspension of Rights. The Association may temporarily suspend the voting rights and right to use the Common Area facilities by an Owner for any period during which any assessments remain unpaid, or for up to ninety (90) days for the Members or his or her guests, tenants, or family members' violation of the Governing Documents, after Due Process, set forth in subsection (D).

(B) Fines/Monetary Penalties. The Board may impose fines and/or monetary penalties against an Owner for his or her family members', guests', tenants' or agents' violation of the Governing Documents, after due process, as set forth in subsection (D). Prior to imposing any such penalties, the Board shall adopt and distribute to each Member, by personal delivery or first- class mail, a schedule of the penalties. The Board shall only be required to distribute additional schedules upon any amendments to such schedule being made.

(C) Reimbursement Assessments. The Board may levy Reimbursement Assessments, for damage to the Common Area or Association Property, or Limited Common Area, or to reimburse the Association for costs incurred to bring a Member into compliance with the Governing Documents, as set forth in Article VI, Section 5.

(D) Due Process. Such suspension, fines, or reimbursement assessments may occur only after the Member has been given at least ten (10) days notice, and an opportunity to be heard before the Board before the effective date of the suspension, as set forth in Section 1363(h) of the California Civil Code, or successor statute. Within fifteen (15) days after the hearing, the Board shall give the Member written notice of the action taken against the Member, in conformance with California Civil Code Section 1363(h).

(E) Alternative Dispute Resolution (ADR). Where required by Civil Code Section 1354, prior to the Association or any Owner bringing a civil action for declaratory relief or injunctive relief, or for such claims in conjunction with a claim for damages not in excess of \$5,000, related to the enforcement of the governing documents, such party shall offer alternative dispute resolution to the other party, as set forth in Civil Code Section 1354.

(F) Towing of Vehicles. The Association shall have the power to tow vehicles from the Common Areas and Limited Common Areas including private streets, parked in violation of the Association's Governing Documents or California law, pursuant to Vehicle Code Section 22658.2.

(G) Right of Entry. The Board shall have the right of entry onto a Lot or Unit to remedy violations of the Governing Documents, and where necessary to protect, preserve and maintain the Common Area, Limited Common Area, or Association Property, as set forth in Article V, Section 3(G) and Article IX, Section 4.

(H) Legal Action. The Board shall have the power and duty to enforce the Declaration, Bylaws, and Rules and Regulations by all legal means available, and bring an action in law or in equity, and to utilize any lawful enforcement remedy. In the event the Association, or any Owner, shall commence litigation to enforce any of the Association's governing documents, the prevailing party in said action shall be entitled to attorneys' fees and costs reasonably incurred.

## **ARTICLE XII**

## AMENDMENTS

**Section 1.**     **General.** This Declaration may be amended at any time and from time to time by the vote or written consent of a majority of the total voting power of the Association. An amendment shall be effective upon the recording thereof with the Office of the County Recorder of Riverside County, California. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any First Mortgage recorded prior to the recording of such amendment. If the consent or approval of any mortgagee or other entity is required under this Declaration, no such Amendment shall be become effective unless such consent or approval is obtained.

## ARTICLE XIII

### DESTRUCTION OF IMPROVEMENTS

**Section 1.**     **Insurance Proceeds Sufficient.** In the event of damage to or the destruction of the improvements constituting the PGA West Association Property and if the available proceeds of the insurance carried pursuant to Article X are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof, the damaged or destroyed improvements, if any, shall be promptly restored, repaired, or rebuilt, as the case may be, unless, within ninety (90) days from the date of such damage or destruction, at a duly constituted meeting of the Association, Owners representing seventy-five percent (75%) or more of the total voting power of the Association determine that such repair and reconstruction shall not take place. In the event of damage or destruction to the Common Area of the Condominium Project, or any portion thereof, and if the available proceeds of the insurance carried pursuant to Article X are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof, the damaged or destroyed improvements, if any, shall be promptly restored, repaired or rebuilt, as the case may be, unless, within ninety (90) days from the date of such damage or destruction, at a duly constituted meeting of the Association, Owners representing seventy-five percent (75%) or more of the voting power of the Owner who own undivided interests in the damaged or destroyed Common Area determine that such repair and reconstruction not take place.

