

Covenants, Conditions & Restrictions

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: MMW
DEPUTY RECORDER
0503 ROOF



DOCKET: 11741
PAGE: 581
NO. OF PAGES: 8
SEQUENCE: 20020350185
02/21/2002
ARSTRT 11:35
ENVELOPE

W
SPANISH TRAIL COUNCIL OF CO OWNERS
8450 E OLD SPANISH TRAIL #122
TUCSON AZ 85710

AMOUNT PAID \$ 15.00

SECOND AMENDMENT TO FIRST AMENDED AND RESTATED

DECLARATION OF HORIZONTAL PROPERTY REGIME

AND COVENANTS, CONDITIONS AND RESTRICTIONS

FOR SPANISH TRAIL CONDOMINIUMS

This document was
presented for recording
without legal description.

This Second Amendment to the First Amended and Restated Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Spanish Trail Condominiums is made this 31st day of December, 2001, by SPANISH TRAIL COUNCIL OF CO-OWNERS, an Arizona Corporation, hereinafter referred to as "Spanish Trail."

Recitals

A. On December 22, 1980, HSL Properties, Inc./La Jolla Enterprises ("Declarant") executed the First Amended and Restated Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Spanish Trail Condominiums (the "Amended and Restated Declaration"), and caused the Amended and Restated Declaration to be recorded January 28, 1981, at docket 6456, pages 318-340, Pima County Recorder's Office. The Amended and Restated Declaration supercedes all prior Declarations of Horizontal Property Regime applicable to the property which is the subject of the Amended and Restated Declaration.

B. On January 1, 1983, Declarant and additional unit owners, together constituting a majority of the Apartment Owners, executed a First Amendment to the Amended and Restated Declaration, and caused the First Amendment to be recorded July 6, 1983, at docket 7067, pages 650-655, Pima County Recorder's Office.

C. Spanish Trail desires to amend Section 5.3 of the Amended and Restated Declaration to create four assessment categories based on Apartment size instead of the existing three categories. This change will conform the categories to the intent of the first sentence of Section 5.3, which states that all Apartments of similar size shall be assessed at a uniform rate. Currently some larger units are being assessed at a rate that is disproportionately low. The amendment to Section 5.3 also adjusts the definitions of the categories so that they no longer overlap.

D. Spanish Trail also desires to amend Section 7.21 of the Amended and Restated Declaration so that future amendments of the Amended and Restated Declaration may be made by a majority decision of the Apartment owners as is currently the case, but that the amendment

BOOK 00100

E. Apartment Owners executing this Amendment as "Concurring Owners" indicated below comprise a majority of the Apartment Owners.

In consideration of the foregoing facts, Spanish Trail hereby declares that the Amended and Restated Declaration is hereby amended as follows:

Section 5.3. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all apartments of similar size and may be collected on a monthly, quarterly or annual basis. A base assessment shall be determined for all units with no more than 800 sq. ft. All units with greater than 800 sq. ft. up to and including 1100 sq. ft. shall be assessed at a rate of 126.67% of the base assessment. All units with greater than 1100 sq. ft. up to and including 1500 sq. ft. shall be assessed at the rate of 144.44% of the base assessment. All units with greater than 1500 sq. ft. shall be assessed at the rate of 164.21% of the base assessment in 2002, 188.42% of the base assessment in 2003, and 199.21% of the base assessment in 2004. In the event that a general increase (or increases) in the assessments is approved prior to the time that the rate for the units greater than 1500 sq. ft. reaches 199.21%, the following apply: (a) unless the assessment increase is approved pursuant to Section 5.5(b), the foregoing percentages for units with greater than 1500 sq. ft. shall be adjusted downward so that no increase in assessments exceeds 15% for any given year, and (b), annual increases of the rate for units with greater than 1500 sq. ft. shall continue until the rate reaches 199.21%

Section 7.21. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the Apartment, and Common Elements, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by a majority vote of the Apartment owners. Consent of the required majority of the Apartment owners shall be obtained on individual written ballots to be signed by the Apartment owners. If a majority of the owners approves an amendment, an amendment instrument memorializing the amendment shall be recorded.

In all other respects the Amended and Restated Declaration is hereby ratified and confirmed in its entirety.

Spanish Trail Council of Co-Owners

Daniel Wolther-Femmer

Daniel Wolther-Femmer, President

Concurring Owners:

Enrique Ronquillo

Owner of Unit No. 101

Jan & Ben

Owner of Unit No. 102

Owner of Unit No. 103

Marilyn J. Hubbard

Owner of Unit No. 104

Charles

Owner of Unit No. 105

Owner of Unit No. 106

Charles

Owner of Unit No. 107

Owner of Unit No. 108

Mrs. Lattie E. Benedict

Owner of Unit No. 109

Cheryl Kugman

Owner of Unit No. 110

W. J. Osh

Owner of Unit No. 111

Sandra Miller

Owner of Unit No. 112

Owner of Unit No. 113

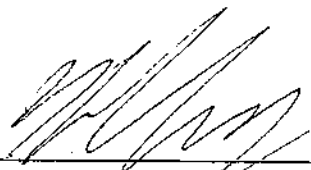
Owner of Unit No. 114

[Signature]

Owner of Unit No. 115


Louides de Oro Eco

_____	Owner of Unit No. 116
_____	Owner of Unit No. 117
<u>Nidalberto Mallesheros Salgado</u>	Owner of Unit No. 118
<u>[Signature]</u>	Owner of Unit No. 119
<u>Joanna Leggett</u>	Owner of Unit No. 120
<u>[Signature]</u>	Owner of Unit No. 121
<u>Walter Finner</u>	Owner of Unit No. 122
<u>David N. [Signature]</u>	Owner of Unit No. 123
<u>[Signature]</u>	Owner of Unit No. 124
_____	Owner of Unit No. 125
<u>Harold P. [Signature]</u>	Owner of Unit No. 126
_____	Owner of Unit No. 127
<u>[Signature]</u>	Owner of Unit No. 128
<u>[Signature]</u>	Owner of Unit No. 129
_____	Owner of Unit No. 130
_____	Owner of Unit No. 131
<u>[Signature]</u>	Owner of Unit No. 132
<u>Harriet M. Reed</u>	Owner of Unit No. 133
<u>Brita M. Smith</u>	Owner of Unit No. 134
_____	Owner of Unit No. 135
<u>Betty Ann Martin - Matten</u>	Owner of Unit No. 136
<u>[Signature]</u>	Owner of Unit No. 137

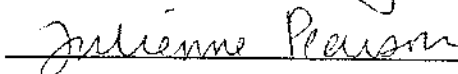
 Owner of Unit No. 138

____ Owner of Unit No. 139

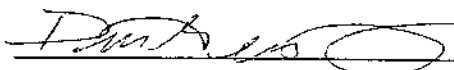
____ Owner of Unit No. 140

 Owner of Unit No. 141

 Owner of Unit No. 142

 Owner of Unit No. 143

____ Owner of Unit No. 144

 Owner of Unit No. 145

____ Owner of Unit No. 146

 Owner of Unit No. 147

____ Owner of Unit No. 148

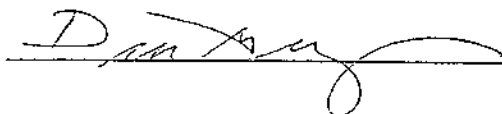
____ Owner of Unit No. 149

____ Owner of Unit No. 150

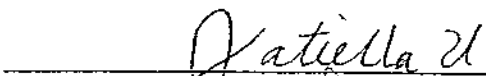
____ Owner of Unit No. 151

____ Owner of Unit No. 152

____ Owner of Unit No. 153

 Owner of Unit No. 154

____ Owner of Unit No. 155

 Owner of Unit No. 156

 Owner of Unit No. 157

 Owner of Unit No. 158

____ Owner of Unit No. 159

____ Owner of Unit No. 160

John P. Bilbrey Owner of Unit No. 201

____ Owner of Unit No. 202

John B. Owner of Unit No. 203

____ Owner of Unit No. 204

____ Owner of Unit No. 205

Araceli Owner of Unit No. 206

Cecilia Durazo Figueroa Owner of Unit No. 207

Mance Kate Owner of Unit No. 208

____ Owner of Unit No. 209

____ Owner of Unit No. 210

Joshua McArthur Owner of Unit No. 211

Elisa Owner of Unit No. 212

Robert Peishung Owner of Unit No. 213

____ Owner of Unit No. 214

____ Owner of Unit No. 215

____ Owner of Unit No. 216

____ Owner of Unit No. 217

____ Owner of Unit No. 218

Araceli Chandler Owner of Unit No. 219

Chris Owner of Unit No. 220

Frank Owner of Unit No. 221

<u>John C. Eberhart</u>	Owner of Unit No. 222
<u>John D. L.</u>	Owner of Unit No. 223
<u>Alvin A. Davis</u>	Owner of Unit No. 224
<u>AB</u>	Owner of Unit No. 225
<u>John H. H.</u>	Owner of Unit No. 226
<u>Henderson</u>	Owner of Unit No. 227
<u>W. L.</u>	Owner of Unit No. 228
_____	Owner of Unit No. 229
_____	Owner of Unit No. 230
<u>John B.</u>	Owner of Unit No. 231
_____	Owner of Unit No. 232
_____	Owner of Unit No. 233
<u>Josefina Osta</u>	Owner of Unit No. 234
<u>W. J. Yettie</u>	Owner of Unit No. 235
_____	Owner of Unit No. 236
_____	Owner of Unit No. 237
<u>John B.</u>	Owner of Unit No. 238
<u>John B.</u>	Owner of Unit No. 239
<u>John B.</u>	Owner of Unit No. 240
_____	Owner of Unit No. 241
_____	Owner of Unit No. 242
_____	Owner of Unit No. 243

James B. Lee

Owner of Unit No. 244

Owner of Unit No. 245

Carla Martin

Owner of Unit No. 246

Owner of Unit No. 247

Owner of Unit No. 248

Owner of Unit No. 249

Owner of Unit No. 250

Owner of Unit No. 251

Shirley

Owner of Unit No. 252

Bob Vinyard

Owner of Unit No. 253

Robin Tyler

Owner of Unit No. 254

Owner of Unit No. 255

Leonarda Aguilar

Owner of Unit No. 256

p.p. Aguilar v.

Frank

Owner of Unit No. 257

Lillian J. How

Owner of Unit No. 258

June H. Severson

Owner of Unit No. 259

Owner of Unit No. 260

RECORDED BY: OKG
DEPUTY RECORDER
2077 RD13



DOCKET: 9239
PAGE: 1882
NO. OF PAGES: 3
SEQUENCE: 92028816
03/04/92
NOTICE 15:50:00

W
WESTERN INVESTIGATIVE
TANIS A DUNCAN

TUCSON

AZ 85701

PICKUP
AMOUNT PAID \$ 6.00

NOTICE REGARDING SPANISH TRAIL CONDOMINIUMS

Please take notice that the following described real property is subject to a First Amended and Restated Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Spanish Trail Condominiums recorded on January 28, 1981, at Docket 6456 at Pages 318 through 340, in the Office of the Pima County Recorder.

SPANISH TRAIL CONDOMINIUMS, as set forth in the restated Declaration of Horizontal Property Regime, together with covenants, conditions and restrictions for Spanish Trail Condominiums, recorded in Docket 6456 at Page 318, as amended in Docket 7067 at page 650, and as shown on the plat of record in Book 31 of Maps at Page 88, all in the office of the County Recorder, Pima County, Arizona.

TOGETHER WITH each Owner's undivided interest in the common elements and carports, including but not limited to all exclusive use space, as set forth in the above referenced Declaration and Plat.

More specifically referred to as:

That portion of Block "C", Desert Steppes Estates, according to Book 15 of Maps, Page 47, records of Pima County, Arizona, lying Northwesterly of the following described line:

BEGINNING at the Northwesterly terminus of the tangent portion of the Northeasterly line of said Block "C", said tangent having a bearing of North 63 degrees 55 minutes 00 seconds West;

Thence Northwesterly along the Northeasterly line of said Block "C", which is on a curve concave Northeasterly, having a radius of 766.20 feet, through a central angle of 11 degrees 35 minutes 26 seconds, an arc length of 155.00 feet to the True Point of Beginning, a radial line through said Point bears South 37 degrees 40 minutes 26

seconds West;

Thence South 26 degrees 05 minutes 00 seconds West
345.40 feet to the Southwesterly line of said Block "C".

WHEREAS Article V of the Declaration provides that each owner of every apartment, by acceptance of a deed to the apartment in Spanish Trail Condominiums agrees to pay the Spanish Trail Council of Co-Owners annual assessments or charges and special assessments, together with late payment penalties, interest, costs and reasonable attorneys' fees.

WHEREAS the Association desires to record a notice that assessments are due, to ensure that upon the close of escrow of any apartment in Spanish Trail Condominiums, all assessments are brought current through the close of escrow and that each person taking title to property at Spanish Trail Condominiums receives additional notice of his/her obligation to pay such assessments.

NOW THEREFORE, prior to the sale or transfer of title to any apartment located within Spanish Trail Condominiums, all unpaid assessments must be paid in full. To obtain information concerning the payment of any costs and expenses which are due to the Association from any Apartment Owner, contact the Association at the following address:

SPANISH TRAIL COUNCIL OF CO-OWNERS
C/O Prime Property Management
6280 E. Pima, Suite 103
Tucson, AZ 85712
(602) 886-5544

Executed this 27th day of February, 1992.

SPANISH TRAIL COUNCIL
OF CO-OWNERS, INC.

By: 
Its: President

9239 1883

STATE OF ARIZONA

COUNTY OF PIMA

) ss:

This instrument was acknowledged before me this 27th day
of February, 1992, by JOSEPH GONZALES,
President of Spanish Trail Council of Co-Owners, Inc.

