

**CONDITIONS, COVENANTS, AND RESTRICTIONS OF THE**  
**“Playa de Oro Neighbors Association, AC”**  
*“Asociación de Vecinos Fraccionamiento Playa de Oro” A.C.,*

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**Whereas**, The Playa de Oro Project (the "Project") consists of the following; Block 2 - lots 4 through 5, Block 3 - lots 1 through 13, Block 4 – lots 1 through 13, Block 5 – lots 1 through 12, Block 6 – lots 1 through 11, Block 7 – lots 1 through 30, Block 8 – lots 1 through 18, Block 9 – lots 1 through 12, Block 10 – lots 1 through 12, Block 11 – lots 1 through 12, Block 12 – lots 1 through 25, Block 15 – lots 1 through 23, Block 16 – lots 1 through 14, Block 17 – lots 1 through 25, Block 18 – lots 1 through 12, Block 19 – lots 1 through 21, Block 20 – lots 1 through 12, Block 21 – lots 1 through 14, Block 22 – lots 1 through 14, located approximately six and one-half (6 ½) miles North of San Felipe, Baja California Norte, Mexico, as described and recorded in Mexicali, Mexico by Parkstrong S. de R.L. de C.V. as the certain property known as PLAYA DE ORO SUBDIVISION.

**NOW, THEREFORE**, "Asociación de Vecinos Fraccionamiento Playa de Oro" A.C., also known as "Playa de Oro Neighbors Association A.C." (the "Association" or "A.C.") hereby declares that the property, improvements, appurtenances and facilities as shown on the Unit Plan, to be recorded in connection with this Project and described above shall be held, sold, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only and subject to, the following uniform covenants, and conditions, restrictions, limitations, reservations, grants of easements, rights, right-of-way rights, liens, charges, and equitable servitudes, all of which are hereby declared, established, expressed and agreed:

- (1) To be in furtherance of a plan for the subdivision and sale of individual Lots as defined in the FRACC. Regime filed in Mexicali, Baja California;
- (2) To be for the benefit which are for the purpose of protecting the value, desirability and attractiveness, and of and which shall run with the land.
- (3) To be for the benefit of the Owners of Lots/Homes, their heirs, successors and assigns, in the Project;
- (4) To run with the real property and be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof in the Project or any portion thereof;
- (5) To inure to the benefit of every portion of the Project and any interest therein; and to each Owner thereof;
- (6) To inure to the benefit of and be binding upon each successor, assignee, and benefactor in the interest of each Owner. Any conveyance, transfer, sale assignment, lease, sublease and rental made by Developer or by the Association of the Lot/Home in the Project, shall and hereby is deemed to incorporate by reference, the provisions of this Declaration, including, but not limited to, covenants, conditions, restrictions, limitations, grants of easements, right-of-way-rights, liens, charges and equitable servitudes contained herein. The provisions of the Declaration shall be enforceable by the Owners, or his successor in interest, and shall also be enforceable by the A.C. including the "Asociación de Vecinos Fraccionamiento Playa de Oro A.C.", its Board of Directors, Committees, or any Person, firm, corporation or other association, duly authorized by the Association or its Board of Directors, to enforce all or any one or more of the provisions hereof.

## **ARTICLE I**

### **DEFINITION OF TERMS\***

Whenever used in this document, the following terms shall mean;

**"Approved"** shall mean and refer to approval granted by the Architectural Committee on any building, changes, additions, fences or improvements on any lots and homes by an Owner.

**"Architectural Committee"** shall mean and refer to the committee described in Article VI.

**“Assessment”** shall mean that portion of an extraordinary cost of maintaining, improving, repairing, constructing, operating and managing the Project or the Development outside of the normal course of business, which is to be paid by each Property Owner as determined by the Association, including, but not limited to, regular assessments, special assessments and emergency assessments as may be determined from time to time by the BOD and approved by the Association Members in an ordinary Assembly meeting.

**“Association”** shall mean an incorporated association, particularly, the “Asociación de Vecinos Fraccionamiento Playa de Oro, A.C.”, which entity shall have the duty of maintaining, operating, and managing the common area of the Project in the manner and to the extent provided for herein. Each Owner shall become a member of the “Asociación de Vecinos Fraccionamiento Playa de Oro, AC”, a Mexicali Baja California non-profit benefit corporation, contemporaneously with the acquisition of his/her/their Lot/Home and its successors and assigns, without further documentation of any kind.

**“Assembly”** shall mean a meeting of the Members or Associates of the Association.

**“Board or Board of Directors”** shall mean and refer to the body in charge of overseeing the activities of the Association.

**“Bylaws”** shall mean and refer to the bylaws of the Association, as defined herein, as amended from time to time.

**“CC&R’s”** shall mean and refer to the Rules and Regulations governing the daily operation of the Playa de Oro Subdivision as amended from time to time and to be enforced by the Association.

**“Common Area(s)”** shall mean all real property including any improvements thereon, owned and controlled by the Association, as defined herein, including certain areas of land designated as roadways, reserves, beach access, recreational access and utility easements subject to all easements and rights of use described herein for the common use and enjoyment of the Owners hereinafter defined as the “Common Area(s)”. The Common Area(s) to be managed by the Association includes only the property and assets owned by it, which may include but is not limited to roads, beach access, recreation facilities, the pools owned by the Association and hot tub(s), security gates, the common perimeter walls both inside and outside, pool pumps and equipment thereof. Notwithstanding the fact that the Association does not own the private roadways, streets, the perimeter wall and the park area and easements, it shall by express provision thereof, be responsible for general maintenance and upkeep of same.

**“Common Expense”** shall mean and include the actual and estimated expenses of operating the Common Area and any reasonable reserves for such purpose as found and determined by the Board.