**Section 2.**     **Insurance Proceeds Insufficient.** If in the event of damage or destruction of the improvements constituting the PGA West Association Property, available proceeds of such insurance are less than eighty-five percent (85%) of the cost of repair or reconstruction, such repair or reconstruction shall, nevertheless, take place if, within ninety (90) days from the date of such damage or destruction, Owners representing a majority of the total voting power of the Association so elect at a duly constituted meeting of the Association. If in the event of damage or destruction to the Common Area of the Condominium Project, or any portion thereof, available insurance proceeds are less than eighty-five percent (85%) of the cost of repairs or reconstruction, such repairs or reconstruction shall, nevertheless, take place, if, within ninety (90) days from the date of such damage or destruction, Owners representing a majority of the voting power of the Owners who own undivided interests in the damaged or destroyed Common Area so elect at a duly constituted meeting of the Association.

**Section 3. Assessments.** If the Owners determine to repair, rebuild or reconstruct PGA West Association Property, either pursuant to Section 1 or Section 2 above, each Owner shall be obligated to contribute such funds as may be necessary to pay his proportionate share of the cost of repair or reconstruction, over and above the insurance proceeds. The proportionate share of each Owner shall be levied upon the basis of square footage of the interior floor area of the Residence assessed to the total square footage of the floor area of all Residences to be assessed. If the Owners of undivided interests in the Common Area damaged or destroyed determine to repair, rebuild or reconstruct pursuant to Section 1 and Section 2 above, each such Owner shall contribute such funds as may be necessary to pay his proportionate share of the cost or repair or reconstruction over and above the insurance proceeds. The proportionate share of each such Owner shall be levied upon the basis of square footage of the interior floor area of the Unit assessed to the total square footage of the floor area of all Units to be assessed. In the event of the failure or refusal of any Owner to make this proportionate contribution, the Board may levy a special assessment against such Owner as provided in Article VI, Section 4, and enforce such assessment as provided in Article VI, Section 8.

**Section 4. Contractor.** If the Owners determine to, or are required to rebuild, or repair, the Board shall obtain bids from at least two (2) reputable contractors and award the reconstruction work to the lowest bidder. The Board shall have the authority to enter into a written agreement with such contractor for such reconstruction and to disburse insurance proceeds received by the Board. The Board shall take all necessary actions to assure the commencement of such reconstruction within one hundred twenty (120) days after such destruction and the diligent prosecution of such reconstruction to completion.

**Section 5. Failure to Rebuild.** If rebuilding shall not be authorized either pursuant to Section 1 or Section 2 above, any available insurance proceeds shall be distributed in the following manner. First, each Condominium or Lot in the Property affected by such damage or partial destruction shall be appraised as of the date immediately prior to, and the date immediately after, such damage or partial destruction. The Board shall appoint an independent appraiser who is a member of the American Institute of Real Estate Appraisers to make these appraisals. If the Board cannot agree on an appraiser, than the appraiser shall be named by the Superior Court of Riverside County. Second, the available insurance proceeds shall be distributed so that each Owner and his Lender, as their interests may appear, shall receive an amount equal to the available insurance proceeds times a fraction, the numerator of which is the decrease in value of such Owner's Condominium or Lot, due to such damage or partial destruction, as reflected in the aforementioned appraisal, and the denominator of which is the total decrease in value of all Condominiums or Lots, due to such damage or partial destruction, as reflected in the aforementioned appraisal.

**Section 6. Interior Repairs.** In the event of any damage to the Common Area, any reconstruction undertaken pursuant to the foregoing provisions shall cover only the exterior and structural components of the damaged or destroyed Condominiums, and such other damage to such Condominiums as may be covered by insurance maintained by the Association. If a destroyed Condominium is so rebuilt, the Owner of such Condominium shall be obligated to repair and rebuild the damaged portions of the interior of his Unit in a good and workmanlike manner at such Owner's expense.

