



TO ALL APPLICANTS:

Enclosed are:

1. A copy of Article V, Section 7 of the Basic Protective Restrictions
2. A copy of PVHA Resolution No. 182
3. An application form, including agreement of financial responsibility.
4. Indemnity Agreement

The experience of PVHA has shown that the trimming of trees and plantings can be an emotional, time consuming and expensive process. Every effort should be made to resolve the situation with your neighbor.



APPLICATION FOR TRIMMING OF TREES

Applicant _____	Phone _____
Applicant Address _____	Email _____
Lot _____ Block _____	Tract _____
Owner of property with trees/shrubs _____	Phone _____
Owner Address _____	Email _____
Lot _____ Block _____	Tract _____

Received Date _____
Fee Paid _____ Receipt # _____

View obstruction must be located on adjacent or adjoining property. Provide Plot Map showing both properties and location of trees/shrubs that affect your view. Provide photos of trees/shrubs keyed on the plot map.

Explain in detail how the vegetation issue affects your view.

Please list all efforts to resolve the problem with your neighbor. Attach copies of all correspondence.

1. I have received and read PVHA Resolution No. 182. I am willing to pay the cost of trimming or removal (if agreed to by the parties) in accordance with said Resolution.
2. I understand that if legal proceedings by Alternate Dispute Resolution and a court action is necessary to enforce the PVHA decision that I will have the right and responsibility for any such legal action. I understand that even though I have the responsibility for enforcement, such enforcement of a decision could require that PVHA be involved in Alternative Dispute Resolution ("ADR") proceedings and a lawsuit. The potential expense is substantial and an exact cost estimate at this time is impossible.
3. I understand that PVHA does not arrange for trimming, nor institute any legal action to compel enforcement of its opinion. As stated in Resolution 182 "... The final act in the process for PVHA is to establish an opinion that the applicant can seek to enforce. PVHA will not be involved in scheduling trimming on behalf of the applicant; or any efforts to enforce the provisions of Article V Section 7."

IF ALTERNATIVE DISPUTE RESOLUTION OR LITIGATION IS COMMENCED IN ORDER TO ENFORCE THE DECISION OF PVHA, I ACKNOWLEDGE AND UNDERSTAND THAT I WILL HAVE THE RESPONSIBILITY FOR ANY LEGAL PROCEEDING. I ALSO UNDERSTAND THAT EVEN THOUGH THE RESPONSIBILITY IS MINE THAT PVHA COULD BE INVOLVED. FOR EXAMPLE PVHA COULD BE NAMED AS A PARTY IN LITIGATION. IF PVHA IS INVOLVED, I SPECIFICALLY AGREE TO PAY ALL EXPENSES INCURRED BY PVHA AND AGREE TO INDEMNIFY PVHA FOR ANY LIABILITY ARISING OUT OF THE ALTERNATE DISPUTE RESOLUTION OR LITIGATION.

Expenses include but are not limited to expert's and attorney's fees.

I UNDERSTAND AND AGREE TO INDEMNIFY AND REIMBURSE PVHA FOR ALL EXPENSES INCURRED BY PVHA RELATED TO THIS APPLICATION

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DATE

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SIGNATURE

RESOLUTION NO. 182

RESOLUTION OF THE BOARD OF DIRECTORS OF
THE PALOS VERDES HOMES ASSOCIATION
ADOPTING GUIDELINES AND ESTABLISHING PROCEDURES
FOR IMPLEMENTING THE ASSOCIATION'S
AUTHORITY TO MAINTAIN VIEWS, AND A POLICY THAT ENFORCEMENT OF THE
ASSOCIATION'S AUTHORITY SHALL BE DONE BY INDIVIDUAL MEMBERS NOT PVHA

WHEREAS, ARTICLE V, SECTION 7 OF THE DECLARATION OF ESTABLISHMENT OF BASIC PROTECTIVE Restrictions, Conditions, Covenants, Reservations, Liens and Charges and Certain Local Restrictions (hereinafter referred to as "Restrictions") of Palos Verdes Estates and portions of Miraleste provided in part:

"Representatives of the Homes Association... shall have the right at any time to enter on or upon any property for the purpose of cutting back trees or other plantings which may grow up to a greater height than in the opinion of the Homes Association is warranted to maintain the view and protect adjoining property."

