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**RECORDING REQUESTED BY:**  
CASITAS DEL MONTE CONDOMINIUM  
OWNERS' ASSOCIATION

**WHEN RECORDED RETURN TO:**  
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Gary L Orso  
County of Riverside  
Assessor, County Clerk & Recorder

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**FIRST RESTATEMENT OF  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**  
for  
**CASITAS DEL MONTE CONDOMINIUM  
OWNERS' ASSOCIATION**  
*A California Nonprofit Mutual Benefit Corporation*

2002

**IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.**

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**FIRST RESTATEMENT OF  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
CASITAS DEL MONTE CONDOMINIUM OWNERS' ASSOCIATION**

BY THIS DOCUMENT, First Restatement of Declaration of Covenants, Conditions, and Restrictions, Casitas Del Monte Condominium Owners' Association hereby declares that the document entitled Declaration of Covenants, Conditions, and Restrictions for Casitas Del Monte, which was filed for record on November 13, 1980 as Document No. 80-212657, and all subsequent amendments thereto, of the Official Records of Riverside County, California ("Original Declaration"), is hereby rescinded, canceled and terminated in full. Said document is to be superseded by this First Restatement of Declaration of Covenants, Conditions, and Restrictions for Casitas Del Monte Condominium Owners' Association.

Prior to the execution hereof, the Owners of more than seventy-five percent (75%) of the Time Share Interests approved this Restatement of the Declarations of Restrictions. It is the intention of said Owners to replace the original Declaration and any amendments thereto, in their entirety, with the recordation of this Declaration. The Owners action to amend and restate the original Declaration and any amendments thereto, as set forth herein and the fact that the requisite percentage of affirmative votes required in the original Declaration was achieved, is attested by the execution of this First Restatement of Declaration of Covenants, Conditions, and Restrictions for Casitas Del Monte Condominium Owners' Association by a duly authorized officer of the Association as required by California Civil Code §1355(a). As so amended and restated, the covenants, conditions and restrictions set forth herein shall run with the Units and all Time Share Interests and shall be binding upon all parties having or acquiring and right, title or interest in the Time Share Interests, or any portion thereof, and shall inure to the benefit of each Owner thereof. The provisions of this document shall be effective as of the date this Declaration is recorded.

## ARTICLE I Definitions

Section 1.1. *Additions or Alterations* means improvements, replacements, remodeling, alterations, additions, enlargements or expansions in, on or to a Unit, including any and all machinery and equipment therefor.

Section 1.2. *Agent or Manager* means a property manager appointed in the manner provided in this Declaration or pursuant to the Bylaws of the Casitas del Monte Condominium Owners' Association.

Section 1.3. *Articles or Articles of Incorporation* means the Articles of Incorporation of Casitas Del Monte Condominium Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.4. *Assessment* means regular, special, or special individual assessment imposed or assessed by the Association upon the Owners and against his/her/their Time Share Interest(s) in accordance with the provisions of Article V of this Declaration.

- a. *Capital Improvement Assessment* - shall mean a charge against each Time Share Interest Owner and his/her/their undivided Time Share Interest, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize. Such charge shall be equally levied among all Time Share Interests.
- b. *Reconstruction Assessment* - shall mean a charge against a particular Time Share Interest Owner and his/her/their undivided Time Share Interest, representing a portion of the cost to the Association for substantial repairs or reconstruction of any of the Common Areas which the Association may from time to time authorize, and which shall be levied among all of the Time Share Interests in the Project in the same proportion as Capital Improvement Assessments, as provided herein.
- c. *Special Assessments* - shall mean: (a) a charge against each Time Share Interest Owners and his/her/their undivided Time Share Interest for unanticipated delinquencies and costs incurred to meet the expenses of the Association which are to be determined and levied as provided herein and/or; (b) a charge against a particular Time Share Interest Owners for reimbursement of costs, the Association incurred in bringing said Owner into compliance with this Declaration, the Articles or Bylaws which are to be determined and levied as provided herein.

Section 1.5. *Association* means Casitas Del Monte Condominium Owners' Association, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in California Civil Code §1351(a).

Section 1.6. *Association Rules* means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to its authority under this Declaration, as the same may be in effect from time to time.

Section 1.7. *Board of Directors or Board* means the Board of Directors of the Association.

Section 1.8. *Building* means the building or buildings and all additions, improvements, fixtures and related property forming a part of the Project as they may at any time exist.

Section 1.9. *Bylaws* shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.10. *Casitas del Monte Condominium Owners' Association* means that certain California nonprofit corporation which manages, maintains and operates the common areas and Time Share Condominium Units of that certain real estate development known as Casitas del Monte.

Section 1.11. *City* shall mean, unless otherwise specifically stated, the City of Palm Springs.

Section 1.12. *Common Area* shall mean and refer to all of that certain real property located on a lot 1 of Tract 14942 as shown on a Map recorded in Book 113, Pages 64-65, inclusive, of Miscellaneous Maps in the Office of the county Recorder of the County of Riverside, City of Palm Springs and State of California, together with all structures and other improvements constructed thereon, but excepting therefrom all of the Units.

The Common Area shall include without limitation: land; driveways and driveway areas; exterior stairs and stairway areas; exterior walkways and walkway areas; trash and utility meter areas and equipment; recreational areas and equipment if any; bearing walls, columns, girders, subfloors, unfinished floors, roofs, and foundations of all buildings shown on the Plan; central heating, refrigeration and air conditioning equipment, if any, and reservoirs, tanks, pumps, ducts, flues, chutes, conduits, pipes, plumbing, wires and other utility installations wherever located except the outlets thereof when located within a Unit, required to provide power, light, telephone, television, gas, water, sewage, drainage and other utility service, laundry facilities, pool, reservoirs, tanks, pumps, central hot water tanks, irrigation equipment, and other central services, pipes, ducts, flues, chutes, conduits, wires, exterior lighting, and other utility installations, wherever located (except all utility installations and/or outlets thereof when located within the Condominium Units), guest parking spaces, lawns, pavements, trees, and all other landscaping.

Each Time Share Interest Owner shall have as appurtenant to his Time Share Interest, an undivided interest in the common area equal to the quotient obtained by dividing the number one (1) by the number of timesharing Interests within the Project. Ownership interest shall include a Time Share Interest in a Unit and such undivided interest in the Common Area. The common interest appurtenant to each Time Share Interest in a Unit is declared to be permanent in character and cannot be altered without the consent of all the Time Share Interest Owners affected, as expressed in an amended declaration. Such common interest cannot be separated from the Time Share Interest in a Unit to which it is appurtenant. Each Time Share Interest Owner may use the Common Area in accordance with the purposes for which it is intended without interfering with the rights of any other Time Share Interest Owner. Each Time Share Interest in a Unit shall have appurtenant to it as a nonexclusive easement for ingress, egress and support through the Common Area.

a. *Restricted Common Area* - All balconies, patios and carports within the Project are Restricted Common Areas. Any and all such Restricted Common Areas shall be for the exclusive use and enjoyment of the Time Share Interest Owner(s) and/or their guests when occupying an individual

unit, to which the particular restricted common area is appurtenant. Any and all internal and external telephone wiring, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames and hardwood incident thereto, screens and windows or other fixtures designed to serve a single Unit, but located outside the boundaries of the Unit, are Restricted Common Areas allocated exclusively to that Unit.

Section 1.13. *Common Expense* means any use of the Association funds authorized by the governing documents, and includes without limitation: (a) all expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, or any portion of any Unit that the Association is obligated to maintain or repair, this includes regular, special capital improvement and reconstruction assessments; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors; (c) the costs of any common trash collection and removal; (d) the costs of any metered charges for the Project; (e) compensation paid by the Association to managers, accountants, attorneys and other employees; (f) the costs for all gardening, security and other services benefitting the Common Areas; and (g) the cost of any other item or items designated by or other expenses incurred by, the Association, for any reason whatsoever in connection with the Project for the common benefit of the Time Share Interest Owners.

Section 1.14. *Common Facilities* means the wet bar, gazebo, office, swimming pool and apron area, pool storage and pump house, pool furniture, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, beams, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area or the Recreation Area.

Section 1.15. *Common Furnishings* shall mean furniture, furnishings, appliances, fixtures, equipment, and all other personal property located upon any portion of the Property from time to time owned or held for use in common by all Time Share Interest Owners during their respective use periods.

Section 1.16. *Condominium Time Share* means an estate in real property as described in the California Civil Code §783 and §1351(f) consisting of an undivided interest as a tenant in common in all or any portion of the Common Area, together with a separate undivided Time Share Fee Interest in a Unit and any other separate interests in the real property as are described in this Declaration, the Condominium Plan, or in the deed conveying the Time Share Interest and all easements appurtenant thereto.

Section 1.17. *Condominium Plan* means a condominium plan recorded in the Official Records of the County of Riverside, State of California pursuant to California Civil Code §1351(e) respecting the project, and any amendments thereto.

Section 1.18. *County* means the County of Riverside, State of California, and its various departments, divisions, employees and representatives.

Section 1.19. *Declaration, Declaration of Condominium, or Declaration of Covenants, Conditions and Restrictions* means this instrument, as it may be amended from time to time. The "Original Declaration" means and refers to the document referenced in the Preamble to this Declaration.

Section 1.20. *Exclusive Use Areas* means the areas of the Common Area of the Project designated for the exclusive use of a Time Share Interest Owner and as further described in Section 1.12(a) above.

Section 1.21. *General Definitions*. Except as expressly stated herein, and unless the context hereof requires otherwise, the terms in the Declaration, the Association's Articles of Incorporation, and its Bylaws, to the extent covered thereby, shall be those set forth in California Civil Code, Title 6, Section 1350.

Section 1.22. *Governing Documents* is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Association Rules.

Section 1.23. *Guest* means any person using a Unit with the permission of a Time Share Interest Owner, including but not limited to family members, invitees, exchange guests, and the like.

Section 1.24. *Improvement* includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the Unit interior and which do not involve the roof of any load bearing wall thereof.

Section 1.25. *Land* is the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights to the use of airspace granted, by law.

Section 1.26. *Maintenance Week* shall mean the two (2) Time Share Weeks, as stated in Article VIII of this Declaration, during each calendar year to be used by the Association for the purpose of maintaining, refurbishing, and repairing a Unit.

Section 1.27. *Majority in Interest of Owners* means and refers to "more than fifty (50%) percent" (rounding up to whole numbers) of the total number of Time Share Interests (i.e. 501 Time Share Interests).

Section 1.28. *Member* means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to this Declaration.

Section 1.29. *Mortgage* means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.30. *Mortgagee* shall mean a person or entity to whom a mortgage is made, and shall include the beneficiary of a Deed of Trust; *Mortgagor* shall mean a person or entity who mortgages his/her/its property to another (i.e. maker of a mortgage), and shall include the Trustor of a Deed of Trust.

Section 1.31. *Net Proceeds* when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such gross proceeds.

Section 1.32. *Owner* means any person, firm, corporation or other entity which owns an undivided Time Share Interest in a Unit(s), as shown in the Official Records of the Office of the Riverside County Recorder.

Section 1.33. *Parking Plan* shall mean that certain plan, being a portion of the Condominium Plan, whereby the carports are assigned to individual Units.

Section 1.34. *Permitted Encumbrances* means, as of any particular time, (i) liens for ad valorem taxes and special assessments not then delinquent, (ii) mortgages and deeds of trust given to enable Owners to purchase Time Share Interests in the Units, (iii) utility, access and other easements and rights of way, flood rights, mineral rights, encroachments, leases, restrictions and exceptions that will not interfere with or impair the operation of a Unit or the Project, (iv) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds of title as normally exist with respect to properties similar in character to a Unit or the Project and as do not materially impair the property affected thereby for the purposes for which it was acquired, (v) mechanics and materialmens liens filed or perfected in the manner prescribe by law as in effect on the date hereof and (vi) liens for assessments levied by the Association pursuant to condominium documents.

Section 1.35. *Project* means the Properties and the improvements located thereon which are intended to create a condominium project as described in California Civil Code §1351(f). The project is legally described that certain Map recorded in Book 113, Pages 64-65, inclusive, of Miscellaneous Maps in the Office of the County Recorder of the County of Riverside, City of Palm Springs and State of California.