**Section 7. Arbitration.** In the event of a dispute among the Owners with respect to the provisions of this Article XIII, any Owner may cause such dispute to be referred to arbitration in

accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the Board and all other Owners within ten (10) days after reference to arbitration, and all Owners shall have an opportunity to appear in such arbitration proceedings. The decision of such arbitrator shall be final and conclusive upon all Owners. The arbitrator may include in his decision an award for costs and/or attorney's fees against any one or more parties to the arbitration and may appoint such real estate appraisers or others as he deems necessary to make a determination as to the merits of the dispute.

## **ARTICLE XIV**

### **CONDEMNATION**

**Section 1. Sale by Consent.** If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, the following procedure shall apply: An independent appraiser shall be appointed by the Board to appraise each Condominium affected by the condemnation. Each Owner and his or her Lender, as their interests may appear, shall receive amounts equal to the proceeds of the condemnation award times a fraction, the numerator of which is the decrease in value of such Owner's Condominium due to the condemnation as determined by the appraiser, and the denominator of which is the decrease in value of all Condominiums in the Property due to the condemnation, as reflected in the appraisal. This procedure shall not apply to the extent a judgment apportions such proceeds in another manner.

## **ARTICLE XV**

### **PROTECTION OF MORTGAGEES**

**Section 1. Written Notification to First Mortgagee.** The holder of record of a first Mortgage ("First Mortgagee") encumbering a Lot or Condominium shall be entitled, upon request made to the Board, to written notification from the Board of any default by the Owner in the performance of such Owner's obligations under the Management Documents which default has not been cured within sixty (60) days after notice thereof to the Owners.

**Section 2. Exemption from Right of First Refusal.** Any First Mortgagee that comes into possession of a Lot or Condominium, pursuant to the remedies provided in its Mortgage, foreclosure of the Mortgage or deed or assignment in lieu of foreclosure, shall be exempt from any "right of first refusal" which may hereafter be applicable to the sale or transfer of Lots or Condominiums.

**Section 3. Subordination of Assessment Lien to Mortgagees.** Any Mortgagee that comes into possession of a Lot or Condominium pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, shall take the Lot or Condominium free of any claim for unpaid assessments or charges against the Condominium or Lot which accrued prior to the time such Mortgagee comes into possession of the Condominium or Lot (except for a claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots or Condominiums, including the mortgaged Lot or Condominium). The lien of assessments

provided for herein shall be subordinate to the lien of any Mortgage, made in good faith and for value, now or hereafter placed upon any Lot or Condominium; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of a Lot or Condominium pursuant to a decree of foreclosure or trustee's sale. Such sale or transfer shall not relieve such Lot or Condominium from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

**Section 4. Prior Approval of First Mortgagees.** Unless at least two-thirds ( $\frac{2}{3}$ ) of the First Mortgagees of Condominiums (based upon one vote for each Mortgage owned) and at least two-thirds ( $\frac{2}{3}$ ) of the Owners of Condominiums except Declarant have given their prior written approval, the Association shall not:

- (A) By act or omissions, seek to abandon or terminate the Condominium regime;
- (B) Change the pro-rata interest or obligations of any Condominiums for purposes of allocating distributions of hazard insurance proceeds or condemnation awards, or determining the pro-rata share of ownership in the Common Area;
- (C) Partition or subdivide any Condominium;
- (D) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;
- (E) Fail to name fire and extended coverage on insurable improvements, if any, in the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (F) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area as part of the Property shall not be deemed a transfer within the meaning of this clause;
- (G) Use hazard insurance proceeds for losses to any improvements in the Common Area for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Area of the Property.

**Section 5. Miscellaneous Provisions for Protection of Mortgagees.**

- (A) First Mortgagee shall have the right, upon request, to examine the books and records of the Association during normal business hours.
- (B) An adequate reserve fund for maintenance repairs and replacement of any Common Area improvements shall be established by the Association and shall be funded by regular monthly assessments rather than by special assessments.

(C) All taxes, assessments and charges which may become liens prior to any First Mortgagees, Mortgage under local law shall relate only to the individual Lots or Condominiums and not to the Property as a whole.