WHEREAS, The Board of Directors (the "Board") of the Palos Verdes Homes Association (the "Association" or "PVHA") adopted Resolution No. 146 in November 2000, Resolution 150 in November 2002, Resolution 156 in May 2005, Resolution 159 in July 2006 Resolution 165 in March 2010, Resolution 169 in March 2013 and Resolution 172 to establish procedures for its members to utilize the authority of the Association to correct view impairments created by trees or other plantings;

WHEREAS, the Association has had experience with Resolution No. 146, No. 150, No. 156, No. 159, No. 165, No.169 and No. 172;

WHEREAS, it is the Association's policy to encourage resolution of view impairment issues between parties who are directly involved, whenever possible;

WHEREAS, in the course of resolution the parties frequently agree to the removal of trees or other plantings; removal requires the agreement of parties. The Association does not compel removal of trees or plantings without such agreement;

WHEREAS, the Association wishes to adopt written procedures regarding its view impairment authority so that members may better understand the procedures and remedies available pursuant to Article V, Section 7; and with the hope that this understanding will further promote settlement by the parties;

WHEREAS, the Association has held public meetings, circulated drafts and received written and oral communications from its members;

WHEREAS, the Association wishes to adopt both guidelines and establish procedures for its members to utilize the authority of the Association to establish an opinion that trees and other plantings have grown to a greater height than in the opinion of the PVHA is warranted to maintain the view, which cannot be resolved between the parties;

WHEREAS, Article VI Section 11, the Deed Restrictions give the Association "...the authority to interpret the Restrictions."

WHEREAS, The California Supreme Court has established a principle that judicial deference will be given to Association decisions that are made in good faith, within the scope of its authority and in accordance with reasonable covenants;

Nahrstedt v. Lakeside Village Condominium Ass'n (1994) 8 C4th 361, 33, CR2d 63. The California Supreme Court gave a comprehensive history and overview of common interest developments. The opinion sets out certain basic principles including:

“An equitable servitude will be enforced unless it violates public policy; it bears no rational relationship to the protection, preservation, operation or purpose of the land against which the CC&R’s are recorded; or it otherwise imposes burdens on the affected land that are so disproportionate to the restrictions beneficial effects that the restriction should not be enforced.”

The court instructed that “...generally courts will uphold decisions made by the governing board of an owners association so long as they represent good faith efforts to further the purposes of the common development, are consistent with the development’s governing documents and comply with public policy.”

In 1999, in the case of *Lamden v. LaJolla Shores* (1999) 21 Cal 4th 294, the California Supreme Court established the principal that as a matter of law California Courts must defer to a community association’s board decisions. The court held that where a duly constituted community association board upon reasonable investigation in good faith exercises discretion within the scope of its authority under its restrictions, courts should defer to the Board’s authority and presumed expertise. The court states “thus we adopt today for California Courts a rule of judicial deference to community association Board decision making.”

California law recognizes the right to obtain a mandatory injunction to trim trees that obstruct views in violation of deed restrictions. *Ezer v. Fuchloch* (1979) 99 CA3d 849, 160 CR 486.

WHEREAS, California Civil Code section 5975. *Entitled Covenants and Restrictions in Declaration-Enforcement* states at Section (a) “The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.”

WHEREAS, Enforcement of Article V, Section 7 generally benefits only one property owner, rather than the entire Association;

WHEREAS, nothing in these guidelines or procedures is intended to limit the authority of the Association;

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of this corporation does establish and adopt the following guidelines for the processing of all view impairment applications submitted to the Association and restating the policy that enforcement of Article V, Section 7, opinions established by PVHA shall be done by individual members.

The following words, phrases and terms shall have the following meaning ascribed to them.

The date when a view was obstructed is not mentioned in Declaration No. 1 and is not material.

1. “Cutting back trees or other plantings” means trimming of the necessary portions of a tree or planting to restore a view.
2. “Maintain and improve the view of” means one or more areas of view; and does not mean an unobstructed view.
3. “View” means primary view from a principal residence and any immediately adjoining patio or deck area at the same elevation as the residence which consists of a visually impressive scene or vista such as a scene of the Pacific Ocean, off-shore islands, city lights of Los Angeles basin, or the mountains.
4. “View Impairment” means a significant interference with and obstruction of a view by landscaping, trees or any other vegetation.
5. “Adjoining Property” means close, next to or in contact with one another. [*Welch v. Kai* (1970) 4 CA3d 374, 84 CR2d 619.] PVHA interprets Article V, Section 7 to apply to properties that adjoin the applicants property; or directly across a street.

