

BYLAWS
OF
WINDHAM AT CARMEL MOUNTAIN RANCH
HOMEOWNERS ASSOCIATION

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BYLAWS
OF
WINDHAM AT CARMEL MOUNTAIN RANCH ASSOCIATION

ARTICLE I

OFFICE

The office of this corporation shall be located in the County of San Diego, State of California.

ARTICLE II

DEFINITIONS

Section 2.1. "Declaration" shall mean and refer to that certain Declaration of Restrictions recorded with the Office of the County Recorder of San Diego County, California (including such amendments thereto as may from time to time be recorded), which requires Owners of Condominiums to be Members of this Association.

Section 2.2. **Other Definitions.** The definitions of terms set forth in the Declaration shall also apply to these Bylaws.

ARTICLE III

VOTING RIGHTS IN ASSOCIATION

The Association shall have two (2) classes of voting membership as set forth in the Declaration.

ARTICLE IV

MEMBERSHIP ASSESSMENTS AND LIEN RIGHTS

The Association shall have the right to impose assessments as set forth in the Declaration.

ARTICLE V

MEMBERSHIP RIGHTS, PRIVILEGES AND PENALTIES

Section 5.1. **Rights of Use.** Members shall have the rights to use the Association Property and the Common Area as set forth in the Declaration.

Section 5.2. Suspension; Penalties. The membership rights and privileges, together with the voting rights of any Member of the Association, may be suspended by the Board for the periods set forth in the Declaration. The Board may adopt rules and regulations imposing reasonable monetary penalties for such breach or noncompliance. Should the Board believe grounds may exist for any such suspension or imposition of monetary penalties, the Board shall give to the Member believed to be in violation at least fifteen (15) days' prior written notice of the intended suspension or proposed monetary penalty and the reasons therefor. The Member shall be given an opportunity to be heard before the Board either orally or in writing not less than five (5) days before the effective date of suspension. The notice required hereby may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first class or registered mail sent to the last address of the Member shown on the Association's records. No suspension shall affect the rights of such Member to access to the Owner's Living Unit, Yard nor the Owner's right to use of any Exclusive Use Common Area appurtenant to his Living Unit.

Section 5.3. Adoption of Monetary Penalty; Distribution of Policy To Members. If the Board adopts a policy imposing any monetary penalty, including any fee, on any Member for a violation of the Declaration or the Board's policies, including any monetary penalty relating to the activities of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, 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 these Bylaws and the Declaration. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to Members.

ARTICLE VI

MEETINGS OF MEMBERS

Section 6.1. Place of Meeting. All meetings of Members shall be held at the Project or at such other location in San Diego County, California, as close to the Project as reasonably possible as may be designated in the notice of meeting.

Section 6.2. Annual Meetings of Members. The first annual meeting of Members shall be held no later than six (6) months after the first close of escrow for the sale of a Condominium to a Retail Purchaser; provided, however, if the Phase in which the first closing occurs includes fifty (50) or more Condominiums, then the first meeting of Members shall be no later than forty-five (45) days after the first close of escrow for a sale of a Condominium to a Retail Purchaser. Subsequent regular annual meetings of the Members shall be held on the date determined by the Board provided that such annual meeting is held during the period commencing on annual anniversary of the first annual meeting and ending four weeks thereafter. Such meeting shall be held at the time determined by the Board. An election of directors shall be held at the first annual meeting of Members and all positions of director shall be filled at that election.

Written notice of each such annual meeting shall be given to each Member and, to all first Mortgagees who request notice, either personally or by sending a copy of the notice through the mail, first class, registered or certified, or by telegraph, charges prepaid, to his address appearing on the books of the Association or supplied by him to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given him if mailed

to the address of the Condominium owned by such Member or encumbered by the first Mortgagee, or published at least once in some newspaper of general circulation in the county of said principal office. All such notices shall be sent not less than ten (10) days and not more than ninety (90) days before each annual meeting, and shall specify the place, day and hour of such meeting, and those matters which the Board at the time of mailing the notice intends to present for action by the Members; however, except as otherwise provided by law, any proper matter may be presented at the meeting for action. An Eligible Mortgage Holder shall be entitled to designate a representative who shall have the right to attend all meetings of Members.