James James
Notary Public

My Commission Expires:

11-28-95

micspanish.net

9239 1884

RECORDED RETURN TO:
Thomas W. Ecker
HSL Properties, Inc.
10 S. Scott Ave.
Tucson, AZ 85701

FIRST AMENDMENT TO FIRST AMENDED AND RESTATED
DECLARATION OF HORIZONTAL PROPERTY REGIME
AND COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SPANISH TRAIL CONDOMINIUMS

This First Amendment to First Amended and Restated Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Spanish Trail Condominiums is made June 1, 1983 by HSL PROPERTIES, INC./ LA JOLLA PALMS ENTERPRISES, a joint venture composed of HSL Properties, Inc., a California corporation authorized to do business in Arizona, and La Jolla Palms Enterprises, a limited partnership, hereinafter referred to as "Declarant".

Recitals

A. On December 22, 1980, Declarant executed the First Amended and Restated Declaration of Horizontal Property Regime and Covenants, Conditions and Restrictions for Spanish Trail Condominiums (the "Amended and Restated Declaration"), and caused the Amended and Restated Declaration to be recorded January 28, 1981, at docket 6456, pages 318-340, Pima County Recorder's Office. The Amended and Restated Declaration supersedes all prior Declarations of Horizontal Property Regime applicable to the property which is the subject of the Amended and Restated Declaration.

B. Declarant desires to amend the Amended and Restated Declaration to comply with a requirement of the Federal Housing Administration (FHA) which would limit increases in annual assessments to not more than 15% of the previous year's assessment, unless not less than 2/3 of each class of the members concur in a greater percentage increase at a meeting duly called for such purpose. Such an amendment would allow for FHA approval of the property, and benefit all members, including the Declarant, by allowing FHA financing on Apartment Units and consequently increasing the ease of financing the purchase and

C. Section 7.22 of the Amended and Restated Declaration allows amendment thereof by an instrument signed by not less than a majority of the Apartment Owners.

D. As of the date hereof, Declarant is the owner of 56 of the 120 Apartment Units comprising the Property. The Apartment Owners executing this Declaration as "Concurring Owners" indicated below, together with the Declarant, comprise a majority of the Apartment Owners.

Substantive Provisions

In consideration of the foregoing facts, Declarant

7067
JUN 1 1983
TUCSON 650

hereby declares that the Amended and Restated Declaration is hereby amended as follows:

1. Subparagraphs (a) and (b) of Section 5.5 of the Amended and Restated Declaration are deleted and the following substituted therefor:

"(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than 15% (fifteen percent) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above 15% (fifteen percent) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose."

2. In all other respects, the Amended and Restated Declaration is hereby ratified and confirmed in its entirety.

"Declarant"
HSL Properties, Inc./ La Jolla Palms
Enterprises, a joint venture

Humberto S. Lopez
Humberto S. Lopez
President of HSL Properties, Inc.
Managing Joint Venturer

Owner of Lots Nos.

Concurring Owners

Charles J. Thompson owner of Unit No. 222

Francis J. Thompson owner of Unit No. 210

Bonnie M. Anderson owner of Unit No. 259

James L. Starch owner of Unit No. 147

Ernie Dickerson owner of Unit No. 208

_____ owner of Unit No. _____

CONSENT

Title Insurance Company of Minnesota, a Minnesota corporation, hereby consents to the foregoing First Amendment to First Amended and Restated Horizontal Property Regime as trustee under that certain Deed of trust of which H.S. Pickrell Company, an Arizona corporation, is Beneficiary, recorded February 5, 1981, at Docket 6462, page 849; re-recorded February 17, 1981, at Docket 6468, page 162; and re-recorded May 5, 1981, at Docket 6523, page 209, Pima County Recorder's office.

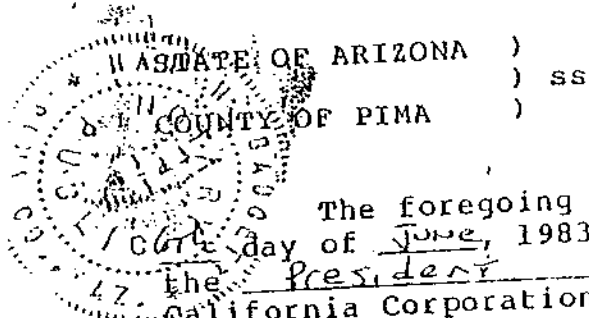
Title Insurance Company of Minnesota, as Trustee
under Deed of Trust

by W. Clark McFarland
title Assistant Vice President

Title Insurance Company of Minnesota, a Minnesota corporation, hereby consents to the foregoing First Amendment to First Amended and Restated Horizontal Property Regime as trustee under that certain Deed of Trust of which HSL Spanish Trail Properties, Ltd., is Beneficiary, recorded at Docket 6212, page 333, as amended by instruments recorded at Docket 6214, page 254, and Docket 6214, page 267, Pima County Recorder's Office.

Title Insurance Company of Minnesota, as Trustee
under Deed of Trust

by W. Clark McFarland
title Assistant Vice President



The foregoing instrument was acknowledged before me this
day of June, 1983, by Humberto S. Lopez,
the President of HSL Properties, Inc., a
California Corporation, on behalf of the corporation.

Humberto S. Lopez
Notary Public

My Commission Expires:

My Commission Expires April 20, 1997

7067PAGE 652

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this
day of June, 1983, by Alicia de Barra.

[Signature]
Notary Public

My Commission Expires:

My Commission Expires April 20, 1987

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this
day of June, 1983, by Antonio Ramirez.

[Signature]
Notary Public

My Commission Expires:

My Commission Expires April 20, 1987

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this
day of June, 1983, by Emilio M. Cardanilla.

[Signature]
Notary Public

My Commission Expires:

My Commission Expires April 20, 1987

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this
day of June, 1983, by Thais Anne Lorch.

M. M. B. Lorch
Notary Public

My Commission Expires:

My Commission Expires April 20, 1987

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this
day of June, 1983, by Thais Anne Lorch.

M. M. B. Lorch
Notary Public

My Commission Expires:

My Commission Expires April 20, 1987

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this
day of _____, 1983, by _____.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this
14TH day of JUNE, 1983, by L. CLARK McFARIAN, ASST. V.P., of
Title Insurance Company of Minnesota, a Minnesota corporation,
on behalf of the corporation.

Marlene Bahn
Notary Public

My Commission Expires:

June 20, 1985

600 m

74620

INDEXED	COPIES	BLOTTED

State of Arizona } ss
County of Pima }

I hereby certify that the Instru-
ment was filed for record as requested
Of Richard J. Kennedy

Date JUL 6 1983-9AM
Book 7067 Page 1250-1255

Witness my hand and Official Seal
day and year above written

RICHARD J. KENNEDY County Recorder
BY Mr. Mc Deputy



FIRST AMENDED AND RESTATED DECLARATION OF
HORIZONTAL PROPERTY REGIME TOGETHER WITH
COVENANTS, CONDITIONS AND RESTRICTIONS

ICOM 11,034
COMMERCIAL DIVISION

FOR SPANISH TRAIL CONDOMINIUMS

This First Amended and Restated Declaration is made December 22nd, 1980 by HSL PROPERTIES, INC./ LA JOLLA PALMS ENTERPRISES, a joint venture composed of HSL Properties, Inc., a California corporation authorized to do business in Arizona, and La Jolla Palms Enterprises, a limited partnership, hereinafter referred to as "Declarant".

RECITALS

A. On January 7, 1980 Declarant recorded a Declaration of Horizontal Property Regime Together with Covenants, Conditions and Restrictions for Spanish Trail Condominiums dated December 7, 1979 (the "Original Declaration") in Docket 6189, pages 554 through 573, records of Pima County, Arizona. The Original Declaration was re-recorded on February 7, 1980 in Docket 6212, pages 293 through 314, records of Pima County, Arizona. The Original Declaration affects the real property (the "Property") described in that certain subdivision plat (the "Plat") recorded in Book 31 of Maps and Plats at page 88, records of Pima County, State of Arizona.

B. Declarant is the owner of the entire real property described in the Plat, and by this First Amended and Restated Declaration, intends to amend and supplement the Original Declaration as hereinafter set forth; restate the remaining portions of the Original Declaration for convenience; and subject the property to this First Amended and Restated Declaration.

NOW, THEREFORE, Declarant hereby declares that Articles I through VII of the Original Declaration are hereby deleted in their entirety, and the following Articles I through VII of this First Amended Declaration are substituted therefor as though fully set forth therein:

ARTICLE I

DECLARATION OF HORIZONTAL PROPERTY REGIME

Section 1.1. DESCRIPTION. Declarant is the owner of real property in Pima County, Arizona, described as follows:

That portion of Block "C", DESERT STEPPES ESTATES, according to Book 15 of Maps, page 47, records of Pima County, Arizona, lying Northwesterly of the following described line:

BEGINNING at the Northwesterly terminus of the tangent portion of the Northeasterly line of said Block "C", said tangent having a bearing of North 63 degrees 55 minutes 00 seconds West;

Thence Northwesterly along the Northeasterly line of said Block "C", which is on a curve concave Northeasterly, having a radius of 766.20 feet, thru

a central angle of 11 degrees 35 minutes 26 seconds,
an arc length of 155.00 feet to the True Point of
Beginning, a radial line thru said Point bears South
37 degrees 40 minutes 26 seconds West;

Thence South 26 degrees 05 minutes 00 seconds
West 345.40 feet to the Southwesterly line of said
Block "C".

The property has been platted as a Horizontal Property
Regime according to the Plat recorded in the office of
the County Recorder of Pima County, Arizona in Book 31
of Maps at Page 88 thereof.

Section 1.2. DECLARATION. Pursuant to Sections 33-551
et seq., Arizona Revised Statutes, Developer hereby submits
the property described above to the Horizontal Property
Regime in order to establish the nature of the use and enjoy-
ment of the Property.

Section 1.3.

(a) DESCRIPTION OF THE SPACE OF THE BUILDING. There
shall be thirteen (13) multi-unit buildings in the Hori-
zontal Property Regime. Each building shall be identified
numerically one (1) through thirteen (13) on the plat. The
cubic content space of each building, with reference to its
location on the land, is as more fully set forth and described
in the Plat referred to in Section 1 above.

(b) DESCRIPTION OF SPACE OF APARTMENT. The Hori-
zontal Property Regime shall be composed of one hundred
twenty (120) individual apartments. Each apartment in
the Horizontal Property Regime shall be numbered as shown
on the plat referred to in Section 1 above. The cubic
content space of each apartment is as is more fully set
forth and described in the recorded plat referred to in
Section 1 above.

(c) DESCRIPTION OF GENERAL COMMON ELEMENTS. The
general common elements shall include all of said property
referred to in Section 1 above, except the individual
apartments located thereon and the outlets of utilities
located within an apartment, including, without limita-
tion, the land upon which the apartments are located, the
buildings, all bearing walls, columns, vertical supports,
roofs, floors, foundations, slabs, all waste water,
water and gas pipes, ducts, flues, conduits, wires, hot
water heaters, hot water heater closets, television anten-
nas, all recreation facilities, office community hall,
maintenance building, swimming pools, laundry areas, pumps,
landscaping, pavements, private drives, playgrounds, common
utility meters, if any, and all other devices and premises
designed for common use or enjoyment by more than one owner
or owners of a single apartment, all as is more fully set
forth and described herein and in the recorded plat as re-
ferred to in Section 1 above. The common elements shall
remain undivided; and no owner shall bring any action for
partition, it being agreed that this restriction is neces-
sary in order to preserve the rights of the owners with
respect to the operation and management of the common
elements which shall be owned in common by the apartment
owners hereof, each apartment owner owning an undivided
interest in the common areas as set forth in Section 1.3(e)
of this Declaration. Said ownership shall be evidenced
by the deed of ownership for each of said apartments.

(d) DESCRIPTION OF SPACE OF EXCLUSIVE USE. There
shall be additional areas constituting a portion of the
general common elements which are hereby set aside and
located for the exclusive use of the apartments as follows:

Each apartment shall have the exclusive use of an area within the common elements of a size and location adequate to install, operate and maintain a heating or refrigeration unit or both, said area to be in the space where the unit is originally placed by the developer.

Each owner shall be responsible for the maintenance, repair and replacement of the heating and refrigeration unit serving his apartment.

There are 120 covered parking spaces as numbered and shown more fully on the recorded plat referred to in Section 1 above. Each apartment shall have the exclusive use of one covered parking space, which space shall have the same numerical designation as the apartment. The space of each covered parking space is more fully set forth and described in the recorded plat referred to in Section 1 above.

Each apartment to which is attached a balcony or deck shall have the exclusive use of the area encompassed by said balcony or deck. Each apartment to which is attached a patio area encompassed by walls shall have the exclusive use of said patio area encompassed by said walls.

(e) FRACTIONAL INTEREST IN COMMON ELEMENTS. Each apartment shall bear appurtenant to it an undivided fractional interest in the common elements as follows:

(A) Units designated as Model "A" on the plat:
a .926% fractional interest

(B) Units designated as Model "B" on the plat:
a .83% fractional interest

(C) Units designated as Model "C" on the plat:
a .74% fractional interest

ARTICLE II

DEFINITIONS

Section 2.1. "Apartment" means a separate freehold estate consisting of an airspace defined as follows:

(a) The lower vertical boundary is the surface of the finished floor thereof.

(b) The upper vertical boundary is a horizontal plane, the elevation of which coincides with the elevation of the surface of the highest unexposed ceiling or ceilings thereof.

(c) The lateral boundaries are the unexposed interior surfaces of the perimeter walls, windows and doors thereof and vertical planes coincidental with the unexposed interior surfaces of the perimeter walls thereof, extended upwards to intersect the upper horizontal boundary.

(d) Each such Apartment includes the surfaces so described, and the portions of the building and improvements lying within said boundaries. Each such Apartment shall also include the ranges, dishwasher, garbage disposal unit, and other household appliances lying within said boundaries or appurtenant areas.

