

Doc # 1994-0375689  
10-JUN-1994 11:33 AM

Recording Requested By  
and

When Recorded Mail To:

McDONALD, HECHT & SOLBERG  
Mr. A. John Hecht  
600 West Broadway, Eighth Floor  
San Diego, California 92101

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY SMITH, COUNTY RECORDER  
RF: 60.00 FEES: 168.00  
AF: 105.00  
MF: 3.00

1080937-22

**DECLARATION OF RESTRICTIONS**  
**FOR**  
**WINDHAM AT CARMEL MOUNTAIN RANCH**  
**(A CONDOMINIUM/PLANNED DEVELOPMENT**  
**COMMON INTEREST DEVELOPMENT)**

TABLE OF CONTENTS

|   | <u>PAGE</u> |
|---|-------------|
| RECITALS .....  | 1           |
| ARTICLE I      DEFINITIONS .....  | 3           |
| Section 1.1      Architectural Committee .....                                | 3           |
| Section 1.2      Articles .....   | 3           |
| Section 1.3      Association .....  | 3           |
| Section 1.4      Association Property .....                                   | 3           |
| Section 1.5      Board .....  | 4           |
| Section 1.6      Building Envelope .....                                      | 4           |
| Section 1.7      Bylaws .....   | 4           |
| Section 1.8      Common Area .....  | 5           |
| Section 1.9      Common Expenses .....  | 5           |
| Section 1.10      Condominium .....   | 5           |
| Section 1.11      Condominium Plan .....                                      | 5           |
| Section 1.12      Declarant .....   | 5           |
| Section 1.13      Declaration .....   | 6           |
| Section 1.14      Eligible Insurer or Guarantor .....                         | 6           |
| Section 1.15      Eligible Mortgage Holder .....                              | 6           |
| Section 1.16      Exclusive Use Common Area .....                             | 6           |
| Section 1.17      Living Unit .....   | 6           |
| Section 1.18      Member .....  | 6           |
| Section 1.19      Mortgage .....  | 6           |
| Section 1.20      Mortgagee .....   | 6           |
| Section 1.21      Owner .....   | 7           |
| Section 1.22      Phase .....   | 7           |
| Section 1.23      Phase 1 .....   | 7           |
| Section 1.24      Project .....   | 7           |
| Section 1.25      Real Property .....   | 7           |
| Section 1.26      Retail Purchaser .....                                      | 7           |
| Section 1.27      Separate Interest .....                                     | 7           |
| Section 1.28      VA .....  | 7           |
| Section 1.29      Yard .....  | 7           |
| ARTICLE II      PROPERTY RIGHTS IN ASSOCIATION PROPERTY AND COMMON AREA ..... | 8           |
| Section 2.1      Title to the Association Property .....                      | 8           |
| Section 2.2      Owners' Easements of Enjoyment .....                         | 8           |
| Section 2.3      Delegation of Use .....                                      | 9           |
| ARTICLE III      MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION .....            | 10          |
| Section 3.1      Each Owner Is A Member .....                                 | 10          |
| Section 3.2      Classes of Voting Membership .....                           | 10          |
| Section 3.3      Termination of Class B Membership .....                      | 10          |
| Section 3.4      Commencement of Voting Rights .....                          | 11          |

PAGE

|              |  |    |
|--------------|--|----|
| ARTICLE IV   | COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION  | 11 |
| Section 4.1  | Covenant for Assessments   | 11 |
| Section 4.2  | Purpose of Assessments   | 11 |
| Section 4.3  | Maximum Regular and Special Assessments  | 11 |
| Section 4.4  | Right of Eligible Mortgage Holders to Approve Assessment<br>Increases; Decreases In Reserves | 12 |
| Section 4.5  | Non-Lien Assessments (Compliance)  | 13 |
| Section 4.6  | Schedule of Monetary Penalties   | 13 |
| Section 4.7  | Rate of Regular Assessments  | 13 |
| Section 4.8  | Water Sub-Metering; Non-Lien Assessments   | 14 |
| Section 4.9  | Rate of Special Assessments for Repairs  | 14 |
| Section 4.10 | Date of Commencement of Regular Assessments  | 14 |
| Section 4.11 | Adjustment of Assessments; Due Dates   | 14 |
| Section 4.12 | Limited Regular Assessments  | 14 |
| Section 4.13 | Model Homes  | 15 |
| Section 4.14 | Effect of Non-Payment of Assessments; Remedies of the<br>Association                         | 16 |
| Section 4.15 | Subordination of the Lien to First Deeds of Trust and First<br>Mortgages                     | 17 |
| Section 4.16 | Estoppel Certificate   | 17 |
| Section 4.17 | Non-Use of Common Area   | 17 |
| Section 4.18 | Taxation of Association  | 17 |
| Section 4.19 | Payment of Assessments By Declarant  | 17 |
| Section 4.20 | Capitalization of Association  | 17 |
| ARTICLE V    | POWERS AND DUTIES OF ASSOCIATION   | 18 |
| ARTICLE VI   | USE OF CONDOMINIUMS  | 18 |
| Section 6.1  | Residential Purposes   | 18 |
| Section 6.2  | Lease of Condominium   | 18 |
| Section 6.3  | Use Not to Impair Insurance  | 18 |
| Section 6.4  | Animals  | 19 |
| Section 6.5  | Nuisance   | 19 |
| Section 6.6  | Sign Control   | 19 |
| Section 6.7  | Outside Antennae   | 19 |
| Section 6.8  | No Owner Modification to Association Property or Common Area                                 | 19 |
| Section 6.9  | No Offensive Activity  | 19 |
| Section 6.10 | Power Equipment  | 20 |
| Section 6.11 | Use of Association Property and Common Area  | 20 |
| Section 6.12 | Owners Liable for Damage   | 21 |
| Section 6.13 | Decorating by Owner  | 21 |
| Section 6.14 | No Room Additions; No Impairment of Structures   | 21 |
| Section 6.15 | Exclusive Use Common Areas   | 21 |
| Section 6.16 | Use of Exclusive Use Common Areas  | 21 |
| Section 6.17 | Use of Porches and Decorative Balconies  | 22 |
| Section 6.18 | Use And Improvements To Yards  | 22 |
| Section 6.19 | Garages  | 22 |

|   | <u>PAGE</u> |
|---|-------------|
| Section 6.20 Outside Parking; No Parking In Driveways . . . . .                                     | 22          |
| Section 6.21 No Conversion of Parking Spaces . . . . .  | 23          |
| Section 6.22 Right of Access . . . . .  | 23          |
| Section 6.23 Restricted Use of Trailers, Etc. . . . .   | 23          |
| Section 6.24 Window Coverings . . . . .   | 23          |
| ARTICLE VII RESPONSIBILITIES OF MAINTENANCE . . . . .   | 23          |
| Section 7.1 Maintenance by Owners . . . . .   | 23          |
| Section 7.2 Failure to Maintain . . . . .   | 24          |
| Section 7.3 Maintenance by Association . . . . .  | 24          |
| Section 7.4 Adoption of Maintenance Plan . . . . .  | 24          |
| Section 7.5 Wood-Destroying Pests . . . . .   | 25          |
| ARTICLE VIII SEPARATION OF INTERESTS AND PARTITION PROHIBITED . . . . .                             | 25          |
| Section 8.1 No Separation of Interests . . . . .  | 25          |
| Section 8.2 No Partition . . . . .  | 25          |
| Section 8.3 Power of Attorney . . . . .   | 26          |
| ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA<br>OR ASSOCIATION PROPERTY . . . . . | 26          |
| Section 9.1 Damage or Destruction . . . . .   | 26          |
| Section 9.2 Condemnation . . . . .  | 28          |
| Section 9.3 Insurance . . . . .   | 28          |
| Section 9.4 Mortgagee Approval . . . . .  | 30          |
| ARTICLE X DAMAGE, DESTRUCTION AND CONDEMNATION OF<br>SEPARATE INTERESTS . . . . .                   | 30          |
| Section 10.1 Damage or Destruction . . . . .  | 30          |
| Section 10.2 Condemnation . . . . .   | 30          |
| Section 10.3 Mortgagee Approval . . . . .   | 30          |
| ARTICLE XI CONDEMNATION OF ASSOCIATION PROPERTY . . . . .   | 31          |
| ARTICLE XII ASSOCIATION'S RIGHT OF ENTRY . . . . .  | 31          |
| ARTICLE XIII ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES . . . . .                                  | 31          |
| Section 13.1 Common Area Licenses . . . . .   | 31          |
| Section 13.2 Association Property . . . . .   | 31          |
| ARTICLE XIV ENFORCEMENT . . . . .   | 32          |
| Section 14.1 Enforcement . . . . .  | 32          |
| Section 14.2 No Waiver . . . . .  | 32          |
| ARTICLE XV GENERAL PROVISIONS . . . . .   | 32          |
| Section 15.1 Severability . . . . .   | 32          |
| Section 15.2 Amendments Prior to Escrow Closings . . . . .  | 32          |
| Section 15.3 Amendments After Escrow Closings . . . . .   | 32          |

|  | <u>PAGE</u> |
|--|-------------|
| Section 15.4 Mortgagee Approval of Amendment . . . . .                     | 32          |
| Section 15.5 Extension of Declaration . . . . .                            | 33          |
| Section 15.6 Annexation; Reservation of Easements . . . . .                | 34          |
| Section 15.7 Enforcement Litigation . . . . .                              | 36          |
| Section 15.8 Encroachment Easements . . . . .                              | 36          |
| Section 15.9 Provisions Apply to All Condominiums . . . . .                | 36          |
| Section 15.10 Special Responsibilities of Association . . . . .            | 36          |
| Section 15.11 Limitation of Restrictions on Declarant . . . . .            | 37          |
| Section 15.12 Owners' Compliance . . . . .                                 | 37          |
| Section 15.13 VA Approval . . . . .  | 38          |
| Section 15.14 FHA Approval . . . . .                                       | 38          |
| Section 15.15 Payments of Taxes or Premiums by First Mortgagees . . . . .  | 38          |
| Section 15.16 Mortgagee Curing Default . . . . .                           | 38          |
| Section 15.17 Approval of First Mortgagees . . . . .                       | 38          |
| Section 15.18 Notice to Eligible Mortgagees . . . . .                      | 39          |
| Section 15.19 Documents to be Available to Mortgagees . . . . .            | 39          |
| Section 15.20 Mortgagee Protection . . . . .                               | 40          |
| Section 15.21 Conflicts . . . . .  | 40          |
| Section 15.22 Provisions of Civil Code Section 1360 . . . . .              | 40          |
| Section 15.23 Documents to be Provided to Prospective Purchasers . . . . . | 41          |
| Section 15.24 Association Property and Common Area Inspection . . . . .    | 41          |

#### SUBORDINATION AGREEMENT(S)

## DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS is made this 26th day of May, 1994 by CARMEL MOUNTAIN RANCH, a California partnership (hereinafter called "Declarant");

This Declaration is made with reference to the following

### RECITALS:

A. **THE REAL PROPERTY.** Declarant is the owner of that certain Real Property located in the City of San Diego, County of San Diego, California, more particularly described on Exhibit "A" attached to this Declaration.