Section 1.36. *Properties* means all parcels of real property (Common Area and Condominium Units) described in that certain Map recorded in Book 113, Pages 64-65, inclusive, of Miscellaneous Maps in the Office of the county Recorder of the County of Riverside, City of Palm Springs and State of California, together with all buildings, structures, utilities, Common Facilities, and other improvements located thereon or hereafter constructed or installed thereon, and all appurtenances thereto.

Section 1.37. *Quorum* The presence in person or by proxy of at least fifty plus one percent of the Time Share Interest Owners of the membership of the Association shall constitute a quorum of the membership.

Section 1.38. *Recreational Area* means the real property and improvements located thereon which are owned by the Association for the common use and enjoyment of the Time Share Interest Owners. The Recreational Area improvements shall comprise a portion of the Common Facilities.

Section 1.39. *Rules and Regulations* means the rules and regulations, if any, adopted and promulgated from time to time by the Association relating to the possession, use, and enjoyment of the Condominiums.

Section 1.40. *Service Period* means the period as may be stated in this Declaration and/or the Rules and Regulations of the Association to permit necessary repair, maintenance, cleaning, maid service, and related upkeep in order to prepare the Unit for occupancy by the next Time Share Interest Owner.

Section 1.41. *State* means the State of California.

Section 1.42. *Time Share Interest* means an undivided interest in a Unit (which includes the exclusive right to use and occupy such Unit during one or more use periods) together with an undivided interest in the Common Area equal to a whole Unit's interest in the Common Area divided by fifty (50).

Section 1.43. *Time Share Interest Owners* means (i) the grantee or grantees named in each original deed to a Time Share Interest, and (ii) the successive Owners of each time Share Interest.

Section 1.44. *Time Share Week(s)* means the individual, separate periods of time into which the use of a Unit has been divided through the filing of an Original Deed; which Time Share Week(s) may be designated pursuant to Article VIII of this Declaration. A purchaser may buy a single week or any combination of weeks as specified in his/her/their Deed and which shall be the period(s) of use during which such Owner may use the Unit to the exclusion of all other tenant-in-common Owners of the Unit subject and subordinate to the Use Right Easements and reservation rights of other Owners as established by Article VIII of this Declaration.

Section 1.45. *Unit* means the elements of a Condominium that are not "Common Area" as defined in Section 1.12 above. The Units and their respective boundaries being shown and particularly described in the Condominium Plan, deeds conveying ownership, and this Declaration.

"Unit" does not include other interests in real property that are less than estates in real property, such as exclusive or nonexclusive easements. In interpreting deeds and plans, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the original plan, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements.

Section 1.46. *Use Periods or Period of Use* means the period specified in Original Deed as the period of time during which the Owner, his/her heirs, personal representatives, successors and assigns shall have the exclusive right to use and occupy the Unit. Such period shall be one or more of the weeks set forth in the Rules and Regulations established by the Association.

Section 1.47. The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments thereto (unless the context shall prohibit) filed or recorded pursuant to the provisions of this Declaration.

## **ARTICLE II**

### **Description of Units**

Section 2.1. *Freehold Estate* - Each Unit shall be a separate freehold estate as defined under California Civil Code §1350, consisting of some or all of the following elements in accordance with the plans and specification for each Unit, as more particularly shown, described, and designated on the Condominium Plan.

Each Unit includes both the portion of the building so described and the airspace so encompassed, all windows and doors in said Unit, the hot water heater, all other utilities, installations and/or outlets thereof located within the Unit.

Section 2.2. *Freehold Estate #2* - A freehold estate consisting of an undivided interest in the remaining portion of the Project described and referred to herein as the "Common Area."

Section 2.3. *Undivided Interest* - The undivided interest in the Common Area and facilities hereby established and which shall be conveyed with each respective Time Share Interest is a one-twentieth (1/20) undivided interest. The above respective undivided interest established and to be conveyed with the respective Time Share Interests, as indicated above, cannot be changed, and the undivided interest in the Common Area and facilities and the fee titles to the respective Time Share Interests conveyed therewith, shall not be separated from or separately conveyed or encumbered without its respective Time Share Interest, even though the description in the instrument of conveyance may refer only to the fee title to the Time Share Interest.

Section 2.4. *Non-Exclusive Easement* - Each Owner of a Time Share Interest shall have a non-exclusive easement appurtenant to a Unit for ingress, egress, use, and enjoyment on and over the Common Area.

Section 2.5. *Carports* - The carport spaces identified on the Parking Plan as 1 through 20, inclusive, are hereby assigned to the Units as set forth in said Parking Plan. All other carport spaces (as identified on the Parking Plan) shall be a part of the Common Area and shall be under the exclusive control of the Association to assign for use by occupants of various Units from time to time as the manager of the Association may deem proper.

Section 2.6. *Number of Units* - Twenty (20) individual Units hereby established and which shall be individually conveyed are described as Units numbered 1 through 20, inclusive, in the Condominium Plan.

### **ARTICLE III**

#### **Property Rights and Obligations of Owners**

Section 3.1. *Use of Units* - Each Unit shall be improved, used and occupied for time-share recreational purposes only. No business or commercial activity (except as may be specified hereinbelow) shall be conducted within a Unit without the prior written consent of the Association.

Section 3.2. *Elements of Units* - Ownership of each Unit within the project includes a Unit, an undivided interest as a tenant-in-common in the Common Area as tenants-in-common, and a membership in the Association. The undivided interest in the Common Area cannot be altered or changed as long as the prohibition against severability of component interests in a Unit remains in effect as provided in this Declaration.

Section 3.3. *Owners' Nonexclusive Easements of Enjoyment* - Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the project. This easement shall include ingress and egress to and from the Unit, which shall be appurtenant to and shall pass with the title to every Time Share Interest, subject to the following rights and restrictions:

- a. The right of the Association to adopt Association Rules as provided herein, regulating the use and enjoyment of the project for the benefit and well-being of the Owners in common. In the event of the breach of such rules or any provision of any Governing Document by any Owner, the right to temporarily suspend the voting rights and/or right to use the Common Area, except for ingress and egress, by any Owner or his/her guests, subject to compliance with the due process requirements of this Declaration.
- b. The right of the Association, in accordance with its Governing Documents, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in said project shall be subordinate to the rights of the Owner hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions hereof.

**Section 3.4. *Persons Subject to Governing Documents*** - All present and future Owners of Time Share Interests, their families, guests and/or invitees shall be subject to and shall comply with each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, families, invitees, etc.). The acceptance of a deed or contract of sale with respect to any Time Share Interest, or the occupancy of any Unit shall constitute the consent and agreement of such Owner or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

**Section 3.5. *Delegation of Use*** - An Owner may delegate his/her rights to use and enjoy the Common Area to guests. The Owner must provide the guest with a copy of the Governing Documents and carport number.

**Section 3.6. *Obligations of Owners*** - Owners of a Time Share Interest shall be subject to the following:

- a. ***Owner's Duty to Notify Association*** - Each Owner of a Time Share Interest shall notify the Board of Directors or the Association's Agent/Manager of the names of any contract purchaser of the Owner's Time Share Interest. Each Owner of a Time Share Interest or contract purchaser shall also notify the Board or Agent/Manager of the names of all persons to whom such Time Share Interest Owner or contract purchaser has delegated any rights to use and enjoy the project and the relationship that each such person bears to the Time Share Interest Owner or contract purchaser. Such notice shall set forth: (i) the name and address of the transferee and transferor; (ii) the address of the Unit in which the interest is being purchased (if applicable); and (iii) the date of sale. Prior to the receipt of any such notification by the Association, any and all communications required or permitted to be given by the Association shall be duly given and made to the transferee if duly and timely made and given to said transferor. Any transfer of any Time share Interest shall operate to transfer to the new Owner the interest of the prior Owner in all funds in the hands of the Association and in the Common Furnishings, without instrument of transfer other than the deed thereto.

- b. ***Contract Purchasers*** - A contract seller must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.
- c. ***Separate Mortgages***- Each Owner shall have the right to mortgage or otherwise encumber his/her Time Share Interest. No Owner shall attempt to mortgage or otherwise encumber in any manner whatsoever the Unit or any part thereof except his/her Time Share Interest nor shall any Owner have the right or authority to do so. Any mortgage, deed of trust or other encumbrance of any Time Share Interest shall be subordinate to all of the provisions of this Declaration and any amendments hereto and, in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure, deed in lieu of foreclosure, by private power of sale, judicial foreclosure or otherwise.
- d. ***Notification Regarding Governing Documents*** -
  - i. As more particularly provided in the California Civil Code Section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract, the Owner thereof must give the prospective purchaser (1) a current copy of the Governing Documents; (2) the Association's most current financial statement; and (3) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Time Share Interest being sold.
  - ii. The Association shall, within ten (10) days of the mailing or delivery of a request for the information described in subparagraph (d)(i), above, provide the Owner with a copy of the current Governing Documents, together with the delinquency statement referred to in the immediately preceding paragraph. The Association shall be entitled to impose a fee for providing the Governing Documents together with the delinquency statement equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials.
- e. ***Payment of Assessments and Compliance With Rules*** - Each Owner shall pay, when due, Assessments levied against the Owner and his/her/their Time Share Interest and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area.
- f. ***Prohibition on Avoidance of Obligations*** - No Owner, by non-use of the Common Area or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of assessments levied against the Owner and his/her/their Time Share Interest pursuant to this Declaration.

- g. *Termination of Obligations* - Upon the conveyance, sale, assignment or other transfer of a Time Share Interest to a new Owner, the transferor-Owner shall not be liable for any assessments levied with respect to such Time Share Interest which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the Ownership of said Time Share Interest shall cease.

Section 3.7. *Special Meeting of Owners* - A special meeting of Time Share Interest Owners (for the purpose of discussing grievances, reviewing management procedures and practices and, if necessary, removing the Agent in accordance with the provisions contained within this Declaration for such purposes, or for any other purpose) may be called at any time upon the written request of owners comprising five percent (5%) of the total number of Time Share Interests or by the vote of a majority of a quorum of the Board of Directors. Meetings shall be held at such places in Riverside County as may be directed by the Association in its notices. Written notice of such meetings shall be given by mailing a copy of the notice, postage prepaid, at least then (10) but not more than ninety (90) days before such meeting. The notice shall specify the place, day and hour of the meeting and the general nature of the business to be transacted. At any meeting, Time Share Interest Owners may vote in person or by written proxy.

#### ARTICLE IV Association

Section 4.1. *Board of Directors* - There shall be a Board of Directors consisting of five (5) persons who shall be Owners of Time Share Interests, whose memberships are in good standing with all assessments current and are not subject to any suspension of membership rights. The Board shall control the business of the Association.

Section 4.2. *Nonliability and Indemnification* - Except as provided for in this Declaration, no right, power, or responsibility conferred on the Board of Directors or the Architectural Committee by this Declaration, the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the Committee, any member of the Board or of the Committee, or any other officer, employee or agent of the Association. No such person shall be liable to any party, other than the Association or a party claiming in the name of the Association, for injuries or damage resulting from such person's acts or omissions within what such person reasonably believed to be the scope of his Association duties, ("Official Acts"), except to the extent that such injuries or damage result from such person's willful or malicious misconduct. No such person shall be liable to the Association, or to any party claiming in the name of the Association, for injuries or damage resulting from such person's Official Acts, except to the extent that such injuries or damage result from such person's negligence or willful or malicious misconduct.

The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for his Official Acts, provided that:

- a. The Board determines that such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association;

- b. In the case of a criminal proceedings, the Board determines that such person had no reasonable cause to believe his conduct was unlawful; and
- c. In the case of an action or threatened action by or in the right of the Association, the Board determines that such person acted with such care, including reasonable inquiry as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this section must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote of a majority of a quorum of the Members of the Association voting at a meeting of the Association called for such purpose, provided that the person to be indemnified shall be entitled to vote.

Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This section shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

**Section 4.3. *Association Membership*** - Every person or entity who is an Owner of a fee, or an undivided fee interest which includes Time Share Interests in any Unit which is subject by the covenants of record to assessment by the Association shall be a Member of the Association. Ownership of a Time Share Interest shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership interest ceases, at which time his/her/their membership in the Association shall automatically cease. Persons or entities who hold an interest in a Time Share Interest merely as security for performance of an obligation are not Members until such time as the security holder comes into title to a Time Share Interest through foreclosure or deed in lieu thereof.