(e) The airspaces for parking, patios, storage areas, heating and airconditioning unit, balconies and stairways, if any, are where so designated, for the exclusive use of the Apartment.

The following are not part of an Apartment: Bearing walls, columns, vertical supports, roofs, floors, foundations, slabs, all waste, water and gas pipes, ducts, flues, conduits, wires, hot water heaters, television antennas and other utility and installation lines and meters wherever located, except the outlets thereof when located within the apartment.

There are uncovered parking areas which are for the use of Owners and their guests and invitees, subject to the regulations established by the Board. In interpreting deeds, plats, declarations, and plans, the existing physical boundaries of an Apartment or an Apartment reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plat, plan or declaration, regardless of settling or lateral movement of the building, and regardless of minor variances between the boundaries as shown on the plan or in the deed and declaration and those of the building. Each of the Apartments in each building shall be deemed to be a separate and distinct Apartment.

Section 2.2. "Articles" means the Articles of Incorporation of the Spanish Trail Council of Co-Owners which are, or shall be filed in the office of the Corporation Commission of the State of Arizona, or its successor, as said Articles may be amended from time to time.

Section 2.3. "Board" means the Board of Directors of the SPANISH TRAIL COUNCIL OF CO-OWNERS.

Section 2.4. "Building" means and refers to the structures designated as buildings on the recorded plat referred to in Section 1 of Article 1 above.

Section 2.5. "By-laws" means the By-laws of the SPANISH TRAIL COUNCIL OF CO-OWNERS as such By-laws may be amended from time to time.

Section 2.6. "Co-owner" means a person, corporation, partnership or other legal entity capable of holding or owning an interest in real property who owns all of or an interest in an apartment as described herein (sometimes referred to herein as "owner").

Section 2.7. "Common Elements" means General Common Elements, as defined herein.

Section 2.8. "Council of Co-owners" means all of the co-owners of the building, pursuant to A.R.S. § 33-551(5) and refers to the SPANISH TRAIL COUNCIL OF CO-OWNERS, INC., an Arizona non-profit corporation, its successors and assigns, formed as an entity through which the co-owners shall act as council of co-owners in accordance with Arizona law permitting Horizontal Property Regimes, non-profit corporations, and the organization and management thereof.

Section 2.9. "Declarant" means HSL PROPERTIES, INC./ LA JOLLA PALMS ENTERPRISES, a joint venture, and its successors in interest and assigns.

Section 2.10. "Declaration" means this First Amended and Restated Declaration of Horizontal Property Regime Together with Covenants, Conditions and Restrictions For Spanish Trail Condominiums, as the same may from time to time be amended.

Section 2.11. "Developer" means HSL PROPERTIES, INC./ LA JOLLA PALMS ENTERPRISES, a joint venture, and its successors in interest and assigns.

Section 2.12. "General Common Elements" means all the general common elements for the common use or enjoyment by more than the Owner or Owners of a single Apartment, as described in Article I, Section 3(c) above and in A.R.S. § 33-551(6). The General Common Elements may sometimes hereinafter be referred to as "Common Elements". General Common Elements includes, but is not limited to, playgrounds, laundry room, maintenance building, hot water heaters, hot water heater closets, water meters, community building and office.

Section 2.13. "Improvement" means all physical structures, including, but not limited to, the buildings, private drives, parking areas, fences and walls, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

Section 2.14. "Institutional Mortgagee" means a bank, savings and loan association, insurance company or pension fund, authorized to do business in the State of Arizona, or an agency of the United States government, owning or holding a mortgage, contract for sale of real estate or a deed of trust upon an apartment. The mortgage, contract for sale or deed of trust may be placed through a mortgage or title company.

Section 2.15. "Lease" means and refers to any agreement for leasing or rental of a unit.

Section 2.16. "Member" means any person, corporation, partnership, joint venture or other legal entity which is a member of the SPANISH TRAIL COUNCIL OF CO-OWNERS and is synonymous with "co-owner".

Section 2.17. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a lot, or any interest therein, including, but not limited to, the improvements developed thereon to secure the performance of an obligation, which obligation will be reconveyed upon completion of such performance.

Section 2.18. "Mortgagee" shall mean and include mortgages, trustees, beneficiaries and holders of deeds of trust, and the holders of any indebtedness secured by mortgages.

Section 2.19. "Mortgagor" shall mean and include mortgagors and trustors under deeds of trust.

Section 2.20. "Plat" means that certain Plat recorded in the Office of the County Recorder of Pima County, Arizona, in Book 31 of Maps at page 88 thereof.

Section 2.21. "Property" means the land whether committed to the Horizontal Property Regime in fee or as a leasehold interest, the buildings, all other improvements located thereon, and all easements, rights and appurtenances thereto.

Section 2.22. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

Section 2.23. "Unit" means and is synonymous with "apartments".

1

Section 2.24. "Visible From Neighboring Property" means with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE III

PROPERTY RIGHTS

Section 3.1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Apartment, subject to the following provisions:

(a) the right of the council to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;

(b) the right of the council to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Apartment remains unpaid; and for a period not to exceed 60 days for any infraction of this Declaration;

(c) the right of the council to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Owners agreeing to such dedication or transfer has been recorded;

(d) the right of each co-owner to have exclusive use of space as provided in Article I above;

(e) the right of the council to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;

(f) the Council's right to temporarily close all or any part of the common areas as the Council deems necessary to prevent a dedication thereof or an accrual of any rights other than to the owners, their successors in interest, and their permittees;

(g) the Council's right to temporarily close, for a reasonable time, any part of the common areas for purposes of maintenance and repairs; and

(h) the right of the Council to impose reasonable rules and regulations pertaining to use of the common elements.

Section 3.2. DELEGATION OF USE. Any Owner may delegate, in accordance with this Declaration, his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or to a reasonable number of his guests or invitees, as shall be determined from time to time by the Board of Directors.

ARTICLE IV

COUNCIL OF CO-OWNERS

Section 4.1. At the date hereof, not all dwelling units designated by the recorded plat referred to in Article I above have been sold, and the Council of Co-Owners envisioned by this Declaration is not operative. In order that said units be sold; said Common Elements be protected, and that the Council become stabilized and operational in the support and promotion of the objectives of this Declaration, Developer hereby reserves unto itself, at its option, the sole and exclusive right to manage the affairs of the Council of Co-Owners, to make contracts or agreements on behalf of the Council, and do all other things authorized by this Declaration until the Developer has transferred title to 75% of the units, or Developer, in its discretion, relinquishes such management to the Council.

Section 4.2. The SPANISH TRAIL COUNCIL OF CO-OWNERS, a non-profit corporation, organized under and by virtue of the laws of the State of Arizona governing non-profit corporations, shall provide such necessary and appropriate action for the maintenance, repair, replacement, and management of all Common Elements including, but not limited to, privately owned streets, walks, landscaping, walls, pools, recreational facilities, hot water heaters, television antennas, community buildings, office and laundry facilities.

Section 4.3. The Council shall have two classes of membership. Class A members shall be every person or entity who becomes a record owner of a fee or undivided fee interest in any apartment which is subject to assessment, including contract purchasers. The Class B member shall be the Developer. Class A members shall be entitled to one vote for each apartment in which they hold the interest required for membership. The Class B member shall be entitled to three (3) votes for each apartment in which it holds a fee interest on the date of the filing of the Articles of Incorporation. The intent of this provision is to provide Developer with control over the Council of Co-Owners until 75% of the units are sold. The Class B member shall be entitled to three votes for each lot or unit owner regardless of when management is relinquished to the Council or whether Developer owns less than 25% of the units. Notwithstanding any provision herein to the contrary, control of the Council of Co-Owners, as defined in Section 6 of this Article, shall become vested in the Class A members no later than 120 days after completion of transfer of title to purchasers representing not less than 75% of the votes of all unit owners.

Section 4.4. Membership is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No member shall have more than one membership. Membership shall be appurtenant to an apartment and may not be separated from ownership of any apartment which is subject to assessment. Ownership of such apartment on the date set forth above shall be the sole qualification for membership.

Section 4.5. Until such time as control of the Council has passed pursuant to Section 3, all right, discretion, power and authority herein granted to said Council of Co-Owners including the right to collect assessments (excepting reserves for replacement) shall, at the option of the

Developer, remain with the Developer indirectly or through the Council of Co-Owners. Capital improvements or additions to the general common elements may be achieved by an affirmative vote of a majority of the unit owners. Upon such affirmative vote said improvement or addition will be installed by the Developer, and the Developer shall prorate such costs to each unit owner and collect such costs as if it were an assessment as provided for herein. Upon sale of not less than 75% of said units, or unless earlier required by the Developer, such right, discretion, power and authority shall be assumed by the unit owners who are then members of the Council of Co-Owners, through their Officers and Directors who shall be duly elected at such time.

Section 4.6. Until control of the Council has been conveyed or transferred from the Developer, Developer shall not be liable for payment of assessments. The Council shall use assessments collected from unit owners for expenses incurred in the month-to-month maintenance, repair, and management of common elements in proportion to the owners' fractional interest in common elements, and in lieu of paying assessments, the Developer shall assume responsibility for all remaining expenses incurred in the month-to-month maintenance, repair, and management of the common elements. Notwithstanding the foregoing, full assessments on all units shall commence no later than six (6) months from close of sale of the first unit, irrespective of whether control of the Council has been conveyed or transferred to the Developer. For purposes of this section, control of the Council shall be deemed to have been conveyed or transferred from the Developer upon completion of the following requirements:

- (a) Developer shall notify the owner of each unit that the Board of Directors of the Council of Co-Owners has resigned effective thirty (30) days after date of notice; and
- (b) Developer shall deliver to the Council of Co-Owners' corporate minutes and seal, if any, to any one of the owners of record receiving such notice, or committee organized for such purpose.

There shall be no outstanding or accrued debts against the Council at the time of assumption of control by the owners.

Section 4.7. Notwithstanding anything in this article to the contrary, Developer reserves the right to retain title to all units until 70% are ready to close escrow; and prior to closing, to charge rent in an amount to be agreed between the Developer and Buyer.

Section 4.8. The Board of Directors of the Council of Co-Owners may enter into a contract with any firm, person or corporation for the maintenance and repair of the Horizontal Property Regime, and may contract for the management of the Horizontal Property Regime and may delegate to the contractor or manager all the powers and duties of the Council of Co-Owners, except such as are specifically required by this Declaration or the By-laws, to have the approval of the Board of Directors or the membership of the Council of Co-Owners. The contractor or manager may be authorized to determine the budget, make assessments for common expenses and collect assessments, as provided by this Declaration and By-laws. The right of the Council of Co-Owners to enter into management agreements shall be limited only by Article VIII, Section 8.2(g) and as follows:

(a) Any management contract shall expressly provide that it is subject to this Declaration, the Articles and By-Laws;

(b) The management contract shall be terminable for cause upon 30 days' written notice; and

(c) The term of any management contract shall not exceed one year, renewable by agreement for successive one-year periods.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. PERSONAL OBLIGATION OF ASSESSMENTS. Each Owner of an Apartment, by acceptance of a deed therefor, except as provided for in Article IV above, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the council: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided in the Articles and By-Laws. The annual and special assessments, late payment penalties, if any, together with interest, costs, and reasonable attorney's fees, shall be a lien on the Apartment and the Common Elements as created by the Articles or By-Laws. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such apartment at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them, or unless prior to the transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessment shall have been filed or recorded with the County Recorder.

Section 5.2. PURPOSE OF ASSESSMENTS. The assessments levied by the Council shall be used exclusively to promote the recreation, health, safety, and welfare of all owners, for the improvements and maintenance of the Common Elements, and for all purposes set forth in the Articles, including, but not limited to, management fees, insurance premiums unless otherwise provided for, expenses for maintenance, repairs, and replacements of Common Elements, reserves for contingencies, charges for all water and water heating for the property and other utilities for the Common Elements.

(a) The Council shall establish and maintain a reserve fund for replacements by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be deposited in a special account with a safe and responsible depository, and may be in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by the United States of America. The reserve fund is for the purpose of effecting replacement or repair because of damage, depreciation or obsolescence to Common Area Elements.

(b) Upon close of escrow the original Purchaser of each unit, other than a successor to or assignee of the Developer, shall pay an amount equal to twice the monthly assessment into an

operating reserve account, the purpose of which is to provide operating funds and continuity of services during the initial period of operation and a measure of financial stability during periods of special stress. Such funds may be used to meet deficiencies from time to time as a result of delinquent payments of assessments by owners and other contingencies. Reimbursement shall be made to the account upon payment of delinquent fees for which funds were withdrawn from the reserve.

(c) By appropriate action of the Board of Directors, the Council may continue and maintain the operating reserve account by allocation and payment thereto monthly of an amount not to exceed 30% of the monthly assessments chargeable to the owners pursuant to the By-laws. This reserve shall remain in a special account and may be in the form of cash deposit or invested in obligations of or fully guaranteed to principal by the United States of America, and shall at all times be under the control of the Council.

Section 5.3. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all apartments of similar size and may be collected on a monthly, quarterly or annual basis. A base assessment shall be determined for all units with less than 800 sq. ft. All units with treater than 799 sq. ft. but less than 1100 sq. ft. shall be assessed at a rate of 126.67% of the base assessment; all units with greater than 1099 sq. ft. shall be assessed at the rate of 144.44% of the base assessment.

Section 5.4. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments shall commence as to all apartments on the first day of the month following the conveyance of an Apartment to the Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Apartment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors.

Section 5.5. MAXIMUM ANNUAL ASSESSMENT. Until January 1 of the year immediately following the conveyance by Declarant of the first unit to an Owner, the maximum annual assessment shall be Five Hundred Forty and no/100 dollars (\$540.) per each unit with less than 800 sq. ft.; Six Hundred Eighty-Four and no/100 dollars (\$684.) per each unit greater than 799 sq. ft. but less than 1100 sq. ft.; Seven Hundred, Eighty dollars (\$780.) per each unit greater than 1099 sq. ft.