**“Common Interest”** shall mean the proportionate undivided interest.

**“Contiguous Lot”**: Prior to April 1, 2023, no more than two adjacent lots where owner(s) have opted not to pay dues on one of the lots.

New ‘Contiguous lots’ option for dues exemption will not be allowed / established after April 1, 2023.

Beginning April 1, 2023, any new modification, or improvements to an existing ‘contiguous lot’ that meets the definition of ‘improved lot’, will nullify / disqualify the non-dues paying status of that ‘contiguous lot.’ Beginning / effective on the date of any sale / ownership transfer of ‘contiguous lots’, the ‘contiguous lot’ status ends. Each individual lot will have the annual assessment based on the ‘improved / unimproved’ status.

**“Currency used by the Association”** With the exception of taxes, accounting and reporting requirements, the currency denomination used by the Association in communications and collections with its Members for Dues, Assessments, fines and fees, and payment thereof shall be in U.S. (\$) Dollars, legal currency of the United States of America, unless indicated to the contrary, and all (\$) amounts, funds, and payments must be received in U.S. (\$) Dollars or the equivalent amount in Pesos, Mexican currency, at the exchange rate published in the Mexican Official Daily Gazette on the date of payment.

**“Developer”** shall mean and refer to Parkstrong S. de R.L. de C.V., its successors and assigns if such successors or assigns should acquire additional phases of Playa de Oro Subdivision and appurtenances.

**“Development”** shall mean the real property, Lots, tracts of land and common areas located within the Playa de Oro Subdivision, in the Port of San Felipe, Municipality of Mexicali, Baja California, Mexico.

**“Dues”** shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Playa de Oro Subdivision Project, which is to be paid by each Lot Owner as determined by the Association, on an annual basis. With the exception of taxes, accounting and reporting requirements, the currency denomination used by the Association in communications with its Members for Dues, Assessments and fees and payment thereof shall be in U.S. (\$) Dollars, legal currency of the United States of America, unless indicated to the contrary, and all (\$) amounts, funds, and payments must be received in U.S. (\$) Dollars or the equivalent amount in Pesos, Mexican currency, at the exchange rate published in the Mexican Official Daily Gazette on the date of payment.

**“Fine(s)”** shall mean the amount assessed for violations and/or late fees or late payments as defined herein. Fines will continue to be assessed every quarter, or portion thereof, in which violations continue, and/or until full payment is made to bring the homeowner account current. The minimum fine shall be \$25.

**“Owner”** shall mean and refer to the owner of record, whether one or more persons or entities, of any Lot whether through a Fideicomiso or in fee simple, which is a part of the Properties, including acquisition by private contract and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**“Legally Fused Lot”** Is the legal combination of 2 or more lots into one lot. This is issued by the city of San Felipe. These lots now have one tax bill and ONE HOA dues / assessment annually because it is now one lot.

**“Lot”** shall mean and refer to each subdivided tract of land shown on the Project and/or Subdivision plan except for the private roads, the common areas, the utility easements, reserves, government donations, and commercial property.

**“Unimproved Lot”** shall mean and refer to a Lot that is in its natural state and has not been improved or constructed upon.

**“Improved Lot”** shall mean and refer to a Lot that has a permanent or semi-permanent structure thereon, included but not limited to, palapas, fences, walls, electric service, septic systems, structural slabs, dwellings, or any kind of construction.

**“Member”** shall mean an Associate Member of the Association, who shall be a legitimate Lot Owner in fee simple and/or titleholder of a fiduciary right in a real estate property trust (Fideicomiso) over a Lot in the Development.

**“Notify”** or **“Notification”** shall mean to send a written notice to the address on file with the Association. Those with Notification addresses in the United States shall be sent by U.S. mail. Those with Notification addresses in Playa de Oro shall be placed in their designated area. Those with an address located elsewhere within Mexico shall be sent by regular Mexican mail. Those that have valid e-mail shall be notified by e-mail and all notices shall be posted on the website. Notwithstanding the above, it is the responsibility of each Owner to consult the website periodically for any notices, calls to order to Assembly meetings or votes or any Notifications whatsoever.

**“Properties”** shall mean and refer to Playa de Oro Subdivision which real property is herein before described.

**“Right to Use”** shall mean and refer to Playa de Oro Property Owners.

\*The meaning of these definitions shall also apply and pertain to defined terms in the By-Laws of the Association.

## **ARTICLE II**

### **MEMBERSHIP**

#### **Section 1. Association Membership.**

Every Owner of a Lot, which is subject to Assessments and/or Dues, shall be a member of the Association, thereby waiving any right to assemble in a different association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or parcel, which is subject to Assessments and/or Dues. Each Owner shall be responsible to notify the Secretary of the Association of any transfer of ownership. New Owners shall be bound to the current and future provisions of the CC&R's.

#### **Section 2. Formation of Association.**

The Association shall be made up of Lot Owners. The Association shall have sole supervisory and enforcement rights and privileges over the Development. The Association shall have the right to review, cancel or honor any written property management contract.

#### **Section 3. Responsibility of the Association.**

The Association shall be responsible for overseeing and contracting the professional management of the Association and common areas and for enforcing or the causing to be enforced, the covenants, conditions and restrictions of the subdivision.