B. **THE FIRST CONDOMINIUM PLAN.** Declarant has filed or will hereafter file a Condominium Plan with the Office of the County Recorder of San Diego County, California, covering a portion of the Real Property, to wit:

Lots 1 and 7 of CARMEL MOUNTAIN RANCH UNIT 19, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 13061, filed with the County Recorder of San Diego County on October 12, 1993.

C. **PHASE 1.** The first Phase of the Project (called "Phase 1") will consist of the land covered by the first Condominium Plan and lot 8 of CARMEL MOUNTAIN RANCH UNIT 19. Lot 8 will be owned by the Windham At Carmel Mountain Ranch Association and will be part of the "Association Property". Phase 1 is described as follows:

Lots 1, 7 and 8 of CARMEL MOUNTAIN RANCH UNIT 19, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 13061, filed with the County Recorder of San Diego County on October 12, 1993.

D. **PHASE 1 CONDOMINIUMS.** Declarant has improved or intends to improve Phase 1 by constructing twenty (20) condominium units within Phase 1 and Declarant intends to establish a condominium project under the provisions of the California CIVIL CODE providing for separate interests in space in certain areas (some of which are called "Living Units" and others of which are called "Yards") appurtenant to which will be an undivided 1/20th fractional interest in the Common Area of Phase 1. Present plans call for the Living Units in the Project to consist of four (4) floor plans, ranging in approximate size from 1,045 to 1,637 square feet. The residential buildings to be built in the Project are each presently planned to include more than one Living Unit. Construction plans are, however, subject to change from time to time.

The development of the Project will be consistent with the overall development plan submitted to the United States Department of Veterans Affairs.

**E. COMMON AREA AND ASSOCIATION PROPERTY.** Declarant has improved or intends to improve the Common Area within Phase 1 with residential buildings and related improvements. Private streets, walkways, landscaped areas, a recreational area and related improvements are planned to be constructed in the Project in areas to be owned by the Association ("Association Property"). Presently it is believed that the recreational facilities to be built with Phase 1 will consist of a pool, spa and showers. The recreational facilities will be located on lot 8 of CARMEL MOUNTAIN RANCH UNIT 19. The walkways, landscaped areas and additional private streets are planned for Phase 1 as well as future Phases. It is intended that the walkways, landscaped areas and additional private streets will all be located within the Association Property. However, Declarant can give no assurance that such subsequent Phases will be annexed to the Project. All recreational facilities built in the Project and made subject to this Declaration may be used by all Members of the Association pursuant to this Declaration. Any Association Property to be owned by the Association with respect to a Phase shall be conveyed to the Association prior to close of the first escrow in the respective Phase to a Retail Purchaser. Any such conveyance of Association Property shall be free of liens, other than non-delinquent taxes.

**F. ADDITIONAL PHASES.** Phase 1 is the first phase of a planned six (6) phase condominium project which is planned to be constructed on the Real Property. The presently planned location and sequence of the Project are described on Exhibit "B" attached hereto. There is no guarantee that all Phases will be constructed or completed or that the phasing will occur in the exact order set forth on Exhibit "B". If all Phases are completed and annexed as planned, there will be a total of one hundred and twenty (120) Condominiums in the Project. Each Condominium shall have appurtenant to it a membership in WINDHAM AT CARMEL MOUNTAIN RANCH ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), which will be the management body for the Project and the owner in fee of any Association Property.

**G. CONDOMINIUM ELEMENTS.** The Owners of a Condominium in each Phase will receive:

- (i) A Living Unit airspace;
- (ii) Any Yard airspace which the applicable Condominium Plan shows as being appurtenant to the Living Unit;
- (iii) The exclusive right to use and occupy any Exclusive Use Common Area which the applicable Condominium Plan shows as being appurtenant to the Living Unit (the Exclusive Use Common Areas presently planned for the Project include Balconies; however other areas may be later designated by Declarant in the applicable Condominium Plan);
- (iv) An undivided interest as tenant in common to the Common Area of the Phase in which the Living Unit is located equal to the reciprocal of the number of Living Units in that Phase;

(v) An easement for ingress, egress and recreational use over portions of the Common Area of other Phases, effective upon annexation of a Phase and conveyance of a Condominium in the Phase to a Retail Purchaser; and

(vi) An easement over the Association Property which has been conveyed to the Association, subject to the Association's rules, regulations and procedures.

H. **ADDITIONAL CONDOMINIUM PLANS; CONDOMINIUM/PLANNED DEVELOPMENT PROJECT.** It is intended that a separate Condominium Plan will be prepared for each Phase. This Project will be a combined condominium and planned development Common Interest Development.

I. **COMMON PLAN OF RESTRICTIONS; BINDING ON FUTURE OWNERS.** Before selling or conveying any interests in Phase 1 Declarant desires to subject Phase 1 in accordance with a common plan to certain covenants and restrictions for the benefit of Declarant and any and all present and future owners of the Real Property.

NOW, THEREFORE, Declarant hereby declares that all of Phase 1 and, upon annexation, each subsequent Phase, shall be held, sold and conveyed subject to the following easements, restrictions and covenants, which are enforceable equitable servitudes as described in California CIVIL CODE Section 1354 and which are for the purpose of establishing a general plan for protecting the value and desirability of, and which shall run with, the Real Property and be binding on all parties having any right, title or interest in Phase 1 and each subsequent Phase which is annexed to this Declaration, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1.** "Architectural Committee" shall mean and refer to the person or persons which may be from time to time appointed by the Board to serve as the Architectural Committee. The members of the Architectural Committee need not be members of the Board or the Association. Each member of the Architectural Committee shall serve until he or she resigns or is removed by the Board. The Board shall act as the Architectural Committee in the event the Board does not appoint an Architectural Committee.

**Section 1.2.** "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

**Section 1.3.** "Association" shall mean and refer to WINDHAM AT CARMEL MOUNTAIN RANCH ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

**Section 1.4.** "Association Property" shall mean all real property and easements owned by the Association from time to time for the common use and enjoyment of the Owners. The Association Property to be owned by the Association at the time of conveyance of the first Condominium in Phase 1 is described as follows:



**PARCEL A:**

Lot 8 of CARMEL MOUNTAIN RANCH UNIT 19, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 13061 filed with the County Recorder of San Diego County on October 12, 1993;

**PARCEL B:**

Lots 1 and 7 of CARMEL MOUNTAIN RANCH UNIT 19, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 13061, filed with the County Recorder of San Diego County on October 12, 1993;

**EXCEPTING FROM PARCEL B:**

(a) All Building Envelopes (including the Living Units and Common Area) shown and described on the WINDHAM AT CARMEL MOUNTAIN RANCH PHASE 1 Condominium Plan recorded in the Office of the County Recorder of San Diego County, California, on June 10, 1994 as Document No. 1994-0375689

(b) All Yards shown and described on the WINDHAM AT CARMEL MOUNTAIN RANCH PHASE 1 Condominium Plan recorded in the Office of the County Recorder of San Diego County, California, on June 10, 1994 as Document No. 1994-0375689; and

(c) Any television cable or CATV equipment;

RESERVING FROM PARCELS A AND B various easements as will be shown on the deed conveying Parcels A and B to the Association.

**Section 1.5.** "Board" shall mean and refer to the Board of Directors of the Association.

**Section 1.6.** "Building Envelope" shall mean and refer to those Building Envelopes described on the applicable Condominium Plan. Each Building Envelope is a separate interest in space as defined in CIVIL CODE §1351(f) and shall have the dimensions shown and described as such on the applicable Condominium Plan. It is intended that a Building Envelope include within its boundaries all portions of the respective building, including, but not limited to, the roof, any chimneys, vents, balconies, foundations, overhangs, columns and other appurtenances. In interpreting deeds and plans, the then existing physical boundaries of a Building Envelope, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

"Building Envelope" includes any garage and/or entry portion thereof as shown on the applicable Condominium Plan.

**Section 1.7.** "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

**Section 1.8.** "Common Area" shall mean and refer to all portions of the Building Envelopes in a Phase of the Project not located within a Separate Interest. Except where otherwise stated, when used in this Declaration, "Common Area" refers to all the Common Area in Phase 1 and in each subsequent Phase which has been annexed and thereby made subject to this Declaration and in which at least one (1) Condominium has been conveyed by Declarant.

**Section 1.9.** "Common Expenses" means and includes the actual and estimated expenses of operating the Project and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the condominium documents.

**Section 1.10.** "Condominium" shall mean and refer to a fee simple estate in a Phase of the Project and shall consist of:

- (i) A Living Unit airspace;
- (ii) Any Yard airspace which the applicable Condominium Plan shows as being appurtenant to the Living Unit;
- (iii) The exclusive right to use and occupy any Exclusive Use Common Area which the applicable Condominium Plan shows as being appurtenant to the Living Unit;
- (iv) An undivided interest as tenant in common to the Common Area of the Phase in which the Living Unit is located equal to the reciprocal of the number of Living Units in that Phase;
- (v) An easement for ingress, egress and recreational use over portions of the Common Area of other Phases, effective upon annexation of a Phase and conveyance of a Condominium in the Phase to a Retail Purchaser; and
- (vi) An easement over the Association Property which has been conveyed to the Association, subject to the Association's rules, regulations and procedures.

**Section 1.11.** "Condominium Plan" shall mean and refer to the Condominium Plan or Condominium Plans recorded pursuant to California CIVIL CODE Section 1351(e) covering any Phase of the Real Property which has been made subject to this Declaration, including such amendments thereto as may from time to time be recorded.

**Section 1.12.** "Declarant" shall mean and refer to CARMEL MOUNTAIN RANCH, a California partnership, its successors and assigns, if Declarant assigns to such successors its rights of Declarant hereunder.

**Section 1.13.** "Declaration" shall mean and refer to this enabling Declaration of Restrictions, as it may from time to time be amended.

**Section 1.14.** "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

**Section 1.15.** "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

**Section 1.16.** "Exclusive Use Common Area" shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner as shown and described on the applicable Condominium Plan covering a Phase. The Exclusive Use Common Areas currently planned for the Project consist of Balconies.

**Section 1.17.** "Living Unit" shall mean and refer to a separate interest in space as defined in CIVIL CODE Section 1351(f) and as shown and described as such on the Condominium Plan. The following are not part of any Living Unit: Bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Living Unit. Each Living Unit shall include any door or window within a perimeter wall, the interior undecorated surfaces of bearing walls and perimeter walls, floors and ceilings, the outlets of all utility installations in the Living Unit, including the fire box of any fireplace located in the Living Unit. In interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building. "Living Unit" includes any garage and/or entry portion thereof as shown on the applicable Condominium Plan.