Section 6.3. Special Meeting. Special meetings of Members, for any purpose or purposes whatsoever, may be called at any time by the president or by a majority of a quorum of the Board, and shall be called by the Board upon receipt of a written request for a special meeting signed by Members representing at least five percent (5%) or more of the total voting power of the Members. Except in special cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of Members. Notices of any special meeting shall specify in addition to the place, day and hour of such meeting, the general nature of the business to be transacted.

Section 6.4. Adjourned Meetings and Notice Thereof. Any membership meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the voting power present in person or represented by proxy, but in the absence of a quorum no other business may be transacted at any such meeting.

When any membership meeting, either annual or special, is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken.

Section 6.5. Mortgagee Representation. First Mortgagees shall have the right to attend all membership meetings through a representative designated in writing and delivered to the Board but, except as otherwise provided in the Declaration or Bylaws, the first Mortgagee shall have no voting rights.

Section 6.6. Voting. Voting of the Members may be by voice or by ballot. However, all elections for directors shall be by secret written ballot.

Section 6.7. Quorum. Except as stated in the Articles of the Declaration entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION" and "DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY", or as may otherwise be stated in the Declaration, the Articles or these Bylaws, the presence in person or by proxy of a majority of the voting power entitled to vote at any meeting shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough voting power to leave less than a quorum. In the event any meeting of Members cannot be held because a quorum is not present, the Members present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time of the original meeting date, at which meeting the quorum requirement shall be twenty-five percent (25%) of the voting power of the

membership of the Association; provided, however, if after adjournment a new date is fixed for the adjourned meeting, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings; provided further, that in the event the quorum requirement becomes twenty-five percent (25%) of the voting power of the membership, then the only matters that may be voted upon at any meeting actually attended in person or by proxy by one-third (1/3) or less of the voting power are matters notice of the general nature of which was given in the notice of meeting.

Section 6.8. Consent of Absentees. The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 6.9. Action Without Meeting. Any action which may be taken at a meeting of the Members, except the election of directors where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the California CORPORATIONS CODE.

Section 6.10. Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by a written proxy executed by such person and filed with the secretary of the Association. All proxies shall be revocable and shall automatically terminate upon transfer of title of a Condominium by the Owner. Any such form of proxy or written ballot shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except that a candidate for election to the Board need not be named in a proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

Section 6.11. Parliamentary Procedures. Meetings of the Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt.

ARTICLE VII

DIRECTORS

Section 7.1. Number and Qualifications of Directors. Until the first annual meeting of Members, the Board shall consist of three (3) directors all appointed by Declarant. From and after the first annual meeting of Members during which the Board is elected by the Members, the Board shall consist of five (5) directors. Directors need not be Members of the Association.

Section 7.2. Election and Term of Office. At the first annual meeting of Members, (3) directors shall be elected for a term of two (2) years and two (2) directors shall be elected for a term of one (1) year (subject to the next paragraph, those persons who receive the greatest number of votes will be elected for the two year terms). Thereafter, directors shall be elected

at each annual meeting of Members to fill the vacancies of those directors whose term then expires and the term of each such director so elected shall be two (2) years. If any annual meeting is not held or the directors are not elected at an annual meeting, the directors may be elected at any special meeting of Members held for that purpose. All directors shall hold office until their successors are elected.

The directors shall be elected by secret written ballot. No Member shall be entitled to cumulate votes for a candidate or candidates unless such candidates' names have been placed in nomination prior to the voting and the Member has given notice at the meeting prior to the voting of the Member's intention to cumulate votes. If any one Member has given such notice, all Members at any election for directors shall have the right to cumulate votes and give one (1) candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the Member is entitled, or to distribute such Member's votes on the same principle among as many candidates as such Member shall think fit. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected. Anything herein stated to the contrary notwithstanding, at the first election of directors by Members and thereafter for so long as a majority of the voting power of Members is held by Declarant, or so long as there are two (2) outstanding classes of membership, not fewer than twenty percent (20%) of the directors may be elected solely by the voting power of Members other than Declarant. Any such director so elected by Members other than Declarant at the first annual meeting of Members shall be elected for a one (1) year term.