WHEREAS, the Association wishes to establish procedures for its members to utilize the authority of the Association to correct view impairments, which cannot be resolved between the parties;

WHEREAS, the Association has retained the services of a professional mediator;

WHEREAS, enforcement of a PVHA decision to remove a view obstruction of PVHA generally benefits only one member; not the entire Association;

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of this corporation does establish and adopt the following procedure for the processing of all view impairment applications submitted to the Association, and a policy that enforcement of view restoration decisions of PVHA shall be done by individual members not PVHA.

The following are general policies of the Association:

1. The applicant shall submit information on an application form provided by the Association.
2. The applicant shall be required to document efforts to resolve the obstruction issue with his neighbor including copies of all correspondence between the parties.
3. The applicant shall pay an administrative application fee to the Association at the time an application is submitted. PVHA shall set the fee from time to time to reflect the expense to PVHA associated with said applications.
4. The applicant shall execute a financial responsibility agreement with the Association at the time an application is submitted.
 - A. The applicant must agree to pay the entire cost of the initial trimming or removal of trees or shrubs.
 - B. The applicant must agree to reimburse the Association for its fees and expenses related to the application particularly if PVHA is named as a defendant in a lawsuit.
5. If the owner appeals, as a condition of the appeal:
 - A. The owner must pay an administrative appeal fee to the Association, at the time the appeal is filed. PVHA will set the fee from time to time to reflect the expense to PVHA associated with the appeal.
 - B. The owner must execute a financial responsibility agreement and the owner must agree that if after a hearing and decision by the Board of Directors, if PVHA is named in litigation related to the Board decision the Owner will pay PVHA expenses and fees.
6. The Association will send a Notice to the owner of the property where the vegetation is located, ("affected property").
7. The Notice will inform the owner of the affected property of the action requested in the application; and that a mediator will be appointed.
8. The mediator and the parties may make reasonable efforts to mediate and reach an agreement between the applicant and the owner of the affected property; however, if the parties cannot agree, the mediator will prepare a written advisory opinion.
9. A copy of the advisory opinion shall be mailed to the applicant and owner of the affected property along with a notice that the opinion will become the opinion of PVHA unless the applicant or the owner appeal to the Board.
10. The Board shall review the advisory opinion to assure that it is not arbitrary or unreasonable. The advisory opinion shall constitute the opinion of the PVHA unless either party appeals the decision to the Board and pays the appeal fee within thirty (30) calendar days of the mailing of the decision. The appeal fee will be set from time to time to reflect the expenses related to the appeal.
11. If the advisory opinion is appealed; The Board will hold a de novo hearing; the Board will hear the

evidence and arguments of the parties and make an independent decision based on the presentations of the applicant and affected party.

12. It is the policy of PVHA to implement decisions without undue delay. If a decision is appealed to the Board, PVHA will put the appeal on a Board agenda, and both parties will be notified of the date of the Board hearing of the appeal. The appealing party must appear or give PVHA 10 days notice of a request that the appeal be continued until the subsequent Board meeting.

13. No more than one continuance will be granted. If the appealing member fails to appear at the continued hearing, the appeal will be denied.

14. It has been the experience of PVHA, that trimming requires the cooperation of the owner or a court order. The applicant and the owner of the affected property shall have the right and responsibility to schedule the trimming. The final act in the process for PVHA is to establish an opinion that the applicant may seek to enforce. PVHA will not be involved in scheduling trimming on behalf of the applicant; or any effort to enforce the provisions of Article V Section 7.

15. If any further action up to and including filing a lawsuit, is necessary to schedule the trim or to otherwise enforce the PVHA opinion, the applicant or the owner shall have the exclusive right and responsibility to pursue whatever means they deem appropriate and legal.

PASSED, APPROVED AND ADOPTED this _____ day of _____.