#### **Section 4. Responsibility of the Association Members.**

The Association Member shall be responsible to adhere to the rules voted on by the Association. The Members shall be responsible to be current on the Association Dues, fines, and/or Assessment(s) in order to have voting privileges in any Association election. The 2008 \$250 Assessment and 2009 annual Dues increases above \$600 remain due and payable and considered in determining all future 'current in Dues' status. Should the Association be required to take any legal action against any member for any reason, said Association Member will be responsible to pay any and all legal fees incurred by the Association. Each Association Member will be responsible to abide by these Association CC&R's. From time to time, the BOD may be required to enact new guidelines. The Members will be notified of the added rules and will vote on the permanent changes at the corresponding annual Assembly (membership) meeting. Individual owners submitting items for the annual Assembly (membership) meeting must have the endorsement of twenty (20) members current in dues and assessments. Endorsements may be by petition or email.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

##### **Section 1. One class of voting membership.**

The Association Members shall be all Lot Owners, and shall be entitled to one vote for each Lot owned, including contract buyers, who shall be considered an Owner and for which full-assessed Association Dues and Assessments are paid. When more than one person holds an interest in any Lot, all such persons shall be Members of the Association, but shall be entitled to one vote per Lot as provided in Article Six of the Association By-Laws. The vote for such Lot shall be exercised as determined by its Owners, but in no event shall more than one vote be cast with respect to any Lot. It is the responsibility of the collective Lot Owners to determine their one vote and any dispute by the Owners of the vote cast shall render that vote invalid.

When any Owner owns more than one contiguous Lot and pays the full Assessments and/or Dues on all Lots, one vote per Lot shall be allowed. Owners of contiguous Lots (no more than two) have the option to pay one Assessment(s) and/or Dues and would have only one vote per two contiguous Lots.

##### **Section 2. Definition of Quorum.**

Written notice of any meeting or Assembly called for the purpose of taking any action shall be provided as established in Article 28 of the By-laws as follows: Notice shall be sent to each Associate in the manner that the Board of Directors deems most appropriate, which may be: (i) by e-mail at the addresses on file with the Secretary, (ii) published in the Association's website, (iii) published in the Community Bulletin Board and/or (iv) at the option of the Board of Directors by single publication of the call to order in one of the newspapers of major circulation in the area, with the stated advance notice of at least forty-five (45) days prior to the meeting. At the first such meeting called, the members present or proxies received electronically or by mail, 50% of which, plus two members of the Board shall constitute a quorum. If the required quorum is not present, another meeting may be called in ten minutes time. The required quorum at this subsequent meeting shall be twenty-six percent (26%) of the Associates and two members of the Board. On Third call, ten minutes after the second, the meeting shall be deemed established with the attendance of at least one member of the Board and the Associates that are present.

A special meeting to undertake a specific action may be held at any time if a simple majority of the Associates are present.

The quorum requirements and voting are allowed to be done electronically by a third-party company.

### **Section 3. Special Vote.**

Unless a simple majority of the Associates has voted its approval, or a favorable resolution has been obtained in an ordinary Assembly meeting, the Association shall not be entitled to:

- a. By act or omission, change, waive, or abandon any purpose of regulation or enforcement thereof pertaining to the architectural design or the exterior appearance of the units.
- b. Fail to maintain fire and extended coverage insurance on any insurable Common Area property on a current replacement cost basis in an amount not less than one hundred percent of the insurable value (based on current replacement cost).
- c. Use hazard insurance proceeds for losses to any Association property for other than the repair, replacement, or reconstruction of such property.

### **Section 4. Board of Directors (BOD).**

The Board of Directors, "BOD", will be the administrative body of the Association and shall be ruled by the provisions of Chapter X and other relevant provisions contained in the By-Laws. Eligibility for Board.

Each member of the Board of Directors shall be a current Lot Owner. Board of Directors must be current in his or her dues and/or assessments. Any Board Member which is no longer a Lot Owner or becomes more than 60 days delinquent in dues and/or assessments must resign immediately from the BOD. If the replaced Director is an officer of the BOD, a new vote for that position shall be made at the next meeting of the BOD. No Member shall receive any payment for serving on the BOD except for reimbursement of reasonable out-of-pocket expenses as duly documented and approved. Scheduled meetings will be held between July and April, dates and times to be determined by the BOD.

### **Section 5. Responsibility of the BOD.**

In addition to the responsibilities contained in Article Twenty-One of the By-laws, the BOD has a fiduciary responsibility to the Association and its members for wise and beneficial use of the Dues and Assessments. The Architectural Committee, which shall have at least 1 board member, will be selected by a majority vote of the BOD. The BOD shall be responsible for Notification of any Association Assembly or meeting or change in meeting, including the Annual Meeting. The Association shall have the responsibility for maintaining all common areas owned and controlled by the Association, including but not limited to pools, walls, perimeters, security, utilities, easements, roadways, and oversee the professional management company, if any, hired to maintain these areas by the Association.

### **Section 6. BOD new improvement limits**

The BOD is limited to not spending more than five thousand dollars (US\$5000) on any new improvements without the approval of a majority of eligible voters whether at the general assembly meeting or a mid-year vote if necessary.

### **Section 7. BOD Term Limits**

The Term Limit shall be a two year, two-term consecutive limit for all serving on the board of directors. A board member may run again after being off the BOD for one term and then resubmit their name as a candidate. Exception: if by three (3) days before the deadline for self-nomination, there are not enough candidates to fill vacancies, then a current board member who has served two consecutive terms shall be able to submit his or her name to the candidate pool for voting.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

#### **Section 1. Annual Dues.**

In April of each year the BOD will present to the Associates a proposed budget for approval that will determine the Annual Dues for the following calendar year. Budget approval by the Associates will be determined by favorable resolution of an ordinary Assembly meeting of the Association. The BOD may contract for professional management and the Dues or Assessments collected shall be held separately by the Association and used to pay duly documented expenses which include, but not be limited to, improvements, taxes, insurance premiums, security, and any other expenses normally covered and paid by the Association. The maximum Annual Dues may be increased or decreased by favorable resolutions of the Annual Assembly meeting or by favorable resolution of an ordinary Assembly meeting of the Association. The limitations hereof shall not apply to any changes in the method and basis of the Dues and/or Assessments undertaken as an incident on a merger or consolidation in which the Association is authorized to participate under its Articles. Prior to the Annual General Assembly membership meeting, the Board of Directors of the Association shall publish to the Associates an update to the approved budget. Dues may be paid annually or quarterly. Annual dues shall be paid no later than January 31<sup>st</sup> of each calendar year and the quarterly dues shall be paid no later than the first day of each quarter. A fine of \$25 will be added to the Dues or to a Property Assessment every calendar quarter when there is a payment delinquency according to the established due dates as defined in this Section until full payment is made to bring the account current. These fines will be effective with Dues and Assessments due beginning with the third quarter of 2012.