Unless the entire Board is removed from office by the vote of the Members, an individual director shall not be removed prior to the expiration of such director's term of office if the number of votes cast against removal or not consenting in writing to removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the most recent election of directors were then being elected. Any director elected to office solely by the votes of Members other than Declarant, as provided below, may be removed from office prior to the expiration of his term only upon the vote of a simple majority of the voting power of Members other than Declarant.

The election of directors may be held at any meeting of Members and each Member shall have the right to nominate from the floor candidates for the office of director.

Section 7.3. Vacancies. Vacancies in the Board created by death or resignation may be filled by a majority of the remaining directors, though less than a quorum, and each director so elected shall hold office until a successor is elected at an annual meeting of Members or at a special meeting called for that purpose.

Vacancies created by the removal of any director may be filled only by the vote of the membership.

The Members may at any time elect directors to fill any vacancy not filled by the directors, and may elect the additional directors at the meeting at which an amendment of the Bylaws is voted, authorizing an increase in the number of directors.

If any director tenders a resignation from the Board, the Board shall have the power to elect a successor to take office at such time as the resignation shall become effective. No reduc-

tion of the number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

Section 7.4. Organization Meeting. Immediately following each annual meeting of Members, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

Section 7.5. Other Regular Meetings. Regular meetings of the Board shall be held monthly unless the Board determines by its resolution to hold less or more frequent meetings. Regular Board meetings shall be held at least quarterly after the first annual meeting of Members. Board meetings shall be held at such place and hour within the Project as may be fixed from time to time by resolution of the Board. However, Board meetings may be held outside the Project if the Board determines that a larger meeting room is required, in which case the meeting room selected shall be as close as possible to the Project. Notice of all such regular meetings of the Board shall be posted at a prominent place within the Project and communicated to the directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.6. Special Meetings. Special meetings of the Board for any purpose or purposes shall be called at any time by the president, or by any two (2) directors other than the president.

Written notice of the time and place of special meetings and the nature of any special business to be considered shall be posted in the manner prescribed for notice of regular meetings and shall be sent to all directors by first class mail not less than four (4) days prior to the scheduled time of the meeting, or such notice shall be delivered personally or by telephone or telegraph not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, notice of the meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 7.7. Compensation and Fees. Neither the directors nor the officers of the Association shall receive any monetary compensation for their services performed in the conduct of the business of the Association, except upon the vote or written consent of a majority of the voting power of each class of Members of the Association, or after conversion of the Class B membership to Class A membership, except upon the vote or written assent of (i) fifty-one percent (51 %) of the total voting power of Members of the Association, and (ii) at least fifty-one percent (51 %) of the total voting power of Members of the Association other than Declarant. Nothing herein contained shall be construed or preclude any director or officer from serving the Association in any other capacity as an agent, employee or otherwise and receiving compensation therefor. Directors and officers of the Association may be reimbursed for expenses incurred in carrying on the business of the Association.

Section 7.8. Attendance at Meetings and Executive Sessions. Regular and special meetings of the Board shall be open to all Members; provided, however, Members who are not Board members may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may with the vote of a majority of its members present at a meeting in which a quorum has been established adjourn to executive session in which Members of the Association may be excluded, to consider litigation, matters that relate to the formation of contracts with third parties, or personnel matters. The

nature of any and all business to be considered in executive session shall first be announced in open session. Any matter discussed in executive session shall be generally noted in the minutes of the Board. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

Section 7.9. Quorum. A majority of the directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board.

Section 7.10. Adjournment. A quorum of the directors may adjourn any directors' meeting to meet again at a stated time and hour; provided, however, that in the absence of a quorum, a majority of directors present at the directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

Section 7.11. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting to be held after regular call and notice if a quorum be present, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Nothing contained herein shall remove the obligation to post the notice of all directors' meetings on the Common Area or Association Property.