(a) From and after January 1 of the year immediately following the conveyance of the first unit to an Owner, the maximum annual assessment may be increased each year up to thirty percent (30%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first unit to an Owner, the maximum annual assessment may be increased above thirty percent (30%) by a vote of two-thirds (2/3) of all members duly called for this purpose.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 5.6. SUBORDINATION OF ASSESSMENT LIEN. The lien for assessments provided for herein in connection with a given Apartment shall not be subordinate to the lien of any mortgage except the lien of a mortgage made in good faith and for value that is of record as an encumbrance against such Apartment prior to the recordation of a notice of assessment against such Apartment in the manner provided for in the Articles or By-laws. (Such mortgage is hereinafter referred to as a "prior mortgage".) The sale or transfer of any Apartment shall not affect either the assessment lien provided for herein nor the creation and enforcement thereof in accordance with this Declaration on account of delinquent assessments, whether such assessments become due prior to, on, or after the date of such sale or transfer, and regardless of whether the Owner of an Apartment as to which such lien is so created and enforced is personally obligated to pay any or all of the delinquent assessments as to which such lien is created; provided, however, that sale or transfer of any Apartment pursuant to a judicial foreclosure or foreclosure by power of sale of a prior deed of trust, or proceeding in lieu of foreclosure of a prior mortgage or deed of trust, shall extinguish any assessment lien created against the Apartment which is the subject of such sale or transfer pursuant to a judicial foreclosure or foreclosure by power of sale or proceeding in lieu of foreclosure by the filing of a notice of assessment prior to the date of such sale or transfer, and shall further prohibit the creation of any assessment lien against such apartment on account of payments which became due prior to the date of such sale or transfer; provided, however, that the purchaser at such sale shall be subject to all of the obligations of an Owner with respect to all assessments which become due after the date of such sale. For the purposes of this Section 6, a sale or transfer of an Apartment shall occur on the date of recordation of a deed or other instrument of title conveying record title to the apartment to the purchaser or transferee.

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 6.1. Every Owner of an Apartment which is subject to assessments shall be a member of the Council. Membership shall be appurtenant to and may not be separated from ownership of an Apartment which is subject to assessment. The rights and obligations of an Owner and membership in the Council shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to such apartment, whether by purchase or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as is not in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to an Apartment shall operate to transfer said membership to the new Owner thereof, and a charge of \$25.00 shall be assessed and paid to the Council by the transferee in each such transfer.

Section 6.2. All Owners shall be entitled to one vote for each Apartment owned. When more than one person holds an interest in any Apartment, all such persons shall be

Members. The vote for such Apartment shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Apartment and fractional votes shall not be allowed. In the event more than one vote is cast for a particular Apartment, none of the votes for such Apartment shall be counted, and said votes shall be deemed void, unless Arizona statutes require otherwise.

Section 6.3. Voting rights shall commence thirty (30) days after transfer of title to the first Owners.

ARTICLE VII

COVENANTS, CONDITIONS AND RESTRICTIONS

Section 7.1. SINGLE-FAMILY RESIDENTIAL USE. An Apartment shall be used, improved and devoted exclusively to Single Family Residential use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such property. Nothing herein shall be deemed to prevent the lease of an Apartment to a single-family from time to time by the Owner thereof, subject to all of the provisions of this Declaration.

Section 7.2. ANIMALS. No animals, birds, fowl, poultry or livestock, other than a reasonable number of domestic dogs, cats, fish and birds in cages shall be maintained in any apartment and then only if they are kept therein solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, nor to become a nuisance. No structure for the care, housing or confinement of an animal or bird shall be maintained so as to be visible from a neighboring unit or street. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this paragraph, a particular animal or bird is a generally recognized household pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein. The Board shall have the right to prohibit maintenance of any animal or bird which constitutes, in the opinion of the Board, a nuisance to any other owner. As used in this Declaration, the term "reasonable number" shall be deemed to limit the number of dogs, cats, and birds, to two of any combination of the above animals. Dogs and other animals must be kept on a leash when not confined in the owner's apartment. No owner shall permit its dog or animal to create unsanitary conditions anywhere on the common properties. When such conditions are created the owner will be assessed \$10.00 for cleanup expenses by the Council and the Council and any Owner may seek other satisfaction as permitted by law and this Declaration. * 11

Section 7.3. ANTENNAS. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property whether attached to a building or structure or otherwise, unless approved by the Board.

Section 7.4. UTILITY SERVICE. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property unless the same shall be

contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Board, nor to abrogate any rights granted by Section 14 of this Article.

Section 7.5. IMPROVEMENTS AND ALTERATIONS. No improvements, exterior painting, landscaping or decorative alterations, repairs, excavation, or other work which in any way alters the exterior appearance of any Property, or the improvements located thereon shall be commenced, erected, maintained, made or done without the prior written approval of the Board or any committee established by the Board for the purpose.

Section 7.6. TEMPORARY OCCUPANCY. No temporary buildings or structure of any kind shall be used at any time for a residence on any Property.

Section 7.7. TRAILERS AND MOTOR VEHICLES. Except with approval of the Board, no mobile home, trailer of any kind, truck camper, or permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any property or street (public or private) in such a manner as will be visible from neighboring property. No boat, trailer, recreational vehicle, camper truck, motorcycle, motorbike, scooter, or other similar motor vehicle which does not fit within assigned parking spaces, shall be parked or stored on any private drive or in any part of the Property except with the permission of the Board or a committee established by the Board for the purpose, unless the Board or the Developer establishes a part of the property for the storage of such vehicles, in which case the Council may charge a reasonable fee for each space therein. Only automobiles in operating condition shall be parked in covered and uncovered parking areas. Provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Board.

Section 7.8. REPAIR AND MAINTENANCE

(a) BY OWNER. Each owner of an Apartment shall maintain, repair, replace, and restore at his own expense all portions of the Apartment including the heating and cooling units, and such maintenance, repair, replacement or restoration shall be subject to control and approval of the Council. No owner shall remove, alter, injure, or interfere with any shrubs, trees, grass or plantings placed upon any Property by Developer or the Council without first obtaining the written consent of the Council.

(b) BY THE COUNCIL. The Council shall have full power to control and it shall be its duty to maintain, repair and make necessary improvements to all Common Elements and the improvements thereon with the exception of the Apartments and with the exception of the outlets of all utility installations of the buildings when located in the Apartments. The Council shall further be empowered with the right and duty to periodically inspect all Common Elements

Duty to repair

in order that minimum standards of repair, design, color and landscaping shall be maintained for beauty, harmony and conservation of values within the entire project.

(c) GENERAL MAINTENANCE. In the event that the Council determines that the Common Elements are in need of improvement, repair, restoration or painting, or that the landscaping is in need of installation, repair, or restoration, the Council shall undertake to remedy such condition and the cost thereof shall be charged to the Owners and shall be subject to levy, enforcement and collection by the Council in accordance with the assessment lien procedure provided for in the Articles or By-laws. The Council shall have a limited right of entry in and upon all Common Elements and the exterior of all Apartments for the purpose of taking whatever corrective action may be deemed necessary or proper by the Council. When so required to enter an Apartment for the purpose of performing installation, alterations or repairs to the mechanical or electrical services, including water, sewer, and other utility services, reasonable requests for entry shall be made and such entry shall be at a time reasonably convenient to the Owner whose Apartment is to be entered. Nothing in this Article shall in any manner limit the right of the Owner to exclusive control over the interior of his Apartment; provided, however, that an owner shall grant the right of entry therein to the Council or any other Owner, or their authorized representatives, or any other person, in case of (a) any emergency originating in or threatening his Apartment and (b) to effect emergency or other necessary repairs which the owner has failed to perform, whether the Owner is present or not.

(d) REPAIR NECESSITATED BY OWNER. In the event that the Council determines that the Common Elements are in need of improvement, repair, restoration, or painting, or that the landscaping is in need of installation, repair, or restoration which has been caused by an Owner, or any person designated by the Owner under the provisions of Article III, Section 3.2 above, then the Council shall give written notice to the Owner of the conditions complained of. Unless the Board has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such reasonable period of time as may be determined by the Board after said written notice is first given, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Council shall undertake to remedy such condition or violation complained of. The cost thereof shall be deemed to be an assessment to such Owner and his Apartment and subject to levy, enforcement and collection provided for in the Articles or By-laws. The Council shall have the same right of entry in and upon all Common Elements and an Apartment as defined in subsection (c) above. The Board shall have the sole right to determine whether any such costs expended by the Council were related to General Maintenance or were Repairs Necessitated by an Owner, and the determination of same shall be binding and final as to an Owner.

Section 7.9. NUISANCES. ~~No nuisance shall be permitted to exist or operate upon any property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. No article shall be draped, hung or attached to an exterior wall or patio enclosure so as to be visible from any street, private drive or unit within the Property. No Owner shall permit any use of his apartment or make any use of the Common Elements which will increase the rate of insurance upon the Property. The Board in its sole discretion shall have the right to determine the existence of any nuisance.~~ X

Section 7.10. TRASH CONTAINERS AND COLLECTION. ~~No garbage or trash shall be placed or kept on any property except in covered containers of a type, size and style which are approved by the Board. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection, and then only the shortest time reasonably necessary to effect such collection.~~ X

Section 7.11. CLOTHES DRYING FACILITIES. ~~Outside clothes-lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.~~

Section 7.12. RESTRICTION ON FURTHER SUBDIVISION. ~~No Apartment within the property shall be further subdivided or separated into smaller apartments by an Owner, and no portion less than all of any such Apartment nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board.~~

Section 7.13. SIGNS. ~~No signs whatsoever (including, but not limited to commercial, political and similar signs) which are visible from neighboring property shall be erected or maintained on any Property except:~~

- (a) Such signs as may be required by legal proceedings;
- (b) Not more than two (2) residential identification signs each of a combined total face area of seventy-two (72) square inches or less;
- (c) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen (18) by twenty-four (24) inches in height and width and having a face area not larger than three square feet or as required by statute; and
- (d) Such signs the nature, number, and location of which have been approved by the Board in advance.

~~Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Developer~~

or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of property.

Section 7.14. EASEMENTS. There is hereby created a blanket easement upon, across, over and under the above described Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company or the Council or their agent to install and maintain facilities and equipment on said Property and to affix and maintain wires, cables and conduits on, in and under the roofs and exterior walls of any building. This easement shall in no way affect or diminish in any manner whatsoever, rights granted by any other recorded easements on said Property. This easement shall be limited to Improvements as originally constructed. There shall be an access easement to all buildings for the delivery and collection of the U.S. Mail.

Section 7.15. ENCROACHMENT. In the event any portion of the Common Elements encroaches upon any unit or any unit encroaches upon the Common Elements, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. If a building is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on parts of the adjacent residence due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 7.16.. COMMON WALLS. The rights and duties of Owners with respect to Common Walls shall be as follows:

(a) The owners of contiguous apartments who have a Common Wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(b) In the event that any Common Wall is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to re-build and repair the Common Wall without cost to the other adjoining Owner or Owners.

(c) In the event any such Common Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests, or family, it shall be the obligation of the Council to re-build and repair such wall.

(d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Common Wall without the prior consent of the Board.

(e) In the event of a dispute between Owners with respect to the construction, repair or re-building of a Common Wall, or with respect to the bearing

of the cost thereof, the Owners shall submit the dispute to the Board, the decision of which shall be final and binding to all Owners.

Section 7.17. INSURANCE. The Board, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the Property except contents of individual Apartments, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work, in the event of damage or destruction from all reasonable hazards. The Board, or its duly authorized agent, shall also obtain a broad form public liability policy covering all Common Elements, and all damage or injury caused by the negligence of the Council or any of its agents. Said insurance may include coverage against vandalism. All such insurance coverage obtained by the Board shall be written in the name of the Council for the benefit of the Council and the Owners and their mortgagees as their interests may appear. The Council shall hold all insurance proceeds collected by it in trust for the purposes stated in this Declaration, including but not limited to, rebuilding the damaged Common Elements, Apartments, Building or Buildings, and for the benefit of the Owners' and their mortgagees. The Board shall have exclusive authority to negotiate with the insurance carrier and to adjust losses, make settlements, and give releases to the insurance carrier. The Board is irrevocably appointed agent for each Owner subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Council and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Council in this regard; provided, however, that nothing in this Declaration shall entitle an Owner or any other party to priority over any institutional first mortgagee with respect to the distribution to any unit of any insurance proceeds allocable to such unit. In addition to the aforesaid insurance required to be carried by the Council, any Owner may, if he wishes, at his own expense, carry any and all other insurance he deems advisable. It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, personal liability insurance, theft and other insurance covering personal property damage and loss.

Section 7.18. EMINENT DOMAIN. The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Property, the members hereby appoint the board of the Council of Co-Owners and such persons as the board may delegate to represent all of the members in connection with the taking. The board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Council, which shall act as Trustee for the benefit of all interested parties, including, but not limited to, the members and their mortgagees; provided, however, that nothing in this Declaration shall entitle an Owner or any other party to priority over any institutional first mortgagee with respect to the distribution to any unit of any insurance proceeds allocable to such unit.

Section 7.19. ENFORCEMENT. The failure of any Owner to comply with the provisions of this Declaration, the Articles and/or the By-Laws shall give rise to a cause of action in the Council and any aggrieved Owner for the recovery of damages, for injunctive relief, or both, as

appropriate. The Council, or any Owner, or both, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, liens and changes now or hereafter imposed by this Declaration, the Articles and By-Laws. Failure by the Council or by any Owner to enforce any right arising out of this Declaration, the Articles, or By-Laws shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.20. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7.21. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the Apartment, and Common Elements, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than a majority of the Apartment Owners. Any amendment must be recorded.

Section 7.22. VIOLATIONS AND NUISANCE. Every act or omission whereby any provision of this Declaration is violated may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Developer, the Council or any Owner or Owners of Apartments. However, any other provision to the contrary notwithstanding, only Developer, the Council, the Board, or the duly authorized agents or any of them, may enforce by self-help any of the provisions of this Declaration.

Section 7.23. VIOLATION OF THE LAW. Any violation of any state, municipal, or local law, ordinance, or regulation, pertaining to the ownership, occupation or use of any property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 7.24. BINDING EFFECT. By acceptance of a deed or by acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, agrees to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Developer, its successors, assigns and grantees, covenant and agree that the Apartments and the membership in the Council and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Apartment even though the description in the instrument of conveyance or encumbrance may refer only to the Apartment.

Section 7.25. LEASING. No owner, except for a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding, or any deed or other arrange-

ment in lieu of foreclosure, shall be permitted to lease his Unit for transient or hotel purposes. Any lease for a period of less than 30 days, or with respect to which rents are received more frequently than monthly, shall be deemed, but not by way of limitation, "for transient or hotel purposes", and shall constitute a violation of this Declaration. All leases shall be in writing; shall expressly state that the term of the lease shall be subject in all respects to the provisions of the Declarations, Articles, and By-Laws; and shall provide that any failure of the lessee to comply with the terms of the Declaration, Articles and By-Laws shall be a default under the lease. Only an entire Apartment together with its appurtenant interest in common elements may be rented or leased, and then only to a single family.

Section 7.26. EXEMPTION OF OWNER. No Owner of an Apartment may exempt himself from liability for his fair and equitable contribution toward the common expenses by waiver and non-use of any of the Common Elements and facilities or by the abandonment of his Apartment.

Section 7.27. OWNER'S RESPONSIBILITY. Each Owner shall be responsible for compliance by said owner's agent, tenant, guest, invitee, lessee, licensee, their respective servants and employees to the provisions of this Declaration, Articles, By-Laws and Council rules as they may be amended from time to time. The owner's failure to so ensure compliance by such persons shall be grounds for the same action available to the Board by reason of said Owner's own noncompliance.

Section 7.28. AD VALOREM TAXATION. Each Apartment shall be assessed separately for all taxes, assessments and other charges of or imposed by the State of Arizona, any political subdivision, special improvement or assessment district, or of any other taxing or assessing authority. For the purpose of such assessment, the valuation of the General Common Elements shall be apportioned among the Owners based upon the Fractional Interest (as defined in Article I, Section 3(e) above) assigned to each of them. The Board shall furnish to the County Assessor or other responsible official of any such taxing or assessing authority all necessary information with respect to the apportionment of such assessments and shall request that each Apartment be carried on the tax records as a separate and distinct parcel of property. No forfeiture or sale of any Apartment for delinquent taxes, assessments or other government charges shall divest or in any way affect the title to any other Apartment.

Section 7.29. REDUCTION OF NUMBER OF UNITS. If any Apartment is taken by eminent domain proceedings or is destroyed and not rebuilt, so that a co-ownership ceases to exist, the undivided fractional interest of each co-owner in the entire horizontal property regime shall be adjusted proportionately, subject, however, to Section 30(b) of this Declaration.

ARTICLE VIII

MORTGAGEE PROTECTION

Section 8.1. MORTGAGEE RIGHTS. No breach of any provision herein contained nor the enforcement of any assessment lien as provided herein shall defeat or render invalid the lien of any prior mortgage made in good faith and for value encumbering any apartment, but all of the provisions hereof shall be binding upon and shall be effective against any Owner whose title is derived through judicial foreclosure, trustee's sale or otherwise.

Section 8.1. FIRST INSTITUTIONAL MORTGAGEE APPROVAL REQUIREMENTS. Unless all of the institutional holders of first mortgages of Units have given their prior written approval, the Council shall not be entitled to:

(a) By act or omission seek to abandon or terminate the Horizontal Property Regime;

(b) Change the pro rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro rata share of ownership of each Unit in appurtenant real estate and any improvements thereon which are owned by the Owners in the property in undivided pro rata interests ("Common Area"), and in no event may any change in pro rata interest or obligations be made more than seven (7) years from the date of this Declaration;

(c) Partition or subdivide any Apartment;

(d) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Owners shall not be deemed a transfer within the meaning of this clause;

(e) Use hazard insurance proceeds for losses to any part of the Property (whether to Units or to Common Area) for other than the repair, replacement or reconstruction of such improvements, except in case of substantial loss to any Units and/or Common Area.

(f) Amend any material provision of this Declaration, the By-Laws or the Articles. For purposes of determining what provisions are material in this Declaration, the Articles, and the By-Laws, a "material provision" shall include, but not be limited to, any provision in such documents which would change the percentage interests of the unit owners and any provision which is required by the rules, regulations or guidelines of programs administered by the Federal National Mortgage Association (FNMA) as of the date of such amendment.

(g) Effectuate any decision to terminate professional management, and assume self management of the Property.

Section 8.3. NOTIFICATION AS TO MORTGAGEES. Each apartment Owner shall notify the Council of Co-owners through the Secretary of the Council of the name and address of the holders of all first mortgages encumbering such Owner's Apartment. Each Owner shall likewise notify the Council through the Secretary of the Council as to the release or discharge of any such first mortgage. In addition, the holder of any first mortgage encumbering an Apartment within the Spanish Trail Condominium may notify the Council, through the Secretary, of such holder's identity and address and a description of the Apartment which such holder's first mortgage encumbers. The Council shall maintain a record of the names and addresses of the institutional holders of first mortgages as to which it receives notice pursuant to the provisions of this Section, and shall provide the holders of all such first mortgages with written notification as follows:

(a) Written notification at least thirty (30) days prior to the effective date of (i) change of the Manager, if any, (not including change in employees of a corporate

manager) or (ii) any change in this Declaration, the Articles, if any, the By-laws or the recorded plat.

(b) Written notification of any default by an Owner of the obligations of such Owner established by this Declaration, the Articles or the By-Laws which is not cured within thirty (30) days after default; provided, however, that such written notification shall be provided only to holders of first mortgages as to which the Council is given notice pursuant to this Section which encumber the Apartment (or Apartments) owned by the Owner in default.

Section 8.4 FIRST MORTGAGEE ACCESS TO RECORDS AND ATTENDANCE AT MEETINGS. Any institutional first mortgagee shall, upon written request to the Council of Co-Owners, be entitled to:

(a) Inspect the books and records of the Council of Co-Owners during normal business hours.

(b) Receive the annual audited financial statements of the Council of Co-Owners ninety (90) days following the end of the Council's fiscal year.

(c) Receive written notice of all annual and special meetings of the members or of the Board, and institutional first mortgagees shall further be entitled to designate a representative to attend all such meetings.

Section 8.5 NOTICE TO MORTGAGEES OF DESTRUCTION OR TAKING. IF any Unit or any part of the common elements is substantially damaged or is destroyed, or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify all institutional first mortgagees. As used herein, "substantially damaged" shall mean damage exceeding TEN THOUSAND (\$10,000) DOLLARS. If requested in writing by an institutional first mortgagee, the association shall evidence its obligations under this Section in a written agreement in favor of such first mortgagee.

IN WITNESS WHEREOF, HSL PROPERTIES, INC./LA JOLLA PALMS ENTERPRISES as Developer has caused this First Amended Declaration to be executed by the undersigned duly authorized parties this 22nd day of December 1980.

HSL PROPERTIES, INC./LA JOLLA
PALMS ENTERPRISES, a Joint
Venture

By Humberto S. Lopez
HUMBERTO S. LOPEZ, President
HSL PROPERTIES, INC.

By Alfredo L. Lopez
ALFREDO L. LOPEZ, General
Partner LA JOLLA PALMS
ENTERPRISES

APPROVED:

HSL SPANISH TRAIL PROPERTIES, LTD.

By Humberto S. Lopez
HUMBERTO S. LOPEZ
General Partner

CONSENT

TITLE INSURANCE COMPANY OF MINNESOTA, a Minnesota corporation, hereby consents to the foregoing First Amended and Restated Horizontal Property Regime as Trustee under that certain Deed of Trust of which HSL Spanish Trail Properties, Ltd. is Beneficiary, recorded at Docket 6212, page 333, as amended by instruments recorded at Docket 6214, page 254 and Docket 6214, page 267.

TITLE INSURANCE COMPANY OF
MINNESOTA as Trustee under
Deed of Trust

By [Signature]

Title Assistant Vice President

STATE OF ARIZONA)
County of Pima) ss:

On this 22nd day of December, 1980, before me the undersigned officer, personally appeared Humberto S. Lopez, the President of HSL Properties, Inc., a California corporation, and that he executed the foregoing instrument for the purposes therein contained on behalf of said corporation which is a joint venturer in HSL Properties, Inc./ LaJolla Palms Enterprises, a Joint Venture.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires:

Nov 14, 1983

STATE OF CALIFORNIA)
County of San Diego) ss:

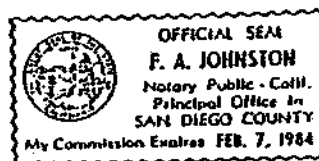
On this 7 day of JANUARY, 1980, before me, the undersigned officer, personally appeared Alfred L. Lopez, a General Partner of La Jolla Palms Enterprises, a limited partnership, and that he executed the foregoing instrument for the purposes therein contained on behalf of said partnership which is a joint venturer in HSL Properties, Inc./ La Jolla Palms Enterprises, a Joint Venture.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires:

Feb 7, 1984



STATE OF ARIZONA }
County of Pima } ss:

On this 27th day of JANUARY 1980,
before me, the undersigned officer, personally appeared
W. CLARK McFARLAND, ASST. V.P., and that he
executed the foregoing instrument for the purposes therein
contained on behalf of Title Insurance Company of Minnesota.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal.

Kathleen A. Street
Notary Public

My commission expires: 1-10-83

STATE OF ARIZONA }
County of PIMA } ss:

The foregoing instrument was acknowledged before me
this 27th day of DECEMBER 1980, by Humberto S. Lopez,
the General Partner of HSL SPANISH TRAIL PROPERTIES
LTD.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal.

[Signature]
Notary Public

My commission expires:

Nov. 14, 1981

... 12.00 ... **9381**

INDEXED	COPIES	BLOTTED
---------	--------	---------

State of Arizona }
County of Pima } ss:

I hereby certify that the instru-
ment was filed for record as requested

MINNESOTA TITLE
DEC 28 81 8 00 AM

Book 456 Page 318-340

Witness my hand and Official Seal
this 28th day of DECEMBER 1980

J. J. KENNEDY, County Recorder

Deputy

COM 11,034
COMMERCIAL DIVISION

FIRST AMENDED AND RESTATED DECLARATION OF
HORIZONTAL PROPERTY REGIME TOGETHER WITH
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SPANISH TRAIL CONDOMINIUMS

This First Amended and Restated Declaration is made December 22nd, 1980 by HSL PROPERTIES, INC./ LA JOLLA PALMS ENTERPRISES, a joint venture composed of HSL Properties, Inc., a California corporation authorized to do business in Arizona, and La Jolla Palms Enterprises, a limited partnership, hereinafter referred to as "Declarant".

RECITALS

A. On January 7, 1980 Declarant recorded a Declaration of Horizontal Property Regime Together with Covenants, Conditions and Restrictions for Spanish Trail Condominiums dated December 7, 1979 (the "Original Declaration") in Docket 6189, pages 554 through 573, records of Pima County, Arizona. The Original Declaration was re-recorded on February 7, 1980 in Docket 6212, pages 293 through 314, records of Pima County, Arizona. The Original Declaration affects the real property (the "Property") described in that certain subdivision plat (the "Plat") recorded in Book 31 of Maps and Plats at page 88, records of Pima County, State of Arizona.

B. Declarant is the owner of the entire real property described in the Plat, and by this First Amended and Restated Declaration, intends to amend and supplement the Original Declaration as hereinafter set forth; restate the remaining portions of the Original Declaration for convenience; and subject the property to this First Amended and Restated Declaration.

NOW, THEREFORE, Declarant hereby declares that Articles I through VII of the Original Declaration are hereby deleted in their entirety, and the following Articles I through VII of this First Amended Declaration are substituted therefor as though fully set forth therein:

ARTICLE I

DECLARATION OF HORIZONTAL PROPERTY REGIME

Section 1.1. DESCRIPTION. Declarant is the owner of real property in Pima County, Arizona, described as follows:

That portion of Block "C", DESERT STEPPES ESTATES, according to Book 15 of Maps, page 47, records of Pima County, Arizona, lying Northwesterly of the following described line:

BEGINNING at the Northwesterly terminus of the tangent portion of the Northeasterly line of said Block "C", said tangent having a bearing of North 63 degrees 55 minutes 00 seconds West;

Thence Northwesterly along the Northeasterly line of said Block "C", which is on a curve concave Northeasterly, having a radius of 766.20 feet, thru

a central angle of 11 degrees 35 minutes 26 seconds, an arc length of 155.00 feet to the True Point of Beginning, a radial line thru said Point bears South 37 degrees 40 minutes 26 seconds West;

Thence South 26 degrees 05 minutes 00 seconds West 345.40 feet to the Southwesterly line of said Block "C".

The property has been platted as a Horizontal Property Regime according to the Plat recorded in the office of the County Recorder of Pima County, Arizona in Book 31 of Maps at Page 88 thereof.

Section 1.2. DECLARATION. Pursuant to Sections 33-551 et seq., Arizona Revised Statutes, Developer hereby submits the property described above to the Horizontal Property Regime in order to establish the nature of the use and enjoyment of the Property.

Section 1.3.

(a) DESCRIPTION OF THE SPACE OF THE BUILDING. There shall be thirteen (13) multi-unit buildings in the Horizontal Property Regime. Each building shall be identified numerically one (1) through thirteen (13) on the plat. The cubic content space of each building, with reference to its location on the land, is as more fully set forth and described in the Plat referred to in Section 1 above.

(b) DESCRIPTION OF SPACE OF APARTMENT. The Horizontal Property Regime shall be composed of one hundred twenty (120) individual apartments. Each apartment in the Horizontal Property Regime shall be numbered as shown on the plat referred to in Section 1 above. The cubic content space of each apartment is as is more fully set forth and described in the recorded plat referred to in Section 1 above.

(c) DESCRIPTION OF GENERAL COMMON ELEMENTS. The general common elements shall include all of said property referred to in Section 1 above, except the individual apartments located thereon and the outlets of utilities located within an apartment, including, without limitation, the land upon which the apartments are located, the buildings, all bearing walls, columns, vertical supports, roofs, floors, foundations, slabs, all waste water, water and gas pipes, ducts, flues, conduits, wires, hot water heaters, hot water heater closets, television antennas, all recreation facilities, office community hall, maintenance building, swimming pools, laundry areas, pumps, landscaping, pavements, private drives, playgrounds, common utility meters, if any, and all other devices and premises designed for common use or enjoyment by more than one owner or owners of a single apartment, all as is more fully set forth and described herein and in the recorded plat as referred to in Section 1 above. The common elements shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the common elements which shall be owned in common by the apartment owners hereof, each apartment owner owning an undivided interest in the common areas as set forth in Section 1.3(e) of this Declaration. Said ownership shall be evidenced by the deed of ownership for each of said apartments.

(d) DESCRIPTION OF SPACE OF EXCLUSIVE USE. There shall be additional areas constituting a portion of the general common elements which are hereby set aside and located for the exclusive use of the apartments as follows:

Each apartment shall have the exclusive use of an area within the common elements of a size and location adequate to install, operate and maintain a heating or refrigeration unit or both, said area to be in the space where the unit is originally placed by the developer.

Each owner shall be responsible for the maintenance, repair and replacement of the heating and refrigeration unit serving his apartment.

There are 120 covered parking spaces as numbered and shown more fully on the recorded plat referred to in Section 1 above. Each apartment shall have the exclusive use of one covered parking space, which space shall have the same numerical designation as the apartment. The space of each covered parking space is more fully set forth and described in the recorded plat referred to in Section 1 above.

Each apartment to which is attached a balcony or deck shall have the exclusive use of the area encompassed by said balcony or deck. Each apartment to which is attached a patio area encompassed by walls shall have the exclusive use of said patio area encompassed by said walls.

(e) FRACTIONAL INTEREST IN COMMON ELEMENTS. Each apartment shall bear appurtenant to it an undivided fractional interest in the common elements as follows:

(A) Units designated as Model "A" on the plat:
a .926% fractional interest

(B) Units designated as Model "B" on the plat:
a .83% fractional interest

(C) Units designated as Model "C" on the plat:
a .74% fractional interest

ARTICLE II

DEFINITIONS

Section 2.1. "Apartment" means a separate freehold estate consisting of an airspace defined as follows:

(a) The lower vertical boundary is the surface of the finished floor thereof.

(b) The upper vertical boundary is a horizontal plane, the elevation of which coincides with the elevation of the surface of the highest unexposed ceiling or ceilings thereof.

(c) The lateral boundaries are the unexposed interior surfaces of the perimeter walls, windows and doors thereof and vertical planes coincidental with the unexposed interior surfaces of the perimeter walls thereof, extended upwards to intersect the upper horizontal boundary.

(d) Each such Apartment includes the surfaces so described, and the portions of the building and improvements lying within said boundaries. Each such Apartment shall also include the ranges, dishwasher, garbage disposal unit, and other household appliances lying within said boundaries or appurtenant areas.

(e) The airspaces for parking, patios, storage areas, heating and airconditioning unit, balconies and stairways, if any, are where so designated, for the exclusive use of the Apartment.

The following are not part of an Apartment: Bearing walls, columns, vertical supports, roofs, floors, foundations, slabs, all waste, water and gas pipes, ducts, flues, conduits, wires, hot water heaters, television antennas and other utility and installation lines and meters wherever located, except the outlets thereof when located within the apartment.

There are uncovered parking areas which are for the use of Owners and their guests and invitees, subject to the regulations established by the Board. In interpreting deeds, plats, declarations, and plans, the existing physical boundaries of an Apartment or an Apartment reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plat, plan or declaration, regardless of settling or lateral movement of the building, and regardless of minor variances between the boundaries as shown on the plan or in the deed and declaration and those of the building. Each of the Apartments in each building shall be deemed to be a separate and distinct Apartment.

Section 2.2. "Articles" means the Articles of Incorporation of the Spanish Trail Council of Co-Owners which are, or shall be filed in the office of the Corporation Commission of the State of Arizona, or its successor, as said Articles may be amended from time to time.

Section 2.3. "Board" means the Board of Directors of the SPANISH TRAIL COUNCIL OF CO-OWNERS.

Section 2.4. "Building" means and refers to the structures designated as buildings on the recorded plat referred to in Section 1 of Article 1 above.

Section 2.5. "By-laws" means the By-laws of the SPANISH TRAIL COUNCIL OF CO-OWNERS as such By-laws may be amended from time to time.

Section 2.6. "Co-owner" means a person, corporation, partnership or other legal entity capable of holding or owning an interest in real property who owns all of or an interest in an apartment as described herein (sometimes referred to herein as "owner").

Section 2.7. "Common Elements" means General Common Elements, as defined herein.

Section 2.8. "Council of Co-owners" means all of the co-owners of the building, pursuant to A.R.S. § 33-551(5) and refers to the SPANISH TRAIL COUNCIL OF CO-OWNERS, INC., an Arizona non-profit corporation, its successors and assigns, formed as an entity through which the co-owners shall act as council of co-owners in accordance with Arizona law permitting Horizontal Property Regimes, non-profit corporations, and the organization and management thereof.

Section 2.9. "Declarant" means HSL PROPERTIES, INC./ LA JOLLA PALMS ENTERPRISES, a joint venture, and its successors in interest and assigns.

Section 2.10. "Declaration" means this First Amended and Restated Declaration of Horizontal Property Regime Together with Covenants, Conditions and Restrictions For Spanish Trail Condominiums, as the same may from time to time be amended.

Section 2.11. "Developer" means HSL PROPERTIES, INC./ LA JOLLA PALMS ENTERPRISES, a joint venture, and its successors in interest and assigns.

Section 2.12. "General Common Elements" means all the general common elements for the common use or enjoyment by more than the Owner or Owners of a single Apartment, as described in Article I, Section 3(c) above and in A.R.S. § 33-551(6). The General Common Elements may sometimes hereinafter be referred to as "Common Elements". General Common Elements includes, but is not limited to, playgrounds, laundry room, maintenance building, hot water heaters, hot water heater closets, water meters, community building and office.

Section 2.13. "Improvement" means all physical structures, including, but not limited to, the buildings, private drives, parking areas, fences and walls, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

Section 2.14. "Institutional Mortgagee" means a bank, savings and loan association, insurance company or pension fund, authorized to do business in the State of Arizona, or an agency of the United States government, owning or holding a mortgage, contract for sale of real estate or a deed of trust upon an apartment. The mortgage, contract for sale or deed of trust may be placed through a mortgage or title company.

Section 2.15. "Lease" means and refers to any agreement for leasing or rental of a unit.

Section 2.16. "Member" means any person, corporation, partnership, joint venture or other legal entity which is a member of the SPANISH TRAIL COUNCIL OF CO-OWNERS and is synonymous with "co-owner".

Section 2.17. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a lot, or any interest therein, including, but not limited to, the improvements developed thereon to secure the performance of an obligation, which obligation will be reconveyed upon completion of such performance.

Section 2.18. "Mortgagee" shall mean and include mortgagees, trustees, beneficiaries and holders of deeds of trust, and the holders of any indebtedness secured by mortgages.

Section 2.19. "Mortgagor" shall mean and include mortgagors and trustors under deeds of trust.

Section 2.20. "Plat" means that certain Plat recorded in the Office of the County Recorder of Pima County, Arizona, in Book 31 of Maps at page 88 thereof.

Section 2.21. "Property" means the land whether committed to the Horizontal Property Regime in fee or as a leasehold interest, the buildings, all other improvements located thereon, and all easements, rights and appurtenances thereto.

Section 2.22. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

Section 2.23. "Unit" means and is synonymous with "apartments".

Section 2.24. "Visible From Neighboring Property" means with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE III

PROPERTY RIGHTS

Section 3.1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Apartment, subject to the following provisions:

- (a) the right of the council to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;
- (b) the right of the council to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Apartment remains unpaid; and for a period not to exceed 60 days for any infraction of this Declaration;
- (c) the right of the council to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Owners agreeing to such dedication or transfer has been recorded;
- (d) the right of each co-owner to have exclusive use of space as provided in Article I above;
- (e) the right of the council to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;
- (f) the Council's right to temporarily close all or any part of the common areas as the Council deems necessary to prevent a dedication thereof or an accrual of any rights other than to the owners, their successors in interest, and their permittees;
- (g) the Council's right to temporarily close, for a reasonable time, any part of the common areas for purposes of maintenance and repairs; and
- (h) the right of the Council to impose reasonable rules and regulations pertaining to use of the common elements.

Section 3.2. DELEGATION OF USE. Any Owner may delegate, in accordance with this Declaration, his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or to a reasonable number of his guests or invitees, as shall be determined from time to time by the Board of Directors.

ARTICLE IV

COUNCIL OF CO-OWNERS

Section 4.1. At the date hereof, not all dwelling units designated by the recorded plat referred to in Article I above have been sold, and the Council of Co-Owners envisioned by this Declaration is not operative. In order that said units be sold, said Common Elements be protected, and that the Council become stabilized and operational in the support and promotion of the objectives of this Declaration, Developer hereby reserves unto itself, at its option, the sole and exclusive right to manage the affairs of the Council of Co-Owners, to make contracts or agreements on behalf of the Council, and do all other things authorized by this Declaration until the Developer has transferred title to 75% of the units, or Developer, in its discretion, relinquishes such management to the Council.

Section 4.2. The SPANISH TRAIL COUNCIL OF CO-OWNERS, a non-profit corporation, organized under and by virtue of the laws of the State of Arizona governing non-profit corporations, shall provide such necessary and appropriate action for the maintenance, repair, replacement, and management of all Common Elements including, but not limited to, privately owned streets, walks, landscaping, walls, pools, recreational facilities, hot water heaters, television antennas, community buildings, office and laundry facilities.

Section 4.3. The Council shall have two classes of membership. Class A members shall be every person or entity who becomes a record owner of a fee or undivided fee interest in any apartment which is subject to assessment, including contract purchasers. The Class B member shall be the Developer. Class A members shall be entitled to one vote for each apartment in which they hold the interest required for membership. The Class B member shall be entitled to three (3) votes for each apartment in which it holds a fee interest on the date of the filing of the Articles of Incorporation. The intent of this provision is to provide Developer with control over the Council of Co-Owners until 75% of the units are sold. The Class B member shall be entitled to three votes for each lot or unit owner regardless of when management is relinquished to the Council or whether Developer owns less than 25% of the units. Notwithstanding any provision herein to the contrary, control of the Council of Co-Owners, as defined in Section 6 of this Article, shall become vested in the Class A members no later than 120 days after completion of transfer of title to purchasers representing not less than 75% of the votes of all unit owners.

Section 4.4. Membership is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No member shall have more than one membership. Membership shall be appurtenant to an apartment and may not be separated from ownership of any apartment which is subject to assessment. Ownership of such apartment on the date set forth above shall be the sole qualification for membership.

Section 4.5. Until such time as control of the Council has passed pursuant to Section 3, all right, discretion, power and authority herein granted to said Council of Co-Owners including the right to collect assessments (excepting reserves for replacement) shall, at the option of the

Developer, remain with the Developer indirectly or through the Council of Co-Owners. Capital improvements or additions to the general common elements may be achieved by an affirmative vote of a majority of the unit owners. Upon such affirmative vote said improvement or addition will be installed by the Developer, and the Developer shall prorate such costs to each unit owner and collect such costs as if it were an assessment as provided for herein. Upon sale of not less than 75% of said units, or unless earlier required by the Developer, such right, discretion, power and authority shall be assumed by the unit owners who are then members of the Council of Co-Owners, through their Officers and Directors who shall be duly elected at such time.

Section 4.6. Until control of the Council has been conveyed or transferred from the Developer, Developer shall not be liable for payment of assessments. The Council shall use assessments collected from unit owners for expenses incurred in the month-to-month maintenance, repair, and management of common elements in proportion to the owners' fractional interest in common elements, and in lieu of paying assessments, the Developer shall assume responsibility for all remaining expenses incurred in the month-to-month maintenance, repair, and management of the common elements. Notwithstanding the foregoing, full assessments on all units shall commence no later than six (6) months from close of sale of the first unit, irrespective of whether control of the Council has been conveyed or transferred to the Developer. For purposes of this section, control of the Council shall be deemed to have been conveyed or transferred from the Developer upon completion of the following requirements:

(a) Developer shall notify the owner of each unit that the Board of Directors of the Council of Co-Owners has resigned effective thirty (30) days after date of notice; and

(b) Developer shall deliver to the Council of Co-Owners' corporate minutes and seal, if any, to any one of the owners of record receiving such notice, or committee organized for such purpose.

There shall be no outstanding or accrued debts against the Council at the time of assumption of control by the owners.

Section 4.7. Notwithstanding anything in this article to the contrary, Developer reserves the right to retain title to all units until 70% are ready to close escrow; and prior to closing, to charge rent in an amount to be agreed between the Developer and Buyer.

Section 4.8. The Board of Directors of the Council of Co-Owners may enter into a contract with any firm, person or corporation for the maintenance and repair of the Horizontal Property Regime, and may contract for the management of the Horizontal Property Regime and may delegate to the contractor or manager all the powers and duties of the Council of Co-Owners, except such as are specifically required by this Declaration or the By-laws, to have the approval of the Board of Directors or the membership of the Council of Co-Owners. The contractor or manager may be authorized to determine the budget, make assessments for common expenses and collect assessments, as provided by this Declaration and By-laws. The right of the Council of Co-Owners to enter into management agreements shall be limited only by Article VIII, Section 8.2(g) and as follows:

(a) Any management contract shall expressly provide that it is subject to this Declaration, the Articles and By-Laws;

(b) The management contract shall be terminable for cause upon 30 days' written notice; and

(c) The term of any management contract shall not exceed one year, renewable by agreement for successive one-year periods.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. PERSONAL OBLIGATION OF ASSESSMENTS. Each Owner of an Apartment, by acceptance of a deed therefor, except as provided for in Article IV above, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the council: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided in the Articles and By-Laws. The annual and special assessments, late payment penalties, if any, together with interest, costs, and reasonable attorney's fees, shall be a lien on the Apartment and the Common Elements as created by the Articles or By-Laws. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such apartment at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them, or unless prior to the transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessment shall have been filed or recorded with the County Recorder.

Section 5.2. PURPOSE OF ASSESSMENTS. The assessments levied by the Council shall be used exclusively to promote the recreation, health, safety, and welfare of all owners, for the improvements and maintenance of the Common Elements, and for all purposes set forth in the Articles, including, but not limited to, management fees, insurance premiums unless otherwise provided for, expenses for maintenance, repairs, and replacements of Common Elements, reserves for contingencies, charges for all water and water heating for the property and other utilities for the Common Elements.

(a) The Council shall establish and maintain a reserve fund for replacements by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be deposited in a special account with a safe and responsible depository, and may be in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by the United States of America. The reserve fund is for the purpose of effecting replacement or repair because of damage, depreciation or obsolescence to Common Area Elements.

(b) Upon close of escrow the original Purchaser of each unit, other than a successor to or assignee of the Developer, shall pay an amount equal to twice the monthly assessment into an

operating reserve account, the purpose of which is to provide operating funds and continuity of services during the initial period of operation and a measure of financial stability during periods of special stress. Such funds may be used to meet deficiencies from time to time as a result of delinquent payments of assessments by owners and other contingencies. Reimbursement shall be made to the account upon payment of delinquent fees for which funds were withdrawn from the reserve.

(c) By appropriate action of the Board of Directors, the Council may continue and maintain the operating reserve account by allocation and payment thereto monthly of an amount not to exceed 30% of the monthly assessments chargeable to the owners pursuant to the By-laws. This reserve shall remain in a special account and may be in the form of cash deposit or invested in obligations of or fully guaranteed to principal by the United States of America, and shall at all times be under the control of the Council.

Section 5.3. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all apartments of similar size and may be collected on a monthly, quarterly or annual basis. A base assessment shall be determined for all units with less than 800 sq. ft. All units with greater than 799 sq. ft. but less than 1100 sq. ft. shall be assessed at a rate of 126.67% of the base assessment; all units with greater than 1099 sq. ft. shall be assessed at the rate of 144.44% of the base assessment.

Section 5.4. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments shall commence as to all apartments on the first day of the month following the conveyance of an Apartment to the Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Apartment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors.

Section 5.5. MAXIMUM ANNUAL ASSESSMENT. Until January 1 of the year immediately following the conveyance by Declarant of the first unit to an Owner, the maximum annual assessment shall be Five Hundred Forty and no/100 dollars (\$540.) per each unit with less than 800 sq. ft.; Six Hundred Eighty-Four and no/100 dollars (\$684.) per each unit greater than 799 sq. ft. but less than 1100 sq. ft.; Seven Hundred, Eighty dollars (\$780.) per each unit greater than 1099 sq. ft.

(a) From and after January 1 of the year immediately following the conveyance of the first unit to an Owner, the maximum annual assessment may be increased each year up to thirty percent (30%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first unit to an Owner, the maximum annual assessment may be increased above thirty percent (30%) by a vote of two-thirds (2/3) of all members duly called for this purpose.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 5.6. SUBORDINATION OF ASSESSMENT LIEN. The lien for assessments provided for herein in connection with a given Apartment shall not be subordinate to the lien of any mortgage except the lien of a mortgage made in good faith and for value that is of record as an encumbrance against such Apartment prior to the recordation of a notice of assessment against such Apartment in the manner provided for in the Articles or By-laws. (Such mortgage is hereinafter referred to as a "prior mortgage".) The sale or transfer of any Apartment shall not affect either the assessment lien provided for herein nor the creation and enforcement thereof in accordance with this Declaration on account of delinquent assessments, whether such assessments become due prior to, on, or after the date of such sale or transfer, and regardless of whether the Owner of an Apartment as to which such lien is so created and enforced is personally obligated to pay any or all of the delinquent assessments as to which such lien is created; provided, however, that sale or transfer of any Apartment pursuant to a judicial foreclosure or foreclosure by power of sale of a prior deed of trust, or proceeding in lieu of foreclosure of a prior mortgage or deed of trust, shall extinguish any assessment lien created against the Apartment which is the subject of such sale or transfer pursuant to a judicial foreclosure or foreclosure by power of sale or proceeding in lieu of foreclosure by the filing of a notice of assessment prior to the date of such sale or transfer, and shall further prohibit the creation of any assessment lien against such apartment on account of payments which became due prior to the date of such sale or transfer; provided, however, that the purchaser at such sale shall be subject to all of the obligations of an Owner with respect to all assessments which become due after the date of such sale. For the purposes of this Section 6, a sale or transfer of an Apartment shall occur on the date of recordation of a deed or other instrument of title conveying record title to the apartment to the purchaser or transferee.

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 6.1. Every Owner of an Apartment which is subject to assessments shall be a member of the Council. Membership shall be appurtenant to and may not be separated from ownership of an Apartment which is subject to assessment. The rights and obligations of an Owner and membership in the Council shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to such apartment, whether by purchase or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as is not in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to an Apartment shall operate to transfer said membership to the new Owner thereof, and a charge of \$25.00 shall be assessed and paid to the Counsel by the transferee in each such transfer.

Section 6.2. All Owners shall be entitled to one vote for each Apartment owned. When more than one person holds an interest in any Apartment, all such persons shall be

Members. The vote for such Apartment shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Apartment and fractional votes shall not be allowed. In the event more than one vote is cast for a particular Apartment, none of the votes for such Apartment shall be counted and said votes shall be deemed void, unless Arizona statutes require otherwise.

Section 6.3. Voting rights shall commence thirty (30) days after transfer of title to the first Owners.

ARTICLE VII

COVENANTS, CONDITIONS AND RESTRICTIONS

Section 7.1. SINGLE-FAMILY RESIDENTIAL USE. An Apartment shall be used, improved and devoted exclusively to Single Family Residential use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such property. Nothing herein shall be deemed to prevent the lease of an Apartment to a single-family from time to time by the Owner thereof, subject to all of the provisions of this Declaration.

Section 7.2. ANIMALS. No animals, birds, fowl, poultry or livestock, other than a reasonable number of domestic dogs, cats, fish and birds in cages shall be maintained in any apartment and then only if they are kept therein solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, nor to become a nuisance. No structure for the care, housing or confinement of an animal or bird shall be maintained so as to be visible from a neighboring unit or street. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this paragraph, a particular animal or bird is a generally recognized household pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein. The Board shall have the right to prohibit maintenance of any animal or bird which constitutes, in the opinion of the Board, a nuisance to any other owner. As used in this Declaration, the term "reasonable number" shall be deemed to limit the number of dogs, cats, and birds, to two of any combination of the above animals. Dogs and other animals must be kept on a leash when not confined in the owner's apartment. No owner shall permit its dog or animal to create unsanitary conditions anywhere on the common properties. When such conditions are created the owner will be assessed \$10.00 for cleanup expenses by the Council and the Council and any Owner may seek other satisfaction as permitted by law and this Declaration.

Section 7.3. ANTENNAS. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any property whether attached to a building or structure or otherwise, unless approved by the Board.

Section 7.4. UTILITY SERVICE. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property unless the same shall be

contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Board, nor to abrogate any rights granted by Section 14 of this Article.

Section 7.5. IMPROVEMENTS AND ALTERATIONS. No improvements, exterior painting, landscaping or decorative alterations, repairs, excavation, or other work which in any way alters the exterior appearance of any Property, or the improvements located thereon shall be commenced, erected, maintained, made or done without the prior written approval of the Board or any committee established by the Board for the purpose.

Section 7.6. TEMPORARY OCCUPANCY. No temporary buildings or structure of any kind shall be used at any time for a residence on any Property.

Section 7.7. TRAILERS AND MOTOR VEHICLES. Except with approval of the Board, no mobile home, trailer of any kind, truck camper, or permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any property or street (public or private) in such a manner as will be visible from neighboring property. No boat, trailer, recreational vehicle, camper truck, motorcycle, motorbike, scooter, or other similar motor vehicle which does not fit within assigned parking spaces, shall be parked or stored on any private drive or in any part of the Property except with the permission of the Board or a committee established by the Board for the purpose, unless the Board or the Developer establishes a part of the property for the storage of such vehicles, in which case the Council may charge a reasonable fee for each space therein. Only automobiles in operating condition shall be parked in covered and uncovered parking areas. Provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Board.

Section 7.8. REPAIR AND MAINTENANCE

(a) BY OWNER. Each owner of an Apartment shall maintain, repair, replace, and restore at his own expense all portions of the Apartment including the heating and cooling units, and such maintenance, repair, replacement or restoration shall be ~~subject~~ to control and approval of the Council. No owner shall remove, alter, injure, or interfere with any shrubs, trees, grass or plantings placed upon any Property by Developer or the Council without first obtaining the written consent of the Council.

(b) BY THE COUNCIL. The Council shall have full power to control and it shall be its duty to maintain, repair and make necessary improvements to all Common Elements and the improvements thereon with the exception of the Apartments and with the exception of the outlets of all utility installations of the buildings when located in the Apartments. The Council shall further be empowered with the right and duty to periodically inspect all Common Elements

in order, the minimum standards of repair, design, color and landscaping shall be maintained for beauty, harmony and conservation of values within the entire project.

(c) GENERAL MAINTENANCE. In the event that the Council determines that the Common Elements are in need of improvement, repair, restoration or painting, or that the landscaping is in need of installation, repair, or restoration, the Council shall undertake to remedy such condition and the cost thereof shall be charged to the Owners and shall be subject to levy, enforcement and collection by the Council in accordance with the assessment lien procedure provided for in the Articles or By-laws. The Council shall have a limited right of entry in and upon all Common Elements and the exterior of all Apartments for the purpose of taking whatever corrective action may be deemed necessary or proper by the Council. When so required to enter an Apartment for the purpose of performing installation, alterations or repairs to the mechanical or electrical services, including water, sewer, and other utility services, reasonable requests for entry shall be made and such entry shall be at a time reasonably convenient to the Owner whose Apartment is to be entered. Nothing in this Article shall in any manner limit the right of the Owner to exclusive control over the interior of his Apartment; provided, however, that an owner shall grant the right of entry therein to the Council or any other Owner, or their authorized representatives, or any other person, in case of (a) any emergency originating in or threatening his Apartment and (b) to effect emergency or other necessary repairs which the owner has failed to perform, whether the Owner is present or not.

(d) REPAIR NECESSITATED BY OWNER. In the event that the Council determines that the Common Elements are in need of improvement, repair, restoration, or painting, or that the landscaping is in need of installation, repair, or restoration which has been caused by an Owner, or any person designated by the Owner under the provisions of Article III, Section 3.2 above, then the Council shall give written notice to the Owner of the conditions complained of. Unless the Board has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such reasonable period of time as may be determined by the Board after said written notice is first given, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Council shall undertake to remedy such condition or violation complained of. The cost thereof shall be deemed to be an assessment to such Owner and his Apartment and subject to levy, enforcement and collection provided for in the Articles or By-laws. The Council shall have the same right of entry in and upon all Common Elements and an Apartment as defined in subsection (c) above. The Board shall have the sole right to determine whether any such costs expended by the Council were related to General Maintenance or were Repairs Necessitated by an Owner, and the determination of same shall be binding and final as to an Owner.

Section 7.9. NUISANCES. No nuisance shall be permitted to exist or operate upon any property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. No article shall be draped, hung or attached to an exterior wall or patio enclosure so as to be visible from any street, private drive or unit within the Property. No Owner shall permit any use of his apartment or make any use of the Common Elements which will increase the rate of insurance upon the Property. The Board in its sole discretion shall have the right to determine the existence of any nuisance.

Section 7.10. TRASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or kept on any property except in covered containers of a type, size and style which are approved by the Board. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection, and then only the shortest time reasonably necessary to effect such collection.

Section 7.11. CLOTHES DRYING FACILITIES. Outside clothes-lines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.

Section 7.12. RESTRICTION ON FURTHER SUBDIVISION. No Apartment within the property shall be further subdivided or separated into smaller apartments by an Owner, and no portion less than all of any such Apartment nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board.

Section 7.13. SIGNS. No signs whatsoever (including, but not limited to commercial, political and similar signs) which are visible from neighboring property shall be erected or maintained on any Property except:

(a) Such signs as may be required by legal proceedings;

(b) Not more than two (2) residential identification signs each of a combined total face area of seventy-two (72) square inches or less;

(c) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen (18) by twenty-four (24) inches in height and width and having a face area not larger than three square feet or as required by statute; and

(d) Such signs the nature, number, and location of which have been approved by the Board in advance.

Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Developer

or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of property.

Section 7.14. EASEMENTS. There is hereby created a blanket easement upon, across, over and under the above described Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company or the Council or their agent to install and maintain facilities and equipment on said Property and to affix and maintain wires, cables and conduits on, in and under the roofs and exterior walls of any building. This easement shall in no way affect or diminish in any manner whatsoever, rights granted by any other recorded easements on said Property. This easement shall be limited to Improvements as originally constructed. There shall be an access easement to all buildings for the delivery and collection of the U.S. Mail.

Section 7.15. ENCROACHMENT. In the event any portion of the Common Elements encroaches upon any unit or any unit encroaches upon the Common Elements, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. If a building is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on parts of the adjacent residence due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 7.16. COMMON WALLS. The rights and duties of Owners with respect to Common Walls shall be as follows:

(a) The owners of contiguous apartments who have a Common Wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(b) In the event that any Common Wall is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to re-build and repair the Common Wall without cost to the other adjoining Owner or Owners.

(c) In the event any such Common Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests, or family, it shall be the obligation of the Council to re-build and repair such wall.

(d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Common Wall without the prior consent of the Board.

(e) In the event of a dispute between Owners with respect to the construction, repair or re-building of a Common Wall, or with respect to the bearing

of the cost thereof, the Owners shall submit the dispute to the Board, the decision of which shall be final and binding to all Owners.

Section 7.17. INSURANCE. The Board, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the Property except contents of individual Apartments, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work, in the event of damage or destruction from all reasonable hazards. The Board, or its duly authorized agent, shall also obtain a broad form public liability policy covering all Common Elements, and all damage or injury caused by the negligence of the Council or any of its agents. Said insurance may include coverage against vandalism. All such insurance coverage obtained by the Board shall be written in the name of the Council for the benefit of the Council and the Owners and their mortgagees as their interests may appear. The Council shall hold all insurance proceeds collected by it in trust for the purposes stated in this Declaration, including but not limited to, rebuilding the damaged Common Elements, Apartments, Building or Buildings, and for the benefit of the Owners and their mortgagees. The Board shall have exclusive authority to negotiate with the insurance carrier and to adjust losses, make settlements, and give releases to the insurance carrier. The Board is irrevocably appointed agent for each Owner subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Council and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Council in this regard; provided, however, that nothing in this Declaration shall entitle an Owner or any other party to priority over any institutional first mortgagee with respect to the distribution to any unit of any insurance proceeds allocable to such unit. In addition to the aforesaid insurance required to be carried by the Council, any Owner may, if he wishes, at his own expense, carry any and all other insurance he deems advisable. It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, personal liability insurance, theft and other insurance covering personal property damage and loss.

Section 7.18. EMINENT DOMAIN. The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Property, the members hereby appoint the board of the Council of Co-Owners and such persons as the board may delegate to represent all of the members in connection with the taking. The board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Council, which shall act as Trustee for the benefit of all interested parties, including, but not limited to, the members and their mortgagees; provided, however, that nothing in this Declaration shall entitle an Owner or any other party to priority over any institutional first mortgagee with respect to the distribution to any unit of any insurance proceeds allocable to such unit.

Section 7.19. ENFORCEMENT. The failure of any Owner to comply with the provisions of this Declaration, the Articles and/or the By-Laws shall give rise to a cause of action in the Council and any aggrieved Owner for the recovery of damages, for injunctive relief, or both, as

appropriate. The Council, or any Owner, or both, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, liens and changes now or hereafter imposed by this Declaration, the Articles and By-Laws. Failure by the Council or by any Owner to enforce any right arising out of this Declaration, the Articles, or By-Laws shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.20. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7.21. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the Apartment, and Common Elements, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than a majority of the Apartment Owners. Any amendment must be recorded.

Section 7.22. VIOLATIONS AND NUISANCE. Every act or omission whereby any provision of this Declaration is violated may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Developer, the Council or any Owner or Owners of Apartments. However, any other provision to the contrary notwithstanding, only Developer, the Council, the Board, or the duly authorized agents or any of them, may enforce by self-help any of the provisions of this Declaration.

Section 7.23. VIOLATION OF THE LAW. Any violation of any state, municipal, or local law, ordinance, or regulation, pertaining to the ownership, occupation or use of any property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 7.24. BINDING EFFECT. By acceptance of a deed or by acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, agrees to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Developer, its successors, assigns and grantees, covenant and agree that the Apartments and the membership in the Council and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Apartment even though the description in the instrument of conveyance or encumbrance may refer only to the Apartment.

Section 7.25. LEASING. No owner, except for a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding, or any deed or other arrange-

ment in lieu of foreclosure, shall be permitted to lease his Unit for transient or hotel purposes. Any lease for a period of less than 30 days, or with respect to which rents are received more frequently than monthly, shall be deemed, but not by way of limitation, "for transient or hotel purposes", and shall constitute a violation of this Declaration. All leases shall be in writing; shall expressly state that the term of the lease shall be subject in all respects to the provisions of the Declarations, Articles, and By-Laws; and shall provide that any failure of the lessee to comply with the terms of the Declaration, Articles and By-Laws shall be a default under the lease. Only an entire Apartment together with its appurtenant interest in common elements may be rented or leased, and then only to a single family.

Section 7.26. EXEMPTION OF OWNER. No Owner of an Apartment may exempt himself from liability for his fair and equitable contribution toward the common expenses by waiver and non-use of any of the Common Elements and facilities or by the abandonment of his Apartment.

Section 7.27. OWNER'S RESPONSIBILITY. Each Owner shall be responsible for compliance by said owner's agent, tenant, guest, invitee, lessee, licensee, their respective servants and employees to the provisions of this Declaration, Articles, By-Laws and Council rules as they may be amended from time to time. The owner's failure to so ensure compliance by such persons shall be grounds for the same action available to the Board by reason of said Owner's own noncompliance.

Section 7.28. AD VALOREM TAXATION. Each Apartment shall be assessed separately for all taxes, assessments and other charges of or imposed by the State of Arizona, any political subdivision, special improvement or assessment district, or of any other taxing or assessing authority. For the purpose of such assessment, the valuation of the General Common Elements shall be apportioned among the Owners based upon the Fractional Interest (as defined in Article I, Section 3(e) above) assigned to each of them. The Board shall furnish to the County Assessor or other responsible official of any such taxing or assessing authority all necessary information with respect to the apportionment of such assessments and shall request that each Apartment be carried on the tax records as a separate and distinct parcel of property. No forfeiture or sale of any Apartment for delinquent taxes, assessments or other government charges shall divest or in any way affect the title to any other Apartment.

Section 7.29. REDUCTION OF NUMBER OF UNITS. If any Apartment is taken by eminent domain proceedings or is destroyed and not rebuilt, so that a co-ownership ceases to exist, the undivided fractional interest of each co-owner in the entire horizontal property regime shall be adjusted proportionately, subject, however, to Section 30(b) of this Declaration.

ARTICLE VIII

MORTGAGEE PROTECTION

Section 8.1. MORTGAGEE RIGHTS. No breach of any provision herein contained nor the enforcement of any assessment lien as provided herein shall defeat or render invalid the lien of any prior mortgage made in good faith and for value encumbering any apartment, but all of the provisions hereof shall be binding upon and shall be effective against any Owner whose title is derived through judicial foreclosure, trustee's sale or otherwise.

Section 8.2. FIRST INSTITUTIONAL MORTGAGEE APPROVAL REQUIREMENTS. Unless all of the institutional holders of first mortgages of Units have given their prior written approval, the Council shall not be entitled to:

(a) By act or omission seek to abandon or terminate the Horizontal Property Regime;

(b) Change the pro rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro rata share of ownership of each Unit in appurtenant real estate and any improvements thereon which are owned by the Owners in the property in undivided pro rata interests ("Common Area"), and in no event may any change in pro rata interest or obligations be made more than seven (7) years from the date of this Declaration;

(c) Partition or subdivide any Apartment;

(d) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Owners shall not be deemed a transfer within the meaning of this clause;

(e) Use hazard insurance proceeds for losses to any part of the Property (whether to Units or to Common Area) for other than the repair, replacement or reconstruction of such improvements, except in case of substantial loss to any Units and/or Common Area.

(f) Amend any material provision of this Declaration, the By-Laws or the Articles. For purposes of determining what provisions are material in this Declaration, the Articles, and the By-Laws, a "material provision" shall include, but not be limited to, any provision in such documents which would change the percentage interests of the unit owners and any provision which is required by the rules, regulations or guidelines of programs administered by the Federal National Mortgage Association (FNMA) as of the date of such amendment.

(g) Effectuate any decision to terminate professional management, and assume self management of the Property.

Section 8.3. NOTIFICATION AS TO MORTGAGEES. Each apartment Owner shall notify the Council of Co-owners through the Secretary of the Council of the name and address of the holders of all first mortgages encumbering such Owner's Apartment. Each Owner shall likewise notify the Council through the Secretary of the Council as to the release or discharge of any such first mortgage. In addition, the holder of any first mortgage encumbering an Apartment within the Spanish Trail Condominium may notify the Council, through the Secretary, of such holder's identity and address and a description of the Apartment which such holder's first mortgage encumbers. The Council shall maintain a record of the names and addresses of the institutional holders of first mortgages as to which it receives notice pursuant to the provisions of this Section, and shall provide the holders of all such first mortgages with written notification as follows:

(a) Written notification at least thirty (30) days prior to the effective date of (i) change of the Manager, if any, (not including change in employees of a corporate

manager) or (ii) any change in this Declaration, the Articles, if any, the By-laws or the recorded plat.

(b) Written notification of any default by an Owner of the obligations of such Owner established by this Declaration, the Articles or the By-Laws which is not cured within thirty (30) days after default; provided, however, that such written notification shall be provided only to holders of first mortgages as to which the Council is given notice pursuant to this Section which encumber the Apartment (or Apartments) owned by the Owner in default.

Section 8.4 FIRST MORTGAGEE ACCESS TO RECORDS AND ATTENDANCE AT MEETINGS. Any institutional first mortgagee shall, upon written request to the Council of Co-Owners, be entitled to:

(a) Inspect the books and records of the Council of Co-Owners during normal business hours.

(b) Receive the annual audited financial statements of the Council of Co-Owners ninety (90) days following the end of the Council's fiscal year.

(c) Receive written notice of all annual and special meetings of the members or of the Board, and institutional first mortgagees shall further be entitled to designate a representative to attend all such meetings.

Section 8.5 NOTICE TO MORTGAGEES OF DESTRUCTION OR TAKING. If any Unit or any part of the common elements is substantially damaged or is destroyed, or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify all institutional first mortgagees. As used herein, "substantially damaged" shall mean damage exceeding TEN THOUSAND (\$10,000) DOLLARS. If requested in writing by an institutional first mortgagee, the association shall evidence its obligations under this Section in a written agreement in favor of such first mortgagee.

IN WITNESS WHEREOF, HSL PROPERTIES, INC./LA JOLLA PALMS ENTERPRISES as Developer has caused this First Amended Declaration to be executed by the undersigned duly authorized parties this 22nd day of December 1980.

HSL PROPERTIES, INC./LA JOLLA
PALMS ENTERPRISES, a Joint
Venture

By Humberto S. Lopez
HUMBERTO S. LOPEZ, President
HSL PROPERTIES, INC.

By Alfred L. Lopez
ALFRED L. LOPEZ, General
Partner LA JOLLA PALMS
ENTERPRISES

APPROVED:

HSL SPANISH TRAIL PROPERTIES, LTD.

By Humberto S. Lopez
HUMBERTO S. LOPEZ
General Partner

CONSENT

TITLE INSURANCE COMPANY OF MINNESOTA, a Minnesota corporation, hereby consents to the foregoing First Amended and Restated Horizontal Property Regime as Trustee under that certain Deed of Trust of which HSL Spanish Trail Properties, Ltd. is Beneficiary, recorded at Docket 6212, page 333, as amended by instruments recorded at Docket 6214, page 254 and Docket 6214, page 267.

TITLE INSURANCE COMPANY OF
MINNESOTA as Trustee under
Deed of Trust

By [Signature]
Title Assistant Vice President

STATE OF ARIZONA)
County of Pima) ss:

On this 22nd day of December, 1980, before me the undersigned officer, personally appeared Humberto S. Lopez, the President of HSL Properties, Inc., a California corporation, and that he executed the foregoing instrument for the purposes therein contained on behalf of said corporation which is a joint venturer in HSL Properties, Inc./ LaJolla Palms Enterprises, a Joint Venture.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires:

Nov 14, 1983

STATE OF CALIFORNIA)
County of San Diego) ss:

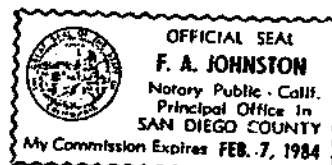
On this 7 day of JANUARY, 1980, before me, the undersigned officer, personally appeared Alfred L. Lopez, a General Partner of La Jolla Palms Enterprises, a limited partnership, and that he executed the foregoing instrument for the purposes therein contained on behalf of said partnership which is a joint venturer in HSL Properties, Inc./ La Jolla Palms Enterprises, a Joint Venture.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires:

Feb 7, 1984



STATE OF ARIZONA)
) ss:
County of Pima

On this 27th day of JANUARY 1980,
before me, the undersigned officer, personally appeared
W. CLARK MCFARLAND, ASST. V.P., and that he
executed the foregoing instrument for the purposes therein
contained on behalf of Title Insurance Company of Minnesota.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal.

Kathleen E. Strode
Notary Public

My commission expires: 1-10-83

STATE OF ARIZONA)
) ss:
County of PIMA

The foregoing instrument was acknowledged before me
this 27th day of DECEMBER 1980, by Humberto S.
Lopez, the General Partner of HSL SPANISH TRAIL PROPERTIES
LTD.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal.

[Signature]
Notary Public

My commission expires:

NOV. 14, 1983

12.00 9381

INDEXED	COPIES	SLOTTED
---------	--------	---------

State of Arizona }
County of Pima } ss

I hereby certify that the Instru-

ment was filed for record as request

MINNESOTA TITLE

BOOK 3456 Page 318-340

Witness my hand and Official Seal

and our state written

P. J. I. KENNEDY, County Recorder

[Signature]

Deputy