**Section 4.4. *One Class of Membership*** - The Association shall have one class of membership and the rights, duties, obligations, and privileges of the Members shall be as set forth in the Governing Documents.

**Section 4.5. *Voting Rights of Members*** - Each Owner of a Time Share Interest shall have one vote for each Time Share Interest owned, which vote or votes shall be cast according to the terms and conditions set forth in the Bylaws of the Association. On all issues before the membership of the Association which by their very nature affect Owners, those issues shall be determined by a vote of such Owners only. This provision refers principally, but is not limited to the issues presented to Time Share Interest Owners under the provisions set forth in this Declaration. The Board of Directors shall be responsible for determining such specific issues solely on the basis of the provisions of this Declaration and shall issue notices to the appropriate Members as provided in this Declaration and the Bylaws of the Association.

**Section 4.6. *Assessments*** - The Association shall have the power to establish, fix and levy assessments against Owners of a Time Share Interest and to enforce payment of such assessments in accordance with this Declaration. Any assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

Section 4.7. *Transfer of Memberships* - Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of a Time Share Interest to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title. In the case of an encumbrance of a Unit or Time Share Interest, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. In the event the Owner of any interest in a Unit should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her interest, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 4.8. *Powers, Authority and Duty of the Association* -

- a. *Designation* - The Association is designated as the managing body of the Project. The Members of the Association shall be the Owners in the Project as provided herein, and the affairs of the Association shall be managed by a Board of Directors as more particularly set forth in the Bylaws of the Association.
- b. *Powers Generally* - The Association shall have the responsibility of owning, managing and maintaining the Common Areas and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the Ownership and management of the project and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents but shall not necessarily be limited to, the specific acts hereinafter enumerated and those set forth in the California Civil Code, Section 1355(b), Subsections (1) through (8). The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required, or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to the exercise of any of the express powers of the Association for the peace, health, comfort, safety, or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in the Governing Documents.
- c. *Association's Right of Entry* - The Association, its agents, or any person authorized by the Association, shall have the right, when necessary, to enter any Unit to perform the Association's obligations under this Declaration, including; (i) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural restrictions hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Area; or (iv) to make necessary repairs which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common. Furthermore, an Owner shall permit other Owners, or their representatives, to enter his/her/their a Unit for the purpose of performing required installation, alterations or repairs to the mechanical or electrical services to a residence, provided that such requests for entry are made in advance and that entry is at a time reasonably convenient to the Owner(s) whose Unit is to be entered and provided further that the entered Unit is left in substantially the same condition as existed immediately preceding such entry.

The Association's rights of entry under this subparagraph (b) shall be immediate in case of an emergency originating in or threatening the Unit where entry is required, or any adjoining Units or Common Area, and the Association's work may be performed under such circumstances whether or not any Owner is present. All such entries shall be made with as little inconvenience as possible to the Owners involved and any damage caused thereby shall be repaired at the expense of the Association.

- d. *Manager / Agent* - The Association shall appoint a Manager or Agent to perform all its duties required by the Declaration, the Articles of Incorporation and Bylaws of the Association, to provide management services for Association Common Areas and individual Time Sharing Units, including, but not necessarily limited to, the management and supervision of the use and operation of the Common Area. These agents/independent contractors shall not have the power to: (i) conduct hearings, (ii) impose discipline, (iii) file suit, (iv) foreclose liens, or (v) make capital expenditures without approval of the Board. The above limitations on power shall not include the Association's legal counsel who shall have the power to exercise all those duties set forth in (i) - (v). In the event that the Association shall delegate any or all of its duties, powers, or functions to any person, corporation, or firm to act as Manager, neither the Association nor the members of the Board of Directors shall be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated. In addition to the duties and powers of the Association respecting the retention of a Manager as outlined above, the Association may further provide such other personnel as the Association deems necessary and proper to assist in the operation of the Association regardless of whether such other personnel are employed directly by the Association or otherwise.

The appointment of a Manager / Agent shall be by written agreement for a period not to exceed ten (10) years. At any time following the expiration of one (1) year after the execution of such agreement, management by the Agent may be terminated by the vote of a Majority of Interest of Owners. The Agent may resign at any time upon not less than sixty (60) days prior written notice to all Owners of a Time Share Interest if (i) it has secured the agreement of a real estate management firm to provide the services required under this Declaration, and its management agreement and a majority of the Owners of a Time Share Interest do not object by written notice to the appointment of such successor Agent within said sixty (60) day period and (ii) it has made provision for turning over all books and records relating to the management and operation of the Association and its Units to such successor Agent and such successor Agent has acknowledged the receipt thereof. If Agent is replaced by resignation as hereinabove provided, and Agent has its management office off of the project site, agent shall continue to provide and maintain such office facilities as may be required to maintain orderly management operations until Association can equip a project management office located on the project site to provide management services. Provided, however that such continued use shall not exceed ninety (90) days from the date of Agent's termination of services.

The Manager/Agent shall be entitled to compensation from the Association for its services as Agent in an amount equal to not more than ten (10%) percent of the aggregate amounts payable by all Time Share Interest Owners pursuant to Article IV, Section 4.15 (excluding therefrom only the Agent's compensation).

The Agent and Association shall not be responsible for the acts or conduct of any of the Owners or for breach of any of the obligations of any of the Owners.

- e. **Loans** - The Association shall have the power to borrow money, with the assent by vote or written consent of the total voting power of the membership, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
- f. **Dedication** - The Association shall have the power to dedicate or transfer all or substantially all of its assets, including all or any part of the Common Area, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. Notwithstanding any contrary provision in the Articles of Bylaws, so long as there is any condominium for which the Association is obligated to provide management, maintenance, preservation or control, no such dedication or transfer, other than the grant, acceptance or dedication of easements for utility purposes, shall be effective unless an instrument approving same has been signed by one hundred percent (100%) of the total voting power of the Association. In the event the Association seeks to grant, accept or dedicate an easement for utility purposes, said act shall require approval by a Majority in Interest of Owners to be effective.
- g. **Contracts** - The Association shall have the power to contract for goods and/or services for the Common Area or for the Association, provided the term of such contracts does not exceed one (1) year, except upon the vote or written assent of a majority of the voting power of the Association:
  - i. A management contract;
  - ii. A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term which the supplies will contract at the regulated rate; and
  - iii. Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits for short rate cancellation by the insured.
- h. **Delegation** - The Association shall have the power to appoint committees, including Architectural Control and Nominating Committees and to delegate its authority and powers to committees, officers, or employees of the Association or to a manager employed by the Association, subject to the limitations elsewhere set forth in the Governing Documents.

#### Section 4.9. *Association Rules* -

- a. **Rule-Making Power** - The Board may, from time to time and subject to the provisions of this Declaration, propose, enact, and amend rules and regulations of general application to Owners. Such rules may concern, but need not be limited to (i) matters pertaining to the maintenance, repair, management, and use of the Common Area by Owners, their guests and invitees, or any other person(s) who have rights to use and enjoyment of such Common Area; (ii) architectural

control; (iii) the conduct of disciplinary proceedings; (iv) regulation of parking and other matters subject to regulation and restriction; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other improvements, and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

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

- b. ***Distribution of Rules*** - A copy of the Association Rules, as they may from time to time be adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner of a Time Share Interest. A copy of the Association Rules shall also be available and open for inspection during normal business hours at the principal office of the Association.
- c. ***Adoption and Amendment of Rules*** - Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rules or amendments thereto shall be adopted by the Board until at least thirty (30) days after the proposed rule or rule amendment has been published in the Association newsletter, if any, or otherwise communicated to all Owners of a Time Share Interest in writing. The notice describing the proposed rule or amendment shall also set forth the date, time, and location of the Board meeting at which action on the proposal is scheduled to be taken.

Any duly adopted rule or amendment to the rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to all Owners of a Time Share Interest by mail.

#### **Section 4.10. *Limitation on Liability of Association's Directors and Officers* -**

- a. ***Claims Regarding Breach of Duty*** - No director or officer of the Association (collectively and individually referred to as "Released Party") shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and enforcement of the Governing Documents.

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

**Section 4.11. *Budgets and Financial Statements*** - The Association's Board of Directors shall prepare reports and financial statements for the Association and distribute copies thereof to all Members as follows:

- a. A budget for each fiscal year shall be distributed not less than forty-five (45) days or more than sixty (60) days before the beginning of the fiscal year which includes a summary which meets the following requirements of California Civil Code §1365(a) and any subsequent amendments thereto. The summary must be in bold type and include the following:
- i. Current estimated replacement cost, estimated remaining life and estimated remaining life and estimated useful life for each major component.
  - ii. As of the end of the fiscal year for which the study is prepared:
    - (1) Current estimate of cash reserves necessary to repair, replace, restore, or maintain the major components.
    - (2) Current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.
  - iii. The percentage of actual cash reserves set aside in relation to the estimate of reserves necessary. Additionally, there must be a disclosure in the budget of any special assessments the Board has determined to levy, or anticipates levying to repair, replace, or restore any major components, or to fund the Association's reserves.
- b. A report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year: (i) a balance sheet as of the end of the Fiscal year; (ii) an operating (income) statement for the fiscal year; (iii) a statement of a changes in financial position for the fiscal year; (iv) for any fiscal year in which the gross income to the Association exceeds seventy-five Thousand Dollars (\$75,000), a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy; and (v) any information required to be reported under Section 8322 of the California Associations Code. Each Annual Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amount assessed and attributable to prospective deposits into the Reserve Fund and the Operating Fund.

- c. If the report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

Section 4.12. *Reserve Study* - The Board shall conduct a reserve study at least once every three (3) years if the current replacement value of the major components is equal to or greater than one-half (2) of the Association's gross budget for any fiscal year. The Board must review the study annually and consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The minimum requirements of the reserve study are set forth in the California Civil Code §1365.5, and any subsequent amendments thereto, and include the following:

- a. Identification of the major components as of the date of the study having a remaining useful life of less than thirty (30) years.
- b. Identification of the probable remaining useful life as of the date of the study.
- c. An estimate of the cost of repair, replacement, restoration, and replacement of each major component during and at the end of its useful life.
- d. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.
- e. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the common interest development, delay the restoration until a time which the Board reasonably determines necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is not subject to the limitation imposed by California Civil Code Section 1366.

Section 4.13. *Annual Statement* - In addition to financial statements, the Board of Directors shall annually distribute within sixty (60) days prior to the beginning of the fiscal year, a statement describing the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments including the recording and foreclosing of liens against Members' Time Share Interests.

Section 4.14. *Duties in General* - The Association shall further perform and execute the following duties:

- a. Provide water, sewer, gas, electricity, garbage and trash collection, and other necessary utility services for the Common Area and, if not separately metered, for the Units;
- b. Paint, repair, and maintain in neat, safe, attractive, sanitary, and orderly condition, all portions of all areas defined and described in the Declaration, including (but without limiting the generality of the foregoing) all exterior and interior portions of each building in the Project, equipment, landscaping, and furnishings in and upon the Common Areas;
- c. Acquire, maintain, repair and replace common Furnishings as needed; Administer the Time Sharing program provided by this Declaration and as may be more fully outlined in the Rules and Regulations of the Association to include, but not necessarily be limited to, the maintenance of a roster of all Time Share Interest Owners, which roster shall be made available to said Owners upon written request;
- e. In addition to all other provisions set forth herein respecting the maintenance of the common Area, maintain all storm drains, sanitary sewers, private streets, if any, utilities, and open spaces within the Common Area in a condition comparable to the condition initially approved by the City;
- f. Pay all real and personal property taxes and assessments which the Association is required to pay for pursuant to the terms and provisions of the Declaration or by law, unless separately assessed to the Time Share Interest Owners;
- g. Obtain any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations, and insurance which the Association is required to pay for pursuant to the terms of this Declaration or by law;
- h. Pay certain costs or expenses for individual Units provided, however, that in the event the Association does pay any such costs or expenses, the amount thereof shall be specifically assessed to the Owners of such Unit, provided further, however, that nothing herein shall permit the Association to assess the Owners for any new improvements or additions to the Common area except pursuant to Article V of this Declaration.
- i. Grant such licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, and other public utility purposes over those portions of the Common Area upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation, and enjoyment of the Common Area or for the preservation of the health, safety, convenience, and welfare of the Owners.
- j. Except as provided for in Article V relating to restoration of damaged improvements, the Association may construct new improvements or additions to the Common Area of the Project or demolish existing improvements, provided that in the case of any improvement, addition, or demolition involving a total expenditure in excess of five (5%) percent of the budgeted gross expenses of the Association for that fiscal year, the written consent or vote of a majority of the Time Share Interest Owners in the Project as to the maximum total cost therefor shall first be

obtained. The Association shall levy a special assessment on all Time Share Interest Owners in the Project for the cost of such work.