Section 7.12. Entry of Notice. Whenever any director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall constitute a rebuttable presumption that due notice of such special meeting was given to such director as required by law and these Bylaws.

Section 7.13. Notice of Adjournment. Notice of any adjournment of any directors' meeting, either regular or special, to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 7.14. Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action to be taken or actually taken by the Board shall be given to the Members of the Association within three (3) days after all written consents have been obtained. The explanation shall be given in the same manner as provided in the Section of this Article entitled "Other Regular Meetings" for the giving of notice of regular meetings of the Board. Failure to give such notice shall not render the action to be taken or actually taken invalid.

Section 7.15. Indemnity. The Association shall indemnify any present or former director or officer of the Association to the fullest extent authorized under California CORPORATIONS CODE §7237, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by

or on behalf of such person to repay such amount unless it is ultimately determined that such person was entitled to be indemnified under this provision.

Section 7.16. Board Minutes To Be Available To Members. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than an executive session, shall be available to Members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member upon request and upon reimbursement of the Association's costs in making that distribution.

Members shall be notified in writing at the time that the Association's pro forma budget is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

ARTICLE VIII

OFFICERS

Section 8.1. Officers. The officers of the Association shall be a president, a vice president, a secretary and a chief financial officer and such other officers as the Board may from time to time by resolution create. Officers other than the president need not be directors. One (1) person may hold two (2) or more offices.

Section 8.2. Election. The president, vice president, secretary and chief financial officer shall be chosen annually by the Board, and each shall hold his or her office until such officer shall resign, or shall be removed or otherwise disqualified to serve, or a successor shall be elected and qualified.

Section 8.3. Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the directors in office at the time, at any regular or special meeting of the Board.

Any officer may resign at any time by giving written notice to the Board or the president, or to the secretary of the Association. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office.

Section 8.5. President. The president shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. The president shall preside at all meetings of the Members and at all meetings of the Board. The president shall be ex-officio a member of all standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a

corporation, and shall have such other powers and duties as may be prescribed by the Board or by the Bylaws.

Section 8.6. Vice President. In the absence or disability of the president, the vice president shall perform all the duties of the president, and when so acting shall have all powers of and be subject to all the restrictions upon the president. The vice president shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by the Bylaws.

Section 8.7. Secretary. The secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order of all meetings of directors and Members, with the time and place of holding, whether regular or special and if special how authorized, the notice thereof given, the names of those present at the directors' meetings, the number of memberships present or represented at Members' meetings and the proceedings thereof.

The secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the Bylaws or by law to be given, and he shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 8.8. Chief Financial Officer. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. He or she shall disburse the funds of the Association as may be ordered by the Board, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Section 8.9. Deposits By Property Manager. The Board may designate a professional property management company to collect assessments and make deposits. A separate trust account shall be established for the Association so that the Association's deposits will not be commingled with non-Association funds. Another separate trust account, complying with the requirements of the Article below entitled "OPERATING AND RESERVE ACCOUNTS", shall be established in the name of the Association for the deposit of reserves and the Association shall require its property manager, if one is designated, to deposit reserves in such separate account on at least a monthly basis. In the event the Association authorizes a property manager to collect assessments or make deposits, the Association shall maintain a fidelity bond in an appropriate amount naming the Association as obligee and insuring against loss by reason of the acts of the management agent and its employees. The fidelity bond shall be in an amount equal to not less than three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment.

Section 8.10. Signing Checks, Etc. All checks, notes, leases and deeds of trust of the Association shall be signed by at least two persons who hold offices of this Association, and one such person must be the president or the vice president.

The Board may designate a professional property management company to pay the Association's operating expenses from the non-reserve trust account established pursuant to the Section above entitled "Deposits By Property Manager".

ARTICLE IX

POWERS AND DUTIES OF ASSOCIATION

Subject to the Declaration, the Articles of Incorporation and the California Nonprofit Corporation Law applicable to mutual benefit corporations, the Board shall have the following powers and duties:

Section 9.1. Selection of Officers. To select and remove all officers, agents and employees of the Association, prescribe such powers and duties for them as may not be inconsistent with law, the Declaration, the Articles of Incorporation or these Bylaws, and, subject to the provisions of the Section entitled "Compensation and Fees" of Article VII of these Bylaws, to fix their compensation.