**Section 1.18.** "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

**Section 1.19.** "Mortgage" shall mean and refer to a mortgage or deed of trust which encumbers a Condominium.

**Section 1.20.** "Mortgagee" shall mean and refer to a beneficiary under a deed of trust which encumbers a Condominium as well as a mortgagee under a Mortgage.

**Section 1.21.** "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.22.** "Phase" shall mean and refer to that portion of the Project which is designated as a separate Phase in a Notice of Declaration of Annexation recorded pursuant to the Section below entitled "Annexation; Reservation of Easements". Phase 1 is also a separate Phase.

**Section 1.23.** "Phase 1" shall mean and refer to that certain real property located in the City of San Diego, County of San Diego, State of California, more particularly described as:

Lots 1, 7 and 8 of CARMEL MOUNTAIN RANCH UNIT 19, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 13061, filed with the County Recorder of San Diego County on October 12, 1993.

**Section 1.24.** "Project" shall mean and refer to Phase 1 together with all other Phases within the Real Property which have been annexed to this Declaration.

**Section 1.25.** "Real Property" shall mean and refer to that real property located in the City of San Diego, County of San Diego, California, described on Exhibit "A" attached hereto.

**Section 1.26.** "Retail Purchaser" shall mean and refer to anyone other than a successive Declarant who purchases a Condominium from Declarant through authority of a Final Subdivision Public Report issued by the California Department of Real Estate.

**Section 1.27.** "Separate Interest" shall mean and refer to a separate interest in space as defined in Section 1351(f) of the California CIVIL CODE. Each Separate Interest will be shown on a Condominium Plan. Declarant currently intends that the Separate Interest for this Project include Living Units and Yards; however, the Condominium Plan for a particular Phase need not show Yards and may show additional kinds of Separate Interests.

**Section 1.28.** "VA" shall mean and refer to the United States Department of Veterans Affairs.

**Section 1.29.** "Yard" shall mean and refer to a separate interest in space as defined in CIVIL CODE Section 1351(f) and as shown and described as such on the Condominium Plan. The following are not part of any Yard: Bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Yard. Each Yard shall extend to the centerline of each fence which separates the Yard from an adjoining Yard and shall extend to the interior surface of any fence or wall which separates the Yard from Common Area or Association Property. In interpreting deeds and plans, the then existing physical boundaries of such fences and walls, whether in their original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be the Yard boundaries rather than the boundaries expressed in the deed or plan, regardless of

settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the fences or walls.

## ARTICLE II

### PROPERTY RIGHTS IN ASSOCIATION PROPERTY AND COMMON AREA

**Section 2.1. Title to the Association Property.** Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association any Association Property within a Phase free and clear of all encumbrances and liens, except non-delinquent taxes, easements, covenants, conditions and reservations then of record, including those set forth in this Declaration, prior to the conveyance of the first Condominium in the respective Phase to a Retail Purchaser.

**Section 2.2. Owners' Easements of Enjoyment.** Every Owner of a Condominium shall have a right and easement of ingress and egress and of enjoyment in and to the Association Property owned by the Association and the Common Area of any Phase in which a Condominium has been conveyed to an Owner. These rights shall be appurtenant to and shall pass with the title of each Condominium, subject to the following provisions:

(a) The right of the Board to make rules and regulations relating to the operation and use of the Association Property and Common Area including the right of the Board to restrict use of the recreational facilities to those in possession of Living Units and to control the hours of such use and to determine whether such facilities may be used by guests. The Association shall have no right to restrict reasonable access to a Condominium by the persons who have the right to possession of the Condominium.

(b) The right of the Board to suspend the voting rights of an Owner and right to suspend use of recreational facilities by the Owner and occupants of a Condominium:

(i) During the period of time any Association assessment against the Condominium remains delinquent; and/or

(ii) For a period of not more than thirty (30) days for any infraction of the Board's published rules and regulations after reasonable written notice and an opportunity for a hearing before the Board which satisfies the minimum requirements of California CORPORATIONS CODE Section 7341 as set forth in the Bylaws.

(c) The right of the Board, subject to the limitations stated in the Section below entitled "Approval of First Mortgagees" and subject to the restrictions stated in California CORPORATIONS CODE Section 8724, to transfer less than substantially all of the Association Property. It is specifically intended that the Board have the right to cooperate with Declarant and any Owner in adjusting the boundaries between the Association Property and other portions of the Project.

(d) The sole and exclusive right of the Association, acting through its Board, to operate, maintain and control the Association Property and Common Area except as otherwise stated in this Declaration.

(e) The right of the Board to grant to third parties permits, licenses (which may be irrevocable) and easements over the Association Property for utilities, roads and other purposes necessary for the proper operation of the Project; and the right of the Board to convey portions of the Association Property to others in connection with a boundary adjustment requested by an adjacent property owner or public entity.

(f) The right of the Board to grant to third parties permits, licenses (which may be irrevocable) and easements over the Common Area for utilities, roads and other purposes necessary for the proper operation of the Project.

(g) The right of the Board to grant easements and licenses over the Association Property and the Common Area pursuant to the Article below entitled "ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES".

(h) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Association Property and to hypothecate any or all real or personal property owned by the Association.

(i) The right of access, ingress and egress over the Association Property and Common Area and the right of installation and use of utilities on the Association Property and Common Area for the benefit of the Condominiums.

(j) Declarant and its sales agents, employees and independent contractors shall have:

(i) a non-exclusive easement over the Association Property and Common Area for the purpose of making repairs to the Association Property or to the Common Area, provided access thereto is otherwise not reasonably available, and for the purpose of constructing, marketing and maintaining the Real Property. Nothing herein stated shall obligate Declarant to make such repairs;

(ii) the right to the non-exclusive use of the Association Property and Common Area for the purpose of maintaining sales offices, parking, signs and flags reasonably necessary to market the Condominiums in the Real Property. Declarant shall have the right, during its marketing of the Real Property, to control those hours in which any gates remain open to the Real Property to allow Declarant, its agents, contractors and potential buyers to have access to the Real Property.

The rights of Declarant provided for in Subparagraphs (i) and (ii) above may be exercised only until (A) three (3) years after termination of Declarant's right to annex additional Phases pursuant to the Section below entitled "Annexation; Reservation of Easements" in the Article entitled "GENERAL PROVISIONS", or (B) close of escrow to Retail Purchasers of all 120 Condominiums planned for the Real Property, whichever shall first occur. The use of the Common Area and the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association. Declarant shall repair any portion of the Association Property or Common Area which may be damaged by Declarant.

**Section 2.3. Delegation of Use.** Subject to the restrictions stated in this Declaration, any Owner may delegate, in accordance with the Bylaws and the rules and regulations of the

Board, the Owner's right of enjoyment to the Association Property and Common Area and facilities to the members of the Owner's family, tenants, guests or contract purchasers who reside in the applicable Living Unit. Each Owner shall be responsible to the Association for any damage to the Association Property and Common Area caused by such Owner or persons to whom Common Area or Association Property rights have been transferred.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

**Section 3.1. Each Owner Is A Member.** Each Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated promptly, fully and faithfully to comply with and conform to this Declaration and the Bylaws and the rules and regulations adopted from time to time by the Board and officers of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his Condominium, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

**Section 3.2. Classes of Voting Membership.** The Association shall have two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners of the Condominiums with the exception of Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

(b) **Class B.** The Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Condominium owned.

**Section 3.3. Termination of Class B Membership.** The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) Two (2) years following the date of the first conveyance of record by Declarant of a Condominium to a Retail Purchaser pursuant to the most recent Final Subdivision Public Report issued by the California Department of Real Estate for a Phase of the Project; or

(b) Four (4) years following the date of the first conveyance of record by Declarant of a Condominium to a Retail Purchaser pursuant to the original Final Subdivision Public Report issued by the California Department of Real Estate for Phase 1 of the Project.

**Section 3.4. Commencement of Voting Rights.** Voting rights shall be attributable to a Condominium commencing on the date the Association's regular assessments have commenced against the Condominium.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

**Section 4.1. Covenant for Assessments.** The Declarant, for each Condominium owned, covenants, and each Owner of any Condominium by acceptance of a deed to the Condominium, whether or not so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) regular assessments, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Association Property and Common Area, (ii) special assessments, and (iii) those other assessments provided for in this Article. The regular and special assessments, together with interest, costs, late charges and reasonable attorney's fees, shall, except as stated in the Sections below entitled "Non-Lien Assessments (Compliance)" and "Water Sub-Metering; Non-Lien Assessments", be a charge and continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, late charges and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; however, the assessment shall remain a lien on the Condominium.

**Section 4.2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project and for the improvement and maintenance of the Association Property and Common Area for the common good of the Project, to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Bylaws, this Declaration and the rules and regulations adopted by the Board, and for those other purposes described in this Declaration. The regular assessments shall be determined at least annually by the Board to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in the Sections below entitled "Non-Lien Assessments (Compliance)" and "Water Sub-Metering; Non-Lien Assessments".

**Section 4.3. Maximum Regular and Special Assessments.** The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in this Declaration and the Bylaws. However, the Board shall not increase the assessments during any fiscal year unless the Board has complied with the requirements of Subsection (a) of the Section in the Bylaws entitled "Financial Statements" or unless the Board has obtained the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE and §7613 of the California CORPORA-



TIONS CODE at which a quorum was present or participated. For purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners.

Except for assessment increases necessary for emergency situations, the Board may not impose annual increases in regular assessments that are in aggregate more than twenty percent (20%) greater than the regular assessments for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE and §7613 of the California CORPORATIONS Code at which a quorum was present or participated. An emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety in the Project is discovered;
- (c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget under Section 1365 of the California CIVIL CODE. However, prior to the imposition or collection of an assessment under this Subsection (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members of the Association with the notice of assessment.

Notwithstanding the above stated limitation against increases in regular assessments:

- (i) The Board may increase regular assessments more than 20% if such increase was shown on an Association budget approved by the California Department of Real Estate and if such increase is allowed by California law;
- (ii) The Board may levy special assessments pursuant to the Section in the Bylaws entitled "Limitation on Expenditure of Reserve Funds"; and
- (iii) Sums assessed against Owners pursuant to the Sections below entitled "Non-Lien Assessments (Compliance)" and "Water Sub-Metering; Non-Lien Assessments" shall not be considered in calculating the increases in assessments.

The due dates of assessments shall be as the Board establishes them. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

**Section 4.4. Right of Eligible Mortgage Holders to Approve Assessment Increases; Decreases In Reserves.** The following actions of the Association shall require the consent of

Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Project which are subject to Eligible Mortgage Holder Mortgages:

(a) Increases in regular assessments which in aggregate are more than 25% during any fiscal year from the regular assessments assessed during the previous fiscal year; and

(b) Reductions in reserves for maintenance, repair and replacement of the Common Area or Association Property.

An Eligible Mortgage Holder who receives a written request to give its consent pursuant to this Section who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have given such consent provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested.