All powers and duties relative to any Unit as may be set forth in the Association's Articles of Incorporation or Bylaws or a written agreement entered into between a majority of the Owners thereof and the Association; provided, however, that no such agreement shall limit the powers or duties of the Association specifically provided for herein.

Without limitation of the foregoing powers and duties, the Association is expressly authorized in its discretion and on behalf of the Owners to do any or all of the following to the extent required herein:

- i. To lease furniture and other housewares to be used as common furnishings, to repair, maintain, repaint, remodel, furnish or refurnish any Unit or any part thereof from time to time as the Association deems necessary; to establish reserves for anticipated costs, including the acquisition and replacement of Common furnishings; to acquire and pay for materials, supplies, furniture, furnishings, labor or services which the Association deems proper for the maintenance and operation of each Unit. The Association shall not, however, make any expenditure which exceeds available reserves and insurance proceeds by more than \$2,000 without the prior approval of a majority in interest of the Time Share Interest Owners, nor shall the Association enter into any contract for the furnishing of services or materials for a period in excess of one year without the prior consent of a majority in interest of the Time Share Interest Owners.
- ii. To obtain and pay the costs of electrical, telephone, water, sewer and other utility services for each Unit.
- iii. To obtain and pay the cost of legal and accounting and other professional services necessary or appropriate for the maintenance and operation of the Units within the Association and the enforcement of this Declaration and the Bylaws and the Rules and Regulations of the Association.
- iv. To levy, collect and enforce assessments against the Owners of a Time Share Interest in order to pay the expenses of the Time Sharing operations and the Agent's fee; and to collect such assessments either in advance of disbursement or following disbursement if the Association advances sums in payment of any of the foregoing (which the Association may, but shall not be required to do) to estimate any such expenditures in advance and to bill the respective Time Share Interest Owners accordingly; and to all things necessary to enforce any Owner's obligations hereunder.
- v. To collect and pay all assessments against the Time Share Interest of the Association; to collect and pay all costs or charges affecting or relating to the individual Units; and to discharge, contest or protest liens or charges affecting the Units or separate Time Share Interest.

- vi. To establish a separate bank account (the "Account") which it shall deposit all amounts collected from Time Share Interest Owners pursuant to this Article and all other amounts collected in connection with its duties hereunder, but no other funds. The Association shall keep accurate books reflecting the amount in the Account attributable to each Time Share Interest Owner. Funds deposited in the Account may be used by the Association only for the purposes for which such funds have been accumulated. From the funds received and deposited in the Account, the Association shall cause to be disbursed regularly and punctually sums due and payable for all operating expenses of the respective Time Share Interest.

**Section 4.15. *Limitation of Duties*** - The Board of Directors of the Association shall be prohibited from taking any of the following actions, except upon the vote or written assent of a majority of the voting power of the Association residing in Members:

- a. Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of **five (5%) percent** of the budgeted gross expenses of the Association for the fiscal year.
- b. Incur aggregate expenditures for capital improvements to any Unit in any fiscal year in excess of **five (5%) percent** of the budgeted gross expenses of the Association for the fiscal year allocable to such Unit without the prior written consent of a majority in interest of the Time Share Interest Owners provided, however, that the Association shall have the right to replace all or a portion of the Common Furnishings from time to time as it deems appropriate without the foregoing consent subject to the restrictions exceeding available reserves.
- c. Sell during any fiscal year property of the Association having an aggregate fair market value greater than **five (5%) percent** of the budgeted gross expenses of the Association for that fiscal year.
- d. Sell during any fiscal year any portion of the Common Furnishings or any other property appertaining exclusively to any Unit having an aggregate fair market value greater than **five (5%) percent** of the budgeted gross expenses of the Time Sharing program allocable to any Unit for that fiscal year without the prior consent of a majority in interest of the Owners, provided, however, that the Association shall have the right to sell any replaced Common Furnishings from time to time as it deems appropriate without the foregoing consent.
- e. Pay compensation to members of the Board of Directors or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board of Directors may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.
- f. Enter into a contract with a third person or entity whereby such person or entity will furnish goods or services for a term longer than one year without the prior consent of a Majority of Interest of the Owners, with the exception granted to the Board of Directors as provided in Article IV, Section 4.8(g) of these CC&R's.

**ARTICLE V**  
**Assessments, Liens and Enforcement**

Section 5.1. *Creation of Lien and Covenant to Pay Assessments* - Each Owner of any Time Share Interest, by acceptance of a deed or other conveyance therefore (whether or not it shall be so expressed in such deed or conveyance) covenants and agrees to pay to the Association in accordance with the Bylaws of the Association (a) Regular (Basic) Assessments; (b) Personal Charges; (c) Special Assessments for capital improvements; and (d) Special Individual Assessments. Such assessments, together with late charges, interest and reasonable costs, (including reasonable attorney's fees) established and collected as hereinafter provided, shall be the personal obligation of each Owner of a Time Share Interest at the time the assessment becomes due and payable and shall be a charge on the land and a continuing lien on the Time Share Interest against which each such assessment is made, which lien shall be created and enforced in accordance with the provisions of this Article.

Section 5.2. *Purpose and Reasonableness of Assessments* - Each assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety, and welfare of the Owners of the individual Time Share Interests; (b) to promote the enjoyment and use of the properties by the Owners and their families, invitees, licensees, guests, and employees; (c) to provide for the operation, repair, maintenance, replacement, and protection of the Common Area and individual Units paying the necessary expenditures of the Association as provided in the Bylaws and this Declaration, (d) establishing an operating reserve fund and reserve for replacement; (e) for the administration of the Time Sharing operation and the payment of the Agent's fee and reimbursement of reasonable expenses incurred by the Association or the Agent on behalf of the Association; and (f) for the performance of the duties of the Agent as set forth herein.

Each and every assessment levied hereunder is further declared and agreed to be a reasonable assessment, and to constitute a separate, distinct, and personal obligation (with respect to which a separate lien may be created hereby) of the Owner against which the assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 5.3. *Extent of Owner's Personal Obligation for Assessments* - All assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a joint and several personal obligation of each person who was an Owner of the Time Share Interest in a Unit at the time the assessment was levied. Each Owner who acquires title to a Time Share Interest in a Unit (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for assessments attributable to that Time Share Interest so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

Section 5.4. *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 Time Share Interest or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Time Share Interest or any portion of the project.

Section 5.5. *Determining Regular (Basic) 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 determine the Regular (Basic) Assessment for each Time Share Interest by determining the total budget for the upcoming fiscal year and dividing that figure by the total number of Time Share Interests.

Section 5.6. *Procedure For Estimating or Increasing Regular (Basic) Assessments* - Notwithstanding the provisions of Section 5.5 above, the Association may, in its discretion, from time to time estimate the amounts to be paid by each Time Share Interest Owner in advance on account of the Regular Assessment and may provide procedures for the payment thereof in equal periodic installments over periods determined by the Association. Each Time Share Interest Owner shall pay to the Association, within fifteen (15) days after the due date reflected on the statement therefore, the amount of any such Assessments including amounts required to establish and maintain reserves authorized hereunder. The Regular Assessment with respect to each Time Share Interest shall commence the first day of the first calendar month following the date of recordation of a deed to an Owner.

The annual assessment can be increased to fund the maintenance or repair of the common areas or other areas which the Association is obligated to maintain or repair, including, but not limited to, the payment of insurance premiums, the payment of utility bills, the costs incurred in maintaining structures or improvements, and funding reserves.

If the Board fails to distribute the budget for any fiscal year within the time period provided for, the Board shall not be permitted to increase the 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 conducted in accordance with the Bylaws.

The Board may not impose an annual assessment increase on any Time Share Interest which is more than twenty percent (20%) greater than the annual assessment for the immediate preceding fiscal year. The annual assessment can not be increased unless the Association has complied with the requirements for distribution of the pro-forma budget set forth in this Declaration.

Subject to the provisions hereof, the Board of Directors shall send written notice via first class mail to every Owner of a Time Share Interest not less than thirty (30) days nor more than sixty (60) days in advance of any increase in the regular or special assessment becoming due.

The annual assessment may not be decreased either by the Board or the Members by more than ten percent (10%) in any one year without the approval of at least sixty-seven percent (67%) of the total voting power of the Association.

Without the approval of the Members of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum nor less than the minimum.

Section 5.7. *Mid-Year Revision of Assessment* - Subject to the limitations on the maximum and minimum amount of assessments herein provided, if at any time during the course of any year, the Board shall deem the amount of the annual assessment to be inadequate or excessive, the Board shall have the power, at a regular or special meeting, to revise the assessment for the balance of the assessment year, effective on the first day of the month next following the date of the revision.

Section 5.8. *Personal Charges* - Personal Charges shall be paid by each Owner at the time of check-out of the Unit occupied by him/her. Personal Charges may include, but not be limited to, the cost of food, beverages, sports supplies, general fund account deficits, optional maid service requested by an Owner and other special services or supplies attributable to the occupancy of the Unit during such Owner's Use Period. To the extent that the Association is unable to determine the amount of any Personal Charges at the time of check-out (for example, but not by way of limitation, the cost to repair any damage to the Unit or to repair or replace any Common Furnishings located therein on account of loss or damage occurring during such Owner's Use Period, the cost to satisfy any expense to any of the other Owners or to the Association due to any intentional or negligent act or omission of such Owner, his/her family, guests or invitees or resulting from his/her breach of any provisions of the Governing Documents of the Association) such Personal Charges shall be paid within thirty (30) days after the Association gives to the Owner written notice of the amount thereof.

Since Casitas del Monte operates much the same as a fine hotel, charges such as laundry, additional maid service, etc., will be placed upon the Owner's bill. This Personal Charge is independent of the Owner's Basic Assessment and must be paid upon check-out. In the event the Owner has made reservations for guests, the Owner will be responsible for any charges not paid by them. Non-payment of such charges may result in suspension of the use privileges. All telephone (long-distance) charges must be made to a credit card or collect. The telephones located within Casitas del Monte will not direct dial long distance.

Section 5.9. *Special Assessments* - The Board, at any time, may levy a special assessment in order to raise funds for unexpected operating or other costs (exclusive of real property taxes), insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate, including non-payment of any Owner's Regular Assessment or Personal Charges on a current basis, and the cost of repair or replacement of Common Furnishings for any portion of a Unit.

The Association shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noted as to the reason therefore, and levy a special assessment not to exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, to meet all such expenses on a current basis against the Owners of each Time Share Interest. If the amount herein specified is inadequate to meet all such extraordinary expenses, a special meeting of the Owners shall be called for purposes of amending the fiscal year budget. No such amended budget will be effective unless approved by a majority of the Time Share Interest Owners.

Notwithstanding the foregoing, the Board, without membership approval, may increase annual assessments or levy special assessments, only if necessary for an emergency situation. For purposes of this section, an emergency situation is one of the following:

- a. An extraordinary expense required by order of a court;
- b. An extraordinary expense necessary to repair or maintain the property or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered;

- c. An extraordinary expense necessary to repair or maintain the property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however that prior to the imposition or collection of the assessment, 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 and the resolution shall be distributed to the Members with the notice of the assessment. This section incorporates the statutory requirements of California Civil Code §1366(b). If this Section of the California Civil Code is amended in any manner, this section automatically shall be amended in the same manner without the necessity of amending this Declaration; or

Section 5.10. *Special Individual Assessments* -

- a. *Circumstances Giving Rise to Special Individual Assessments* - In addition to the Special Assessments levied against all Owners, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs below, provided that no Special Individual Assessments 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, and given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:
  - i. *Damage to Common Area* - In the event that any damage to, or destruction of, any portion of the Common Area including any portion of a 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 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 Special Individual Assessment.
  - ii. *Expenses Incurred in Gaining Member Compliance* - In the event that the Association incurs any costs or expenses, to accomplish (1) the payment of delinquent assessments; (2) 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 (3) to otherwise bring the Owner into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

Section 5.11. *Capital Improvement Assessments* - Should the Board of Directors determine the need for a capital improvement or other such expenditure, the cost of which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for the then current fiscal year, then the vote or written consent of at least a majority of the voting power of the members shall be required to approve and render effective a Capital Improvement Assessment levied by the Board of Directors to cover the cost of such expenditure. Capital Improvement Assessments may be levied by the Board without the consent of the members if the aggregate cost of the expenditure does not exceed five percent (5%) of the budgeted gross expenses of the Association for the then fiscal year.