Section 9.2. Management of Business. To conduct, manage and control the affairs and business of the Association, and to make such rules and regulations therefor not inconsistent with law, the Declaration, the Articles of Incorporation or these Bylaws as they deem best, including rules and regulations for the operation of the Common Area and Association Property and the facilities owned or controlled by the Association.

Section 9.3. Borrowing of Money. To borrow money and incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the corporate name, promissory notes or other evidences of debt and, with the vote or written assent of two-thirds (2/3) of the voting power of each class of Members of the Association, to (a) hypothecate, mortgage, pledge or deed in trust any or all of the real or personal property owned by the Association as real security for money borrowed or debts incurred, and (b) sell any real or personal property owned by the Association. After conversion of the Class B membership to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of Members of the Association, and (ii) two-thirds (2/3) or more of the voting power of Members of the Association other than Declarant.

Section 9.4. Insurance. To contract and pay for fire, casualty, liability, fidelity bonds and other insurance as required by the Declaration and such other insurance as the Board deems to be appropriate.

Section 9.5. Payment of Common Area and Association Property Utilities. To pay all charges for water, electricity, gas, CATV and other utility services for the Common Area and Association Property and, to the extent not separately metered or charged, for each Living Unit and Exclusive Use Common Area.

Section 9.6. Management of Common Area and Association Property. To manage, operate, maintain and repair the Common Area and Association Property and all improvements located thereon, including the parking and drainage facilities and the restoration and replacement of any or all of the buildings, structures and improvements which are part of the Common Area or Association Property at any time and from time to time as the Board may determine desirable or necessary; and to make capital expenditures for and on behalf of the Association; provided, however, unless the Declaration allows otherwise, the Board shall not, without the vote or written consent of a majority of the voting power of each class of Members of the Association, incur aggregate expenditures for capital improvements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. After conversion of the Class B membership to Class A membership, such excess capital expenditures shall require the vote or written assent of (i) a majority of the total voting power of Members of the Association, and (ii) a majority of the total voting power of Members of the Association other than Declarant.

Section 9.7. Right to Enter. To enter onto any Living Unit and Exclusive Use Common Area subject to the limitations set forth in the Declaration.

Section 9.8. Right to Enforce. To enforce the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, the rules and regulations adopted by the Board and the provisions of any agreement to which the Association is a party.

Section 9.9. Right to Contract. To contract and pay for goods and services relating to the Common Area and Association Property, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services. Anything herein to the contrary notwithstanding:

(a) The term of any contract with a third person for supplying goods or services to the Common Area or Association Property or for the Association shall not exceed a term of one (1) year unless a longer term is approved by a majority of the voting power of each class of Members of the Association, or after conversion of the Class B membership to Class A membership, unless such longer term is approved by (i) fifty-one percent (51%) of the total voting power of Members of the Association, and (ii) at least fifty-one percent (51%) of the total voting power of Members of the Association other than Declarant, with the following exceptions:

(1) A contract with the public utility company for materials or services the rates for which are regulated by the Public Utilities Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate;

(2) A contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association;

(3) A management contract the terms of which have been approved by the VA may exceed a term of one (1) year;

(4) Agreements for cable television services and equipment or satellite dish television services and equipment, where the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years, provided such agreements have been approved by the VA; and

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services, where the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years, provided such agreements have been approved by the VA.

(b) Any agreement for management of the Project and any other contract providing for services by Declarant shall be terminable for cause upon thirty (30) days' written notice, and without cause or payment of a termination fee upon not more than ninety (90) days' written notice. Such agreements shall be renewable with the consent of the Board and the management agent.

(c) The Board shall not terminate professional management of the Project and assume self-management except in accordance with the Section of the Declaration entitled "Approval of First Mortgagees".