**Section 4.5. Non-Lien Assessments (Compliance).** The Association may also impose a special assessment against any Owner to reimburse the Association for costs incurred in bringing an Owner and the Owner's Condominium into compliance with the provisions of the Declaration, the Bylaws and Association rules and regulations, or as a penalty imposed as a disciplinary measure for failure of an Owner or occupants of the Owner's Condominium to comply with such provisions. Such special assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California CORPORATIONS CODE, as set forth in the Bylaws, and the Board shall meet in executive session if requested by the Owner being disciplined and the Owner shall be entitled to attend the executive session. Except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Owner's Condominium and shall be assessed only against the Owner who is or was in non-compliance. The Association shall have lien rights with respect to charges imposed against an Owner which are reasonable late payment fees for delinquent assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

**Section 4.6. Schedule of Monetary Penalties.** If the Association adopts a policy of imposing any monetary penalty, including any fee, on any Owner for violation of this Declaration or the rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with the authorization for Owner discipline set forth in this Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

**Section 4.7. Rate of Regular Assessments.** Both regular and special assessments shall be levied upon each Condominium at a uniform rate. However, this Section does not apply to the sums payable by reason of the Sections below entitled: "Non-Lien Assessments (Compliance)", "Water Sub-Metering; Non-Lien Assessments", "Rate of Special Assessments for Repairs", "Limited Regular Assessments" or "Model Homes".

**Section 4.8. Water Sub-Metering; Non-Lien Assessments.** In the event the water supplied to each Condominium is billed to the Association, but is sub-metered to each Condominium, the Association shall have the right to charge the Owners of each Condominium amounts to reimburse the Association for the cost of the water supplied to the Condominium. The reimbursement amount may be billed with the regular assessments but shall not be considered to be a part of such assessments. The amounts so billed shall be the personal obligation of the persons who owned the Condominium during the period of time the water being billed for was supplied to the Condominium. The charges for water shall not constitute a lien on the Owner's Condominium. No Owner shall interfere with the reading of such sub-meters nor in any manner change or disconnect such sub-meters. The Association is hereby granted an easement to read, repair, realign or replace such sub-meters, wherever located.

**Section 4.9. Rate of Special Assessments for Repairs.** Any special assessment to raise funds for the rebuilding or major repair of a portion of the structural Common Area or Association Property shall be levied against each Condominium in the Project against which the Association's regular assessments have commenced. Such special assessments shall be levied upon the basis of the ratio of the square footage of the floor area of the Living Unit of the Condominium to be assessed to the total square footage of the aggregate floor area of the Living Units in all Condominiums to be assessed.

**Section 4.10. Date of Commencement of Regular Assessments.** The regular assessments shall commence as to all Condominiums in a particular Phase of the Project on the first day of the month following the conveyance of the first Condominium to a Retail Purchaser in that Phase or upon the conveyance to the Association of the Association Property in that Phase, whichever shall first occur.

**Section 4.11. Adjustment of Assessments; Due Dates.** The Board shall fix the amount of the regular assessments against each Condominium at least thirty (30) days in advance of each fiscal year but may change the assessment amount on any subsequent occasion. Although the amount of regular assessments (other than special assessments) shall be determined at least annually, commencement of regular assessments against an additional Phase during the marketing period may cause the regular assessment amounts to change. Unless otherwise determined by the Board, regular assessments shall be due and payable in monthly installments on the first day of each calendar month. No notice of regular assessments shall be required except for notices of changes in assessment amount or changes in due dates. Written notice of changes in the regular assessments shall be sent by first class mail to every Owner subject thereto not less than 30 nor more than 60 days prior to the change in assessments becoming due.

**Section 4.12. Limited Regular Assessments.** This Section shall apply only if not all the Condominiums within a Phase have been completed at the time the regular assessments commence against the Phase. Any such Condominiums which are uncompleted at the time regular assessments commence are referred to herein as "Uncompleted Condominiums" and shall be subject to limited regular assessments in lieu of regular assessments as hereinafter provided, unless the Board resolves and Declarant expressly agrees otherwise. For purposes hereof, a Condominium shall be deemed "Uncompleted" if the construction of the structural improvements to the building in which the Condominium is located has not progressed to the point which allows the Condominium to be legally occupied. Should any Phase of the Project

(including, but not limited to, Phase 1) include any Uncompleted Condominium at the time assessments commence against such Phase, then:

(a) In addition to preparing its usual budget, the Association shall prepare a budget which includes costs and reserves for operation, repair and replacement of all portions of the Common Area then under the jurisdiction of the Association, other than any portion of any building within the Project. Such budget is referred to herein as the "Budget for Non-Building Common Area".

(b) The regular assessments which commence against each Uncompleted Condominium ("Limited Regular Assessments") shall be based only upon the Budget for Non-Building Common Area until the first to occur of (i) completion of the structural improvements of the building in which the Uncompleted Condominium is located (as is evidenced by Declarant's filing a Notice of Completion for such building), or (ii) actual occupancy of such Uncompleted Condominium. An Uncompleted Condominium shall thereafter forever lose its status of being "Uncompleted" and shall be subject to the same regular assessment as all other completed Condominiums.

(c) The Limited Regular Assessments shall be uniform in amount. Limited Regular Assessments, if any, shall commence against each Uncompleted Condominium within a Phase at the same time as regular assessments commence for the Phase, and Limited Regular Assessment shall be in lieu of such regular assessments.

(d) The limitations on assessment increases set forth in the Section above entitled "Maximum Regular and Special Assessments" shall not apply to increases in assessments against a previously Uncompleted Condominium which result from the conversion of Limited Regular Assessments to regular assessments.

(e) Limited Regular Assessments shall be deemed to be regular assessments, as such term is used in this Declaration, for all purposes, except as this Section specifically provides otherwise. The Board shall have the right, by its resolution, to disregard this Section provided that Declarant has given its consent to such Board resolution. If Limited Regular Assessments are applicable, the non-limited regular assessments will exclude costs of maintenance and reserves for each building containing the Uncompleted Condominiums until non-limited regular assessments commence against such building.

**Section 4.13. Model Homes.** Conveyance of a Condominium which is being used by Declarant for model home, sales office, design center, construction office or similar purposes (any of which uses are referred to in this Section as "Model Home") shall not commence the regular assessments against such Condominiums or other Condominiums within the Phase until:

- (a) discontinuance of use of such Condominium as a Model Home; or
- (b) conveyance of any non-Model Home Condominium in the Phase,

whichever first occurs. During the period of time commencing on the first day of the month after conveyance of a Condominium being used by Declarant as a Model Home and ending on the date regular assessments commence against such Condominium:

(i) Declarant shall be solely responsible to maintain all portions of the Phase in which a Condominium is being used as Model Home; and

(ii) Declarant shall pay to the Association that portion of the budgeted reserves for replacement of Common Area and any Association Property components which is applicable to each Condominium being used as a Model Home within the Phase in which the Model Home which has been conveyed is located. "Budgeted reserves for replacement of Common Area and any Association Property components" means and refers to such amounts as are shown to be for such purpose on the budget submitted by Declarant to and approved by the California Department of Real Estate.

The Board shall have the right to inspect the areas being maintained by Declarant pursuant to this Section to determine that such maintenance meets reasonable standards.

**Section 4.14. Effect of Non-Payment of Assessments; Remedies of the Association.**

Any assessment made in accordance with this Declaration (including lien and non-lien assessments) shall be a debt of the Owner of a Condominium from the time the assessment is due. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid in full. The Association shall have the right to impose a late charge on unpaid assessments in an amount not exceeding the greater of \$10.00 or 10% of each assessment which is fifteen (15) days delinquent. At any time after any assessments levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the County Recorder of the County of San Diego a notice of delinquency as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorney's fees), interest and late charges which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien by sale. Such notice shall be signed by an officer of the Association or its authorized agent.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees), late charges and interest accruing thereon, shall (except as provided in the Sections above entitled "Non-Lien Assessments (Compliance)" and "Water Sub-Metering; Non-Lien Assessments") be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs (including attorney's fees), late charges and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including

attorney's fees), late charges and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1367 the California CIVIL CODE, and all other applicable statutes, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien.

**Section 4.15. Subordination of the Lien to First Deeds of Trust and First Mortgages.**

The lien of the assessments, interest, costs, attorney's fees and late charges shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. However, the Association may treat as Common Expenses, assessable against all the Condominiums, any unpaid assessments for which lien rights have terminated. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

**Section 4.16. Estoppel Certificate.** The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

**Section 4.17. Non-Use of Common Area.** No Owner shall be exempt from personal liability for assessments levied by the Association, nor shall any Condominium be released from the liens and charges of assessments because of the non-use of the Association Property or Common Area nor because of abandonment of the Condominium.

**Section 4.18. Taxation of Association.** In the event that any taxes are assessed against the Common Area, Association Property or the personal property of the Association, rather than against the individual Condominiums, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the Condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**Section 4.19. Payment of Assessments By Declarant.** Declarant shall pay all assessments levied by the Association against any Condominium owned by Declarant at the same time, in the same manner and in the same amount as any other Owner.

**Section 4.20. Capitalization of Association.** Upon acquisition of record title to a Condominium in Phase 1 from Declarant, each Owner shall contribute to the capital of the Association an amount equal to two times the then regular assessment for that Condominium

as determined by the Board. This amount shall be deposited by the Retail Purchaser into the purchase and sale escrow and disbursed therefrom to the Association at close of escrow. Amounts paid pursuant to this Section are not advance payments of assessments and are in addition to and not in lieu of regular and special assessments of the Association. The capital contributions will be the Association's funds and may not be used by Declarant to defray its expenses, constructions costs or assessments. The obligation to make capital contributions pursuant to this Section shall apply to each Condominium in Phase 1 only and shall not apply to any Condominium located in any other Phase. This Section shall not apply to any resales of any Condominium.

## ARTICLE V

### POWERS AND DUTIES OF ASSOCIATION

The Association shall have those powers and duties set forth in its Bylaws.

## ARTICLE VI

### USE OF CONDOMINIUMS

**Section 6.1. Residential Purposes.** Each Condominium shall be improved, used and occupied for private, single-family dwelling purposes only, and shall be not be used for any commercial purposes. However, Declarant may use any of the Condominiums owned by Declarant as model homes, design centers, construction offices and sales offices until (A) all the Condominiums in all Phases of the Project are sold and conveyed by Declarant to Retail Purchasers, or (B) three (3) years from the date of expiration of Declarant's right to annex additional Phases, or (C) seven (7) years after the first close of escrow of a Condominium in the Project to a Retail Purchaser, whichever shall first occur.

**Section 6.2. Lease of Condominium.** Each Owner shall have the right to lease the Owner's Condominium provided that such lease is in writing. Each tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and a tenant's failure to do so shall be deemed a default under the lease. No Owner shall lease a Condominium for transient or hotel purposes. Any such lease which is either for a period of less than seven (7) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes. Should the Board so request an Owner to do so, the Owner shall forward an executed copy of a lease to the Owner's Condominium to the Board together with the telephone number and street address of the residence of the Owner. Other than as provided in this Section, there shall be no restriction on the right of any Owner to lease a Condominium.