Section 5.12. *Maintenance of Assessment Funds* -

- a. Bank Accounts** - All sums received or collected by the Association from assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings, or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds, or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code Section 1365.5 and the Bylaws.

To preclude a multiplicity of bank accounts, the proceeds of all assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various assessment fund accounts maintained on the books of the Association as provided in subparagraph (b) below.

- b. Separate Accounts: Commingling of Funds** - Except as provided below, the proceeds of each assessment shall be used only for the purpose for which such assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, under funded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purpose of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to this Article shall be accounted for, together with the receipts and disbursements of Regular Assessments and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

**Section 5.13 *Nonpayment of Assessments; Recording of Lien; Payment Under Protest (ADR); Suspension of Rights -***

- a. ***Nonpayment of Assessments*** - Regular and special assessments levied pursuant to the Declaration are delinquent fifteen (15) days after they become due. A late charge may be imposed which does not exceed ten percent (10%) of the delinquent assessment or Ten Dollars (\$10.00), whichever is greater. Interest may be charged on the sum of the delinquent assessments, late charges and reasonable costs of collection at an annual percentage rate not to exceed twelve percent (12%), commencing thirty (30) days after the assessment becomes due.
  
- b. ***Recording of Lien*** - The amount of the delinquent regular and special assessments, late charges, and interest thereon, shall become a lien upon the Time Share Interest of the Owner upon the recordation in the Office of the County Recorder of a Notice of Delinquent Assessment. Prior to the recordation of a Notice of Delinquent Assessment, the Association must notify the record Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. The Notice of Delinquent Assessment shall set forth (i) the amount of the delinquent assessment(s) and other sums duly imposed pursuant to this section and California Civil Code Section 1366, (ii) the legal description of the Time Share Interest against which the Assessments and other sums are levied, (iii) the name of the Owner(s) of record, (iv) the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any member of the Board of Directors, the Association's managing agent, or any other person who has been delegated the authority by a Power of Attorney to sign on the Association's behalf. Notice of the Delinquent Assessment shall be mailed to all record Owners of the Time Share Interest, as provided in Section 2924b of the Civil Code, no later than 10 calendar days after recordation.
  
- c. ***Payment Under Protest*** - The exception for disputes related to Association assessments in subdivision (b) of California Civil Code Section 1354, shall not apply, if in a dispute between the Owner of a separate Time Share Interest and the Association regarding assessments imposed by the Association, the Owner of the separate Time Share Interest chooses to pay in full to the Association all of charges against them, namely; (1) the amount of the assessments in dispute; (2) late charges; (3) interest; (4) all fees and costs associated with the preparation and filing of a notice of delinquency assessment, including all mailing costs, and including attorney's fees not to exceed four hundred twenty-five dollars.

The right of any Owner to utilize alternative dispute resolution under this section may not be exercised more than two times in a single calendar year, and not more than three times within any five calendar years.

- d. *Suspension of Rights* - The Association may, upon written notice to any delinquent Owner, suspend such Owner's right to use his/her Time Share Interest for any Use Period during the time any assessment or charge remains delinquent. Such notice shall specify the amount of the delinquent assessment due, and inform the Owner that the suspension is effective immediately subject to the Owner's right to present an oral or written defense to the allegation of delinquency within ten (10) days after mailing said Notice. The Association may delegate the responsibility for handling suspension disputes to the Manager or Agent appointed to manage the Association's day to day affairs. During the time of suspension an Owner shall have no right to use any portion of the common Area or exercise any other rights of an Owner of a Unit.
- e. Special Individual Assessments shall not be recoverable through the imposition of a lien against the Owner's Time Share Interest enforceable through foreclosure, but the same may be recovered by the Association through other legal processes.

Section 5.14. *Subordination of the Lien to First Deeds of Trust* - The lien of the assessments provided for herein shall be subordinate only to the lien of any recorded first mortgage. The sale or transfer of any Time Share Interest pursuant to the foreclosure of any first mortgage recorded prior to the Association's lien shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer of a Time Share Interest as the result of foreclosure, exercise of a power of sale or otherwise shall relieve the new Owner of such Time Share Interest from liability for any assessments thereafter becoming due.

Section 5.15. *Notice and Procedure for Member Approval* - In the event that Member approval is required in connection with any increase or imposition of assessments pursuant to this Article, approval of the requisite percentage of the Members shall be solicited either by written ballot conducted in accordance with Associations Code Section 7513 and the Bylaws or at a meeting of the Members called for that purpose, duly noticed in accordance with the Bylaws. The quorum required for such membership action shall be a majority of the Members.

Section 5.16 *Enforcement* - The Association, in its name and on behalf of all other Owners, may do either of the following: (a) initiate legal action in addition to any other remedy provided herein or by law, to recover a money judgment for unpaid assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same; (b) foreclose its lien; or (c) accept a deed in lieu of foreclosure.

Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same and this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit in law or in equity, initiated pursuant to this section, may include reasonable attorney's fees as fixed by the court.

Foreclosure may be either judicial or nonjudicial. A nonjudicial foreclosure shall be done in accordance with California Civil Code Sections 2924, 2924b, and 2924c. The Association, acting on behalf of the Owners, shall have the power to bid for the Time Share Interest in a Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the Time Share Interest. The Association shall have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association

shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

**Section 5.17 *Estoppel Certificate*** - The Board or the manager, on not less than twenty (20) days after the written request, shall execute and deliver to the party making said request, a written statement reflecting whether or not to the knowledge of the Association, a particular Owner is in default as to his/her Time Share Interest under the provisions of this Declaration and further reflecting the dates to which installments of assessments have been paid as to the Time Share Interest. Any such certificate may be relied on by any prospective purchaser or mortgagee of the Unit, but reliance on the certificate may not extend to any default not involving the payment of assessments of which the signer of the certificate had not actual knowledge.

**Section 5.18 *Taxes*** - All Time Share Interest Owners shall pay any real and personal property taxes separately assessed, and such payment shall be made by each Owner in addition to and separately from assessments otherwise payable to the Association by such Owners. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the separate Time Share Interest, said taxes shall be included in the assessments made under this provision and if necessary, a special assessment may be levied against the separate Time Share Interest in an amount equal to said taxes, to be paid no later than thirty days prior to the date of said tax.

## **ARTICLE VI**

### **Use of Property and Restrictions**

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

**Section 6.1. *Activities Affecting Insurance*** - Nothing shall be done or kept in any Unit or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association without the prior written consent of the Association. No Owner shall permit anything to be done or kept in a Unit or within the Common Area which would cause any improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Unit or any part of the Common Area.

**Section 6.2. *Business Activities*** - No business or commercial activities of any kind whatsoever shall be conducted in any Unit or carport without the prior written approval of the Board, provided that the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this section shall be construed in such a manner so as to prohibit any Owner from (a) handling his or her personal or professional telephone calls or correspondence therefrom; or (b) conducting any other activities within a Unit otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization, provided that, considering the overall residential nature of the Project rather than the nature of any given business, such use does not involve an unreasonable number of clients, customers, or other persons coming to the Unit for business purposes, nor an unreasonable amount of mail or other business deliveries to the Unit, and further provided that such use does not interfere with any other Owner's quiet enjoyment of a Unit or otherwise violate any covenant or restriction set forth in this Declaration.

Section 6.3. *Animal Regulations* - No animals, livestock, reptiles, insects, poultry or other animals of any kind shall be kept in any Unit. No pets belonging to casual visitors shall be allowed in the Common Area.

Section 6.4. *Improvements* - No fence, hedges or walls shall be erected and maintained on the Common Area except as such are installed in accordance with the initial construction of the Project or approved by the Board of Directors. No Owner shall at his or her expense or otherwise make any alterations or modifications to the exterior of the buildings without the prior written consent of the Board of Directors. Furthermore, no structural alterations to the interior of a Unit or Common Area surrounding any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without the prior written consent of the Board of Directors. Under no circumstances shall any Owner undertake any activity or work with respect to the any Unit or the Common Area that will impair the structural soundness or integrity of another Unit or building or impair any easement or hereditament, or do any act or allow any condition to exist in or around any Unit. No building, fence, structure or wall shall be constructed on any portion of the open spaces, unless approval therefor has been specifically obtained from the Board of Directors. No Exclusive Use Area shall be used in any manner which causes encroachment upon the other Common area or any other Exclusive Use Area.

Section 6.5. *Parking and Vehicle Restrictions* - No vehicle maintenance, other than emergency work shall be permitted on the Project, except with the prior written approval of the Board. Each carport shall be used for the storage of automotive passenger vehicle(s) only. No carport shall be converted to a residential or any other use. No inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Project, other than temporarily, except with prior written approval of the Board.

Section 6.6. *Use of Common Area* - The Board of Directors shall have the right to limit the number of guests that an Owner may permit to use any open parking on the Common Areas and the Board shall have the right to set further reasonable restrictions on the time and manner of use of said parking areas in accordance with the Rules and Regulations. The Common Area may be used for pedestrian movement within the Project, for vehicular passage to and from any parking spaces and for storage, laundry, trash and recreational purposes in the appropriate and designated areas if any. All Owners, their invitees and guests shall have reasonable rights of ingress to egress from their respective Units and any and all Restricted Common Areas appurtenant thereto. The portions of the Common Area from time to time designated by the Board of Directors for use as guest parking shall be utilized solely for guest parking and may not be utilized by any Owner for parking or any other purpose.

Section 6.7. *Property Damage* - Each Owner, by acceptance of his or her deed, agrees personally and for contract purchasers, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within a Unit, if any, except to the extent that (a) such injury or damage is covered by liability insurance in favor of the Association or other Owner; or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other person temporarily visiting a Unit within the Association.

Section 6.8. *Prohibition of Noxious Activities* - No Unit or Exclusive Use Areas shall be used in such manner as to interfere with the enjoyment of occupants or to annoy them by unreasonable noises or otherwise; nor shall any illegal, noxious or offensive activities shall be carried on upon the Project. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Unit and its contents, shall be placed or used in any such residence. No loud noises or noxious odors shall be permitted on the Project, and the Board of Directors of the Association shall have the right to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner shall permit or cause anything to be done or kept upon the Project which will increase the rate of insurance thereon, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners, nor will he commit or permit any nuisance thereon. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of the Units. Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of any visiting children and other family members or persons, and any damage to the Common Areas, personal property of the Association, or property of another Owner, caused by such children or other family members, or persons, shall be repaired at the sole expense of the Unit with whom said children or other family members or persons are visiting.

Section 6.9. *Radio and Television Antennas* - No towers, antennae, aerials or other facilities for the reception or transmission of radio or television broadcasts or other means of communication shall be erected or maintained or permitted to be erected or maintained on or in any Unit except by installations inside of the dwelling house on each of said Units, by underground conduits or by cable that is utilized for television reception. No alteration or modification to the exterior installed cable television system shall be permitted without the prior written consent of the Board of Directors. No Owner may be permitted to construct or use an external radio or television antenna without the prior written consent of the Board, and if necessary, the City of Palm Springs. No interior or exterior antennas may be constructed which create a nuisance to or scramble the signals of the other residents.

The installation of satellite dishes shall be permitted so long as said dish complies with the provisions of California Civil Code Sec. 1376, as amended and FCC Rule No. 207, specifically the dish is not greater than one meter (39.37 inches) in diameter and said dish is attached to a structure where it is not visible from any street or common area. The following reasonable restrictions shall apply:

- i. Such installation shall not significantly increase the cost of the antenna system, including related equipment, or significantly decrease its efficiency or performance;
- ii. Approval of any installation of an antenna or qualifying satellite dish shall be subject to the same requirements and processed in the same manner as any other architectural improvement request. Said application must contain provisions for maintenance requirements for the repair or replacement of roofs or other building components;
- iii. Installers shall indemnify or reimburse the Association or members for loss or damage due to the installation, maintenance, or use of the antenna;
- iv. The prevailing party in any action to enforce compliance with this Section shall be awarded reasonable attorneys' fees.