(d) No contract with the Association negotiated by Declarant shall exceed a term of one (1) year except as may otherwise be provided in this Section 9.9.

Section 9.10. Payment of Taxes on Common Area or Association Property. To pay any taxes and governmental special assessments which are or could become a lien on the Common Area or Association Property or any portion thereof.

Section 9.11. Adoption of Rules. To adopt reasonable rules not inconsistent with the provisions contained in the Declaration, and to amend the same from time to time relating to the use of the Common Area and Association Property and the facilities located thereon.

Section 9.12. Right of Discipline. To suspend the voting rights and right to use the recreational facilities located on the Common Area and Association Property of a Member who is in default in the payment of any assessment, as provided in Article V of these Bylaws.

Section 9.13. Preparation of Budgets and Financial Statements. To prepare budgets and financial statements for the Association as provided in these Bylaws.

Section 9.14. Notification to Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, any Eligible Mortgage Holder or Eligible 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 first Mortgage held,

insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable.

(b) Any delinquency in the payment of assessments or other default by an Owner of a Condominium subject to a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible 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 as required in these Bylaws or in the Declaration.

Section 9.15. Right to Litigate. Pursuant to California CODE OF CIVIL PROCEDURE §374, to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual Owners, in matters pertaining to the following:

(a) Enforcement of the Declaration, these Bylaws or the policies and rules of the Association;

(b) Damage to the Common Area or the Association Property;

(c) Damage to the Living Units and/or Exclusive Use Common Areas (or other Separate Interests) that the Association is obligated to maintain or repair;

(d) Damage to the Living Units or Exclusive Use Common Area (or other Separate Interests) which arises out of, or is integrally related to, damage to the Common Area, Association Property or separate interests that the Association is obligated to maintain or repair.

Section 9.16. Right to Delegate. To delegate any of its powers hereunder to others, including committees, officers and employees.

Section 9.17. Right to Sell. As permitted in the Declaration, to sell the Project for the benefit of all of the Owners and their Mortgagees (excepting the Administrator of the VA), as their interests may then appear, at such price and upon such terms as the Board may determine reasonable; provided, however, the Board shall not, without the vote or written consent of a majority of the voting power of each class of Members of the Association, sell in any fiscal year Association property having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. After conversion of the Class B membership to Class A membership, sale of property having an aggregate fair market value exceeding five percent (5%) of the budgeted gross expenditures of the Association shall require the vote or written assent of (i) a majority of the total voting power of Members of the Association, and (ii) a majority of the total voting power of the Association other than Declarant.

Section 9.18. Availability of Documentation. To make available to any prospective purchaser of a Condominium, any Owner of a Condominium, any first Mortgagee, and the holders, insurers and guarantors of a first Mortgage on any Condominium, or any of their duly appointed representatives, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules governing the Condominium and all other books, records and financial statements of the Association, including, but not limited to, the membership register, mailing addresses and telephone numbers of Members, books of account and minutes of the Members and Board and committees. "Available" as used in this Section shall mean available for inspection upon request at least during normal business hours or under other reasonable circumstances.

Section 9.19. Availability of Minutes. In the case of minutes of the Board, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than executive session, shall be available to Members upon request and payment of the fee incurred for reproducing copies.

Section 9.20. Right to Permit Use of Common Area and Association Property. To permit utility suppliers to use portions of the Common Area or Association Property reasonably necessary to the on-going development or operation of the Project. So long as Class B membership remains in existence, the Board shall at Declarant's request, grant to utility suppliers reasonable easements and licenses over, under, upon and across the Common Area and Association Property for the installation and maintenance of utility systems within the Project.

Section 9.21. Authorization to Contract. To authorize any officer or officers or agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances, and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 9.22. Duty to Make Records Available for Inspection. To keep in its principal office for the transaction of business or at such place within the Project as the Board shall prescribe, the original or a copy of the Bylaws as amended or otherwise altered to date, certified by the secretary, a membership register (including mailing addresses and telephone numbers), books of accounts and copies of minutes of all membership, board and committee meetings, all of which shall be made available for inspection and copying by any Member of the Association, or by any Member's duly appointed representative and by all first Mortgagees, at any reasonable time and for a purpose reasonably related to his interest as a Member or Mortgagee. The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member or Mortgagee desiring to make the inspection;
 - (b) Hours and days of the week when such an inspection may be made;
- and
- (c) Payment of the costs of reproducing copies of documents requested.

Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and all physical property owned or controlled by the

Association. The right of inspection by a director shall include the right at his expense to make extracts and copies of documents.

Section 9.23. Common Area Licenses. To grant irrevocable licenses for Owners to exclusively use portions of the Common Area adjoining the Owners' Exclusive Use Common Area, provided that the granting of such licenses would not materially and adversely affect any Owner's use of the Common Area.

Section 9.24. Association Property. To grant easements for Owners to exclusively use portions of the Association Property adjoining the Owners' Exclusive Use Common Area, provided that the granting of such easements would not materially and adversely affect any Owner's use of the Association Property.

Section 9.25. Financial Statements. The Board shall do the following:

(a) **Initial Financial Statements.** A financial statement (including a balance sheet and income and expense statement) of the affairs of the Association shall be made as of the last day of the month closest in time to the date six (6) months following close of escrow for the sale of the first Condominium by Declarant to an Owner. Said financial statement shall reflect the financial condition of the Association as of said date and shall summarize the financial transactions in which the Association was involved during the period between the close of the first sale and the date of the financial statement. The financial statement shall include a schedule of assessments received or receivable itemized by Condominium and shall include the name of the person or entity assessed. A copy of said financial statement shall be distributed personally or by mail to each of the Members of the Association and, upon written request, to all first Mortgagees, within sixty (60) days after the date of such financial statement.

(b) **Annual Reports.** Annual reports consisting of the following shall be distributed within one hundred twenty (120) days after close of the Association's fiscal year:

- (i) a balance sheet as of the end of the fiscal year;
- (ii) an operating (income) statement for the fiscal year;
- (iii) a statement of changes in financial position for the fiscal year;
- (iv) any information required to be reported under Section 8322 of the California CORPORATIONS CODE;
- (v) for any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(c) Independent Accountant. The annual report referred to in Subsection (b) above shall be prepared by an independent accountant.

(d) Statement of Association's Policies. A statement of the Association's policies and practices in enforcing its remedies against Members for default in the payment of annual and special assessments, including the recording and foreclosing of liens against Member's interest in the Project, shall be distributed to Members within sixty (60) days prior to the beginning of each fiscal year.

(e) Annual Budgets. The Board shall cause a pro forma operating statement (budget) for the Association to be prepared for the second and each subsequent fiscal year of the Association, a copy of which shall be distributed personally or by mail to each of the Members not fewer than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year to which the budget relates. The budget shall include the following information:

(i) The estimated revenue and expenses of the Association on an accrual basis for the next fiscal year.

(ii) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to the Section of these Bylaws entitled "Reserve Study", which shall be printed in bold type and include all of the following:

(1) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component in the Common Area or the Association Property.

(2) As of the end of the fiscal year for which the study is prepared:

(A) The current estimate of the amount of the cash reserves actually set aside to repair, replace or maintain the major components of the Common Area and the Association Property;

(B) The current amount of the accumulated cash reserves actually set aside to repair, replace, restore or maintain the major components of the Common Area and the Association Property; and

(C) The percentage of the amount determined pursuant to (B) above of the amount determined pursuant to (A) above.

(iii) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments

will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(iv) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area and Association Property for which the Association is responsible.

(f) Budget Summary. In lieu of distributing the budget, the Board may at its election distribute a summary of the budget along with a written notice (in at least 10 point bold type on the front page of the summary) that the budget is available at the business office of the Association or at another suitable location within the boundaries of the Project, and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association and delivered within five (5) days.

(g) Notice of Right To Have Copies of Minutes. At the time the budget is distributed or at the time of any general mailing, Members shall be notified in writing of their right to have copies of the minutes of meetings of the Board and as to how and where those minutes may be obtained and the cost of obtaining such copies.