## **Section 2. Purpose of Dues and Assessments.**

The Dues and Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Development for residents and Owners of the Properties, for the improvement, maintenance and insurance of the Common Areas, to pay taxes on the Common Areas, and to oversee and pay the professional management of the Subdivision, among other items as determined by the BOD. No Director shall be paid for serving as a Director except for reimbursement of approved reasonable and documented out-of-pocket expenses.

## **Section 3. Creation of the Lien and Personal Obligation of Dues and Assessments.**

Each Owner of any Lot, by acceptance of ownership thereof, whether or not it shall be so expressed in such Ownership, is deemed become a member of the Association and to covenant and agree to pay to the Association: (1) Annual Dues and/or Assessments, and (2) Special Assessments for capital improvements, or other Assessment on a case by case basis, such Dues and Assessments shall be established and collected as hereinafter provided. The Annual Dues and Special Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Lot(s), and shall be a continuing lien upon the Lot(s) against which each such Dues and/or Assessments are made. Each such Dues and/or Assessment(s), together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was listed as the Owner of such Lot(s) at the time when the Dues and/or Assessment(s) became due. The personal obligation for delinquent Dues and/or Assessments shall also be a personal obligation to the Owner's successors in title. The recorded Property Owner shall be considered jointly and severally liable with any successive Owner for any unpaid Dues and/or Assessments when a Lot(s) is sold by means of a private purchase or assignment of rights agreement or any other private transfer.

## **Section 4. Special Assessments for Capital Improvements.**

In addition to the Annual Dues and/or Assessment(s) authorized above, the Association may levy a special Assessment only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, any such assessment shall be approved by a favorable resolution or vote during an ordinary Assembly meeting of the Association. If such assessment is not approved by the ordinary Assembly of Members as provided herein, there shall be no Special Assessment.

## **Section 5. Uniform Rate of Assessment.**

Both annual Dues and Assessments and Special Assessments must be fixed at a uniform rate for (i) unimproved lots and at a uniform rate for (ii) improved lots, the latter defined as a lot with any permanent structure, such as palapas, fences, walls, septic systems, structural slabs, etc, and will be collected as defined above.

## **Section 6. Date of Commencement of Annual Assessments and/or Dues: Due Dates.**

The annual Assessments and/or Dues provided herein shall commence on the first day of the month following the purchase of the Lot(s) and shall be pro-rated for the first year. The BOD shall recommend to the General Assembly for approval, the amount of the annual Dues and/or Assessments per class of Lot. Written notice of the Lot Owners approved Annual Assessment and/or Dues shall be sent to every Owner prior to the fiscal year.

## **Section 7. Effect of Nonpayment of Dues and/or Assessments.**

The Association may bring an action of law against the Owner personally obligated to pay the Dues and/or Assessments with a lien against the Lot(s) including reasonable filing and attorney's fees. No Owner may waive or otherwise escape liability for the Dues and/or Assessment provided for herein by non-use of the Common Areas or abandonment of his Lot(s). Except as provided herein, no sale or transfer shall relieve any Lot(s) from liability for any Dues and/or Assessments thereafter becoming due or from the lien thereof.

### **Section 7.1. Nonpayment of Dues and/or Assessments.**

Under special circumstances, the Board may evaluate a delinquent dues situation, upon request by the seller, regarding the potential sale of a property. The primary factor in a potential negotiation for reduced delinquent dues would be "no realistic expectation of recovering the fees without a negotiated settlement". The fiduciary responsibility of the Board would be to negotiate any settlement of the delinquent fees in favor of the membership, with the objective of adding a future dues paying property, effective on date of sale. The agreed upon assessment will clear the previous owners' "bad debt" and allow the new owner to start fresh owing HOA dues the following 1st of the month after the sale of the property. This potential negotiation shall not be available to any board member or their immediate family.

### **Section 8. Assessment Shortfall.**

Any operational shortfalls requiring an additional Assessment will require the favorable vote and/or resolution of the Associates at an ordinary Assembly meeting.

## **ARTICLE V**

### **OWNER'S RIGHTS**

#### **Section 1. Dedication of Common Areas.**

The Developer, in the Playa de Oro Subdivision as recorded with the Public Registry of Mexicali, Baja California Norte, Mexico, has designated certain areas of land as roadways, reserves, beach access, recreational access, and utility easements. Said areas are destined to be used by the Lot Owners and their guests for roadway, recreational and utility purposes, reserving also the use of the roadways for the additional purpose as roadways by those persons using and maintaining the Common Areas. The Common Areas are not dedicated for use by the general public. Access and use of said Common Areas may be controlled and limited by the Association so long as such controls and limitation do not unreasonably restrict the use of the roadways by Association Members. The final plat of the Playa de Oro Subdivision is hereby incorporated into these CC&Rs by this reference.