Section 6.10. *Signs & Poles* -No sign, poster, masts, poles or flag poles. display or other advertising devise of any character shall be erected or maintained on, or shown or displayed from any Unit, without the prior written consent of the Board of Directors.

Section 6.11. *Storage* - No exposed portion of a Unit shall be used for the storage of building materials, refuse, equipment, appliances, or any other materials, other than usual patio furnishings. and no such items shall be kept, stored, or allowed to accumulate on any patio, balcony or parking space.

Section 6.12. *Inside and Outside Installations* - No outside installation of any type, including but not limited to a television or radio pole, antenna, satellite dish, or clothesline shall be constructed, erected or maintained on any Unit, excepting antennae installed as a part of the initial construction of the Project and except as may be installed by, or with the prior consent of, the Board of Directors. No patio or balcony covers, wiring, air conditioning equipment, water softeners, or other machines shall be installed on the exterior of the buildings of the Project or be allowed to protrude through the walls or roof of the buildings, unless the prior written approval of the Board of Directors is secured. Notwithstanding the specificity of the foregoing, no exterior addition, change or alteration to any residence shall be commenced. Nothing shall be done in any Unit or in, on or to the Common Areas which will or may tend to impair the structural integrity of any building in the Project or which would structurally alter any such building except as otherwise expressly provided herein. There shall be no alteration, repair or replacement of wall coverings within Units. No interior wall of the buildings of the Project shall be pierced or otherwise altered in any way. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Unit. Any such Owner shall immediately cause such lien to be discharged within five (5) days after notice to the Owner from the Board. If the Owner fails to do so, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge after Notice and Hearing.

Section 6.13. *View Obstructions* - No fence, structure, improvement, vegetation or other obstruction shall be constructed, planted or maintained upon any entry, deck or yard in the Project. Any item or vegetation maintained upon any entry, deck or yard in the Project, which item or vegetation is exposed to the view of any other Unit within the Project, shall be removed or otherwise altered to the satisfaction of the Board of Directors if it is determined that the maintenance of such items or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration.

Section 6.14. *Rubbish Removal* - All rubbish, trash or garbage shall be regularly removed from each Unit and shall not be allowed to accumulate thereon or on the adjacent Common Area. Trash, garbage, or other waste shall be disposed of only by depositing same into a designated trash container. Said sanitary containers shall be kept in a clean and sanitary condition and concealed from view of the other Units and from the Common Area. No portion of the Project shall be used for the storage of building materials, refuse, or any other materials. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor. The cost of trash collection and removal and trash bin rentals shall be borne by the Association and shall constitute a portion of the Common Expenses. Absolutely no toxic or hazardous materials of any kind may be left in the trash containers or areas. Furthermore, other prohibited items include sofas, chairs, furniture, refrigerators and stoves. Owners who violate this prohibition will be liable to the Association for the full cost associated with the removal of rubbish not authorized for routine removal by the Association's rubbish removal vendor.

Section 6.15. *Clotheslines* - No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes on the Exclusive Use Areas or any other part of the Common Area.

## ARTICLE VII Time Share Interest

Section 7.1. *Exclusive Use and Occupancy* - Each Owner shall have the exclusive right to occupy a Unit during the Use Periods specified in the Owner's transfer deed, and the non-exclusive right to use and enjoy the Common Areas appurtenant thereto as specified in this Declaration, subject to the Use Right Easements and prior reservation rights of all other Owners as created and set forth in Article VIII below. No Owner shall occupy any Unit, or use any portion of the Common Area or use or exercise any other rights of Ownership with respect to any Unit during any Use Period when said Owner is not properly in possession of such Unit unless expressly so authorized by another Owner who is properly in possession of same. Each Owner shall keep his/her/their occupied Unit and all Common Furnishings in such Unit in good condition and repair during such Owner's reserved Use Period, vacate the Unit at the expiration of said Use Period, remove all personal property therefrom (excluding Common Furnishings), leave the Unit in good and sanitary condition and repair and otherwise comply with such check-out and other procedures as may from time-to-time be contained in the rules and Regulations established by the Association. Any Owner may permit a Unit to be occupied by guests for the purposes permitted within this Declaration, but shall be responsible for any loss, damage, or destruction to property or violation of the provisions of this Declaration or of the Rules and Regulations of the Association, which occurs during such occupancy as if such Owner were at that time in possession and occupancy of the Unit.

Section 7.2. *Use Restrictions* - All of the use restrictions (and any exceptions thereto) for the Project as set forth in the Declaration, Bylaws and the Association's Rules and Regulations shall apply to each Unit.

Section 7.3. *Protection of Interests* - No Owner shall permit his Time Share Interest, a Unit in which an interest may be held, or the Common Furnishings to be subject to any lien (other than the liens of current real property taxes and current and future installments of special district assessments), claim or charge, the enforcement of which may result in a sale or threatened sale of the interest of any other Owner of a Time Share Interest in a Unit or Common Furnishings or any part thereof, or in any interference in the use or enjoyment thereof by any other Owner; and in the event of a threatened sale of the entire Unit or of the Common Furnishings or Time Share Interest of any Owner or any part thereof, or should the use and enjoyment of any portion thereof by any Owner thereof be threatened by reason of any lien, claim or charge against the interest of any other Owner, or should proceedings be instituted to effect any such sale or interference, the Association through the Agent may, but shall not be required to, pay or compromise the lien, claim or charge without inquiry into the proper amount or validity thereof and, in that event, the Owner whose interest was subjected to such lien, claim or charge shall forthwith repay the amount so paid or expended to the Association together with such reasonable attorneys' fees and related costs as he or they may have incurred.

No Owner shall permit his interest in any funds from time-to-time in the possession of the Association to be subjected to any attachment, lien claim or charge or other legal process and each Owner shall promptly restore any funds held by the Association in respect of his/her Time Share Interest to the extent depleted by reason of assertion of any such attachment, lien, claim, charge or other legal process and shall reimburse the Association for all reasonable attorneys' fees or other costs incurred in respect thereof.

Section 7.4. *Existing Restrictions* - Each Owner shall comply with, and hold his/her/their Time Share Interest subject to the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and Rules and Regulations of Casitas del Monte Condominium Owners Association, and Protective Covenants of record.

## **ARTICLE VIII**

### **Periods of Use**

Section 8.1. *Designation of Periods* - The designated numbers for the Time Share periods of Use, or Time Share Weeks and their duration are as follows:

Subject only to the Service period (as defined in Article I of this Declaration), the year shall be broken down into 52 consecutive weeks of seven days each which shall be defined herein as "Time Share Week". Each week shall run from 4:00 p.m. Friday to 10:00 a.m. on the next Friday. The first week of each year shall commence on 4:00 p.m. on the first Friday of each year after January 2, and shall be designated as Week No. 1, followed by Weeks 2 through 52.

Time Share Week 1 commences at 4:00 p.m. on the first Friday of each year after January 2 and ends on 10:00 a.m. seven days later on the next Friday, at which time Time Share Week Two shall commence, and so forth. Time Share Week 52 commences on 4:00 p.m. on the 52<sup>nd</sup> Friday of each year and ends on 10:00 a.m. one week later.

Section 8.2. *Time Share Week Calendar* - A "year" as referred to in this document commences on the first Friday of each year after January 2, at 4:00 p.m. and ends 12 months later.

There are 52 weeks in the normal year. However, every five or six years a 53<sup>rd</sup> week will appear at the end of the defined calendar prior to Time Share Week 1 of the new year as defined above. In that instance, the use of the 53<sup>rd</sup> week will be reserved to the Association for use as an additional maintenance week or as an additional use period to facilitate the bonus time program hereinafter described. In the next 80 years, this occurs in the years: 2003, 2008, 2014, 2020, 2025, 2031, 2036, 2042, 2048, 2053, 2059, 2064, 2070, 2076.

The Time Share Weeks are numbered consecutively, beginning with week 1 as defined above.

Section 8.3. *Maintenance Weeks* - Two weeks of each year shall be reserved for the purpose of permitting the Association to perform required maintenance and service. Therefore, not more than 50 Time Share Interest shall be sold for any Unit, however, the determination of the weeks to be reserved shall be at the discretion of the Board and may vary from Unit to Unit. Further such weeks shall be subject to the use right easements and bonus time use described below. The Association shall reserve the maintenance weeks for each Unit so as to accommodate Owners use and the most economical maintenance schedule for the Association.

Section 8.4. *Service Periods* - The period from 10:00 a.m. each Friday (Monday and Tuesday when split use periods are elected) until 4:00 p.m. the same day shall be reserved by the Association to perform necessary repair, maintenance, cleaning, maid service and related upkeep in order to prepare the Unit for occupancy by the next Time Share Interest Owner. Notwithstanding the foregoing, if any Owner reserves successive weeks or Use Periods, said Owner shall be entitled to the exclusive use of such Unit during the Service Period between such weeks, and the Association or its Agent shall not provide any such service, including maid service, to said Unit during the intervening Service Period unless requested to do so by the Owner.

Section 8.5. *Check-In and Check-Out Times* - Time Share Interest Owners reserving whole weeks must check-in with the Manager not earlier than 4:00 p.m. on the day their Use Week commences, and must check-out with the Manager not later than 10:00 a.m. on the same day one week later in order to permit the rendition of services that must be performed during the Service Period. Owners reserving successive weeks need not check-out during the Service Periods that intervene between their first week and their last week.

Section 8.6. *Cross Use Easement Rights* - In order to maximize each Owner's opportunity to use the facilities at Casitas del Monte at the times most convenient to that Owner's desires, all Units shall be available for reservation occupancy and use ("Use Right Easement") by all other Time Share Interest Owners on a first-come-first-serve basis. Each Time Share Interest Owner's exclusive right to use and occupy a Unit during the Use Periods specified in an original Deed is subject and subordinate to the Use Right Easements herein created and the prior reservation of any other Time Share Interest Owner. The purchase of a Time Share Interest of a Unit during one of the weeks specified below is subject to the Use right Easement specified.

Prime: The purchase of Time Share Weeks 8 through 17 of any Unit, shall be subject to Use Right Easements, and any Owner of one or more of the aforementioned Time Share Weeks may use any Unit in any of the weeks specified in this paragraph, subject to and in accordance with the reservation procedures set forth below.

High: Time Share Weeks 1 through 7, inclusive, Time Share Weeks 18 through 27, inclusive, and Time Share Weeks 38 through 52, inclusive, in any Unit shall be subject to Use Right Easements and any Owner of one or more of the aforementioned Time Share Weeks specified in the paragraph may use any Unit in any of the Weeks specified in the paragraph subject to and in accordance with the reservation procedures set forth below.

Swing: Time Share Weeks 28 through 37, inclusive, in any Unit shall be subject to Use Right Easements and any Owner of one or more of the aforementioned Time Share Weeks specified in the paragraph may use any Unit in any of the Weeks specified in the paragraph subject to and in accordance with the reservation procedures set forth below.

Section 8.7. *Reservation Procedures* - Each Owner of a Time Share Week shall be entitled to make a reservation with the Manager for a Use Period or a part thereof during the season or period specified in Paragraphs (a), (b) or (c) above under "Cross Use Easement Rights" in which the Time Share Week or Weeks specified in the Owner's original deed falls. Specific procedures relating to reservations, number of consecutive days of occupancy, cancellations and failure to vacate shall be established by the Manager and shall be set forth in the Rules and Regulations of the Association. Owners of Time Share Weeks may, but are not obligated, to use their seven days of each Time Share Week owned in two separate times on one period of three days and another period of four days ("split use") as follows:

- a. (i) a three-day period starting Friday afternoon at 4:00 p.m. and ending the following Monday at 10:00 a.m.; and (ii) a four-day period starting on a Monday afternoon at 4:00 p.m. and ending the following Friday at 10:00 a.m.; OR
- b. (i) a four-day period starting Friday afternoon at 4:00 p.m. and ending the following Tuesday at 10:00 a.m.; and (ii) a three-day period starting on a Tuesday afternoon at 4:00 p.m. and ending the following Friday at 10:00 a.m.

Such split use is subject to the availability of Units as provided in the reservation procedure and Owners of Weeks electing to split use must arrange both period of use within the season each calendar year specified in the season (Paragraphs (a), (b) and (c) above) in which their Time Share Weeks fall.

Section 8.8. *Bonus Time* - Subject to all the terms and conditions contained elsewhere in this Declaration, the Board of directors of the Association shall have the right to establish a program and promulgate rules and regulations which allow Owners to use up unreserved time on a short-notice basis, to be known as "Bonus Time." The charge for such Bonus Time shall be established by the Board of Directors of the Association from time to time, but in no instance shall the charge for such Bonus Time be less than the per diem rate for common charges. All money collected for Bonus Time is to be credited to a General Fund of the Association and used to defray the common charges assessed to all Owners for the current fiscal year. In no case shall any such monies be paid to an Owner.

## ARTICLE IX Architectural Control

Section 9.1. *Architectural Control* - Except for the purposes of proper maintenance and repair, and except as hereinbelow provided, no person, persons, entity or entities shall install, erect, attach, apply, paste, hinge, screw, nail, build, or construct any lighting, shades, screens, awnings, patio covers, decorations, fences, or make any changes or otherwise alter the exterior of any Unit. For purposes of this provision, the term "exterior" shall mean outside wall, outside surface, roof, outside door, balcony, patio, garage, or other outside structure of any Unit.

Section 9.2. *Architectural Control Committee* - Shall consist of at least three (3) members who may also be Directors on the Board. The Architectural Control Committee shall consider and act upon any and all applications, plans, and specifications submitted to the Association for construction, alteration, addition, modification, decoration, redecoration or reconstruction of any building or improvement located within the Association pursuant to guidelines that may be established by such Committee and approved by the Board of Directors.

**ARTICLE X**  
**Damage, Destruction or Condemnation**

In the event of any damage or destruction to any Common Furnishings, or other common property, other than by ordinary wear and tear, the Association shall forthwith cause such damage to be repaired and shall use any available insurance proceeds for such purpose. If the damage is not covered by insurance, or if the available insurance proceeds are insufficient, the Association shall levy a special Assessment in the manner provided pursuant to Article V of this Declaration against each respective Owner(s) of a Time Share Interest for the amount required to meet the cost of such repair or restorations. In the event the damage was caused by the intentional or negligent act or omission of an Owner, his/her family, guests or invitees, the cost of such repair or the amount of such deficiency shall be paid by such Owner. Any excess in insurance proceeds over the cost of such repair or restoration shall be deposited to the Association's account to offset future basic assessment.

Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner:

- a. In the event of damage or destruction to the Common Area, and the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.
- b. If the insurance proceeds are within Five Thousand (\$5,000.00) Dollars or less of being sufficient to effect total restoration to the Common Area, then the Association shall cause such Common Area to be repaired or reconstructed substantially as it previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a special assessment equally against each of the Owners on the basis of the ration of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units to be assessed.
- c. If the insurance proceeds are insufficient by more than Five Thousand (\$5,000.00) Dollars to effect total restoration to the Common Area, then by written consent or vote of a majority of the Owners, they shall determine whether (i) to rebuild and restore the Common Area to substantially the same condition as it existed prior to damage, and to raise the necessary funds over the insurance proceeds by levying a Special Assessment against each of the Owners, on the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units to be assessed, (ii) to rebuild and restore the Common Area in a way which utilizes all available proceeds and an additional amount not in excess of Five Thousand (\$5,000.00) Dollars and which is assessable equally to all Condominiums, but which is less expensive than rebuilding and restoring the Common Area to substantially the same manner as it existed prior to being damaged, or (iii) to not rebuild and to distribute the available insurance proceeds equally to the Owners and mortgagees of the Condominiums as their interests may appear. Provided, however, that unless the City shall agree to the contrary, it shall be the obligation of the Association and each of the Owners to rebuild the private streets, if any, utilities, and open spaces, at least to the extent said streets, utilities and spaces were accepted initially by the City in lieu of payment of fees due pursuant to the Quimby Act.

- d. If reconstruction or restoration has not actually commenced within one (1) year from the date of the damage to which this Article is applicable, then the covenant against partition provided shall terminate and be of no further force and effect.
- e. A condemnation award affecting all or a part of the structural Common Area which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners shall be distributed among the affected Owners and their respective mortgagees according to their relative values of the condominium Units, or interest therein, affected by the condemnation as determined by independent appraisal in accordance with a procedure set forth herein.
- f. In the event of partial or total destruction of the structural Common Area, and an election by the Owners not to rebuild, insurance proceeds received by the Association on account of the destruction of the Common Area shall be distributed by the Association among Time Share Owners and their respective mortgagees proportionately according to the respective fair market value of the Units or Time Share Interest at the time of the destruction as determined by an independent appraisal in accordance with a procedure set forth herein.
- g. In the event of a condemnation award distribution, or a distribution of insurance proceeds as specified in Subsections (e) and (f) above, the Board of Directors shall obtain the services of a real estate appraiser holding an M.A.I. designation from the American Institute of Real Estate Appraisers who shall appraise and determine the value of each Unit, or Time Share Interest affected. A determination by said appraiser shall be conclusive and the Board shall make all distributions based on such appraisal.

## **ARTICLE XI**

### **Insurance**

11.1 *Types of Insurance* - The Association shall purchase, obtain, and maintain, with the premiums therefor being paid out of common funds, the following insurance, if to the extent such insurance, with the coverage described below, is available at a reasonable premium cost. The Association's policies shall be written with a company licensed to do business in California and holding a rating of "A" or better, if commercially available. The Association shall make a reasonable effort to obtain insurance which may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association.

- a. A policy(s) of fire and casualty with extended coverage endorsement for vandalism and malicious mischief insuring all insurable structures, improvements, equipment, and fixtures, for the full insurance replacement value of the entire Project, including, without limitation, the Common Area and the Condominium Units but excluding the Owners' personal property, payable as provided herein, or such other fire and casualty insurance as the Association shall determine gives substantially equal or greater protection, insuring the Owners and their Mortgagees, as their Mortgagees, as their interests may appear, and as to each of such policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board of Directors, the managing agent, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of any agreement by, said persons, but only to the extent of the insurance proceeds received in compensation for such loss. Casualty insurance shall have an inflation guard endorsement, if reasonably available.

- b. A comprehensive general liability policy insuring the Association, The Board of Directors, the management agent, and agents and employees of each of the foregoing, the Owners, and their respective family members against any liability incident to the public, or to any Ownership or use of the Common Area or any other Association Owner, his invitees and/or tenants, arising from or incident to the Ownership, occupation, use, maintenance, and/or repair of the Common Area and Units, or maintained real or personal property. The amount of the general liability insurance which the Association shall carry at all times shall not be less than \$1,000,000 as required by the California Civil Code. And, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured.
- c. A policy covering the Association, its agents, the Owners and their respective family members against any liability resulting from a negligent act of the officers and directors of the Association. The amount of the insurance which the Association shall carry at all times shall not be less than \$1,000,000, as required by the California Civil Code.
- d. Workers compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers compensation claims from any independent contractor who performs an service for the Association, if the receipt of the Certificate is feasible.
- e. Fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds or otherwise possess fiscal responsibilities on behalf of the Association.
- f. Officers and directors liability insurance.
- g. Such other insurance as the Board in its discretion considers necessary and advisable.

11.2. *Actions on Behalf of Association* - Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including, without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.

11.3. *Waiver of Subrogation* - Any insurance maintained by the Association shall contain a "waiver of subrogation" as to its officers, directors, Members, the Owners and occupants of the Units, and Mortgagees, and if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other.

11.4. *Review of Policies* - The Association shall review annually all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

11.5. *Individual Unit Owner Insurance* - No Owner of a Time Share Interest shall separately insure a Unit against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance.

Insurance maintained by the Association does not cover the Owner's or occupant's personal property and does not cover personal liability for damages or injuries occurring within a Unit. Any Owner can insure his or her personal property against loss and obtain any personal liability insurance. Members shall not be prohibited from carrying other insurance for their own benefits for personal property and personal liability for damages or injuries, provided that all policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any Member.

In the event of personal injury or property damage sustained by any one person while physically within the Unit or private balcony or patio and in the further event any other Owner shall be sued or a claim made against him for injury or damage, the Owner(s) of the Unit in which the injury or damage occurs, shall indemnify and hold harmless any such other Owner against whom such claim may be made and shall further defend any such other Owner, at his own expense, to the extent such expenses are not covered by insurance carried by the Association, in the event of litigation of the claim; provided that, such protection shall not extend to any other Owner whose own negligence or willful misconduct may have caused or contributed to the cause of the injury or damage.

11.6. *Coverage Not Available* - In the event that any insurance policy, or any endorsement thereof, required by this Article is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above.

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

11.8. *Association as Trustee* - The Association shall be deemed the trustee for the Owners in connection with any insurance proceeds paid to the Association under any of the aforesaid policies, and shall have full power to receive such funds on behalf of the Owners, Mortgagees, and beneficiaries of Deeds of Trust, as their interests appear, and to deal therewith.

## XII Easements

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

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

12.3. *Common Area Easement* - The Association, acting by and through the Board, shall have the right to consent to or join in the grant or conveyance of easements, licenses or rights-of-way, in, on, or over the Common Area for purposes not inconsistent with the intended use of the property.

### XIII Partition

Section 13.1. *Partition of Common Area* - Except as expressly provided in this Article, an Owner shall have no right to partition or divide his or her Ownership of the Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition relating to damage or destruction or condemnation or in California Civil Code Section 1359 have been met. Nothing in this Declaration shall prevent partition of a cotenancy in a Unit.

Section 13.2. *Partition of the Time Share Interest* - Except as provided in this Section, no Owner or other person or entity acquiring any right, title, lien in or on a time Share Interest in a Unit shall seek or obtain, through any legal procedures, judicial partition of a Time Share Interest or sale thereof in lieu of partition. If, however, any Time share Interest is owned by two or more persons as tenants-in-common or as joint tenants or as a community property, nothing herein contained shall prohibit a judicial sale of the Time Share Interest in lieu of partition as between such co-tenants or joint tenants. All rights with respect to the use, possession, enjoyment, management or disposition of any Time Share Interest which an Owner might otherwise have as a tenant-in-common (including, but not limited to, any common law or statutory right to jointly use, possess, or manage commonly owned property) are hereby unconditionally and irrevocably subordinated to this Declaration for so long as this Declaration may remain in effect. In the event this Declaration is terminated for any reason, any Time Share Interest Owner shall, following termination, have the right to maintain an action for sale in lieu of partition of his/her time Share Interest and any proceeds arising from such sale shall be distributed pro rata to the Owners of time share Interest subject to the rights of such Owner's mortgagees.

Section 13.3. *Partition of the Entire Project* - All rights with respect to the use, possession, enjoyment, management or disposition of any Time Share Interest or the Project which an Time Share Interest Owner might otherwise have as a tenant-in-common (including, but not limited to, any common law or statutory right to jointly use, possess, or manage commonly owned property) are hereby unconditionally and irrevocably waived. Without limiting the foregoing, no Time Share Interest Owner or other person or entity acquiring any right, title, lien or interest in any Time Share Interest in the Project shall seek or obtain, through any legal procedures, judicial partition of the Project or the sale thereof in lieu of partition.

**ARTICLE XIV**  
**Breach and Default**

Section 14.1. *Remedy at Law Inadequate* - Except for the nonpayment of any assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default, or "violation" of any of the covenants, conditions, restrictions, or equitable servitudes contained in this Declaration are inadequate and that the failure of any Time Share Interest Owner, guest, occupant, or user of any Unit, or any portion of the Common Area, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest. Legal proceedings may only be initiated in accordance with California Civil Code Sections 1354(b) - 1354(j), effective January 1, 1994, which requires Alternative Dispute Resolution (ADR), in the form of mediation or arbitration, binding or non binding, under certain circumstances prior to an Owner or the Association filing a court action.

The following is intended to be only a summary of the provisions of California Civil Code Section 1354. Members are encouraged to read the full text of this section.

More specifically, ADR is required in:

- a. An action other than a cross-complaint which is solely for declaratory relief or injunctive relief;
- b. Declaratory relief or injunctive relief in conjunction with a claim for damages (other than a cross-complaint), other than assessments, not to exceed Five Thousand Dollars (\$5,000), relating to enforcement of the Governing Documents;
- c. A matter in which the statute of limitations will not run within one hundred twenty (120) days.

ADR may be initiated by serving on the other party a request for resolution through ADR. The request must comply with specific requirements which are more fully described in the code section itself. The service must be completed in compliance with Code of Civil Procedure Section 116.340. ADR shall be completed within ninety (90) days of receipt of acceptance of the request for resolution, unless extended by written agreement. Costs of ADR shall be borne by the parties.

In some cases, if an action is filed after ADR, the party filing the lawsuit must file a certificate stating ADR has been completed. If a party refuses to submit a dispute to ADR, the Court, in determining the amount of the award, may consider a party's refusal to participate in ADR.

If an action is filed before ADR, upon agreement of the parties to the action, the action may be stayed to refer the dispute to ADR.

Unless consented to by both parties, documents, evidence, anything said, or admissions in ADR shall not be admissible in a civil action.

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

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

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

14.5. **Failure Not a Waiver** - The failure of any Owner, the Board of Directors, the Association, or its officers or agents to enforce any of the covenants, conditions, or restrictions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association, the Board, or any of its officers or agents.

14.6. **Rights and Remedies of the Association** -

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

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

- b. **Schedule of Fines** - The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.
- c. **Definition of "Violation"** - A violation of the Governing Documents shall be defined as "a single act or omission occurring on a single day." If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

d. *Limitations of Disciplinary Rights* -

- i. *Loss of Rights: Forfeitures* - The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Time Share Interest due to the failure by the Owner (or his or her family members, guests, or invitees) to comply with any provision of the Governing Documents or of any duly enacted association rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale or failure of the Owner to pay assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph below.
  - ii. *Monetary Penalties* - Monetary penalties may be imposed by the Association (1) for failure of a Member to comply with the Governing Documents; (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area allegedly caused by a Member; or (3) in bringing the Member and his or her separate Time Share Interest in a Unit into compliance with the Governing Documents. Monetary penalties may not be characterized nor treated as an assessment which may become a lien against the Member's separate Time Share Interest enforceable by a sale of the Time Share Interest in nonjudicial foreclosure. This limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in the Association's efforts to collect delinquent assessments.
- e. *Hearings* - No penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least fifteen (15) days prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least five (5) days before the effective date of the proposed disciplinary action.

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

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner

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

- f. **Notices** - Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice. If notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.
- g. **Rules Regarding Disciplinary Proceedings** - The Board or a Covenants Committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules and Regulations.
- h. **Appeals** - The decisions of a Committee, if established, shall be appealable to the Board of Directors within ten (10) calendar days following receipt of the committee's decision. The Board shall have the discretion to hear any appealed matter or decline to take the appeal and thus affirm the decision. Any decision to decline an appeal shall be based on a reasonable determination from the record that the appeal lacks merit. Decisions of the Board regarding appeals shall be final.
- i. **Court Actions** - Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board in accordance with the provisions of Section 13.1 of this Declaration, and California Civil Code Sections 1354(b) - 1354(j).

## **ARTICLE XV**

### **Protection of Mortgagees**

Section 15.1. **Prior Approval of First Mortgage Holders** - Except as provided by statute in case of condemnation or substantial loss to the Units and/or common elements of the project, unless at least seventy-five (75%) percent of first Mortgagees of the individual Time Share Interests have given their prior written approval, the Association shall not be entitled to:

- a. Effectuate any decision to terminate professional management and assume self-management of the project.
- b. By act or omission seek to abandon or terminate the condominium project.

- c. Change the prorata interest or obligations of individual condominium Unit for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the prorata share of Ownership of each condominium Unit.
- d. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause).
- e. Use hazard insurance proceeds for losses to any condominium property (whether to Units or to common elements) for other than the repair, replacement, or reconstruction of such condominium property.
- f. An individual Time Share Interest may not be partitioned or subdivided without the prior written approval of the holder of the first mortgage lien affecting that particular Time Share Interest .

15.2. *Examination of Books and Records* - The holders of first mortgages shall have the right to examine the books and records of the Association.

15.3. *Taxes, Assessments, and Charges* - All taxes, charges, and assessments which may become prior to first mortgages under local law, shall relate only to the individual time Share Interests and not to the project as a whole. First Mortgagees may jointly and singly pay taxes or other charges which are in default and which may or have become a charge against the common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

15.4. *Reserves for Replacement* - Assessments or charges shall include an adequate reserve fund for maintenance, repairs and replacement for those common elements that must be replaced on a periodic basis and shall be payable in regular installments, rather than by special assessments.

15.5. *No Priority Over Rights of First Mortgagees* - No provision herein shall give Time Share Interest Owners, or any other party, priority over any rights of the first Mortgagees of a Time Share Interest pursuant to its mortgage in the case of a distribution to such Owners of insurance proceeds or condemnation award for losses to or a taking of Time Share Interest and/or common elements. First Mortgagees shall be entitled to timely written notice of any such damage or destruction of the Common Area or damage to a Unit covered by a mortgage. Additionally, if any condominium or portion thereof, is made the subject matter of any condemnation or eminent domain proceedings, no provision herein shall entitle any Owner of a Time Share Interest or any other party to have priority over a first Mortgagee with respect to any distribution to such condominium of the proceeds of any award or settlement. First Mortgagees shall be entitled to timely written notice of any such proceeding or proposed acquisition.

15.6. *Further Notice to Lenders* - The Association shall give written notice to any first Mortgagee who requests same of all meetings of the Association. Each such first lien holder shall have the right to be represented at such meetings, but shall have no voting rights unless it has succeeded to title to one or more of the condominiums by foreclosure. Further, the Association upon request, shall deliver to each such first Mortgagee, a copy of the Association's annual audited statement within ninety (90) days after the end of the Association's fiscal year.

15.7. *Obligation to Cure Breach* - Any first Mortgagee who acquired title to any Time Share Interest pursuant to the remedies provided in the mortgage or through foreclosure of the mortgage, shall not be obligated to cure any breach of this Declaration which is non-curable or of a type which is not practical or feasible to cure.

15.8. *Amendment* - No amendment of this Article shall affect the rights of any first mortgages whose first mortgage is recorded prior to the recordation of such amendment and who does not join in the execution thereof.

15.9. *Breach of Declaration* - No breach of the covenants, conditions, or restrictions contained in this Declaration, nor the enforcement of any lien provisions created herein, shall affect, impair, defeat, or render invalid the lien of any first mortgage made in good faith and for value, but all of said covenants, conditions, and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale with respect to an individual Time Share Interest.

15.10. *Federal Home Loan Mortgage Corporation Requirements* - If any loan secured by a mortgage encumbering a Time Share Interest is owned by the Federal Home Loan Mortgage Corporation ("FHLMC") or its successors or assigns, or is tendered to the FHLMC or its successors or assigns for purchase, the Association and Owners shall obtain and maintain in full force and effect, all insurance coverages which may at any time and from time to time be required by the FHLMC or its successors or assigns and shall otherwise comply in all respects with all insurance requirements of the FHLMC which may be in effect at any time and from time to time.

15.11. *Conflicts* - If there is any conflict between any provisions of this Article and any other provisions of this Declaration or the Bylaws, the language in this Article shall control.

## ARTICLE XVI Amendment of Declaration

### Section 16.1. *Construction of Declaration* -

- a. *Restrictions Construed Together* - All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.
- b. *Restrictions Severable* - Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity by court order of any provision or portion thereof shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect.

- c. *Singular Includes Plural* - The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter as the context requires.
- d. *Construction* - The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Project and for the maintenance of said Project. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration, nor shall they be considered or referred to in resolving questions or construction.
- e. *Exhibits* - All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.
- f. *Conflicts* - In the event there is any conflict between the provisions of the Articles of Incorporation, Bylaws, Rules and Regulations, or provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 16.2. *Delivery of Notices and Documents* - Any written notice or other document required by this Declaration, shall be in writing and may be delivered personally or by mail. If delivery is made by registered or certified mail, such notice shall be deemed to be delivered and received, unless expressly provided for herein or in the Bylaws to the contrary as to the type of notice being given, twenty four (24) hours after a copy thereof has been deposited in the United States mail, postage prepaid, addressed to the address last furnished to the Board in writing by the Owner(s). If such notice is sent by regular mail, it shall be deemed to have been delivered when received. Each Owner shall file his address with the Board promptly upon his becoming an Owner for the purpose of receiving notice and shall promptly notify the Board in writing of any subsequent change of address. Notices to the Board shall be addressed as follows: Board of Directors of Casitas Del Monte Condominium Owners' Association, Inc., c/o Association Secretary. The Board shall cause the address of the Secretary of the Association to be posted in a prominent location to be determined by the Board. Notice of the address of the Secretary of the Association shall be given to each Owner within a reasonable time after the Board has received actual notice of such Owner's purchase of a condominium.

Section 16.3. *Amendment of Declaration* - This Declaration may be amended by a written instrument executed by the Association, upon approval of seventy-five percent of all Time Share Interest Owners acting in person or by proxy as herein provided. Subject to the foregoing provisions, any amendment shall be binding upon every Time Share Interest Owner and every Unit whether the burdens thereon are decreased or increased.

Section 16.4. *Term of Declaration* - This Declaration, and the covenants set forth herein, shall run with the land and bind the Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of a Time Share Interest subject to this Declaration, their respective legal representatives, heirs, successors and assigns, and shall continue in full force and effect for a period of fifty (50) years from the date on which this Declaration is recorded with the County Recorders Office of Riverside County, California. After that time, this Declaration and all covenants, conditions, restrictions and other provisions shall be automatically extended for successive ten (10) year periods unless this Declaration is revoked by an instrument executed by a majority of the Owners recorded in the Office of the County Recorder of Riverside County, California.

Section 16.5. *Encroachments* - None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as the shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

Section 16.6. *Enforcement* -

- a. The City, the Association, or the Time Share Owner shall have the right to enforce by proceedings at law or in equity all of the covenants and provisions now or hereafter imposed by this Declaration and the Bylaws, respectively, including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of said covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied, and/or to recover damages for said violation.
- b. The result of every act or omission whereby any of the covenants contained in this Declaration or the provisions of the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Time Share Owner, by the Association, or by its successors in interest.
- c. A breach of the covenants contained in this Declaration or of the provisions of the Bylaws shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on any Condominium or the improvements thereon; provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether or not such Owner's title was acquired by foreclosure, a trustee's sale, or otherwise.
- d. In addition to the above general rights of enforcement, the City shall have the right, through its agents and employees, to enter upon any part of the Project for the purpose of enforcing the California Vehicle code and the Ordinances of the City, and is hereby granted an easement over the Project for that purpose.

Section 16.7. *Attorneys Fees* - If any Owner defaults in making a payment of assessments or in the performance or observance of any provision of this Declaration, and the Association has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorney's fees, regardless of whether legal proceedings are instituted. In a case where a suit is instituted, the Owner shall also pay the cost of the suit, in addition to the aforesaid costs and fees.

Section 16.8. *Property Exemption* - All public property within the Project shall be exempt from the provisions of this Declaration.

IN WITNESS WHEREOF, this Restatement of the Declaration is executed by the President of Casitas Del Monte Condominium Owners' Association

By: William C. Hatton  
William C. Hatton, President

[Attach Notarization]

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

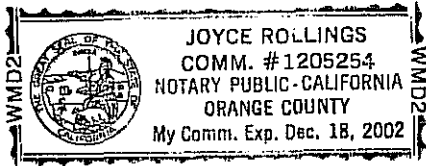
State of CALIFORNIA

County of ORANGE

On September 18, 2002 before me, JOYCE ROLLINGS, A NOTARY PUBLIC  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared WILLIAM C. HATTON  
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

*Joyce Rollings*  
SIGNATURE OF NOTARY

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

INDIVIDUAL  
 CORPORATE OFFICER  
President  
TITLE(S)

TITLE OR TYPE OF DOCUMENT

PARTNER(S)       LIMITED  
                                   GENERAL  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NUMBER OF PAGES

DATE OF DOCUMENT

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

SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT A**

**TO  
FIRST RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
CASITAS DEL MONTE CONDOMINIUM OWNERS' ASSOCIATION**

**LOT 1 OF TRACT 14942 AS SHOWN ON A MAP RECORDED IN BOOK 113, PAGES 64 TO 65  
INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER IN THE  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.**