**Section 6.3. Use Not to Impair Insurance.** No Condominium shall be occupied, improved or used for any purpose or in any manner which shall cause such Condominium or any Condominium to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof or to increase the premium therefor.

**Section 6.4. Animals.** No animals shall be kept in any Condominium or elsewhere within the Project except that two domestic dogs or two domestic cats (or one dog and one cat) may be kept as household pets within a Condominium if not kept, bred or raised for commercial purposes. Caged birds and fish in an aquarium may also be kept, but not for commercial purposes. Each person bringing or keeping a pet within the Project shall be liable pursuant to the laws of the State of California to third persons for any damage to persons or property caused by the pet brought on or kept within the Project by such person. The Board shall have the right to require the removal from the Project of any pet which, in the Board's opinion, constitutes an unreasonable annoyance to any Condominium occupant and no pet shall be allowed within the Common Area except as permitted by the Board.

**Section 6.5. Nuisance.** No Condominium shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any portion of the Project.

**Section 6.6. Sign Control.** An Owner may place one (1) sign of reasonable and customary dimensions in the window of the Owner's Living Unit to advertise the Condominium for sale or rent. No other signs may be placed anywhere in the Project without the prior written permission of the Architectural Committee. All signs must conform with applicable City of San Diego ordinances. No signs shall be erected or displayed anywhere in the Project except signs placed by authority of the Board. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain in any Condominium owned or leased by it, on the Association Property and Common Area during the sales period set forth in the Section above entitled "Residential Purposes", such signs, poles, flags, banners and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.

**Section 6.7. Outside Antennae.** There shall be no outside television or radio antennae, masts, satellite dishes, transmitter tower or facility, poles or flag poles (other than poles or flag poles installed and maintained by Declarant in connection with its sales program for the period set forth in the Section above entitled "Residential Purposes") constructed, installed or maintained in the Project for any purpose whatsoever without approval of the Architectural Committee. Under no circumstances may the antenna component(s) of a master antenna system be constructed, erected or otherwise placed on any portion of the Project without approval of the Board.

**Section 6.8. No Owner Modification to Association Property or Common Area.** Except as otherwise specifically provided in this Declaration, no Owner shall have the right to alter, paint, decorate, remodel, landscape or adorn any part of the Association Property or Common Area without the written consent of the Board.

**Section 6.9. No Offensive Activity.** No noxious or offensive activity shall be carried on in the Project, nor shall anything be done in the Project which may be or become an annoyance or nuisance to the others within the Project. However, construction or repair of improvements made at the Board's instruction or at Declarant's instruction shall be permitted. Nothing shall be done in any Condominium or elsewhere in the Project which will impair the structural integrity of any building. Except as otherwise provided in this Declaration, nothing shall be altered or constructed in or removed from the Association Property or Common Area,



except upon the written consent of the Board. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Condominiums, streets, Association Property and Common Area. All rubbish, trash or garbage shall be regularly removed from each Condominium and shall not be allowed to accumulate in the Project. Trash containers shall not be put out before 7:00 P.M. of the night prior to scheduled trash pickup and shall be removed within twelve (12) hours after collection. No fences, hedges or walls shall be erected or maintained in the Project except such as are installed in accordance with the initial construction by Declarant or as provided by the Architectural Committee. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Association Property or on the Common Area except in areas which may be approved by the Board.

**Section 6.10. Power Equipment.** No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted in the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. Construction or repair of improvements at Declarant's request shall not require such approval.

**Section 6.11. Use of Association Property and Common Area.** Except as otherwise provided in this Declaration, the Association Property and Common Area shall be improved and used only for the following purposes:

- (a) Affording vehicular passage and pedestrian movement within the Project, including access to the Condominiums;
- (b) Recreational use by the Owners and occupants of Condominiums and their guests, subject to rules established by the Board;
- (c) Beautification of the Project and providing privacy to the residents of the Project through landscaping and such other means as the Board shall deem appropriate;
- (d) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board; the rules and regulations of the Board may be enforced by the Board, which shall have the right and power to remove vehicles from the Project at the cost of the vehicle owner and to levy monetary penalties as provided in this Declaration;
- (e) As Exclusive Use Common Areas to be used in the manner described in this Declaration or a Declaration of Annexation;
- (f) By Declarant for marketing and construction activities;
- (g) Those additional purposes which may be allowed by the Board.

No Owner shall use or interfere with use of the Common Area or Association Property in any manner which shall increase the Association's cost of insurance or which shall result in cancellation of insurance or making insurance unavailable.

**Section 6.12. Owners Liable for Damage.** Each Owner shall be legally liable to the Association for all damages to the Project, including but not limited to, the buildings, recreational facilities and landscaping caused by such Owner, such Owner's guests (or other licensees) or any occupant of such Owner's Living Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of this Declaration, the Bylaws and rules and regulations of the Board by such Owner's licensees and occupants of such Owner's Condominium.

**Section 6.13. Decorating by Owner.** Each Owner shall have the right, at the Owner's sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Owner's Living Unit, and the surfaces of the bearing walls and partitions located within the Living Unit. Such Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his Living Unit. Windows shall be covered only by drapes, curtains and shades, and shall not be painted or covered by aluminum foil, paper or similar materials. Each Owner shall have the obligation to keep in good repair all items mentioned in this Section.

**Section 6.14. No Room Additions; No Impairment of Structures.** No Owner shall build any room addition to his or her Living Unit, nor shall any Owner make any change to his or her Living Unit which would adversely affect the structural integrity of the building.

**Section 6.15. Exclusive Use Common Areas.** Each Exclusive Use Common Area shall be appurtenant to the Living Unit it serves. Conveyance of a Living Unit will automatically convey all appurtenant Exclusive Use Common Areas. No Owner shall make any improvements to an Exclusive Use Common Area unless such improvements have been approved by the Architectural Committee.

**Section 6.16. Use of Exclusive Use Common Areas.** Each Owner shall be entitled to use any Balcony appurtenant to the Owner's Living Unit for usual and ordinary residential purposes subject to the Board's or Architectural Committee's right to restrict those activities and improvements which it believes would have adverse structural, drainage or maintenance impacts or adverse visual or noise impacts on other Owners. No pots or other items shall be placed on top of any railing, and each Owner shall take reasonable steps to capture water from potted plants placed on a Balcony.

No Owner shall make any improvements to any Exclusive Use Common Area unless and until the Board or Architectural Committee approves the plans therefor. The Board or the Architectural Committee shall have the right from time to time to establish regulations regarding the content of plans for improvements and the procedure of filing plans with the Board. Should an Owner file plans with the Board or Architectural Committee in compliance with all applicable requirements and should the Board or Architectural Committee fail to approve, conditionally approve or disapprove such plans within sixty (60) days, the plans shall be deemed approved by the Board or the Architectural Committee.

The Board and the Architectural Committee shall have the right to allow Owners to exclusively use portions of the Common Area above or below the vertical limits of any Exclusive Use Common Area.

**Section 6.17 Use of Porches or Decorative Balconies.** Each Owner shall be entitled to place potted plants within those portions of the Common Area which constitute the porch or decorative balcony (if any) adjoining the Owner's Living Unit, provided the Owner takes adequate steps to capture water from such potted plants and to prevent any damage to the Common Area or unsightly conditions. No pots or other items shall be placed on top of any fence or railing, and no Owner shall allow the potted plants to grow on the exterior of a decorative balcony or other portions of the building. Each Owner shall be responsible to pay for the repairs of any damage which may be caused by the placing of potted plants on the porch or decorative balcony.

**Section 6.18. Use And Improvements To Yards.** Each Owner shall have the right to use his or her Yard for residential yard purposes. Each Owner shall be responsible to maintain and repair any subsurface drainage improvements installed by Declarant in the Owner's Yard, and no Owner shall interfere with the surface or any subsurface drainage of his or her Yard as established by Declarant. All improvements installed by an Owner in his or her Yard shall provide for proper and adequate drainage.

No Owner shall make any improvements to his or her Yard unless and until the Architectural Committee has approved plans of such improvements showing such detail as the Architectural Committee or its consultant deems appropriate. Any such approval may be conditional. The Architectural Committee shall have sixty (60) days to approve or disapprove such plans from the date the plans, in form required by the Architectural Committee, are received by the Architectural Committee. Failure of the Architectural Committee to approve or disapprove the plans within such sixty (60) day period shall be deemed an approval. The Architectural Committee shall have the right to hire a civil engineer, landscape architect or other expert consultant as the Architectural Committee deems appropriate to evaluate plans and inspect the Yard improvements. The Owner shall be required to pay the cost of such consultant. The Architectural Committee may require an Owner to deposit the estimated cost of such consultant at the time plans are submitted for Architectural Committee approval.

Each Owner assumes all risks which may result from improvements he or she makes to his or her Yard or Exclusive Use Common Area and each Owner indemnifies and holds harmless the Association, the Architectural Committee, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of Yard improvements.

**Section 6.19. Garages.** Each Owner shall have the right to use any garage portion of the Owner's Living Unit for parking of automotive vehicle(s) (including cars, passenger vans and trucks) and the storage of non-hazardous materials. Neither the Association nor any Owner shall convert any garage to any use which prevents its use for vehicular parking of the number of vehicles used by the Owner.

**Section 6.20. Outside Parking; No Parking In Driveways.** The Board shall have the right, but not the obligation, to assign the right to use parking spaces within the Common Area to one or more Owners for such periods and on such terms as the Board deems appropriate. Should the Board decide to make such assignments, it shall generally do so on a first come, first served basis, but the Board may consider such factors as the Board deems relevant. Parking shall not be permitted in the driveway entrances to the Living Units except for purposes of loading and

unloading. The Association shall not charge a fee for assigning the right to use an outside parking space.

No dune buggy, boat, trailer, recreational vehicle, mobile home, motor home, van, camper shell which is detached from a vehicle or otherwise mounted on a vehicle, nor truck which (i) is larger than one ton capacity, or (ii) has a mounted camper shell which protrudes from the truck from either side or from beyond the rear gate or above the cab ceiling, shall be parked within any private street or anywhere else in the Project where visible to other Owners unless the Board expressly allows otherwise. Commercial vehicles shall be permitted within the Project for purposes of making deliveries and similar purposes, provided the same conform to rules which may be established by the Board. No dismantled or wrecked vehicle or equipment shall be parked, stored or deposited within the Project and no vehicle shall be repaired within the Project.

**Section 6.21. No Conversion of Parking Spaces.** The Planned Residential Permit issued by the City of San Diego for the Project states that "Each of the parking spaces shall be permanently maintained and not converted for any other use at any time. Each subsequent owner shall be informed of this requirement through the CC&R's".

**Section 6.22. Right of Access.** Each Owner shall have an unrestricted right of access for egress and ingress to and from such Owner's Living Unit, Yard and Exclusive Use Common Areas.