#### **Section 2. Owners' Rights of Enjoyment.**

Every Owner shall have the right and use of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) It is the intent and design of the Playa de Oro Subdivision to be an ecologically friendly Development. The Sea of Cortez directly offshore of the Subdivision is designated as a biosphere where a unique ecological equilibrium exists. The Sea, its beaches, and the surrounding area are an

eco-dependent environment. Every Owner will pledge to preserve the beaches, desert and its diverse ecology to the best of their ability. The Owners also covenant to further preserve the environment with judicious use of water and electricity, and to refrain from littering and exposing the environment to toxic chemicals.

- (b) The right of the Association to establish rules and regulations for use of the Common Areas and facilities located thereon.
- (c) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas for use by non-owners.
- (d) The right of the Association to suspend the voting rights and right to use of the recreational facilities and other Common Areas by an Owner for any period during which any Dues or Assessment against the Lot(s) remains unpaid, **finest remain unpaid, construction that does not comply with architectural guidelines;** and for a period not to exceed sixty (60) days for any infraction of **the Association's** published rules and regulations.
- (e) The right of the Association to set speed limits. Maximum of (20) twenty miles per hour. Violators shall be fined, to be deposited in the Association Maintenance Fund. Owners that have not paid assessed fines will be barred from voting at the Annual Assembly meeting. All motorized vehicles used in the Development must stay on the defined streets, including any and all off road-vehicles. Fines for violations under this paragraph will consist of US\$25 Dollars per occurrence, and if unpaid within 30 days, the amount of the fine will be added to the respective Homeowner's Dues and Assessments account. Repeated violations of speeding by individuals previously cited will result in doubling of the fine (from \$25 to \$50 US.)
- (f) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. However, the Association shall not have the authority to sell or transfer any real property owned by it except to such a public agency, authority, or utility or to another legal entity having similar purposes to the Association without an instrument agreement to such dedication or transfer authorized as required in the By-Laws of the Association.

### **Section 3. Delegation of Use.**

Any Owner may delegate, in accordance with the CC&R's, his right of enjoyment to the Common Areas and facilities to the members of his family, guests, or contract purchasers who reside on the Property. Any Owner shall be allowed to rent its home. Renters and/or Guests shall comply at all times with the provisions of the CC&R'S and any renter rules that may be set forth by the Association. The BOD reserves the right to require short-term tenants to pay a Resort fee to access development facilities.

### **Section 4. Rights-of-Way and Easements.**

Each Lot and Common Areas shall be subject to such rights of way and easements as the Developer (and the Association after it has acquired title to the Common Areas) may grant for installation and maintenance of water lines, sewer lines, power lines, and telephone lines. The Developer, and thereafter the Association, specifically reserves the right and power to grant such easements while title to the Common Areas remains with the Developer, and the Association shall have such right and power after title to the Common Areas has been transferred to it regardless of whether such reservation appears in any conveyance, property deed or sales document.

## **Section 5. Disclosure of Delinquencies.**

Any Owner, upon written request, is entitled to Notification from the Association of any default in the performance of any other Lot Owner who has current indebtedness to or any obligation to the Association which is not cured within sixty days.

## **Section 6. Viewing of Records.**

Any Owner, upon written request to the Board and at a reasonable time, shall be entitled to view at the Association's office any of the following:

- a. Copies of budgets, notices of Dues, notices of Assessments, insurance certificates, if any, or any other notices or statements.
- b. Any audited or un-audited financial statement of the Association within ninety days following the end of any fiscal year, which are prepared for the Association and distributed to the Owners.

## **Section 7. Taxes.**

The Owners may jointly or severally pay taxes or other charges which are in default, and which may or have become charges against any Common Areas, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Areas, and the Lot owners making such payments shall have the right to be immediately reimbursed by the Association or to pursue legal remedies to obtain same.

# **ARTICLE VI**

## **ARCHITECTURAL CONTROL**

### **Section 1. Architectural Committee.**

The Architectural Committee may have up to three representatives to be appointed by the Board of Directors of the Association who may serve indefinitely until they are removed by a majority vote of the BOD. The appointed members of the Architectural Committee shall remain in their positions until removed by a majority vote of the Board of Directors of the Association, with or without cause, and the Board of Directors of the Association shall fill all appointed vacancies on the Architectural Committee. Members of the BOD may serve on the Architectural Committee.

### **Section 2. Architectural Guidelines.**

No structures or improvements shall be erected, placed, altered, maintained or permitted to remain upon the properties unless drawings and specifications, signed by the Owner of the site or his authorized representative, are submitted to and approved in writing by the Architectural Committee. The drawings shall include, without limitation, the following matters: two sets of plot plan showing proposed contouring of grades, location of buildings, parking areas, and plans for all floors, cross-sections and elevations. The specifications shall describe types of construction, materials to be used, exterior finish and color, exterior lighting and water uselimiting devices to be installed. The HOA encourages utilization of the concept of "Dark Sky" lighting for exterior lighting. Photos of the lot before any construction may begin need to be included. All plans must include pictures of desert plants, their location and the number of plants to be moved to the green area.

Protected plants may be required to remain in their location or may be moved to the green area or a lot(s) as approved by law and the Architectural Committee. Before removing any plants from green areas, you must have permission from the Architectural Committee and any relevant governmental authority if required by law. Approval shall be based, among other things, on conformity and harmony of external design with neighboring structures, the effect of location and use of improvements on neighboring sites, relation of finished ground elevations of the site being improved to that of neighboring sites, and conformity of the plans and specifications to the purpose and general plan and intent of these covenants. Each Lot will have the type of home that can be placed on that Lot specified and specific locations for garage(s), carport(s), RV enclosure(s), guesthouse, outbuildings and rooms. Each specification is made to preserve as much of the view of the Lot and neighboring Lots as possible and the aesthetics and integrity of the Development. Once approved, building must begin on the main residence first. No garage or casita can be built before main residence construction begins.