(D) No provision herein shall give an Owner or any other party priority over any rights of First Mortgagees pursuant to the Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Lots, Units and/or Common Area.

(E) Any agreement for professional management of the Property or any other contract providing for services by Declarant shall provide for a contract term of not more than three (3) years and for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice.

(F) If requested by a First Mortgagee, the Board shall give notice, in writing, to such First Mortgagee of any loss to or taking of the Common Area, if such loss or taking exceeds \$10,000 or damage to the Unit subject to its mortgage exceeds \$1,000.00.

**Section 6. Violation of Covenants.** No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of such covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

**Section 7. Conflict; Amendment.** If there is any conflict between any provision of this Article XV, and any other provision in the Management Documents, the provisions of this Article XV shall control. No amendment to this Article XV shall effect the rights of a Mortgagee whose Mortgage was recorded prior to the recording of the amendment, unless the Mortgagee shall join in the execution of or consent in writing to the amendment.

## **ARTICLE XVI**

### **GENERAL PROVISIONS**

**Section 1. Notices.** Any notice to be given to an Owner or a Mortgagee under the provisions of this Declaration shall be in writing and may be delivered personally or by first class mail, postage prepaid to the latest recorded address in the business records of the Association.

**Section 2. Extension of Declaration.** Each and all of these Covenants, Conditions and Restrictions shall terminate on December 31, 2048, after which date they shall automatically be extended for successive periods of ten (10) years unless dissolution or non-renewal has been approved by the Owners and Mortgagees, as provided by law.

**Section 3. Liberal Interpretation of Declaration.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Properties for the mutual benefit of all Owners.

**Section 4. Cumulative Remedies.** Each and all legal or equitable remedies provided for herein shall be deemed to be cumulative.

**Section 5. Indemnification.** Every director and every officer past or present of the Association shall be indemnified by the Association against expenses and liabilities, including reasonable attorney's fees and costs incurred or imposed upon him or her in connection with any proceeding in which such director or officer may be a party, or in which such officer or director may become involved, by reason of his or her being, or having been, a director or an officer of the Association, or any settlement thereof, except in such cases wherein the director or officer is adjudged guilty of gross negligence or wilful or intentional misconduct in the performance of his or her duties.

Indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

**Section 6. Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation shall constitute a violation of this Declaration, and a nuisance, and shall be subject to any or all of the enforcement procedures set forth herein.

**Section 7. Partial Invalidity.** The invalidity or partial invalidity of any provision of this Declaration shall not affect the validity or enforceability of any other provision. Invalidation or reformation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or any other provisions, which shall remain in full force and effect.

**Section 8. Number; Gender.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

**Section 9. Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of all heirs, representatives, successors, assigns, lessees, licensees and renters of Owners.

**Section 10. Waiver or Breach of Declaration.** No waiver or any breach of any covenants or conditions of this Declaration shall constitute a waiver on any succeeding or preceding breach of the same, or any other covenant or condition herein contained.

**Section 11. Joint and Several Liability.** In the case of joint ownership of a Lot or Unit, the liability of each Owner and the Owners thereof for obligations set forth herein shall be joint and several.

**Section 12. Conflicts.** If there are conflicts between the provisions of California law, this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations, the provisions of California law, the Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations, in that order, shall prevail.

**CERTIFICATE OF AMENDMENT**

We, the President/Secretary of PGA WEST RESIDENTIAL ASSOCIATION, INC., a California non-profit mutual benefit corporation, respectively, hereby declare as follows:

The foregoing FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PGA WEST RESIDENTIAL ASSOCIATION, INC. was approved by the members of the corporation in accordance with the amendment provisions of the CC&Rs, Article XV, Section 15.2(b), and in accordance with the Order of the Riverside Superior Court reducing the required voting percentage as set forth in said Order, a copy of which Order is attached hereto.

Date: \_\_\_\_\_, 2005

By: \_\_\_\_\_  
\_\_\_\_\_, President

Date: \_\_\_\_\_, 2005

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary