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David W. Slayton,
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By K. Parenteau, Deputy Clerk

7 Attorney for Plaintiff PALISAIR HOME OWNERS ASSOCIATION
8 a California Non-Profit Mutual Benefit Corporation

9 **FOR THE COUNTY OF LOS ANGELES, SANTA MONICA COURTHOUSE**
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 PALISAIR HOME OWNERS) Case No.: **24SMCV01076**
ASSOCIATION, a California non-profit)
13 mutual benefit corporation,) Assigned for all purposes to:
14) Dept.:
Plaintiff,)
15 vs.) **COMPLAINT FOR:**
16) **(1) PRELIMINARY AND**
LAS LOMAS ESTATE, LLC, a California) **PERMANENT INJUNCTION;**
17 Limited Liability Company; and DOES 1-25,) **(2) DECLARATORY RELIEF; AND**
inclusive,) **(3) BREACH OF CC&RS**
18)
Defendants.) **UNLIMITED JURISDICTION**
19)
20)
21)
22)

23
24 COMES NOW PLAINTIFF PALISAIR HOME OWNERS ASSOCIATION, a California
25 non-profit mutual benefit corporation, and against Defendants, and each of them, alleges as
26 follows:

27 ///
28 ///

1 **GENERAL ALLEGATIONS**

2 **Nature Of Action and Parties**

3
4 1. This is a complaint seeking a preliminary and permanent injunction to halt the
5 illegal construction of a residential structure within a common interest development in the
6 Pacific Palisades section of the City of Los Angeles, California. In repeated, knowing and
7 intentional violation of the applicable covenants, conditions, and restrictions, the defendant in
8 this action has failed and refused repeated requests to halt construction and has, to the contrary,
9 has now expedited construction efforts in a wrongful attempt to complete the project before this
10 Court can render judgment.

11 2. Plaintiff, PALISAIR HOME OWNERS ASSOCIATION (hereinafter referred to
12 as “Plaintiff” or “Association”), is and has been at all times mentioned herein, a California non-
13 profit mutual benefit corporation, organized and existing under the laws of the State of
14 California, qualified to do business in the state of California, County of Los Angeles.

15 3. The Association was created to manage a “Common Interest Development” as
16 defined in *California Civil Code* §4100. Plaintiff has standing to bring this action pursuant to,
17 among other sections, *Civil Code* §5980.

18 4. The Association is located in the City of Los Angeles, County of Los Angeles,
19 State of California. The Association is charged with the duty, for the benefit of all owners and
20 members of the Association, to, among other things, enforce the covenants, conditions, and
21 restrictions contained in the Declaration and the other Governing Documents which have been
22 established to further the legitimate rights and interests of the Association and each member
23 thereof.

24 5. Defendants LAS LOMAS ESTATE, LLC, a California Limited Liability
25 Company and the DOE Defendants (collectively “Defendants”) are, and at all times material
26 herein, have been the beneficial owners of an interest real property described as Lot 29 of Tract
27 No. 15948, as shown on a map recorded in book 589, Pages 36 to 38 inclusive of miscellaneous
28 maps, records of Orange County, California and more commonly known as 1205 Las Lomas

1 Place, Pacific Palisades, California 90272 (hereinafter “Subject Property”). The Subject Property
2 is located within the Association. Defendants acquired title to the Subject Property by Grant
3 Deed recorded in the Official Records of Los Angeles on or about August 30, 2021. The LLC-12
4 Statement of Information on file with the California Secretary of State indicates that Dan
5 Grossman (“hereinafter “Mr. Grossman”) is both the Managing Member of the LLC as well as
6 the Agent for Service of Process. Mr. Grossman is also a member of the Board of Directors of
7 the Association.

8 6. Plaintiff is ignorant of the true names and capacities of the Defendants sued
9 herein as Does 1 through 25, inclusive, and, therefore, sues these Defendants by such fictitious
10 names. Plaintiff will amend this Complaint to allege the true names and capacities of the
11 fictitiously named Defendants when ascertained. Plaintiff is informed and believes and thereon
12 alleges that the fictitiously named Defendants are in some manner responsible for the
13 occurrences, injuries, omissions, obligations and/or damages alleged herein, and/or that said
14 Defendants claim some beneficial interest in the Subject Property.

15 **Governing Documents**

16 7. The Association’s Governing Documents include, among other things, a Third
17 Modification of Restrictions for Tracts 15944, 15948 and 19890 (hereinafter “CC&Rs” or
18 “Declaration”), recorded in the Official Records of Los Angeles on or about January 11, 2012, as
19 Instrument Number 20120045091 and the Association’s corporate Bylaws. These documents are
20 hereinafter collectively referred to as the “Governing Documents.” A true and correct copy of the
21 CC&Rs is attached hereto as Exhibit “A” and is incorporated by reference herein.

22 8. The Governing Documents may be enforced by the Association against
23 Defendants and all who claim to be owners of the Subject Property, as provided both in the
24 Declaration and *California Civil Code* §5975. The terms and provisions of the Declaration
25 provide that the Association is obligated to observe and enforce said covenants, conditions and
26 restrictions set forth within the Declaration, and to enhance and protect the value, attractiveness
27 and desirability of the real property within the Association, including the Subject Property,
28 according to the established general plan for the maintenance, care, use, and management of the

1 development.

2 9. Pursuant to Article VII, Section 1 of the Declaration, Defendants are members of
3 the Association and are subject to the Governing Documents by his or her ownership of a lot
4 within the Association.

5 10. Pursuant to Article IV, Section 1 of the Declaration, the Association has the
6 power and authority to enforce the Governing Documents. Article IV, Section 1 provides, in
7 pertinent part, as follows:

8 Without prejudice to the rights of the owners of the reversionary rights or of any
9 landowner, as herein established, these Restrictions shall be enforced by a Board
10 of Directors ("Tract Committee") for the PALISAIR HOME OWNERS
11 ASSOCIATION, a non-profit California corporation ("Association"). Any
12 reference to the "Tract Committee" made in these Restrictions, Bylaws, or any
13 other governing documents of the Association shall be interpreted to mean the
14 Board of Directors of the Association.

15 The Tract Committee shall represent the interests of all landowners of the tract
16 and in good faith shall execute, interpret and enforce these restrictions for the
17 benefit of the tract and all landowners within the purpose, spirit, meaning and
18 intent thereof....

19 11. The Declaration establishes recorded deed restrictions which obligate all
20 homeowners to comply with the provisions and restrictions set forth therein, including the
21 architectural rules and restrictions. Those restrictions are in place to protect the aesthetic quality
22 and architectural harmony of the community, and to prohibit offensive activities, thus protecting
23 property values for all owners.

24 12. Pursuant to the Declaration, an owner may not remodel or perform construction
25 on his or her residence unless and until he or she has received the prior written approval of the
26 Association. Article IV, Section 2(a) states, in pertinent part, as follows:

27 Work Subject to Prior Approval: No residence, garage, out-building, fence, wall,
28 mast, aerial, clothes line pole, sidewalk, steps, or other structure, and no
improvement, utility, swimming pool, parking area or driveway shall be erected,
constructed, laid down, altered, installed, located, relocated, or maintained and no
cutting down, filling up or grading (except "fine grading" for landscaping) shall
be done on, under or about any land of said tract unless complete grading and/or
building plans (including elevations, and, if requested by the Tract Committee, a
rendering) and specifications thereof showing the nature, kind, shape, height,
type, material and color scheme thereof, together with the plot plan indicating the

1 location on the lot or building site, **shall have been submitted to and approved**
2 **in writing by the Tract Committee** and a copy of such plans, specifications and
3 plot plan, as finally approved, permanently deposited with the Committee...
(Emphasis added.)

4 13. The Declaration, among other things, provides for certain architectural guidelines
5 and controls, including but not limited to, certain provisions providing for the protection of
6 views. Article IV, Section 2(a) of the Declaration states, in pertinent part, as follows:

7 ... The erection, alteration, maintenance, location or relocation of any clothes line
8 pole, fence, hedge, mast, aerial or antenna for radio or television, or other
9 structure of a similar or dissimilar nature, whether separate or an integral part of
10 the dwelling, such as a residence addition, **shall be disapproved or desisted**
11 **from whenever such structure, because of its kind, shape, color, height,**
12 **material, or location, in the opinion of the Tract Committee would be**
unsightly, or detrimental to, or unreasonably obstruct or unreasonably
diminish the nature or quality of the view from any other land in this or an
adjoining tract, or otherwise tend to lower the value of any land of the tract.

13 No alteration shall be made in the exterior appearances and design of any of the
14 items mentioned in the first paragraph of this Subsection (a) at any time after its
15 erection or construction, or in the shape, contours and condition of any land,
16 unless written approval of such alteration first shall have been obtained from the
Tract Committee. (Emphasis added.)

17 14. Should an owner submit an application and plans seeking approval to remodel
18 their residence, the Association must first consult with any neighboring owners who might be
19 affected by the proposed project prior to deciding whether to approve the remodel project.
20 Article III, Section 1 of the Declaration states, in pertinent part, as follows:

21 ... No structure of any kind shall exceed 15 ½ feet above the finished ground
22 from the front of the building pad to the top of its ridge pole, nor more than 14
23 feet above the finished floor, except that the Tract Committee in its sole discretion
24 **and after consultation with the possibly affected neighbors** may permit the
25 erection of a structure higher than 15 ½ feet above the finished ground measured
26 from the front of the building pad, provided it will not unreasonably obstruct or
27 unreasonably diminish the quality and nature of the view from any other land of
28 this or an adjoining tract.

...

The 'sole discretion' of the Tract Committee must be exercised in good faith, non-
arbitrarily and consistent with the Restrictions and applicable governing laws. In
exercising this discretion, the Tract Committee shall consider factors, including

1 but not limited to, how the structure may impact property values, statements from
2 members of the Association, the precedential effect of the decision on the
3 Association and how said structure would affect the character of the
neighborhood. (Emphasis added.)

4 15. In addition to the submission of an application and plans, the owner applicant is
5 required to submit a fee. Article IV, Section 2(c) of the Declaration states as follows:

6 The Tract Committee shall charge a reasonable fee for its services, which fee shall
7 be on a case by case basis and will depend on the number and extent of requested
8 modifications. The Tract Committee may designate one or more consultants (i.e.,
9 architect(s), engineer(s), or other agents) for the purpose of assisting in the review
10 of such plans or other requests as to outward appearance, design and compliance
11 with all other requirements of the Restrictions and may charge the owner making
12 a plans submission its reasonable costs of such consultant's review. Acceptance of
such fee shall not be considered a waiver of the rights of the Tract Committee to
take action against owners starting construction work without written approval or
otherwise violating the restrictions.

13 16. Lastly, prior to commencing construction work, the owner, or his contractor, is
14 required to secure all necessary permits, as described in Article IV, Section 2(a) footnote 11 of
15 the Declaration states as follows:

16 Where a contractor undertook to “secure all necessary permits” (a standard clause
17 in most construction contracts) it remains, nevertheless, the owner’s responsibility
18 under the restrictions to see to it that his contractor does not fail to submit plans
19 for our approval prior to construction. This is important especially in case of pools
or pool equipment.

20 **Defendants’ Wrongful Construction**

21 17. Over a lengthy period, Defendants have submitted numerous proposals, with
22 significant changes in each. Thereafter, when the Association attempted to determine which
23 project Defendants actually wished to construct, Defendants openly and repeatedly misled the
24 Association and its Board of Directors with respect to the Subject Property, and Defendants’
25 intentions. Thereafter, *despite three cease and desist letters*, and repeated attempts to reach a
26 compromise that would avoid this litigation, Defendants have instead rushed to complete a
27 project that has never been approved by the Association due to its obstruction of views and
28 failure to submit proper plans for review, among other reasons.

1 18. This dispute arises because Defendants: (1) failed to acquire the Association’s
2 approval before commencing work on a construction project at the Subject Property; (2) failed
3 prior to or during most of the completed construction to obtain all of the required building
4 permits from the City before commencing work on a remodel project at the Subject Property;
5 and (3) despite repeated assurances that no work would be completed before Association
6 approval, commenced and then made numerous unauthorized changes to the Subject Property
7 that interfered with neighboring owners’ views, including, but not limited to, ocean views.
8 Defendants have failed, and continue to fail, to take the necessary action to correct the ongoing
9 violations.

10 19. Defendants submitted an application for the first of many eventually abandoned
11 plans in or about December 2021/January 2022, for a large project to remodel the Subject
12 Property (“January 2022 Submission”). As described below, the project eventually commenced
13 would have almost nothing in common with the January 2022 submission.

14 20. On January 10, 2022, the Association advised Defendants that no decision had
15 been made regarding Defendant’s January 2022 Submission based on the following: (1) the
16 Association needed to consult with neighboring owners who may be affected by the project; (2)
17 the January 2022 Submission proposed a residence three stories high, with a proposed height of
18 35.82 feet. However, this would require a variance from the Association as 15 feet 6 inches is the
19 maximum height currently allowed in the community; (3) the January 2022 Submission would
20 also require another variance from the Association because the proposed elevation to the top of
21 the roof from the first floor is 35 feet, and a maximum of 14 feet is currently allowed in the
22 community; and (4) the proposed height of the structure would cause view obstructions to
23 neighboring owners.

24 21. Before the Association made a final determination regarding the January 2022
25 Submission, Defendants abandoned the January 2022 Submission, and submitted an entirely new
26 application and plans to demolish the existing single-family home and construct an entirely new
27 residence with a below-grade basement, roof deck, pool/spa and a four (4) car underground
28 garage (“March 2022 Submission”).

1 22. On April 28, 2022, the Association denied the March 2022 Submission as the
2 proposed structure’s height was in violation of the Association Declaration, as described in detail
3 above. The Association’s denial was based, in part, upon the Association’s outreach to the
4 Association’s membership and site visit to review the proposed project and the story poles. The
5 Association received numerous objections from neighboring owners due to the proposed
6 structure’s height. A Neighbor objected due to blockage of views, light, and lack of the
7 structure’s conformity with the other residences in the neighborhood.

8 23. Also on April 28, 2022, Defendants resubmitted revised plans to the Association
9 (“April 2022 Submission”).

10 24. On May 19, 2022, the Association rejected Defendant’s April 2022 Submission
11 for the following reasons: (1) the height of the roof top parapet was not identified on the plans;
12 (2) the height of the rooftop handrails was not identified on the plans; (3) clarification of the
13 proposed structure’s footprint in contrast to the existing structure was required; (4) material and
14 color of the roof and exterior paint were not identified on the plans; and (5) certified story poles
15 were required to allow the consulting architect and neighbors to evaluate possible view
16 obstructions. On June 16, 2022, Defendants resubmitted revised plans to the Association (“June
17 2022 Submission”).

18 25. On July 19, 2022, the Association rejected Defendant’s June 2022 Submission for
19 the following reasons: (1) Defendants did not coordinate with two (2) neighbors to make
20 adjustments to the story poles, which at present height, impact those neighbor’s views; (2)
21 Defendants did not memorialize in writing whether the rooftop or deck areas were “accessible”
22 or “inaccessible;” and (3) although Defendants were directed to keep accessible or green deck
23 space to the center of the roof deck, the June 2002 Submission included an “accessible” roof
24 deck that was not located in the center of the roof.

25 26. On August 15, 2022, Defendants resubmitted revised plans to the Association
26 (“August 2022 Submission”).

27 27. On August 26, 2022, the Association rejected Defendant’s August 2022
28 Submission for the following reasons: (1) the roof deck railing should be clear glass and no more

1 than 42” high; (2) items on the deck can be no taller than 42” in height; (3) the tallest point on
2 the main structure can be no taller than the existing’s home’s ridgeline; (4) no water fixtures are
3 permitted on the roof; (5) no barbeque grill is permitted on the roof; (6) the accessible roof top
4 deck must be minimized to 400 sq feet and designated to the center of the roof as a function of
5 noise control; (7) trees must not exceed 12 feet in height; and (8) certified story poles must
6 coordinate with the submitted plans.

7 28. On September 10, 2022, Defendants resubmitted revised plans to the Association
8 (“September 2022 Submission”).

9 29. On September 19, 2022, the Association notified Defendants that the Association
10 would approve the September 2022 Submission *on the condition* that (1) the high roof not
11 exceed 480.68 feet in elevation (above sea level); (2) high roof may not be a green roof; (3) high
12 roof must remain a cool, white roof as detailed in most recent set of plans; (4) the circular
13 staircase going to the high roof must be removed; and (5) a full set of hard copy, revised
14 drawings must be submitted to the Association for review and stamping.

15 30. Defendants did not resubmit revised drawings to the Association for review and
16 stamping, as requested by the Association on September 19, 2022.

17 31. On April 13, 2023, Defendants submitted plans to the Association (“April 2023
18 Submission”) to build a 4,000 square foot home at the Subject Property, but Defendants did not
19 pay the required architectural resubmission fee of \$3,500.

20 32. On April 28, 2023, Defendants resubmitted the plans to build the 4,000 square
21 foot house; however, the required architectural resubmission fee of \$3,500 remained outstanding.
22 The Association did not take action on the April 2023 Submission as Defendants did not pay the
23 required architectural resubmission fee of \$3,500.

24 33. At the Association’s Board of Directors meeting on September 11, 2023, it was
25 decided to defer discussion of the Subject Property to the October 2023 meeting.

26 34. On September 24, 2023, a community viewing took place at the Subject Property.

27 35. In or about November 2023, prior to obtaining approval by the Association,
28 Defendants began the remodel construction at the Subject Property, including, but not limited to

1 performing excavation and building of a retaining wall, among other things.

2 36. The Association’s Board of Directors discussed the Subject Property at its
3 October 2023 meeting; however, no action was taken on the submission as Defendants had still
4 not submitted the required resubmission fee of \$3,500.

5 37. Plaintiff alleges on information and belief that the Los Angeles Department of
6 Building and Safety (“LADBS”) had at the time only one (1) building permit on file. This
7 building permit was for a “Remodel with no structural changes.” Therefore, based upon
8 information and belief, Defendants were performing structural work, beyond the existing
9 building, without the required building permit(s).

10 38. Plaintiff is informed and upon that basis alleges that on or about November 16,
11 2023, the LADBS inspected Defendants’ work at the Subject Property and issued a Stop Work
12 Order.

13 39. Also on November 16, 2023, the Association notified Defendants that the
14 required resubmission fee of \$3,500 must be paid in order to have the Board of Directors vote on
15 the resubmission at the next meeting.

16 40. On November 17, 2023, the Association, through its legal counsel, served
17 Defendants with a Cease and Desist demanding that all construction at the Subject Property stop
18 immediately, and not continue until the proposed work is approved by the Association.

19 41. Throughout November/early December 2023, Defendants continued construction
20 at the Subject Property, including the installation of a large steel beam, presumably to support a
21 new sloped roof. This steel beam clearly and objectively interferes with the protected views of
22 neighboring owners.

23 42. On December 6, 2023, the Association’s President spoke with Defendants’
24 manager Dan Grossman at the Subject Property. During this conversation, Mr. Grossman
25 admitted to the following: (1) the steel beam installed at the Subject Property was not consistent
26 with the Association’s prior plan approval; (2) Defendants did not obtain the proper building
27 permits from LADBS; and (3) Defendants had been issued a Stop Work Order.

28 43. On December 6, 2022, Defendants’ manager Dan Grossman made a verbal

1 agreement with the Association's President to do all of the following: (1) Defendants would stop
2 all work at the Subject Property immediately, pending the Association's approval of the
3 proposed work/plans; (2) Defendants would submit all outstanding fees due, including the
4 outstanding architectural resubmission fee from April 2023; and (3) Defendants would confirm
5 this verbal agreement, in writing, to the Association's Board of Directors.

6 44. On December 7, 2023, Defendants paid the Association the outstanding
7 architectural resubmission fee of \$3,500 from April 2023 but did not confirm the December 6,
8 2022, verbal agreement in writing and did not stop all work at the Subject Property.

9 45. After further discussions, on January 24, 2024, the Association rejected
10 Defendant's September 2022 Submission on the following basis: (1) Defendants' continue to
11 engage in unapproved construction at the Subject Property; (2) the Subject Property
12 unreasonably interferes with neighboring owners' protected views; and (3) the Association is
13 unable to determine which of Defendants' proposed projects is being constructed; and (4) the
14 Association's members are entitled to story pole viewing, prior to the commencement of work, to
15 evaluate all possible view obstructions. The Association notified Defendants of this rejection via
16 email and demanded Defendants cease construction at the Subject property.

17 46. On January 25, 2024, the Association videotaped Defendants continuing work at
18 the Subject Property.

19 47. On January 25, 2024, the Association, through its legal counsel, issued a Second
20 Notice to Cease Work on the basis that Defendants' most recent submission was denied by the
21 Association due to Defendants' failure to provide a proper community viewing and the obvious
22 view impairment resulted from the project. The Association demanded that all construction at the
23 Subject Property stop immediately, and requested that Defendants contact the Association's legal
24 counsel by the close of business to avoid the Association seeking a temporary restraining order
25 and an injunction.

26 48. On January 29, 2024, Defendant's Dan Grossman spoke with the Association's
27 President and the following verbal agreement was made: (1) Defendant will immediately stop all
28 work, except for shoring up the retaining walls and plumbing; (2) The Association's Board will

1 meet within seven (7) days to either approve or reject Defendant's plans; (3) Defendant agrees,
2 that per the CC&Rs, the Association is permitted access onto the Subject Property to inspection
3 the work; and (4) Defendant will agree to revise his plans should there still be a view obstruction
4 issue.

5 49. On February 29, 2024, it was observed that Defendants had once again
6 commenced with construction work on the project and had now added large rafter beams to the
7 steel beam that was already in place.

8 50. On March 1, 2024, the Association, through its legal counsel, issued a Third
9 Cease and Desist, on the basis that Defendant was once again continuing construction on the
10 Subject Property without the approval or permission of the Association. The Cease and Desist
11 correspondence requested that Defendant provide a written understanding of his intent
12 concerning the removal of the unapproved improvements within ten (10) days.

13 51. As of March 6, 2024, Defendants have failed to cease all work and continue to
14 construct the project that has not been approved by the Association.

15 **FIRST CAUSE OF ACTION**

16 **(For Preliminary and Permanent Injunction)**

17 52. Plaintiff incorporates each and every allegation contained in Paragraphs 1 through
18 51 of this Complaint, as though fully set forth herein.

19 53. On multiple occasions, and over an extended period of time, representatives of the
20 Association have visually inspected the Subject Property and repeatedly found it to be in
21 violation of the Declaration and Governing Documents because Defendants: (1) failed to acquire
22 the Association's approval before commencing work at the Subject Property; (2) failed to obtain
23 the required building permits from the City before commencing work at the Subject Property;
24 and (3) have and continue to make unauthorized changes/additions to the Subject Property that
25 objectively interfere with neighboring owners' views, including, but not limited to, protected
26 ocean views.

27 54. Defendants were notified in writing of such violations, issued a Stop Work Order,
28 three (3) Cease and Desist letters, and was repeatedly requested to immediately stop all work at

1 the Subject Project.

2 55. Defendants have and continue to fail and/or refuse to stop performing
3 unauthorized and/or unpermitted work at the Subject Property as referenced above. Defendants
4 ignored the LADBS Stop Work Order and the Association's Cease and Desist letters. Defendants
5 failed to submit complete plans, including timely resubmission fee(s), to the Association for
6 review, and failed to obtain the necessary building permits from the LADBS. Unfortunately,
7 Defendants have failed to cooperate and work with the Association to achieve compliance, and
8 Defendants remains in violation of the Governing Documents.

9 56. The appearance of the Subject Property has, and continues to remain, a damaging
10 appearance to the detriment of the surrounding neighbors and the Association as a whole, as the
11 structure does not conform with the other residences in the neighborhood. In addition, the steel
12 beam and the apparent roof-line at the Subject Property interfere with the protected views of
13 other neighboring owners.

14 57. Having extended every effort to Defendants to avoid litigation and due to
15 Defendants' willful disregard of the Association's Governing Documents, the Association had no
16 choice but to bring this action to enforce the Governing Documents.

17 58. As a proximate result of Defendants' breach and violation of the Declaration and
18 other Governing Documents, Plaintiff Association is entitled to a preliminary and permanent
19 injunction requiring and directing Defendants to immediately stop all work at the Subject
20 Property in compliance with the Association's Governing Documents and to cease violations of
21 the Governing Documents. In addition, a preliminary and permanent injunction is required to
22 direct Defendants to remove the retaining wall, steel beam, rafter beams, among other
23 unapproved and unpermitted construction, and restore the Subject Property to its original
24 condition.

25 59. As a further proximate result of said Defendants' breach and continued violations
26 of the Association's Governing Documents, the Association has incurred, and will continue to
27 incur, attorney's fees, costs and expenses in connection with this action. Pursuant to *California*
28 *Civil Code* §5975(c), the Association is entitled to recover its attorney's fees, costs and expenses

1 the LADBS; and installing a steel beam that interferes with the views of other neighboring
2 owners.

3 72. Plaintiff has performed all conditions, covenants, and promises required on its
4 part to be performed in accordance with the terms and conditions of the CC&Rs, except those
5 prevented by Defendants' actions. Plaintiff has not consented to the breach of any of the terms
6 and provisions of the CC&Rs, and has followed its own standards and procedures, which are fair
7 and reasonable.

8 73. Based upon Defendants' breach and violation, Plaintiff has been damaged in a
9 sum uncertain, including the costs and expenses incurred in bringing this action and is thereby
10 entitled to recover such costs, expenses and other relief from Defendants according to proof at
11 trial. As a direct and proximate result of Defendants' breach, Plaintiff has been required to
12 engage the services of legal counsel to bring this action, and has thereby incurred, and will
13 continue to incur, attorney's fees and costs.

14 74. Additionally, as a result of Defendants' breach, Plaintiff is entitled to fines from
15 Defendants for violations of the CC&Rs and Governing Documents, in an amount according to
16 proof at trial.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment and relief against all Defendants:

19 **As to The First Cause of Action**

20 1. For a preliminary and permanent injunction directing and ordering Defendants,
21 and each of their agents, representatives, employees or any person or entity acting for or on their
22 behalf, to for a preliminary and permanent injunction directing and ordering Defendants, and
23 each of their agents, representatives, employees or any person or entity acting for or on their
24 behalf, requiring and directing Defendants to immediately stop all work at the Subject Property
25 in compliance with the Association's Governing Documents and to cease violations of the
26 Governing Documents. Also, a preliminary and permanent injunction requiring and directing
27 Defendants to remove the retaining wall, steel beam, rafter beams, among all other unapproved
28 and/or unpermitted construction, and restore the Subject Property to its original condition.

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As to The Second Cause of Action

2. For a Declaration of the Rights, Duties and Obligations of the Plaintiff and Defendants under the Declaration, and the Association’s other Governing Documents, and specifically, for a Declaration by this Court that the failure to acquire the Association’s approval before commencing work at the Subject Property and construction which interferes with the view of neighboring owners constitutes a violation of the Governing Documents.

As to The Third Cause of Action

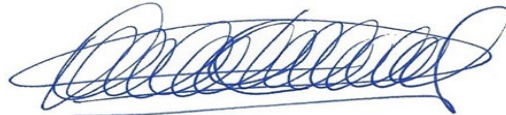
3. For fines based on violations of the Governing Documents, according to proof at trial.

As to All Causes of Action

- 4. For damages incurred, according to proof at trial;
- 5. For reasonable attorney's fees and costs as allowed by law; and
- 6. For such other and further relief as the Court deems just and proper.

DATED: March 7, 2024

IGER WANKEL & BONKOWSKI, LLP



By: _____

David A. Wankel, Esq.
Attorneys for Plaintiff, PALISAIR HOME OWNERS ASSOCIATION, a California Non-Profit Mutual Benefit Corporation

EXHIBIT A

Palisair Home Owners Association

A NONPROFIT CORPORATION

THIRD MODIFICATION OF RESTRICTIONS

FOR TRACTS

15944, 15948 AND 19890

THIS THIRD MODIFICATION OF RESTRICTIONS FOR TRACTS 15944, 15948 AND 19890 ("**Modification**") is made by the Palisair Home Owners Association ("**Association**"), a California nonprofit corporation.

RECITALS

A. The specific purpose of the Association is to provide for the administration, maintenance and preservation of Tract Nos. 15944, 15948 and 19890 as described on Exhibit "A", which is attached hereto and incorporated herein by reference ("Project").

B. The Declaration of Establishment of Protective Covenants and Restrictions on Tract 15944, as Instrument No. 3215, recorded on July 13, 1953 in Book 42199, Page 393, which was modified by that certain Modification of Restrictions Tract 15944, as Instrument No. 5549, recorded on February 24, 1955 in Book 47008, Page 256, all of Official Records of Los Angeles County (collectively "Restrictions for Tract No. 15944").

C. The Declaration of Establishment of Protective Covenants and Restrictions on Tract 15948, as Instrument No. 3811, recorded on February 21, 1956 in Book 50383, Page 176, of Official Record of Los Angeles County ("Restrictions for Tract No. 15948").

D. The Declaration of Establishment of Protective Covenants and Restrictions on Tract 19890, as Instrument No. 2874, recorded on February 3, 1958 in Book 56464, Page 64, which was modified by that certain Modification of Protective Covenants and Restrictions on Tract 19890, as Instrument No. 1480, recorded on March 11, 1960 in Book M465, Page 782, all of Official Records of Los Angeles County (collectively, "Restrictions for Tract No. 19890").

E. The Restrictions for Tract No. 15944, Restrictions for Tract No. 15948 and Restrictions for Tract No. 19890 were consolidated by the following modification instruments to create a single set of restrictions with identical provisions for all three tracts as stated in the Restrictions for Tract No. 19890 (except as to the provisions

for roof pitch, minimum square footage and the partition of lot 30 in Tract No. 19890 as in the provided below referenced general modifications): General Modification of Restrictions and Assignment of Rights and Powers Concerning Tract 15944, as Instrument No. 3370, recorded August 30, 1960 in Book M592, Page 891, General Modification of Restrictions and Assignment of Rights and Powers Concerning Tract 15948, as Instrument No. 3371, recorded August 30, 1960, in Book M592 page 896 and General Modification of Restrictions and Assignment of Rights and Powers Concerning Tract 19890, as Instrument No. 3650, recorded August 26, 1960 in Book M590, page 443, all of Official Records of Los Angeles County (collectively "Consolidation Restrictions").

F. The Association recorded that first certain Modification of Restrictions for Tracts 15944, 15948, and 19890, as Instrument No. 3982, recorded on April 26, 1961 in Book M757, Page 453, and the second Modification of Restrictions for Tracts 15944, 15948 and 19890, as Instrument No. 2704, recorded on October 19, 1967 in Book M2685, Page 267, of Official Records in Los Angeles County, California ("First and Second Modifications").

G. The Restrictions for Tract No. 15944, Restrictions for Tract No. 15948 and the Restrictions for Tract No. 19890, Consolidation Restrictions and First and Second Modifications are collectively the covenants and restrictions ("Restrictions") for the Project.

H. It is the intention of Declarant, by this Third Modification of Restrictions for Tracts 15944, 15948 and 19890 ("Third Modification"), to amend the Restrictions to require every landowner in the Project to pay annual dues, to give the Association collection enforcement rights for said annual dues, to delete the specified fee amount charged by the Tract Committee to review architectural plans, to clarify the provisions regarding view obstructions and to conform the Restrictions to the Davis-Stirling Common Interest Development Act, which include but are not limited to revising the amendment requirements for the Restrictions.

I. The Association has distributed this Third Modification to the membership and received approval by more than fifty percent (50%) the owners in Tract Nos. 15933, 15948 and 19890, in accordance with the requirements of Section 1355 of the California Civil Code.

J. Any provision contained in the Restrictions, which has not been amended and is contrary to the Davis-Stirling Common Interest Development Act, shall hereby be considered void and be superseded by the applicable provision of the Davis-Stirling Common Interest Development Act.

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P R E A M B L E ¹ * *

...Declarant hereby establishes a general plan for the improvement, development, protection and maintenance of the tract, and, in order to...provide for improvements of high type and quality, Declarant hereby...imposes upon said tract...the following...restrictions...subject to which...all lots...or portions thereof shall be owned, used, held, occupied, leased, sold or conveyed by Declarant or by the present and future purchasers or record owners thereof, to wit:

ARTICLE I

DEFINITIONS

"Restrictions" means the whole and each part of the provisions, conditions, restrictions, covenants, easements and reservations set forth in this Declaration, including any additions to, or amendments, changes and modifications thereof, or amendments, changes and modifications of such additions, all of which may be made from time to time hereafter, as herein provided for;

"Landowner" means the bona fide holder of a purchase and sales agreement to, or the record owner of, or any party having an interest, equitable or otherwise, in, any original lot or building site or any portion of such lot or building site, in said tract, whether improved or not, his heirs, successors, personal and legal representatives or assigns;

"Land" means any original lot in said tract, as shown on the tract map hereinabove referred to, or any building site established according to Article III, Section 2, or any portion of such lot or building site or any parcel, even though inadequate for a building site, and shall include the subsurface as well as the surface;

"Tract Committee" means the body established according to Article IV, Section 1;

"On" in terms like "on any land" means not only "upon", but also "in", "under", "through" or "in relation to".

¹ Except where marked by one or two asterisks, all Sections are printed in full. One asterisk (*) after the heading means contents are summarized. Two asterisks (**) means the text is condensed to facilitate easier reading. Phrases are from the recorded text but unessential or redundant words are omitted and indicated by dots (...).

ARTICLE II

GENERAL RESTRICTIONS

Section 1. Uses Other Than Residential Prohibited * ^{2 3}

All of the land shall be used exclusively for private, single-family residential purposes and not, directly or indirectly, for any business or profession or commercial or manufacturing work or "for the carrying on of any act or thing which may be or become an annoyance to the neighborhood."

Section 2. Oil Drilling. Mining, Gravel Excavating. Cutting or Filling Prohibited ²

Prospecting for, or extracting of, oil, natural gas, ore, minerals, etc., on any land shall not at any time be done or permitted, and sand, gravel or soil shall only be excavated in connection with the erection of approved structures. Cutting, filling or grading (except "fine grading" for landscaping) is also prohibited but may exceptionally be permitted by the Tract Committee provided it shall not create a drainage hazard or interfere with the safety or view from other land.

Section 3. Horses, Livestock, Poultry and Bees Prohibited * ²

No horses, donkeys, mules, monkeys, cows, cattle, goats, sheep, rabbits, hares, chinchillas, or other livestock, no poultry, pigeons, doves or similar fowl, and no bees, shall be kept or raised, and no pet (dogs, cats, birds, fish or other animals) raising or trading as a business shall be carried on, directly or indirectly, on any land of said tract. No pets shall be kept which, in the opinion of the Tract Committee, disturb the neighborhood by excessive noise, or which, if other than cats or birds, are allowed to leave the premises while not under owner's control., nor shall animals be kept or maintained in such a manner that they become, directly or indirectly, an annoyance of any kind to a neighbor. (Amendment Recorded Apr. 26, '61 #3982, Book M757, p. 453)

² The basic prohibitions in Sections 1-3 can never be abrogated; see Subsection (b) of Section 4 of Article IV.

³ As long as the restrictions will continue to be enforced, this protection will remain valid even if the area should ever lose its present official zoning status (R1, one-family dwellings), with, of course, these two exceptions: (a) "eminent domain" condemnation for public use, for instance, a highway; (b) a complete change of character and opportunity of utilization for all or part of the area, for instance, a block of residences abutting on a shopping area. The extension of the shopping area may become of such importance to the future of a whole district that the court may decide it is overwhelmingly in the public interest to have the land in this block utilized for markets and shops (perhaps in combination with a "transitional" belt of multiple dwellings) rather than for one-family homes.

However, it is almost inconceivable that either of these two exceptions will ever apply to our three tracts or part thereof.

Section 4. Construction Diligently to be Prosecuted and New Material Used*

Construction of any structure, once commenced, shall continue without unreasonable delays or interruptions until fully completed. Old materials may be used, for artistic effects only, with approval of the Tract Committee

Section 5. Occupancy of Unfinished, Dwellings and Other Structures Prohibited*

No residence shall be lived in until completed and in compliance with all requirements of the restrictions. Tents, shacks, trailers, out-buildings, garages, or other structures shall never be used for dwelling purposes.

Section 6. Limitations on Use of Signs

No signs or billboards of any kind shall be erected, permitted or maintained on any land in said tract or on any City right of way adjoining such land except upon prior written approval by the Tract Committee, which approval in the discretion of the Tract Committee may be revoked at any time.

However, the following signs may be displayed without such specific approval, under the responsibility of the land owner:

(a) Provided plans have been duly approved, professionally lettered signs naming the architect, construction company or subcontractors, may be displayed on the site during actual construction, but no such sign shall exceed the dimensions of 24" x 24" and they shall be removed immediately upon filing of the notice of completion.

(b) One "for sale" or "for lease" sign only may be maintained at any time on a lot, building site, or building, provided it does not exceed the dimensions of 18" x 24", is professionally lettered, and contains no price but only the name, address and telephone number of the owner or his duly authorized broker. Smaller riders may be added to the main sign provided they do not contain words or text tending to depreciate values or impair the character of the neighborhood such as "sacrifice," "special price," "your terms," etc.

(c) Up to four pennants and one "open" sign not exceeding 18" x 24" may be displayed on the premises while a sales representative is actually present.

(d) After a sale, a broker may continue his sign with a "sold" rider attached, but it must be removed within two weeks after the date of recordation of the conveying instrument or of date of purchase and sales agreement if not recorded.

Signs not authorized in writing by the Tract Committee or not conforming to the above exceptions may be removed summarily and destroyed by the Tract Committee in the manner provided for in Section 3 of Article V. Signs that are allowed to deteriorate and become unsightly shall be considered unauthorized even if originally approved or permissible. No provision contained in this Section 6 shall be read or construed to prohibit the posting or displaying of noncommercial signs, posters, flags, or banners on or in a Landowner's separate lot (not common area), in accordance with California Civil Code Sections 1353.5 and 1353.6.

Section 7. Privies. Septic Tanks and Cesspools *

Cesspools, etc., are prohibited, and so are privies, except during construction.

Section 8. Land to be Kept Cleared of Weeds and Rubbish and Slopes to be Planted

Each land owner shall keep his property free and clear of all weeds and rubbish (including rubbish dumped by others) and if the property is improved, do all other things necessary or desirable to keep the front, rear and side yards of the premises neat, clean, attractive and in good order, and if a garden or lawn has been installed, adequately cultivated, or mowed and watered. When a property, whether vacant or improved, includes a slope, the owner shall plant and water or otherwise maintain it in such a manner that erosion is prevented and no fire or health hazard created.

Failure of a landowner to comply with this provision may be remedied by any of the measures provided for in Article V but should the Tract Committee elect to proceed under Section 3 of Article V, the reasonable expenses involved in the removal of weeds or rubbish, in planting and watering a slope, or in other acts necessary to put the land in a neat and orderly condition, shall become a special assessment levied against said landowner pursuant to Article VII Section 4 as herein provided.

Section 9. Right to Plant and Maintain Vacant or Unimproved Land *

The Tract Committee may plant and maintain portions of vacant land.

ARTICLE III

BUILDING AND PLANTING RESTRICTIONS

Section 1. Single Family Residences ⁴

On each lot or building site in said tract not more than one detached single-family residence shall be erected, constructed or maintained, together with the

⁴ The original Declarants, by retaining the right to appoint and remove the members of the "Art Jury", respectively "Tract Committee", impliedly reserved the power to amend the original development plan by re-dividing lots, which they found to be unduly big. They could not be charged with a breach of trust or of warranty if they used this power, provided, however, the new building sites retained the same characteristics as the other lots, namely, having the building pad on level ground only, not partially or wholly on a slope. They used this power in this manner once in Tract 15944 and once in Tract 19890, not at all in Tract 15948 (see notes 5 and 6). With the Tract Committee powers now vested in this Association, the development plan is no longer subject to modification. The final number of residences permissible is 29 in Tract 15944, 52 in Tract 15948 and 58 in Tract 19890.

customary accessory outbuildings appurtenant thereto.⁵ Garages may be attached to, or detached from, the residence.

No structure of any kind shall exceed 15 ½ feet above the finished ground from the front of the building pad to the top of its ridge pole, nor more than 14 feet above the finished floor, except that the Tract Committee in its sole discretion and after consultation with the possibly affected neighbors may permit the erection of a structure higher than 15 ½ feet above the finished ground measured from the front of the building pad, provided it will not unreasonably obstruct or unreasonably diminish the quality and nature of the view from any other land of this or an adjoining tract.

As provided for in Article IV, Sec 2, subsection (a), if cutting, filling, or grading creates a new building pad at a lower elevation than, and separate from, the original pad, then the above referenced ground level at the front of this new pad shall be used for measuring the allowable height of the new building portion. If the elevation is greater than the original pad the allowable building height shall be measured from the elevation of the original pad.

The 'sole discretion' of the Tract Committee must be exercised in good faith, non-arbitrarily and consistent with the Restrictions and applicable governing laws. In exercising this discretion, the Tract Committee shall consider factors, including but not limited to, how the structure may impact property values, statements from members of the Association, the precedential effect of the decision on the Association and how said structure would affect the character of the neighborhood.

Section 2. Building Sites ⁴

Plans for a residence, even if otherwise complying with these restrictions, shall in no event be approved by the Tract Committee unless the building site shall consist of at least an entire vacant original lot, that is, a lot as shown on the tract map hereinabove referred to.

However, exceptions may be granted by the Tract Committee, in its sole discretion, by an instrument entitled "Certificate of Acceptance as a Building Site" to be prepared and recorded by the Committee, at applicants expense, provided ⁶ any reapportionment, in the opinion of the Tract Committee, shall be of a minor nature only, so that the proposed building site shall consist of a portion of an original lot, the usable depth and shape of which building site still will allow the erection of a residence which not only complies technically with all the other requirements of these restrictions but is also in keeping with the prevailing standards of the tract and provided, further, that such reapportionment does not materially alter the original development plan of the tract. Such a certificate may be issued subject to certain specified conditions.

⁵ Added, for tract 15944 only: "except ... that one detached single-family residence ... may be erected ... or maintained on lots 16,17A and 17 as re-divided on or about November 15, 1954, from original lots 16 and 17" (amendment recorded February 24, 1955).

⁶ Added, for Tract 19890 only: "with the exception of lot 30 which, because of its size, contour and location, may be reapportioned into two building sites" (amendment recorded March 11, 1960).

Section 3. Moving of Buildings Onto Property Prohibited *

Moving of structures to or from any land is not permissible.

Section 4. Land Not to be Used for Storage **

No land....shall....be used for open air storage of building materials, vehicles, implements, tools, furniture, landscaping materials or equipment, irrigation pipes or apparatus, junk, trash or any other things whatsoever; provided, however, that building and landscaping materials, tools or equipment may be....maintained on any....site....for use in.... construction; provided, further, that such construction shall commence within a reasonable time after....approval..... The Tract Committee shall be the sole judge of what is a "reasonable time."

Failure of a landowner to comply with any provision of this Section may be remedied by any of the measures provided for in Article V, but should the Tract Committee elect to proceed under Section 3 of Article V, the reasonable expenses involved in the removal of such objectionable things as described above shall become a special assessment levied against said landowner pursuant to Article VII Section 4, as herein provided.

Section 5. Minimum Size of Residence **

No residence shall be erected on any land in said tract which shall have a floor area of less than 2000 square feet for Tract 19890; 1600 square feet for Tract 15948; 1500 square feet for Tract 15944, excluding, however, any portion used for outside or open porches and/or patios, and/or basements and/or cellars and/or garages and/or carports. For the purpose of computing the floor area measurements shall be taken from the outer faces of the studs supporting the exterior walls.

Should two (2) or more contiguous lots or building sites or portions thereof be included in one agreement of sale or conveyance, such area may be treated as a single "consolidated building site" for the purposes of computing the total required floor area of a residence in said tract, but no residence or structures shall be erected thereon which shall not comply with the requirements set forth in this Declaration. Such two (2) contiguous Lots shall still be deemed to be separate Lots for all other purposes of this Declaration, including levy of assessments. Each owner of a lot by acceptance of a grant deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association annual assessments or charges for each lot owned as provided in Article VII.⁷

Section 6. Residences to Face Front Lines

The front of each residence in the Tract shall face toward the established front line of the lot or building site upon which it is built. The side of a residence containing the main entrance door shall be considered its front.

Section 7. Established Front Lines

All lots or building sites in said tract shall front on the streets, drives, or places which they adjoin.

⁷ However, should later any part of such a site be sold separately, the restrictions must again be complied with as to each part thereof.

Section 8. Front and Side Set-back Lines⁸

No residence or garage of any part thereof, including porches, chimneys, steps, balconies and/or other architectural features, and no other structure (except clothes line poles, pool heaters, fences, walls and the like, provided their location has been duly approved by the Tract Committee) shall be erected, placed, permitted and/or maintained on any lot or building site in this tract nearer than 10 feet from the established front line or nearer than 5 feet from either side line.

The setback distance shall be measured from the outermost point of architectural features other than eaves, and where no such features exist, from the foundation walls to the respective lines. Eaves (including gutters) shall, however, not protrude into the setback spaces by more than 1 foot at the sides or by more than 3 feet 6 inches at the front, unless a variance is granted by the Tract Committee.

Section 9. Height of Fences, Walls, Hedges, and Trees Limited

No fence, wall, hedge, or planting (with exception of trees), if exceeding 3 1/2 feet in height above finished surface (not counting any part used as retaining wall), shall be permitted or maintained on any land in this tract in the area between the established front line and the front set-back line; nor if exceeding six feet above finished surface (not counting any part used as retaining wall) anywhere to the rear of the front set-back line, unless a height variance is granted by the Tract Committee.

However, fences, etc., and trees shall not be placed, permitted or maintained on any land of this tract in such a location that they unreasonably obstruct or unreasonably diminish the quality and nature of the view from any other land in this or an adjoining tract.

Floodlights and other outside lights shall be so located, positioned, shielded, or maintained that they do not dazzle occupants of homes in the line of vision nor users of street and do not unreasonably obstruct or unreasonably diminish the quality and nature of the view from any other land in this or an adjoining tract.

Upon a finding made by the Tract Committee that the nature or quality of the view is unreasonably diminished or unreasonably obstructed by fences, etc. or by trees on any land in this tract, or that outside lights are objectionable under the preceding paragraph, the owner thereof, upon written notice sent by the Tract Committee, within thirty (30) days shall remove, cut down or cut back any such obstructions or remedy the objectionable effect of such lights to the extent specified by the Tract Committee.

Failure of a landowner to comply with any provision of this Section may be remedied by any of the measures provided for in Article V, but should the Tract Committee elect to proceed under Section 3 of Article V, the reasonable expenses

⁸ Where these restrictions as well as City ordinances regulate the same subject matter, both must be complied with and the higher requirements prevails, For instance, the restrictions provide for a front yard of ten feet where the City may require less or none: the restrictions prevail. Or, the City requires a rear yard of 25 feet minimum while the restrictions do not provide for any rear yard: the City regulation prevails.

involved in the removal of such objectionable things as described above shall become a special assessment levied against said landowner pursuant to Article VII Section 4, as herein provided.

Section 10. Roof Requirements

(a) **Non-Glare Materials and Thickness**

No roofing materials, although admissible under the City Building Code, shall be used if they are:

(1) of such a nature as glaringly to reflect light;

(2) of less than 1/4 inch

thickness;

(3) Subsection (b) (for tract

19890 only).

(b) **Pitch**

Roofs of any residence or structures shall have a pitch or slope of not less than 2 1/2 inches to each 12 inches, except that up to 25% of the total roof surface may have less or no pitch.

Section 11. Regulations as to Rubbish Containers⁹

Rubbish of all kinds, including garbage, combustible trash, such as paper, garden cuttings and branches, and incombustible trash, such as bottles, cans, etc., and the receptacles containing them, shall not be placed for collection in front of or at the side of a residence earlier than dusk on the evening before collection. The containers shall be removed promptly after collection. At all other times such refuse and containers shall be kept on the owner*s premises fully shielded against view from the street or adjacent residences.

⁹ Under the L.A. Municipal Code is a MISDEMEANOR (punishable by a fine of up to \$500 and/or by imprisonment in the City Jail for up to six months for each and every day of violation) to leave rubbish of any kind and/or full or empty containers out on or near the curb at any time except from 6:00 p.m. the day before to 8:00 p.m. the day of collection. If you go on a trip, arrange with your neighbor to put your containers out, and to remove them, during authorized hours only, rather than have them “adorn” our neighborhood earlier or longer than necessary.

ARTICLE IV

TRACT COMMITTEE AND ITS POWERS

Section 1. Enforcement Agency, How Constituted, Objectives

Without prejudice to the rights of the owners of the reversionary rights or of any landowner, as herein established, these Restrictions shall be enforced by a Board of Directors ("Tract Committee") for the PALISAIR HOME OWNERS ASSOCIATION, a non-profit California corporation ("Association"). Any reference to the "Tract Committee" made in these Restrictions, Bylaws, or any other governing documents of the Association shall be interpreted to mean the Board of Directors of the Association. The Tract Committee shall exercise all rights, powers, duties and functions of, act as, and be, such Board of Directors.

The Tract Committee shall represent the interests of all landowners of the tract and in good faith shall execute, interpret and enforce these restrictions for the benefit of the tract and all landowners, within the purpose, spirit, meaning and intent thereof. It shall not be held liable for damages or otherwise by any landowner of the tract for decisions or actions made or executed in good faith in the performance of its functions. The files of the Committee, including its Book of Minutes, shall be open for inspection by any landowner of the tract at all reasonable times.

Section 2. Approval of Plans: Fees

(a) Work Subject to Prior Approval

No residence, garage, out-building, fence, wall, mast, aerial, clothes line pole, sidewalk, steps, or other structures, and no improvement, utility, swimming pool, parking area or driveway shall be erected, constructed, laid down, altered, installed, located, relocated or maintained and no cutting down, filling up or grading (except "fine grading" for landscaping) shall be done on, under or about any land of said tract unless complete grading and/or building plans (including elevations, and, if requested by the Tract Committee, a rendering) and specifications thereof showing the nature, kind, shape, height, type, material and color scheme thereof, together with the plot plan indicating the location on the lot or building site, shall have been submitted to and approved in writing by the Tract Committee and a copy of such plans, specifications and plot plan, as finally approved, permanently deposited with the Committee.¹⁰

However, no plans for a residence or other structure shall be approved by the Tract Committee:

- (1) which show an exterior appearance and design that lacks conformity to widely or commonly accepted appearances and designs; or

¹⁰ Such approvals are valid only if signed by one of the officers of this Association. Oral statements by any officer or director of this Association do not constitute an approval.

- (2) which provide for a residence or other structure substantially identical or, similar in exterior appearance and design ("carbon copy houses") with other buildings erected, or approved but still to be erected, within a radius of 500 yards; or
- (3) which provide for service yards, clothes line poles, refuse containers, pool equipment, or other like appurtenances not reasonably shielded against view from the street or adjacent homes, or for a pool pump located near enough to an adjacent home to annoy its occupants by noise, if not soundproofed or at least prevented from operating at night; or
- (4) which provides for a residence addition, garage or other outbuilding that is not of construction and architectural type in harmony with the main residence; or
- (5) which provide for a garage or other structure or a wall or fence, which has a gate or door, so constructed that it may swing into a public road or right of way.

The erection, alteration, maintenance, location or relocation of any clothes line pole, fence, hedge, mast, aerial or antenna for radio or television, or other structure of a similar or dissimilar nature, whether separate or an integral part of the dwelling, such as a residence addition, shall be disapproved or desisted from whenever such structure, because of its kind, shape, color, height, material, or location, in the opinion of the Tract Committee would be unsightly, or detrimental to, or unreasonably obstruct or unreasonably diminish the nature or quality of the view from any other land in this or an adjoining tract, or otherwise tend to lower the value of any land of the tract.

No alteration shall be made in the exterior appearances and design of any of the items mentioned in this Subsection (a) at any time after its erection or construction, or in the shape, contours and condition of any land, unless written approval of such alteration first shall have been obtained from the Tract Committee.¹¹

¹¹ In principle, any alteration of, or any permanent addition to, the exterior of a house not shown on the plans as originally approved, or any alteration of, or installation of, a structure elsewhere on the lot, other than mere landscaping, requires approval in writing by this Association prior to the execution of the work. Whether it is a major item such as a pool or an additional room, etc., or a minor item such as a normal television antenna or a fence gate or the like, makes, legally, no difference.

In practice, however, we do not consider installation or alteration of minor items without such formal approval as violation requiring action by us. But sometimes it is rather difficult to distinguish between minor and major items, and it is up to the Association, not the owner, to decide where to draw the line. Therefore, we recommend consulting us in case of doubt.

Where a contractor undertook to "secure all necessary permits" (a standard clause in most construction contracts) it remains, nevertheless, the owner's responsibility under the restrictions to see to it that his contractor does not fail to submit plans for our approval prior to construction. This is important especially in the case of pools and pool equipment.

(b) **Sets of Plans**

Sets of plans with specifications shall be submitted in duplicate, accompanied by the required fee. If approval is granted, one copy of the plans and specifications shall be returned to applicant duly certified. Sets of plans legibly must show the following information:

1. Date;
2. Name and address of owner(s);
3. Street address of job;
4. Full legal description of lot or building site;
5. Setbacks, which must be indicated in numerals; (in case of discrepancy between numerals and scale drawings, the numerals shall prevail).

Sets of plans or specifications presented shall not be considered properly submitted until errors, changes or deficiencies shall have been corrected, made or added, so that they fully comply with all requirements.

Any deviation from, or alteration of, the plans and specifications as approved (except changes of the interior layout not affecting exterior appearance and design as approved) during the construction or at any time thereafter shall render the approval null and void, unless the Tract Committee's written approval thereof is obtained in advance.

(c) **Fees**

The Tract Committee shall charge a reasonable fee for its services, which fee shall be on a case by case basis and will depend on the number and extent of requested modifications. The Tract Committee may designate one or more consultants (i.e., architect(s), engineer(s), or other agents) for the purpose of assisting in the review of such plans or other requests as to outward appearance, design and compliance with all other requirements of the Restrictions and may charge the owner making a plans submission its reasonable costs of such consultant's review. Acceptance of such fee shall not be considered a waiver of the rights of the Tract Committee to take action against owners starting construction work without written approval or otherwise violating the restrictions.

Section 3. Interpretation

The Tract Committee shall have the exclusive right to interpret any or any or all provisions of the restrictions in this Declaration set forth or at any time hereafter created for the benefit of the tract, and such interpretation in case of uncertainty as to the meaning of any article, section, subsection, paragraph, sentence, clause, phrase or word, shall be final, conclusive and binding upon all parties. Whenever such interpretation is of a general nature it shall be brought to public notice by recording an interpretative and clarifying amendment of these restrictions in the manner provided for in Subsection (b) of the following Section 4.

Section 4. Power of Tract Committee to Modify Restrictions

(a) Individual Exceptions

The Tract Committee shall have the right and power, as to individual lots and building sites, and for good cause shown, to change and/or determine the front and side set-back lines, to change the fronting, and to grant such other exceptions or waivers as may be required. The exception or waiver for individual lots does not need to be recorded. In such cases, unless the deviation for which an exception is granted shows clearly on the plans submitted, the exception is to be stated in the writing by which plans are approved. Such determinations, changes, or exceptions shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Each Landowner shall be responsible for obtaining all necessary approvals or permits from applicable governmental entities or agencies and shall comply with all laws, codes and regulations concerning the construction of any improvements. Any Landowner who desires to modify such Landowner's Land shall be the sole responsible party, and hereby covenants to take whatever actions are necessary, including obtaining any necessary insurance policies and hiring consultants/experts to advise such Landowner and/or the Tract Committee whether any proposed modifications to a Landowner's Land are in full compliance with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the California Government Code), any applicable building codes, and/or any other applicable laws governing land use or public safety ("Applicable Building Laws").

(b) General Modifications

The Restrictions may be amended only by an affirmative vote of more than fifty percent (50%) of the total voting power of the Association. In no event shall the percentage of the voting power necessary to amend a specific provision of the Restrictions be less than the percentage of affirmative votes prescribed for action to be taken under said provision. The proposed amendment shall be distributed to all Landowners of the separate interests by first-class mail postage prepaid or personal delivery not less than fifteen (15) and not more than sixty (60) days prior to any approval being solicited pursuant to Section 1355 of the California Civil Code. An amendment hereto shall be effective after (a) the approval of the percentage of owners required in this Section has been given, (b) that fact has been certified in a writing executed and acknowledged by the officer designated by the Association for that purpose, or if no one is designated, by the president of the Association and (c) that writing has been recorded in Los Angeles County. A copy of the recorded amendment shall be distributed by first-class mail or personal delivery to all Landowners immediately upon recordation.

From and after its effective date, each amendment shall be as effective as to all lots within Tract Nos. 15944, 15948 and 19890, the owners thereof and their successors in interest except that structures erected, or to be erected according to plans duly approved before such amendment took effect, will not be retroactively affected by changes, as far as such changes deal specifically with structures. The restrictions regarding use of the lots exclusively for residential purposes, the prohibition of horses, live-stock, poultry and similar fowl and the prohibition of gravel excavation as stated in Article II Sections 1, 2 and 3 shall not be removed. Nothing in the Restrictions shall restrict the ability of any owner at any time to

petition the Superior Court in Los Angeles County to amend this Declaration as provided under California Civil Code Section 1356."

(c) **Limitations of Power No Consent Required**

The Tract Committee may proceed only under the preceding Subsection (a) as long as the landowner requesting a modification or exception to the building requirements represent and warrant to the Tract Committee, in a signed certificate, the form and substance of which are reasonably acceptable to the Tract Committee that the proposed modifications are in full compliance with any and all Applicable Building Laws. The Tract Committee shall then, in its sole discretion and judgment, act as is necessary or advisable, and shall be the sole judge of such necessity or advisability. The 'sole discretion' of the Tract Committee must be exercised in good faith, non-arbitrarily and consistent with the Restrictions and applicable governing laws. The consent of landowners shall not be required, provided that in the case of individual exceptions, the neighbors possibly affected by such exception have been consulted.

Section 5. Liens for Unpaid Charges

Any special assessment levied pursuant to Article II Section 8, Article III Sections 4 and 9, or Article VII may become a lien against the property to the extent of the unpaid balance, including interest, costs, and reasonable attorney's fees for the Tract Committee's attorney pursuant to Article VII Section 8 of the Restrictions. The Tract Committee may then record such lien and pursue foreclosure proceedings in accordance with said Article VII Section 8 of the Restrictions. However, such lien shall be subordinate to any bona fide mortgage or deed of trust given in good faith for value.

Section 6. Recording and Mailing of Notices of Violation¹²

Notice of any breach or violation of any of the restrictions or notice of any failure of any person, firm or corporation to comply therewith, within a reasonable time after the occurrence of such breach, violation o-failure to comply, shall be executed by the owners of the reversionary rights herein provided for, or by the Tract Committee, or by the record owners of any land in said tract, and recorded in the office of the County Recorder of Los Angeles County, describing the lot or building site involved; and a copy of such notice, showing the date of recordation and document number, within a reasonable time after recordation thereof as aforesaid, shall be

¹² By committing or maintaining a violation, the owner himself is clouding his title. Filing a Notice of Violation upon the public record against a certain lot will impart constructive notice of this fact to any prospective buyer or loan company. Furthermore, in escrow, the title search will reveal the existence of the Notice and the title policy will have to list it as an "encumbrance affecting the title." Thus, all interested parties are warned that the property may soon be involved in litigation.

Experience shows that in most cases the recordation of a Notice of Violation will make further court action unnecessary. It is our desire to avoid actual litigation, which, of course, would "tie up the title" for quite some time. But, if a violation has occurred which the owner cannot be induced by amicable means to remedy within a reasonable time, we will have no choice but to file a Notice of Violation.

mailed by certified mail to the last known address of the person, firm or corporation responsible for such breach or violation of, or failure to comply with, any of said restrictions. Until such notice shall have been recorded and mailed as in this Section 6 provided, neither the owners of the reversionary rights, nor the Tract Committee, nor the record owner of any land in said tract, shall have the right to commence any action at law or the enforcement or foreclosure of the liens as provided herein against any person, firm or corporation responsible for any breach or violation of any of said restrictions, or for failure to comply therewith.

ARTICLE V

DURATION, REVERSIONARY RIGHTS, ENFORCEMENT VALIDITY, ASSIGNMENT

Section 1. Duration of Restrictions

The restrictions shall remain in force until January 1, 1975, and from then on automatically be renewed for periods of ten years each, unless within six months prior to January 1, 1975, or within six months prior to the expiration of each 10 year period thereafter, they shall be modified or extinguished in whole or in part by a written and duly recorded agreement executed by the then record owners of a majority of the lots and/or building sites in the tract.

Section 2 Reversion of Title; Enforcement ¹³

In accordance with Article VII Section 8, the amount of a delinquent assessment or installment together with any accompanying late charges, interest, costs (including reasonable attorney's fees) and penalties may become a lien on the lot which the Association may enforce with judicial or non-judicial foreclosure proceedings.

The default or breach of any of said restrictions or the continuance of any such default or breach also may be enjoined, abated or remedied by appropriate proceedings other than a suit for reversion of title by the owners of the reversionary rights or the Tract Committee or any owner of land in said tract. ¹⁴ Such remedy shall

¹³ The Palisair Home Owners Association is now the Owner of the Reversionary Rights (see cover for recordation data).

¹⁴ Among the remedies for enforcement are: (a) suit for injunction; (b) suit in abatement of a nuisance; (c) suit for loss of title.

The policy of this Association regarding violations of the restrictions will be this: we will not go through the tracts searching for violations to prosecute. All the directors and officers serve without compensation and have no inclination or time to look for trouble beyond what must come their way in due course on account of the offices they have accepted as public-spirited citizens. We intend to act only upon complaints, except, of course, in the case of gross or intentional violations which we cannot help noticing. However, it will not matter in the least whether complainants or violators are, or are not, members of this Association.

In no case will we act upon anonymous complaints, and we will always investigate a complaint before deciding upon action. We will, of course, follow the standard policy of all similar owners' associations, namely not to

be deemed cumulative and not exclusive and shall not be construed as in any way impairing or limiting the authorization of the owners of the reversionary rights to declare or enforce such reversion or forfeiture or to reenter upon said land.

Section 3 Right of Entry to Correct Violations

The violation or breach of any of these restrictions also shall give the owners of the reversionary rights and/or the Tract Committee the right (either personally or through their authorized representatives) to enter upon the land upon or as to which such violations or breach exists, and summarily to abate and remove at the expense of the owner thereof, any structure, thing or condition that may be or exist thereon contrary to the letter, intent, spirit, or meaning of these restrictions, including the right to remove and destroy without notice any unauthorized sign or billboard. For these purposes they may enter upon and inspect, within reasonable hours, all land of said tract, improved or unimproved, to the extent reasonably necessary in determining whether such violation or breach has occurred or is about to occur. The party or parties making such entry thereby shall not be deemed guilty of any manner of trespass or held liable for damages resulting from such entry, inspection, abatement, removal or destruction.

Section 4 Violation Constitutes Nuisance

Every act or omission whereby any restriction is violated, in whole or in part, is declared to be and shall constitute a nuisance, and may be enjoined, abated or remedied by the owners of the reversionary rights and/or the Tract Committee and/or any land owner of said tract, and such remedy shall be deemed cumulative and not exclusive.

Section 5 Construction and Validity: Paragraph Headings for Convenience Only *

If at any time any part of the restrictions shall be held to be invalid or unenforceable, the remainder shall not be affected. Paragraph headings shall be disregarded in the interpretation of the restrictions.

Section 6 Assignment of Powers *

Declarant reserves the right to assign any or all its rights and powers to any person, corporation or association.

disclose complainant's name, if so requested, in the interest of good neighbor relations.

However, once a violation is officially brought to our attention, it becomes our duty to take appropriate action. To condone violations by inaction would make future enforcement more difficult or prevent it altogether, and our Association was created precisely for the purpose of impartially enforcing the restrictions. Inaction would also be unfair to the great majority of owners who comply with the restrictions.

Section 7 Failure to Enforce Not A Waiver * ¹⁵

Failure to enforce any part of the restrictions shall not be considered a waiver of the right to do so thereafter. A variance granted to one applicant shall not be a precedent for subsequent cases, however similar.

Section 8 View

Whenever in these restrictions the phrase 'the view from any other land of this or an adjoining tract' is used, 'adjoining tract' shall exclusively mean tracts 15944 or 15948 or 19890, as the case may be. The 'view' shall include, but is not limited to, the sight of the ocean, mountains, city, valleys, canyons, sunrises and sunsets or any other sight deemed by the Tract Committee as being an important part of the property's value that is entitled to protection.

ARTICLE VI * ¹⁶

EXTENT AND SCOPE

The restrictions are for the benefit of the tract and imposed upon same as a servitude and as conditions or covenants running with the land. Whether or not their text or substance shall have been incorporated in the deed by reference or otherwise, all present or future owners are bound by the restrictions by the acceptance of the deed or conveyance or by its entry upon the public record, or by acceptance of a purchase and sales agreement.

ARTICLE VII

ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments

Each Landowner of a lot by acceptance of a grant deed therefore, whether or not it shall be so expressed in such deed, is a member of the Association and is deemed to covenant and agrees to pay to the Association: (a) annual assessments or charges and (b) special assessments as provided in Section 4 below, such assessments

¹⁵ Attention is drawn to the fact that this Association may, from time to time, change its established policy regarding certain instances of enforcement, on the basis of experience. The contention is not valid that a change of policy cannot take effect unless all owners are first notified. Therefore, the fact that, *e.g.*, a certain deviation was permitted in one or more cases, does not constitute an obligation to continue this policy indefinitely. If specific provisions of the restrictions are to be changed, a general modification or clarifying amendment under the procedure set forth in Article IV, Section 4(b) will, of course, be necessary, and owners will thus receive constructive notice of such changes. In addition, we will endeavor to give such changes additional publicity in the local press and by circulars.

¹⁶ Nobody can plead ignorance as a valid excuse if a violation of the restrictions has occurred.

to be established and collected as hereinafter provided for each lot owned. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made, the lien to be effective upon recordation of a Notice of Delinquent Assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Landowner of such lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to a Landowner's successors in title, unless expressly assumed by them.

Section 2. Purpose of Assessments

The assessments levied by the Association shall be used for promoting the health, safety and welfare of the residents in the Project, which includes but is not limited to maintaining insurance for the Directors and Officers of the Association, providing clerical services, obtaining legal counsel, payment of office expenses and supplies, causing and/or performing weed and brush abatement of the common areas to promote fire safety, and such for other purposes as set forth in these Restrictions and the Bylaws.

Section 3. Maximum Annual Assessment

The Association shall maintain an adequate reserve fund for emergency litigation, or in the event the Association constructs any improvements in the common areas, maintenance, repairs and replacement of those elements of the common area that must be replaced on a periodic basis. Such reserve shall be funded by annual assessments.

The maximum annual assessment may be increased effective the first day of each fiscal year by the Tract Committee without a vote of the membership, provided that (i) any such increase shall not be more than ten percent (10%) of the previous year's assessment, and (ii) the Tract Committee has complied with California Civil Code Sections 1365, et seq. with respect to that fiscal year, including, but not limited to, the preparation and distribution of a pro forma operating budget to all members of the Association as provided in Section 1365 of the California Civil Code et seq., or has obtained the approval of Landowners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. Such annual assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

The maximum annual assessment may be increased above the amount provided in this Section by the vote or written assent of at least a majority of Landowners in the Association, constituting a quorum (as defined below), provided that the Tract Committee has prepared and distributed a pro forma operating budget to all members of the Association as provided in Section 1365 of the California Civil Code et seq. For purposes of this Article, "quorum" means more than fifty percent (50%) of the Landowners of the Association. The Association shall provide notice by first-class mail to each Landowner of any increase in the regular or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

The Tract Committee may fix the annual assessment at an amount not in excess of the maximum.

Section 4 Special Assessments

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of paying any increased cost of insurance premiums, unanticipated legal costs, or maintenance of the common area lots, or otherwise, provided that any such assessment which total more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall have the vote or written assent of a majority of the Landowners constituting a quorum. The Association may also levy a special assessment against any member to reimburse the Association for costs incurred in bringing the member and such member's lot into compliance with the provisions of the Restrictions, any amendments thereto, the Articles, the Bylaws, and the Rules and Regulations, which special assessment may be levied upon the vote of the Tract Committee after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code, as set forth in the Bylaws. The above provisions requiring the requisite vote of the membership with respect to special assessments do not apply in the case where a monetary penalty is imposed against a Landowner as a disciplinary measure by the Association for the following reasons: (1) for failure of a Landowner to comply with the Restrictions, Bylaws or Rules and Regulations, or (2) as a means of reimbursing the Association for costs incurred by the Association in the mitigation, remediation and/or repair of damages to common areas and facilities for which the Landowner is allegedly responsible (rework to fit PHOA) or (3) to bring an Landowner or an Landowner's lot into compliance with provisions of these Restrictions, Articles of Incorporation, Bylaws, Rules and Regulations and any amendments thereto. The Association shall provide notice by first-class mail to each Landowner of any increase in the special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 5 Notice and Quorum for Any Action Authorized Under Sections 3 and 4

Any action authorized under Sections 3 and 4 of this Article shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) nor more than ninety (90) days in advance of the meeting. A quorum for such meeting shall be more than fifty percent (50%) of members entitled to vote on such action. If the required quorum is not present, another meeting may be called subject to the same notice requirement; however, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is by less than the requisite quorum of more than fifty percent (50%) of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting.

Section 6 Uniform Rate of Assessment

Both annual and special assessments, except as may be otherwise provided in Sections 4, shall be fixed at a uniform rate for all lots and shall be collected on a yearly basis.

Section 7 Date of Commencement of Annual Assessments; Due Dates

The Tract Committee shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to the Landowner of each lot within Tract Nos. 15944, 15948 and 19890. The due dates for assessments shall be established by the Tract Committee.

Section 8 Effect of Non-Payment of Assessments; Remedies of the Association

Any assessment made in accordance with these Restrictions shall be a debt of the Landowner of a lot from the time the assessment is levied. With respect to each assessment not received by the Association within fifteen (15) days after its due date, the Tract Committee may, at its election, require the Landowner to pay a late charge in a sum to be determined by the Tract Committee, but not to exceed ten percent (10%) or Ten Dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent assessment, but it shall not eliminate or supersede any charges imposed on prior delinquent assessments. If any such assessment is not paid within thirty (30) days after the date said assessment is due, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Landowner personally obligated to pay same, and in addition thereto, or in lieu thereof, after the expiration of thirty (30) days following recordation thereof, may foreclose the lien provided herein below against the lot.

Any assessment not received by the Association within fifteen (15) days after the due date shall be delinquent. At least thirty (30) days before the Association may place a lien upon the lot of a Landowner as provided herein, the Association shall notify such Landowner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement which indicates the principal amount 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 amount of any such delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorney's fees), and penalties, as provided for in these Restrictions, shall be and become a lien on the lot against which the assessment is levied when the Association causes a Notice of Delinquent Assessment (herein the "Notice") to be recorded in the office of the County Recorder of the County in which the lot is located. The Notice shall describe the amount of such delinquent assessment or installment and such other charges thereon as may be authorized by these Restrictions, a legal description of the lot against which the same has been assessed, the name of the Landowner, and, if the lien is to be enforced by the power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. Such Notice shall be signed by the President or Vice-president, and the Secretary or assistant secretary of the Association or any employee or agent of the Association authorized to do so by the Tract Committee and shall be mailed in the manner set forth in California Civil Code Section 2924b to all record owners of the Landowner's interest in the lot no later than ten (10) calendar days after recordation. Said Notice shall be recorded along with a legal description of the lot against which said assessment is levied and the name of the record Landowner of said lot. Any payments received by the Association on account of such a debt shall first be applied to the principal amount owed, and only after the principal amount owed is paid in full shall such payments be applied to interest or collection expenses. If the delinquent assessment or installment and

related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien. Notwithstanding anything to the contrary herein, and in accordance with California Civil Code Sections 1365.1, 1367.1 and 1367.4, an Landowner may dispute an assessment debt by submitting to the Tract Committee a written request for dispute resolution, and in the event such a request is made, the Association may not initiate foreclosure without participation in an alternative dispute resolution proceeding. In no event shall the Association proceed with judicial or non-judicial foreclosure to enforce any lien if the amount of the delinquent assessments, exclusive of any interest, cost of collection, late fees and other charges, is less than Eighteen Hundred Dollars (\$1,800.00), until such debt has been delinquent for more than twelve (12) months. The decision to record a lien for delinquent assessments shall be made only by a majority vote of the Tract Committee in an open meeting, held at least thirty (30) days prior to any public sale. The Tract Committee shall record the vote in the minutes of that meeting.

The Tract Committee may, after the expiration of thirty (30) days following recordation thereof, enforce any assessment lien which is in excess of Eighteen Hundred Dollars (\$1,800.00), or more than twelve (12) months delinquent, provided for in this Section 8, by filing an action for judicial foreclosure or, if the Notice contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in California Civil Code Section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h that apply to nonjudicial foreclosures of Mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of the California Civil Code. The Association may bid on the lot at the sale, and may hold, lease, mortgage, and convey the acquired lot. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien, and on receipt of a written request by the Landowner, a Notice of Rescission of the Restrictions of Default and Demand for Sale. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. Notwithstanding any provision in the law or in these Restrictions to the contrary, a nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to the right of redemption, as provided in California Civil Code Section 1367.4, which right shall run for a period of ninety (90) days after the sale.

A monetary penalty imposed by the Association as a disciplinary measure (a) for failure of an Landowner to comply with these Restrictions, the Articles, Bylaws or the Rules and Regulations of the Association, (b) as a means of reimbursing the Association for costs incurred by the Association in the mitigation, remediation and/or repair of damages to the common area and facilities (if any) for which the Landowner is allegedly responsible, or (c) to bring a Landowner or its lot into compliance with these Restrictions, the Articles, Bylaws or the Rules and Regulations of the Association shall not be treated as an assessment that may become a lien against the Landowner's Lot enforceable by a sale of the lot in accordance with the provisions of Sections 2924, 2924b and 2924c of the California Civil Code. This paragraph shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

In addition to the lien power described hereinabove, each Landowner vests in the Association or its assigns, the right and power to bring all actions at law against such Landowner or other Landowners for the collection of delinquent assessments. In lieu of bringing an action at law to collect delinquent assessments, the Association may submit the matter to arbitration pursuant to the rules of the American Arbitration Association. The decision of the arbitrator on such delinquent assessment shall be binding on both the Association and the delinquent Landowner and may be enforced in any court of competent jurisdiction. The fee to initiate such arbitration shall be paid by the Association and shall be recoverable as part of the arbitration award, in addition to the late charges and interest on the delinquent assessment as provided above.

Section 9 Policies for Assessment Collection

The Tract Committee shall annually distribute within sixty (60) days prior to the beginning of the fiscal year a statement of the Association's policies and practices for enforcing its remedies against members for defaults in the payment of annual and special assessments, including the recording and foreclosing of liens against members' lots.

Section 10 Subordination of the Lien to First Deeds of Trust and First Mortgages

The lien for the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any lot. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage or any conveyance in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of Record or other purchaser of a lot obtains title to the same as a result of foreclosure or conveyance in lieu thereof, such acquirer of title, including successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such lot which became due prior to the acquisition of title to such lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the lots including such acquirer, successors and assigns.

Section 11 Estoppel Certificate

The Association shall furnish or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 12 Personal Liability of Landowner

No member may be exempt from personal liability for assessments, nor any part thereof, levied by the Association, nor release the lot owned by such member from the liens and charges hereof by waiver of the use and enjoyment of the common area and facilities thereon (if any), or by abandonment of such member's lot.

Section 13 Exempt Property

All properties dedicated to and accepted by a local public authority, and all properties owned by a charitable nonprofit organization exempt from taxation by the laws of the State of California, shall be exempt from the assessments created herein. However, no real property or improvements devoted to dwelling use shall be exempt from said assessments.

Section 14 Assessment Limitation Not Applicable

The limitation on percentage increases of annual assessments shall not limit assessment increases by the Tract Committee for the following emergency situations:

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

(b) An extraordinary expense necessary to repair or maintain the common areas within Tract Nos. 15944, 15948 and 19890 or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered; or

(c) An extraordinary expense necessary to repair or maintain common areas within Tract Nos. 15944, 15948 and 19890 or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Tract Committee in preparing and distributing the pro-forma operating budget pursuant to 1365 of the California Civil Code et seq. However, prior to the imposition or collection of an assessment under this subparagraph (c), the Tract Committee 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 resolutions shall be distributed to the members with the notice of assessment.

Section 15 Association Statement at Transfer of Title

At the request of any Landowner transferring title to such Landowner's lot, the Association shall provide (i) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Landowner's lot which are unpaid on the date of the statement, and (ii) any change in the Association's current regular and special assessments and fees which have been approved by the Association's Tract Committee, but have not become due and payable as of the date disclosure is provided pursuant to this Section."