### **Section 3. Residential Units Per Lot.**

No more than one single-family residence shall be constructed on any Lot, though a guesthouse or detached garage may be permitted if approved by the Architectural Committee. No Lot may be subdivided.

### **Section 4. Review Fee.**

A non-refundable fee of seven hundred fifty dollars (US\$750) will be charged by the Architectural Committee to review and approve the plans for home building. This fee shall only include the service of reviewing the plans submitted, whether they are approved or not, and does not and shall not include any work by the Architectural Committee to correct or adjust said plans to conform to the Architectural guidelines set forth by the BOD.

When adding a wall or addition that was not approved with the original drawings, a one-hundred dollars (\$100) plan review fee will be assessed.

### **Section 5. Continuing Approval.**

The Architectural Committee shall have a continuing role in the Approval and disapproval of proposed changes from the original design and construction, including, without limitation, exterior remodeling, changes of color, exterior lighting, provision for storage, recreational equipment (swimming pools, swing sets, volleyball courts, tennis courts, horseshoe pits, palapas, golf course and BBQ and beach access) and exterior pet facilities. No such changes or additions will be permitted unless approved by the Architectural Committee, which may, in its discretion, waive the requirement that drawings and specifications be submitted as to such changes.

### **Section 6. Prohibited Actions.**

The Architectural Committee shall not approve and no Owner, except for the BOD, shall modify or otherwise alter any perimeter block, iron, etc., wall, constructed by Developer. Notwithstanding the foregoing, in the event any Common Area decorative wall or perimeter wall is damaged or destroyed, the Association shall repair the damaged or destroyed wall to the same style and appearance as originally constructed by Developer.

### **Section 7. Limits on Construction Terms.**

Once construction of a dwelling or residence has been initiated, it shall continue in a diligent and regular manner until the exterior is completed. Any exterior construction that has been suspended for a period of eight (8) months or more shall be evaluated on a case by case basis by the Architectural Committee to determine whether said construction shall be (i) completed, or (ii) torn down and removed so as to not create an eyesore of unfinished construction in the Development. Fines of US\$25 Dollars per quarter will be levied upon the Owner in the event he does not comply with the ruling of the Architectural Committee within the required timeframe.

### **Section 8. Reconstruction of Residences.**

In the event of damage or destruction to a Residence by fire or other casualty, the Owner shall within two (2) months clear away all debris and within four (4) months commence to reconstruct the Residence and diligently prosecute the reconstruction to completion in substantial compliance with the original plans and specifications. The residence shall be restored so that the exterior appearance substantially resembles the original appearance of the Residence, both in form and in color, as before the damage or destruction, subject to changes as may be approved by the Architectural Committee. Should the Owner choose not to rebuild, the Lot must be completely cleared of all structural material including but not limited to the foundation. In either case, the Dues and Assessments will continue to be in effect.

The approval by the Architectural Committee of any plans and specifications for an improvement to a Lot shall not be deemed to constitute a waiver by the Architectural Committee of its right to object to the same features or elements embodied in plans and specifications submitted for approval on any other Lot.

### **Section 9. Enforcement Rights.**

The Architectural Committee and the Owner of a Lot shall have the right, but not the obligation, to enforce, by proceedings at law or in equity, any or all of the provisions of these CC&Rs, including, without limitations, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate these CC&Rs to enjoin or prevent them from doing so, to cause the violation to be remedied or to cover damages for the violation.

### **Section 10. Viewing of Records.**

Architectural Committee records shall be available to all Owners for review during reasonable business hours with reasonable notice at the Committee's business office.

## **ARTICLE VII**

### **RESTRICTIVE COVENANTS AS TO USAGE**

#### **Section 1. Dwelling Quality, Size and Protection of View.**

All dwellings must be site-built or of the constructed designs presented to the Architectural Committee for approval. Construction shall not be permitted to begin until approval has been granted by the Architectural Control Committee. Restrictions may apply as to what floor plan can be put on any certain Lot.

All dwellings shall be single-family homes. The square footage of the main structure exclusive of open porches, patios and garages, shall not be less than eleven hundred (1100) square feet west of the green area and thirteen hundred (1300) square feet east of the green area. The Architecture Committee may grant exceptions to these provisions.

Set-back requirements are five feet (5') from each boundary and intended to provide a minimum corridor between each dwelling. The Architectural Committee shall have the right to adjust the set-back requirements for all Blocks so as to enhance the view corridors which may not be less than (5') per lot.

No dwelling shall be more than fourteen feet (14') high from finish grade with the exception of the existing 2-story homes. The point of measurement for the height limit shall be determined on a case by case basis and approved by the Architectural Committee.

All dwellings shall be of good quality, permanent-type new construction, affixed to the Property and aesthetically compatible with the other structures in the Subdivision. All garages, carports, RV enclosures, outbuildings, if approved, shall be of good quality, permanent-type construction, specifically drywall, brick, foam, or concrete block with stucco finish, or any combination of these as long as they are aesthetically compatible with the whole premises and Subdivision and approved by the Architectural Committee.

All construction approved by the Developer prior to June 30, 2009 is deemed to have met all requirements in this Section.

**Section 2. Land Use and Building Type.**

No Lot shall be used except for residential purposes, and no business, trade or manufacture of any sort or nature shall be conducted thereon. This restriction does not include legal in-home businesses doing business exclusively through the Internet, telephone and/or conducted solely within the privacy of the dwelling.