**Section 6.23. Restricted Use of Trailers, Etc.** No trailer, truck, boat, camper or recreational vehicle shall be used as a living area in the Project. Subject to the time limitations stated in the Section above entitled "Residential Purposes", nothing herein stated shall restrict Declarant and its agents, contractors and employees from using trailers as temporary structures for uses incidental to the sales and construction within the Project.

**Section 6.24. Window Coverings.** Unless Declarant has done so, each Owner shall, within one hundred twenty (120) days after close of escrow for his Condominium, install window coverings on all windows of his Living Unit which are visible from any public or private street. The exterior appearance of such window coverings must be consistent with any requirements promulgated by the Architectural Committee.

## **ARTICLE VII**

### **RESPONSIBILITIES OF MAINTENANCE**

**Section 7.1. Maintenance by Owners.** Each Owner of a Condominium shall be responsible for the maintenance and repair of:

(a) The windows and the interior surfaces of doors enclosing the Living Unit, including the metal frames, tracks and exterior screens of glass doors and windows.

(b) The interior of the Living Unit and all appliances whether "built-in" or freestanding within the Living Unit.

(c) The plumbing, electrical, cable television, water heating systems, heating systems and air conditioning systems (if any), and other systems servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common. For example, each Owner shall be responsible to maintain the automatic garage door opener for his or her garage. Declarant hereby reserves an easement to allow such systems to be located within the Common Area in those locations where installed by Declarant.

(d) The routine maintenance (for example, sweeping and cleaning) of any Exclusive Use Common Area appurtenant to the Condominium.

(e) All Yard improvements.

(f) The interior of any fences and walls which separate the Owner's Yard from Common Area or Association Property.

(g) Should a fence or wall exist between two Yards, the cost of maintenance, repair and replacement of such fence or wall shall be shared equally by the Owners of the two adjoining Yards.

**Section 7.2. Failure to Maintain.** In the event an Owner defaults in his or her maintenance or repair obligations, the Board may give written notice of such default, stating with particularity the work of maintenance or repair the Board finds to be required and requesting the same be completed in a reasonable period of time as specified in the notice. In the event the Owner fails to complete such maintenance or repair within the period specified in the notice, the Board may cause such work to be completed and assess the Owner the cost thereof.

**Section 7.3. Maintenance by Association.** The Association shall maintain the Association Property and Common Area (except for those items of maintenance which the Owner is required to perform pursuant to the Section above entitled "Maintenance by Owners") including any roadway, slopes, recreational facilities, tot lots, any walkways, all landscaping, project identification and other improvements, the exterior surfaces of the buildings and doors, Balcony railings and surfaces (except for routine sweeping) and other improvements. The Association shall be responsible for the maintenance and repair of the structure and exterior of each wall or fence separating the Yards from Common Area or Association Property.

Each Owner shall reimburse the Association for those costs incurred which result from the Condominium occupants' excessive or neglectful use of the Exclusive Use Common Area or other portions of the Common Area or Association Property.

**Section 7.4. Adoption of Maintenance Plan.** The Association shall adopt, follow and, when appropriate, periodically revise a Maintenance Plan which:

(a) identifies specific components of the Common Area and the Association Property to be maintained by the Association;

(b) sets forth the periods during which such components are to be regularly inspected by the Association or its contractors; and

(c) describes the frequencies and types of routine maintenance of such components.

The Association shall require its contractors to keep a written log of such inspections, any suggested maintenance, the date the maintenance was completed or, if the maintenance was not completed, the reason why it was not completed.

**Section 7.5. Wood-Destroying Pests.** The Association shall be responsible for the repair and maintenance of the Common Area occasioned by the presence of wood-destroying pests or organisms; provided, however, it shall be the responsibility of each Owner to maintain and repair any improvements which may have been added by such Owner to the Owner's Separate Interest and/or Exclusive Use Common Area. The Association may cause the temporary, summary removal of any occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance by the Association shall be borne by the affected Owners and not the Association.

The Association shall give notice of the need to temporarily vacate a residence to the occupants and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

(a) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association; or

(b) By sending a copy of the notice to the occupants at the residence address and a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

## **ARTICLE VIII**

### **SEPARATION OF INTERESTS AND PARTITION PROHIBITED**

**Section 8.1. No Separation of Interests.** No Owner may sell, assign, lease or convey any portion of his or her Condominium separate or apart from the entire Condominium. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of any portion of his or her Condominium separate or apart from the entire Condominium shall be void.

**Section 8.2. No Partition.** There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

(a) With the approval, after substantial destruction or condemnation of the Project occurs, of at least 67% of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least 51% of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(b) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least 67% of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least 67% of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(c) As allowed by California law, including CIVIL CODE Section 1359, as the same may be amended from time to time.

An Eligible Mortgage Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a cotenancy in a Condominium.

**Section 8.3. Power of Attorney.** The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interests in the Project may be had pursuant to this Article. The power of attorney herein granted may be exercised upon the vote or written consent of Owners who own at least fifty percent (50%) of the Condominiums in the Project. Such power of attorney may be exercised by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of the County of San Diego, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, that the power of attorney shall not apply to the Secretary of the United States Department of Veterans Affairs, an officer of the United States of America.

## **ARTICLE IX**

### **DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY**

**Section 9.1. Damage or Destruction.** If any portion of the Common Area or Association Property is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association, the Board shall contract to repair or rebuild the damaged portions of the Common Area or Association Property. Such repair or rebuilding will be in substantial accordance with the original construction unless it is impractical to do so.

(b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association, then:

(i) The Board shall obtain at least two competitive bids for the repair or rebuilding not more than forty-five (45) days after such damage occurs;

(ii) The Board shall use its best efforts to cause a special meeting of the Members to occur no later than ninety (90) days after such damage occurs. The notice of such meeting shall state that the reason for the meeting is to consider repair or rebuilding the portion of the Project which was damaged and whether to impose a special assessment to repair or rebuild. Such notice shall be accompanied with a summary of the competitive bids for repair or replacement.

(iii) Unless a majority of the voting power of the Association votes against the Board doing so, the Board shall within 180 days after such damage enter into a contract for repair or replacement and impose special assessments therefor pursuant to its Resolution to do so in accordance with Paragraph (c) of the Section entitled "Maximum Regular and Special Assessments" of the Article above entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION". For purposes hereof, a "Majority of the voting power of the Association" means: (A) a majority of the voting power of each Class of Members if the two-class voting structure is in effect, or (B) a majority of the total voting power if only one-class voting is in effect.

(iv) Nothing herein stated is intended to prevent the Board from repairing or replacing the Common Area or Association Property and imposing a special assessment therefor pursuant to its authority to do so in accordance with Paragraph (a) or (b) of the Section entitled "Maximum Regular and Special Assessments" of the Article above entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION".

(c) If the Owners vote to not repair or rebuild the Common Area or Association Property, then each Owner (and the Owner's Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of the Owner's Condominium as compared to the aggregate decrease in fair market values of all the Condominiums in the Project caused by such damage or destruction. Fair market value shall be determined by an MAI (Member Appraisal Institute of the American Institute of Real Estate Appraisers) appraiser selected by the Board and hired by and at the expense of the Association. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium pursuant to the Section entitled "Rate of Special Assessments For Repairs" of the Article above entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION" for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

(e) This Article shall not apply to any destruction of a Phase unless and until a Condominium has been conveyed in such Phase. Prior to any such conveyance within a Phase, the Association shall have no right or obligation to insure or repair the improvements of such



Phase and no Owner but Declarant shall be entitled to the proceeds of any insurance carried by Declarant.

**Section 9.2. Condemnation.** If any portion of the Common Area in any Phase is taken by condemnation, eminent domain or any proceeding in lieu thereof, then all the Owners in all Phases of the Project, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to Subsection (c) of the Section above entitled "Damage or Destruction"; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

**Section 9.3. Insurance.** The Association shall obtain and continue in effect at least the following insurance:

(a) A master fire insurance policy with glass coverage and extended coverage endorsement for 100% of the current replacement cost of all of the Common Area and Association Property improvements within the Project, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage. The maximum deductible amount shall be the lesser of \$10,000 or 1 % of the policy face amount. The Association shall have no right or obligation to obtain such insurance for a Phase unless and until the first conveyance of a Condominium in such Phase. "Improvements" means and refers to the Association Property and Common Area together with those appliances and improvements located within the Living Units provided by Declarant to the initial Owners of Condominiums and does not include items not provided by Declarant. The form and content of such policy must satisfy the requirements of the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") and shall contain the following endorsements:

(i) An Inflation Guard Endorsement, when it can be obtained.

(ii) A construction code endorsement, if there is a construction code provision that would require changes to undamaged portions of the building(s) even when only part of a building is destroyed by an insured hazard (typical endorsements include Demolition Cost Endorsements, Contingent Liability From Operation of Building Laws Endorsement and Increased Cost of Construction Endorsement).

(iii) A Special Condominium Endorsement which states the policy shall provide that any insurance trust agreement will be recognized; the right of subrogation against Owners will be waived; the insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Association; and the policy will be primary, even if an Owner has other insurance that covers the same loss.

(b) A comprehensive general liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant and the Owners against liability incident to ownership or use of the Association Property and Common Area. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death, personal injury and property damage arising out of a single occurrence. The form and content of the comprehensive general liability policy must satisfy the requirements of FNMA and FHLMC.

(c) A policy insuring the Association's officers and directors against liability for their negligent acts or omissions while acting in their capacity as officers and directors. The limits of such insurance shall be not less than \$1,000,000.00 for all claims arising out of a single occurrence.

(d) Section 1365.7 of the California CIVIL CODE provides for a partial limitation on the liability of volunteer officers and directors of the Association who reside in a Living Unit, provided that certain requirements, as set forth in the Code section, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Association in specified amounts. The Association shall maintain general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions in amounts which satisfy the requirements of the Code to limit the liability of volunteer officers and directors of the Association.

(e) A fidelity bond covering members of the Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to at least three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment.

(f) Workers' compensation insurance covering any employees of the Association.

(g) A standard all risk of loss perils insurance policy under an extended coverage casualty policy for the full insurable value of all insurable improvements to the Association Property, a policy covering all loss to personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Association Property and personalty owned by the Association shall be payable to the Association.

Insurance premiums for the master policy and other insurance obtained by the Association (other than the cost of indorsements which cover only particular Owners) shall be a Common Expense to be included in the regular assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to his Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within the Owner's Condominium. However, no Owner shall insure a Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision the Owner shall be responsible to the Association for any such diminution.

All insurance policies shall provide that they shall not be cancelable by the insurer without first giving at least ten (10) days prior notice in writing to the Association and the servicer of each first Mortgage which requests such notice, and shall contain a waiver of subrogation by the insurers against the Association, Board and Owners.

The Association shall maintain such insurance coverage as may be required by FNMA or FHLMC so long as either FNMA or FHLMC respectively holds a Mortgage on or owns any Condominium.

Nothing herein stated shall prevent the Association from obtaining additional amounts of insurance or from adding to the items covered by a master policy.