President
Palos Verdes Homes Association

Attest:

Executive Secretary
Palos Verdes Homes Association



APPEAL OF ARBITRATOR'S DECISION (Resolution No. 182)

Appellant			Phone	
Appellant Address			Email	
Lot		Block		Tract
Original Applicant			Phone	
Applicant Address			Email	
Lot		Block		Tract

Received Date	_____
Fee Paid	_____ Receipt # _____

Date of Arbitrator's decision:

1. The decision shall constitute the decision of the PVHA unless either party appeals the decision to the Board and pays the appeal fee within thirty (30) calendar days of the mailing of the decision .
2. I have received a copy of the Arbitrator's decision in the application filed by the above referenced Applicant
3. I understand that enforcement of the Board of Director's decision could require PVHA to be involved in Alternative Dispute Resolution ("ADR") proceedings and a lawsuit. The potential expense is substantial and an exact estimate at this time is impossible.

IF ALTERNATIVE DISPUTE RESOLUTION OR LITIGATION IS COMMENCED IN ORDER TO ENFORCE THE DECISION OF PVHA, I SPECIFICALLY AGREE TO PAY ALL EXPENSES INCURRED BY PVHA.

Expenses include but are not limited to experts and attorney's fees.

I UNDERSTAND AND AGREE TO INDEMNIFY AND REIMBURSE PVHA FOR ALL EXPENSES INCURRED BY PVHA RELATED TO THIS APPEAL

Appellant

Appeal Process:

1. A copy of the appeal will be given to the Board of Directors and placed on the agenda of a Board meeting. Notice of the meeting and a copy of the appeal will be mailed to all parties.
2. A copy of the Board decision on the appeal shall be mailed to all parties.

INDEMNITY AGREEMENT

This agreement (the "Agreement") to indemnify and hold harmless the Palos Verdes Homes Association ("PVHA") is entered into between ("Indemnitor(s)" or "Applicant(s)") and PVHA, and is made with reference to the following facts:

RECITALS

A. PVHA is a homeowners' association whose membership consists of all persons owning land within a certain designated geographic area coextensive with the city limits of the incorporated city of Palos Verdes Estates and portions of the city of Rancho Palos Verdes commonly known as Miraleste (the "Community Area"). Property located within the Community Area is subject to PVHA's authority to cut back trees or other plantings which have grown to a greater height than in the opinion of the Homes Association is warranted to maintain the view and protect adjoining property.

B. In 2018, consistent with the enabling covenants, conditions and restrictions, PVHA's Board of Directors (the "Board") adopted Resolution No. 182, which it amended and restated Resolution 159, 165 and 169 to "establish procedures for members to utilize the authority of the Association to correct view impairments created by trees or other plantings."

C. Resolution No. 182 establishes a step-by-step procedure by which a member may submit a view application to the PVHA, and the Board may render a decision on that application. Resolution No. 182 specifically contemplates that a dispute may arise out of a Board decision (the "Decision") that could result in an Alternate Dispute Resolution ("ADR") process or litigation. In this regard, Resolution No. 182 provides:

"...this corporation does establish and adopt ...a policy that enforcement of view restoration decisions of PVHA shall be done by individual members not PVHA"

"...The owner must execute a financial responsibility agreement and the owner must agree that if after a hearing and decision by the Board of Directors, if PVHA is named in litigation related to the Board decision the Owner will pay PVHA expenses and fees."

"...If any further action up to and including filing a lawsuit, is necessary to schedule the trim or to otherwise enforce the PVHA opinion, the applicant or the owner shall have the exclusive right and responsibility to pursue whatever means they deem appropriate and legal.."

D. Applicants have received copies of Resolution 182.

E. Applicants have submitted a view application to PVHA.

F. Applicant's acknowledge that the result of any action taken by PVHA may include, but is not necessarily limited to, participation in ADR, participation in the dispute resolution procedure contemplated by *California Civil Code section 1331.810, et. seq.*, and prosecution or defense of any and all actions in any way related to, or arising out of, attempts to enforce the decision, including any cross complaint or related action that may be filed by any party, and any appeals process(es).

G. In the event PVHA participates in or is involved in ADR and/or litigation in any way related to the subject matter of the Application, in addition to attorneys' fees and costs, PVHA may also become subject to affirmative awards for damages, and/or potential liability for attorneys' fees and costs to be paid to the prevailing party pursuant to *California Civil Code section 1354(c)*, or otherwise. Applicants understand that, even if Applicants enforce the PVHA decision with their own attorney, PVHA will incur legal expenses and costs. Applicants acknowledge that they are responsible for PVHA's attorneys' fees and costs. It is the policy of PVHA to indemnify members of the Board of Directors and staff from any action, suit or proceeding to the fullest extent permitted by California Law, which may well add to the cost reimbursable by Applicants hereunder.