No building shall be created, altered, placed or permitted to remain on any Lot within the subdivision which exceeds one story and no higher than the existing original on-site dwelling, and under no circumstances no more than fourteen (14) feet at its highest point from the "measurement point" as defined above. No element shall exceed the 14' limit except chimneys and they shall not be higher than 16'.

All structures shall be constructed of new materials, or approved used materials such as used bricks or beams. Old buildings, whether intended for use in whole or in part as the main residential structure or for use as a garage or other outbuilding, shall not be moved upon the premises. Only single-family residences, garages, and carports, and fully enclosed RV garages shall be allowed to be constructed as approved by the Architectural Committee. Basements and daylight basements are discouraged but allowed as long as they are approved and the height restriction of 14 feet from finish grade is met. Homeowners with below grade structures acknowledge that there is potential for flooding in these structures and are responsible to provide mitigation to reduce the probability of flooding and hold harmless the Architectural Committee and the Association in the event of flooding, insect, spiders, snakes or other damage.

**Section 3. Exterior Colors.**

All homes, garages, outbuilding walls and their trim, and perimeter walls shall be of the approved color, shade, and tone and shall be kept in good repair and condition. Approved accent colors may be of individual choice as long as they do not constitute a nuisance or an annoyance to the neighborhood. Accents are window and door trim, fascia, columns. All exterior colors and finishes require the approval of the Architectural Committee prior to application and installation.

**Section 4. Vehicles.**

All vehicles shall be parked in the garages, carports, driveways, or designated parking areas. No vehicles, boats, trailers, etc. are to be parked on vacant lots unless the owner has given permission and not to exceed the 21 day limit. Each occupant shall be responsible to see that visitors and guests utilize the parking areas provided. Other than normal maintenance, outdoor repair work shall not be performed. Used oils and lubricants shall be properly disposed of and may not be disposed of in the Development.

Recreational Vehicles (RV's) campers and fifth wheels may be parked in close proximity to the main dwelling with the intent to be used as additional guest space for a period not to exceed twenty-one (21) twenty-four (24)-hour periods of time (three weeks) each calendar quarter. Recreational Vehicles (RV's), campers or fifth wheels may be parked in close proximity to the main dwelling with the intent to be used as housing for the period not to exceed one year during construction only. Recreational Vehicles must be maintained in good working order and must be solely on the lot being improved.

Recreational Vehicles (including but not limited to) such as ATV's, dune buggies, rails, boats, campers, camper-trailers, motor homes, may not be kept or stored within the properties except on a temporary, transitory basis. However, nothing shall prevent storage of such vehicles on the properties in an approved enclosed RV storage outbuilding or covered garage and then only if the garage door is capable of being fully closed. ATV's and dune buggies will be considered appropriate if parked in a carport area as a passenger vehicle.

Trucks exceeding a capacity of one ton may not be regularly parked or kept on the Properties. These prohibited vehicles shall not be allowed in any driveway or other exposed parking areas, or any street (public or private), except for the purposes of loading, unloading, making deliveries or emergency repairs ("Transitory Use") provided that no Transitory Use shall extend over more than twenty-four hours during any seven (7) consecutive days.

No repairs, painting or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle or equipment shall be conducted upon any street (public or private), Lot or elsewhere within the Property, except where specifically designated or wholly within an enclosed garage provided, however, that such activity may be prohibited entirely if it constitutes a nuisance or environmental concern.

## **Section 5. Animals.**

No animals, fowl, poultry, fish, reptiles, or insects of any kind ("animals") shall be raised, bred or kept on any Lot, except that a reasonable number of birds, fish, and up to three dogs and cats or other household pets may be kept on each Lot provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities, but under no circumstances any type of reptiles or insects or wild animals that may be a danger to the community. No animal shall be maintained in any Lot that constitutes a nuisance or danger to other Owners of Lots in the Property. Animals belonging to Owners, occupants or their licensees, guests, tenants or invitees must be kept either within an enclosed portion of a Lot in an approved enclosure or secured on a leash by a person capable of controlling the animal.

After 1 warning, a \$50 fine will be assessed anytime an animal is not on a leash while not on their own property.

Furthermore, any Owner shall be liable to each and all other Owners, their families, guests, tenants and invitees for any unreasonable noise or damage to person or property caused by any animals brought upon the Property by an Owner or by members of his or her family, tenants or guests; and it shall be the duty and responsibility of each Owner to clean up after such animals. Excessive noise is prohibited after 10 P.M. and before 8 A.M.

## **Section 6. No Hazardous Activities.**

No activities shall be conducted nor shall any Improvements be constructed anywhere on a Lot which are or might be unsafe or hazardous to any person or property. Neither FIREARMS NOR AMMUNITION, TO INCLUDE FIREWORKS, are allowed on the property for any reason. Firearms are illegal in Mexico. Anyone bringing a firearm onto the Property will be in violation of Mexican law and will be dealt with by the Mexican Authorities.

## **Section 7. Signs and Billboards.**

No signs, billboards or advertising devices of any nature except as may be authorized by the Architectural Committee shall be erected or maintained in the Subdivision. "For sale" signs size 24" x 24" on metal or 4 x 4 wood posts, and approved realtor "For Sale" signs are acceptable. Any signage erected by the builder during construction must be removed from the Property within seven days of completion of the construction either by the builder or the Owner. Failure to remove such signage shall subject the Owner to a fine of US\$25 Dollars per quarter, or portion thereof, during the time the sign remains in violation.

## **Section 8. Nuisances.**

No unreasonably offensive or noxious activity shall be carried on upon the Subdivision, nor shall anything be done thereon which may be or become an unreasonable annoyance, nuisance or danger to the neighborhood. ATV's, Sand Rails, Dune Buggies, and all off-road vehicles must adhere to the speed limits of the community. Off-road vehicles must stay on designated roads. There will be no racing, doughnut or offroad activity within the community. Paddle tires will not be permitted on community roads. Violators will be requested to leave the Development.