**Section 9.4. Mortgagee Approval.** Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

## **ARTICLE X**

### **DAMAGE, DESTRUCTION AND CONDEMNATION OF SEPARATE INTERESTS**

**Section 10.1. Damage or Destruction.** In the event of damage or destruction to any Living Unit, Yard or other Separate Interest, the Owner shall reconstruct the same as soon as reasonably practicable (unless the Association is not required to repair surrounding damaged Common Area pursuant to the terms of the Article above entitled "DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY"). The Owner shall be entitled to the benefit from an equitable distribution of the master policy of casualty insurance referred to in Article IX above to the extent it covers the damage or destruction of elements of the Condominium which are within the Separate Interest and which are the obligation of the Owner to repair as provided in this Section.

**Section 10.2. Condemnation.** In the event of any taking of a Separate Interest, the Owner of the Condominium (and such Owner's Mortgagees as their interests may appear) shall be entitled to receive the award for such taking and after acceptance thereof the Owner and the Owner's Mortgagee shall be divested of all further interest in the Project and membership in the Association if such Owner shall vacate the Condominium as a result of such taking if the Separate Interest(s) so taken includes the Living Unit. In such event the Owner shall grant the Owner's remaining interest in the Common Area appurtenant to the Living Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

**Section 10.3. Mortgagee Approval.** Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

## ARTICLE XI

### CONDEMNATION OF ASSOCIATION PROPERTY

In the event the Association Property or any portion thereof shall be taken for public purposes of condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

## ARTICLE XII

### ASSOCIATION'S RIGHT OF ENTRY

For the purpose of performing the maintenance of the Association Property and Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Separate Interest, Exclusive Use Common Area or upon any portion of the Association Property and Common Area to effect repairs, improvements, replacements or maintenance as necessary; provided, however, except in case of an emergency, there shall be no entry into a Separate Interest or Exclusive Use Common Area without (i) a court order allowing such entry or (ii) the Owner's consent, which consent shall not unreasonably be withheld and shall be presumed if the Owner makes no objection to such entry within three (3) days after the Board delivers notice of its intent to enter. When there is an entrance into any Separate Interest or Exclusive Use Common Area such entrance shall be made with as little inconvenience to the Owner as possible and any damage caused shall be repaired by the Association.

## ARTICLE XIII

### ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES

The Board shall have the right to grant the following additional easements and licenses:

**Section 13.1. Common Area Licenses.** The Board shall have the right to grant irrevocable licenses for Owners to exclusively use portions of the Common Area adjoining the Owners' Exclusive Use Common Area and/or Yard, provided that the granting of such licenses would not materially and adversely affect any Owner's use of the Common Area.

**Section 13.2. Association Property.** The Board shall have the right to grant easements for Owners to exclusively use portions of the Association Property adjoining the Owners' Exclusive Use Common Area and/or Yard, provided that the granting of such easements would not materially and adversely affect any Owner's use of the Association Property.

## ARTICLE XIV

### ENFORCEMENT

**Section 14.1. Enforcement.** The Association, Declarant, and/or any Owner shall have the right to enforce against one another, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration.

**Section 14.2. No Waiver.** Failure by the Association, Declarant or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE XV

### GENERAL PROVISIONS

**Section 15.1. Severability.** Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

**Section 15.2. Amendments Prior to Escrow Closings.** Prior to the date escrow closes for any sale of a Condominium to a Retail Purchaser, this Declaration may be unilaterally amended by Declarant.

**Section 15.3. Amendments After Escrow Closings.** The following provisions shall apply after the close of the first escrow for a sale of a Condominium to a Retail Purchaser. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that at least sixty-seven percent (67%) of the voting power of each class of Members of the Association have approved the amendment. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that the following have approved the amendment: (i) at least sixty-seven percent (67%) of the total voting power of the Association, and (ii) at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant. The percentage of voting power necessary to amend a specific clause or provision of this Declaration shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause. An amendment shall become effective upon the recording thereof by the Office of the County Recorder of the County of San Diego, California.

**Section 15.4. Mortgagee Approval of Amendment.** Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Project which are subject to Eligible Mortgage Holder Mortgages. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall normally be deemed "material to a Mortgagee":

- (a) Voting rights.

(b) Assessment liens and the priority of assessment liens and the right of Eligible Mortgage Holders to approve increases in regular assessments of in aggregate more than 25 % during any fiscal year from the regular assessments assessed during the previous fiscal year.

(c) The right of Eligible Mortgage Holders to approve reductions in reserves for maintenance, repair and replacement of the Association Property and the Common Area.

(d) Responsibility for maintenance and repairs.

(e) Reallocation of interests in the Common Area (including Exclusive Use Common Area) or rights to its use.

(f) Redefinition of Separate Interest boundaries.

(g) Convertibility of Separate Interests into Common Area and vice versa.

(h) Annexation and deannexation.

(i) Hazard or fidelity insurance requirements.

(j) Imposition of any restrictions on the leasing of Condominiums.

(k) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey the Owner's Condominium.

(l) The Section below entitled "Approval of First Mortgagees".

(m) Restoration or repair of the Project (after a hazard or partial condemnation) in a manner other than specified herein.

(n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

(o) Any provision which, by its terms, is specifically for the benefit of the first Mortgagees, or specifically confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested.

**Section 15.5. Extension of Declaration.** Each and all of these covenants, conditions and restrictions shall terminate sixty (60) years following the recordation of this Declaration of Restrictions with the Office of the County Recorder of the County of San Diego, after which date they shall automatically be extended for successive periods of ten (10) years unless all the Owners have executed and recorded at any time within six (6) months prior to said sixty (60) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that

said restrictions shall terminate at the end of said sixty (60) year period or at the end of any such ten (10) year period.

**Section 15.6. Annexation; Reservation of Easements.**

(a) Phase 1 is the first Phase of a projected six (6) phase staged condominium development. When completed, Declarant contemplates that the entire Project will consist of 120 Condominiums. Nothing contained herein, however, shall require Declarant to complete the future Phases of the planned overall Project.

(b) If, within three (3) years of the date of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report covering a Phase of the overall development, Declarant should develop additional lands within the Real Property, such additional lands or any portion thereof may be added to and included within the Project and the jurisdiction of the Association by action of Declarant without the assent of Members of the Association. Annexation may be accomplished by the recording of a Declaration of Annexation which requires Owners of Condominiums therein to be Members of the Association. Any Phase may be deannexed anytime prior to the first conveyance of a Condominium in such Phase by Declarant executing, acknowledging and recording a Declaration of Deannexation for such Phase; provided, however, a draft of the Declaration of Deannexation must be submitted to the VA which shall determine whether it is acceptable and so advise Declarant prior to its recordation. The obligation of Condominium Owners to pay dues to the Association and the right of such Condominium Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that particular Phase of development.

(c) Annexation of any additional Phase is subject to the following requirements:

(i) Recordation of a Declaration of Annexation identifying the specific land to be annexed;

(ii) Declarant shall be obligated to pay the Association, concurrently with the closing of the escrow for the first sale of a Condominium in an annexed Phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Area or Association Property improvements in the annexed Phase necessitated by or arising out of the use and occupancy of Condominiums under a rental program, if any, conducted by Declarant which has been in effect for a period of at least one year as of closing of escrow for the first sale of a Condominium in the annexed Phase;

(iii) The VA shall have the right to reasonably determine that the annexation is in substantial conformity with the overall development plan, if any, approved by the VA;

(iv) The Condominiums to be constructed in the Phase to be annexed shall be substantially consistent with the Condominiums in Phase 1 in structure type and quality of construction, if so required by FNMA. This Subsection (iv) is intended to benefit FNMA only and its requirements may be waived by FNMA;

(v) Annexation shall not result in there being more than 120 Condominiums in the Project; and

(vi) The Declaration of Annexation shall not change the provisions herein set forth (including, but not limited to, those pertaining to voting rights and assessments) but may impose additional restrictions, easements and covenants on the Phase being annexed.

(d) Declarant reserves the right to construct on the portions of the Real Property annexed to this Declaration, Condominiums of those sizes, price ranges, floor plans, architectural styles and designs as Declarant may, in its sole discretion, determine. Such sizes, price ranges, floor plans, architectural styles and/or designs need not be consistent with any previous or other Phase except as required by FNMA pursuant to Subsection (c)(iv) above. Among other things, but not as a limitation, Declarant may construct on the Real Property annexed hereto, lower or higher priced Condominiums, higher density or lower density residences, attached or detached residences. Moreover, Declarant shall not be obligated to complete the future Phases at all or in any particular order and has the right to change the Association Property and the numbers of Condominiums in a Phase, subject to the limitations stated in Subsection (c) above.

(e) The Declaration of Annexation shall contain (i) a description of the property to be annexed, and (ii) a statement that the property to be annexed shall be subject to this Declaration.

(f) Declarant hereby reserves reciprocal cross-easements in and to the Common Area (other than Exclusive Use Common Area) and Association Property in all Phases of the Project for the benefit of the Owners of Condominiums in all other Phases of the Project to the same extent and with the same effect as if each Owner of a Condominium in each Phase subject to this Declaration owned an undivided interest in the Common Area of each other Phase in the Project. These cross-easements shall not benefit or burden a Phase until (i) such Phase has become subject to this Declaration and (ii) a Condominium has been conveyed to a Retail Purchaser in such Phase.

(g) As an alternative method of annexation, upon the approval in writing of the VA and of the Association, pursuant to a two-thirds (2/3) majority of the voting power of its Members, or the written assent of such Members, excluding the voting power or written assent of Declarant, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation.

(h) Declarant hereby reserves the right to use the private street system and any private utilities within the Project for access (and connection of utilities) by Declarant and future owners of portions of the Real Property, regardless of whether such portions of the Real Property become annexed to this Declaration. The easements so reserved are appurtenant to the Real Property. Any owner utilizing easements reserved hereby shall, pursuant to California CIVIL CODE Section 845, reimburse the Association for its costs and reserves to maintain, repair and replace such private streets and private utilities, if any, based proportionally to the use made of such easements by the owners of portions of the Real Property not annexed hereto.



(i) This Section shall not be amended without the written approval of Declarant attached to the instrument of amendment during the period of time set forth in Subsection 15.6(b) above for annexation by Declarant without the assent of Members of the Association.

**Section 15.7. Enforcement Litigation.** In the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants or restrictions contained in this Declaration, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

**Section 15.8. Encroachment Easements.** The Owner of each Condominium is hereby granted an easement over all adjoining Condominiums, the Association Property and Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, repair, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if the encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure in the Project is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Condominiums, Association Property or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

**Section 15.9. Provisions Apply to All Condominiums.** The provisions of this Declaration apply to all Condominiums which have been made subject to this Declaration, including any unsold Condominiums within Phase 1 or an annexed Phase which may be owned by Declarant. Declarant shall have the same rights and assumes the same duties as any other Owner with respect to unsold Condominiums, except as expressly stated otherwise.