H. Attorneys' fees and costs incurred by PVHA in participating in ADR and/or Litigation, and awards, attorneys' fees and costs awarded to respondents in such actions, can be very substantial. Applicants acknowledge that as a result of their promises under this Agreement, they will be liable and responsible for not only their own attorneys' fees and costs and those of the PVHA, but also, in the event Respondent is the prevailing party, for attorneys' fees and costs incurred by, and any damages assessed against PVHA for the benefit of any party.

I. With full knowledge and understanding of the foregoing and knowing that PVHA is acting in reliance on the undertakings herein; Applicants hereby agree to indemnify and hold harmless PVHA, its Board members and staff from and against any related attorneys' fees, costs, damages, and any other liability from and arising from or related to ADR and/or litigation, in accordance with the provisions set forth below.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Indemnification.** Indemnitors shall indemnify and hold harmless PVHA from and against any and all liability, claims, demands, judgments, losses, damages, costs, and expenses of any kind in any way arising out of or related to ADR and/or Litigation. Without limitation of the foregoing, this indemnification obligation specifically includes any and all attorneys' fees and costs that PVHA may in any way sustain, incur, or become liable for in consequence of PVHA's participation in alternate dispute resolution, PVHA's participation in the dispute resolution procedure contemplated by *California Civil Code section 1331.810, et seq.*, and PVHA's involvement in any and all suits, actions, disputes or proceedings

in any way related to or arising out of attempts to enforce the Decision, including any cross-complaints or related actions that may be filed by Respondent and any appeals process(es). Without limitation of the foregoing, this indemnification and hold harmless obligation includes claims by Respondent arising out of the negligence, or alleged negligence of PVHA, and specifically encompasses any and all attorneys' fees and costs incurred by Applicants and PVHA, as well as attorneys' fees and costs of, and any damages or judgment awarded to, Respondent in the event that Respondent is the prevailing party.

2. Arbitration.

a. All questions and disputes with respect to rights and obligations of the parties arising under this Agreement shall be resolved by binding arbitration, in accordance with the process set forth in the American Arbitration Association commercial dispute resolution procedures for the State of California.

b. A party may demand arbitration by delivering a written demand to the other party within sixty (60) days after the occurrence of the dispute.

c. The parties may agree on one arbitrator. If they cannot agree on one arbitrator, three arbitrators shall be appointed.

d. A hearing on the matter to be arbitrated shall take place before the arbitrator(s) at the office of the PVHA, at a mutually agreeable time to be selected by the arbitrator(s). The arbitrator(s) shall give at least twenty (20) calendar days notice of the hearing. Evidence may be admitted or excluded in the sole discretion of the arbitrator(s). The arbitrator(s) shall hear and determine the matter and shall execute and acknowledge the award in writing and cause a copy of the writing to be delivered to each of the parties. The presiding arbitrator shall be an attorney or a retired judge.

e. The decision of the arbitrator(s) shall be binding and conclusive on the parties. A judgment confirming the award may be given by any superior court having jurisdiction.

f. At the election of the arbitrator(s), the costs of the arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrator(s) may determine.

3. **Notices.** Any notice given by any party under this Agreement shall be personally delivered or sent by United States mail, postage prepaid, and addressed to Indemnitors and /or PVHA at their respective addresses for notices indicated below. Either party may change the place to which notices, requests, and other communications are to be sent to them by giving written notice of that change to the other.

PVHA
P.O. Box 188
Palos Verdes Estates, CA 90274

With a copy sent to: Sidney F. Croft, Attorney at Law
314 Tejon Place
Palos Verdes Estates, CA 90274

Address for Indemnitor:

4. **Successors Bound.** This Agreement shall be binding on and inure to the benefit of the parties and their legal representatives and successors, but it shall not inure to the assigns of either party unless the other party gives written consent.

5. **Headings.** Headings in this Agreement are for convenience only, and shall not be used to interpret or construe its provisions.

6. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

7. **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.

8. **Recitals.** The factual recitals are part of this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement on

INDEMNITOR(S)

(Name of Indemnitor)

Signature

Print Name and Title

PALOS VERDES HOMES ASSOCIATION

By:

Signature

Print Name and Title

Signature

Print Name and Title