## **Section 9. Fences, Hedges and Walls.**

No chain link or other types of fences shall be permitted. No hedges or fences of Ocotillo will be permitted. Brick or stucco-finished concrete block walls may be permitted for the purpose of providing privacy or safety for pets and play, patio or pool area and shall not exceed five (5') feet in height as follows; columns may not exceed (5') feet and must be a minimum of (12)' feet apart. Stucco walls may not exceed (4') feet. You will be able to have wrought iron fences up to but may not exceed (6') feet provided, however, the wall plans must be approved by the Architectural Committee as to construction, materials, style and height. Corner lots and intersections walls may not exceed the following, (3') feet height stucco and (2') feet wrought iron for a maximum of (5') feet. Wrought iron must be kept in good repair at all times. Walls may be built on Owner's side of property line. At no time can your wall block the neighbors view above (4') feet. No walls shall be built in common areas by individual Lot Owners with the intent, purpose or result of keeping other Lot Owners from access to the common areas.

## **Section 10. Garbage.**

Garbage containers may be provided at locations specified by the Architectural Control Committee as an expense of the Association as paid for by the Lot Owners. Owners will be responsible for disposing of their garbage and trash in Approved containers.

## **Section 11. Exterior Maintenance.**

Each Owner of a structure shall be responsible to maintain the structure in a manner consistent with its original design, including painting, repair, landscaping, and removing trash and debris. No outside burning will be permitted except for outdoor barbecue and recreation in approved appurtenances. To maintain the appearance of the Community, no exterior storage is allowed of any kind other than automobiles as stated within this document.

### **Section 12. Antennas, Poles, Satellite Dishes and other Structures.**

No antenna, pole or other structure shall be erected unless approved by the Architectural Committee. The Architectural Committee shall have no authority over the size, height, or placement of Vendor's antenna as determined by the communications company and their engineers. Satellite dishes shall be no more than twenty (20) inches in diameter or about 1 meter across if oval, and if at all possible be installed below the parapet so as to not be visible from the street. Solar panels may be added when approved, but usually only on garages, carports, or outbuildings and should remain within the height restrictions. All AC units, ducts, water heaters, propane tanks, etc., shall not be visible from the adjoining Properties.

### **Section 13. Oil or Mining Operations.**

No operations of any kind for the purpose of discovering or removing any oil, gas, gravel, water or minerals of any kind shall be conducted on the Properties or any premises subjected to these covenants.

### **Section 14. Easements.**

Easements for installation and maintenance of utilities and drainage facilities are reserved as to all roadways and common areas and all property located within five feet of any Lot boundary line. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot except for those improvements or disturbances made by a public authority for which the perpetrator shall be responsible and shall reasonably restore when the purpose of the disturbance is accomplished. To maintain the appearance of the Playa de Oro Development, in the event that a Property has not been restored by the corresponding public authority, utility company or third party within eight (8) months of a disturbance, the Owner of the Lot shall be obligated to restore the Lot(s) or structures thereon to their original condition, reserving its right to independently pursue the appropriate legal action against the perpetrator as the Owner deems fit.

## **ARTICLE VIII**

### **GRANT OF EASEMENTS**

The Association grants unto the utility providers a non-exclusive easement to enter upon the premises identified as the Subdivision Common Area(s) at any and all times for the purposes of performing their duties and responsibilities. This easement expressly includes, without limitation, the right of the fire department personnel engaged in firefighting operations to operate vehicles and equipment in areas without liability for damage to landscaping, plants, cacti, bushes, shrubs or trees, and further that utility provider personnel may make such excavation as is necessary to service and maintain underground utilities, common area access, beach access and to utilize such surface area for the operation of equipment, piling of excavated materials as reasonably necessary therefore, but shall have the obligation to repair the landscape and private roads to their original status.

## ARTICLE IX

### GENERAL PROVISIONS

#### **Section 1. Enforcement.**

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these CC&Rs. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Property Owners/Association Members agree to be subject to the enforcement of these covenants. The Association enforcement may be pursued through one or both of the appropriate court systems in Mexicali, State of Baja California, Mexico.

Any court finding violation of any covenant shall have, in addition to the foregoing remedies, the right to require abatement of the violation, including the removal of any structures or improvements, at the expense of the Owner of the Lot or Lots on which the violation occurs. Further, the party ultimately prevailing in any such action described in this section (as evidenced by a final judgment for which no appeal is taken) shall be entitled to an award of reasonable attorneys' fees incurred in connection with the bringing of or defense of such action and any other remedies to which it is entitled by law.

#### **Section 2. Severability.**

If any of the obligations, options, privileges, covenants or rights created by these CC&R's shall be declared unlawful by a court of law, then such provision shall be deemed null and void.

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 3. Obligatory Nature of the By-Laws and CC&R's.**

The Association Members have adopted these Conditions, Covenants and Restrictions (CC&Rs) to rule and regulate various activities of the Association and of the Playa de Oro Subdivision. Such CC&Rs may be amended from time to time, as provided in the Association By-Laws. The provisions of these CC&Rs shall prevail in the event of any discrepancies between the Association By-laws, the CC&Rs and any other document that governs the Association. Any person, whether an individual or entity, shall become a Member of the Association or Associate, and be subject to the rights and obligations contained in the by- laws and these CC&Rs by virtue of having acquired a Lot(s) in the Playa de Oro Subdivision, or by virtue of holding a beneficiary interest in a real estate trust (Fideicomiso) created over a Lot(s) in the Playa de Oro Subdivision.