**Section 15.10. Special Responsibilities of Association.** In the event that the improvements to be installed by Declarant to the Association Property or Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering a Phase and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members of the Association,

excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

**Section 15.11. Limitation of Restrictions on Declarant.** Declarant is undertaking the work of construction of residential Condominium dwellings and incidental improvements within the Project. The completion of that work, and the sale, rental and other disposal of said Condominium dwellings is essential to the establishment and welfare of the Project as a residential community. In order that Declarant's work may be completed and the Project may be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing in the Project whatever is reasonably necessary or advisable in connection with the completion of such work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part of the Project such structures as may be reasonable and necessary for the conduct of its business of completing such work and establishing the Project as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the Project its business of completing such work, and of establishing a plan of Condominium ownership and of disposing of Condominiums in the Project by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such signs within the Project as may be necessary for the sale, lease or disposition of Condominiums; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of such Owner's Condominium.

The rights of Declarant provided in Subparagraphs (a) through (d) above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending (A) three (3) years after termination of Declarant's right to annex additional Phases pursuant to the Section in this Declaration entitled "Annexation; Reservation of Easements", or (B) when all 120 Condominiums have closed escrow, or (C) seven (7) years following the date of conveyance of the first Condominium in Phase 1 of the Project to a Retail Purchaser, whichever shall first occur.

**Section 15.12. Owners' Compliance.** Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

**Section 15.13. VA Approval.** So long as there is a Class B membership in the Association, the following actions will require the prior approval of the VA: Annexation or deannexation of additional property to the Real Property, any mergers or consolidations of the Association, any special assessment, and amendment to the Declaration, a draft of which shall be submitted to and approved by the VA prior to recordation.

**Section 15.14. FHA Approval.** The Federal Housing Authority ("FHA") shall have the same approval rights as are provided to VA in this Declaration during such period of time as FHA is insuring a Mortgage encumbering a Condominium within the Project or owns a Condominium within the Project.

**Section 15.15. Payments of Taxes or Premiums by First Mortgagees.** First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of first Mortgagees shall be governed by the provisions of their deeds of trust. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

**Section 15.16. Mortgagee Curing Defaults.** A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

**Section 15.17. Approval of First Mortgagees.** Unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each first Mortgage owned) have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission seek to abandon or terminate the Project.
- (b) Change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium in the Common Area. (This Subsection is not intended to require approval of First Mortgagees to the annexation of additional Phases to the Project or to the sale of Condominiums in such additional Phases.)
- (c) Partition or subdivide any Condominium.
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property. The granting of easements for public utilities or for other public purposes and other easements allowed by this Declaration shall not be deemed a transfer within the meaning of this Subsection nor shall non-material boundary adjustments be deemed a transfer within the meaning of this Subsection.

(e) Restoration of the project (after hazard damage or partial condemnation) in such a manner other than specified in this Declaration. Any restoration or repair of the Association Property or Common Area after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by Eligible Mortgage Holders, Insurers or Guarantors which have at least sixty-seven percent (67%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors. When Owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the project, Eligible Mortgage Holders, Insurers or Guarantors which have at least sixty-seven percent (67%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors must agree.

(f) Use hazard insurance proceeds or proceeds from other third parties for losses to or claimed defects in any portion of the Association Property or Common Area for other than the repair, replacement or reconstruction of such Association Property or Common Area.

(g) When professional management has been previously required by any Eligible Mortgage Holder, Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder, Insurer or Guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of at least sixty-seven percent (67%) of the voting power of the Association and the approval of Eligible Holders, Insurers or Guarantors of Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors. This paragraph (g) applies only if the Project contains 50 or more Living Units.

**Section 15.18. Notice to Eligible Mortgagees.** Upon written request to the Association identifying the name and address of the Eligible Mortgage Holder, Insurer or Guarantor and the Condominium number or address, any Eligible Mortgage Holder, Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor.

(b) Any delinquency in the payment of assessments or other default by an Owner subject to a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, Insurers or Guarantors as specified above.

**Section 15.19. Documents to be Available to Mortgagees.** The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any Mortgage, current copies of this Declaration, the Bylaws, other rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection,

upon request, during normal business hours or under other reasonable circumstances. If the Project consists of fifty (50) or more Condominiums, the Association must provide an audited statement for the preceding fiscal year if an Eligible Mortgage Holder or Eligible Mortgage Insurer or Guarantor of a first Mortgage submits a written request for it. If the Project consists of less than fifty (50) Condominiums and no audited statement is available, the Eligible Mortgage Holder or Eligible Mortgage Insurer or Guarantor may have an audited statement prepared at its expense. Any such financial statement so requested shall be furnished within a reasonable time following such request.

**Section 15.20. Mortgage Protection.** A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Condominium; provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Condominium in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

**Section 15.21. Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

**Section 15.22. Provisions of Civil Code Section 1360.** Section 1360 of the California CIVIL CODE provides as follows:

"(a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the owner of the separate interest may do the following:

(1) Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(A) The modifications shall be consistent with applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf or physically disabled.

(D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law."

**Section 15.23. Documents to be Provided to Prospective Purchasers.**

(a) ***By Owners.*** Each Owner shall, as soon as practicable before transfer of title to his Condominium or execution of a real property sales contract therefor (as defined in CIVIL CODE Section 2985), provide the following to the prospective purchaser:

(1) A copy of this Declaration, the Association's Articles and Bylaws, and the Condominium Plan for the Phase which describes the Condominium offered for sale;

(2) The statement required by CIVIL CODE Section 1368(2), if applicable (*i.e.*, if an age restriction becomes applicable);

(3) A copy of the Association's most recent financial statement distributed pursuant to CIVIL CODE Section 1365;

(4) A true statement, in writing, from an authorized representative of the Association, as to the respective amounts levied upon the Owner's Condominium which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Condominium pursuant to CIVIL CODE Section 1367.

(b) ***By the Association.*** Upon written request to the Association it shall, within ten (10) days of mailing or delivery of the request, provide an Owner with a copy of the requested Association items specified in 1, 2, 3 and 4 above. The Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

**Section 15.24. Association Property and Common Area Inspection.** Declarant may, at its election, notify the Board that (i) Association Property and Common Area landscaping improvements for a particular Phase, or some portion thereof, have been completed and (ii)

Declarant is requesting the inspection provided for in this Section. Within fifteen (15) days after Declarant gives such notice, Declarant shall select an independent and qualified horticulturalist or landscape architect to perform the inspection. Each person selected or appointed pursuant to this Section is referred to collectively as the "Expert". Declarant shall pay the reasonable compensation of the Expert.

Promptly upon the selection of the Expert as provided above, the Expert shall inspect the improvements as to which Declarant has given notice of completion and requested inspection. One representative of the Declarant and one representative of the Board may accompany the Expert during the inspection. The inspection shall be limited to a visual inspection, and improvements shall not be uncovered. The Expert shall not be responsible for identifying latent deficiencies. Promptly after the inspection is completed, the Expert shall submit a written report (the "Report") to Declarant and the Board specifying the respects, if any, in which the improvements do not substantially conform to the plans and specifications therefor and are defective, and if there are no such deficiencies, the Report shall state that the improvements conform to the plans and specifications therefor. The Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent deficiencies, if any, the improvements have been constructed in substantial accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any deficiencies specified in the Report and except with respect to latent deficiencies, if any, and the separate repair obligations of Declarant under express written warranty, if any.

Declarant shall correct any deficiencies specified in the Report, and the Expert shall reinspect such improvements within thirty (30) days after Declarant's request. Such reinspection shall be performed in the same manner as provided for the first inspection. Promptly after the reinspection is completed, the Expert shall submit another written report (the "Reinspection Report") to Declarant and the Board specifying the deficiencies specified in the Report which have not been corrected, if any, and if all such deficiencies have been corrected the Reinspection Report shall state that the improvements substantially conform to the plans and specifications therefor. The Reinspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent deficiencies, if any, the improvements have been constructed in substantial accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any deficiencies specified in the Reinspection Report, and except with respect to latent deficiencies, if any, and the separate repair obligations of Declarant under express written warranty, if any.

Additional inspections and Reinspection Reports shall be made, if necessary, all in accordance with and with the same effect as provided hereinabove.

Within ten (10) days after all deficiencies have been corrected, as evidenced by a Report or Reinspection Report, the Board shall be deemed to have accepted the improvements in writing and shall release in writing any and all rights under any and all payment and performance, labor and material, and completion bonds pertaining to the improvements.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

CARMEL MOUNTAIN RANCH

BY: THE PRESLEY COMPANIES, a California corporation,  
a general partner

By John D. Nabors Jr.  
Title Vice President

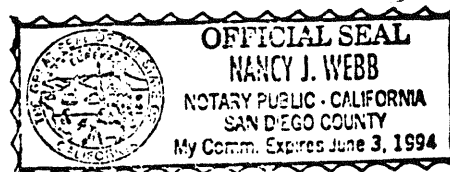
By \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN DIEGO )

On 5-26-94, before me, Nancy J. Webb, Notary  
Public, personally appeared John H. Nabors, Jr.

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

WITNESS my hand and official seal.



Signature Nancy J. Webb

(Seal)



## EXHIBIT "A"

Real Property

Lots 1 through 10, inclusive, of CARMEL MOUNTAIN RANCH UNIT 19, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 13061, filed with the County Recorder of San Diego County on October 12, 1993.

## EXHIBIT "B"

Phasing List

| Phase | Lot(s) | Association Property Lot(s) | Number of Units |
|-------|--------|-----------------------------|-----------------|
| 1     | 1, 7   | 8                           | 20              |
| 2     | 2      | NONE                        | 20              |
| 3     | 6      | NONE                        | 20              |
| 4     | 3      | NONE                        | 20              |
| 5     | 4, 5   | NONE                        | 28              |
| 6     | 9, 10  | NONE                        | 12              |

All lots referred to above are as shown on CARMEL MOUNTAIN RANCH UNIT 19, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 13061, filed with the County Recorder of San Diego County on October 12, 1993.



SUBORDINATION AGREEMENT

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association, being the beneficiary under that certain deed of trust recorded December 2, 1993 as File No. 1993-0809549 with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said deed of trust are and shall be subordinate and inferior to the Declaration of Restrictions to which this Subordination Agreement is attached.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS  
ASSOCIATION, a national banking association

By [Signature]

Title VICE PRESIDENT

By [Signature]

Title Vice President

STATE OF CALIFORNIA )  
COUNTY OF Orange ) ss.  
~~COUNTY OF SAN DIEGO~~ )

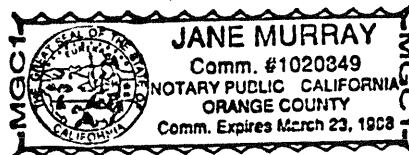
On June 7, 1994 before me, Jane Murray Notary  
Public, personally appeared Jeannette Jordan and Robert  
W. Birmingham

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

WITNESS my hand and official seal.

Signature

[Signature]



(Seal)