Section 9.26. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of each year, except that the first fiscal year shall begin on the date of incorporation of the Association. However, the fiscal year of the Association is subject to change from time to time as the Board shall determine.

Section 9.27. Checks. To cause to be issued checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, in the name of or payable to the Association, which shall be signed or endorsed by the president or vice president and another officer of the Association unless otherwise authorized by the Board or by these Bylaws.

Section 9.28. Audited Financial Statement. If the Project contains fifty (50) or more Condominiums, any holder, insurer or governmental guarantor of a first Mortgage shall be entitled, upon submission of a written request, to an audited financial statement for the immediately preceding fiscal year (if the Project has been established for a full fiscal year), free of charge to the party so requesting it. The audited financial statement shall be made available within 120 days of the Association's fiscal year-end. If the Project contains less than fifty (50) Condominiums, the first Mortgagee shall be entitled to have such audited financial statement prepared at its expense if one is not otherwise available.

Section 9.29. Corporations Code. Except as specifically limited by this Article, the Association shall have all the powers granted to a nonprofit mutual benefit corporation as enumerated in Section 7140 of the CORPORATIONS CODE.

ARTICLE X

OPERATING AND RESERVE ACCOUNTS

Section 10.1. Definitions. As used in this Article:

(a) "Reserve accounts" means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

(b) "Reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

Section 10.2. Reviews. The Board shall do the following:

(a) Review a current reconciliation of the Association's operating accounts on at least a quarterly basis.

(b) Review a current reconciliation of the Association's reserve accounts on at least a quarterly basis.

(c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.

(e) Review an income and expense statement for the Association's operating and reserve accounts on at least a quarterly basis.

Section 10.3. Signatures on Checks. The signatures of at least (i) two directors or (ii) one officer who is not a director and the signature of a director shall be required for the withdrawal of moneys from the Association's reserve accounts.

Section 10.4. Limitation on Expenditure of Reserve Funds. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within three years of the date of the initial transfer, except the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the project, delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits

required by this Section. This special assessment is not subject to the limitation imposed by the Section in the Declaration entitled "Maximum Annual and Special Assessments".

Section 10.5. Reserve Study. At least once every three years the Board shall cause a study of the reserve account requirements of the project to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study required by this Section shall at a minimum include:

(a) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.

(b) Identification of the probable remaining useful life of the components identified in paragraph (a) as of the date of the study.

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in paragraph (a) during and at the end of its useful life.

(d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

ARTICLE XI

AMENDMENT

Section 11.1. Prior to Escrow Closings. Prior to the date escrow closes for any sale of a Condominium to an Owner, these Bylaws may be unilaterally amended by Declarant.

Section 11.2. After Escrow Closings. The following provisions shall apply after the close of the first escrow for a sale of a Condominium to an Owner. During the period of time prior to conversion of the Class B membership in the Association to Class A membership, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of the Members entitled to exercise a majority or more of the voting power of each class of Members of the Association or by the written assent of such Members. After conversion of the Class B membership to Class A membership, these Bylaws may be amended or repealed by the vote of (i) Members entitled to exercise a majority of the voting power of the Association, and (ii) at least a majority of the voting power of Members of the Association other than Declarant. Anything herein stated to the contrary notwithstanding, no material amendment to the Bylaws shall be made without the prior written approval of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51 %) or more of the Condominiums. "Material amendment" shall mean, for purposes of this Article XI, any amendments to provisions of these Bylaws governing any of the following subjects:

- (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 Living Unit boundaries.
- (g) Convertibility of Living Units 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 above entitled "Right To Contract".
- (m) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than specified in the Declaration.
- (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.

The percentage of voting power necessary to amend a specific clause or provision of these Bylaws shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause.

Anything herein to the contrary notwithstanding, so long as there remains a Class B membership in the Association, any amendment to these Bylaws shall require the prior approval of the VA. A draft of any amendment to these Bylaws shall be submitted to the VA for its approval prior to its approval by the membership of the Association.

ARTICLE XII

ANNEXATION

The Association shall admit as Members, Owners of Condominiums in any Phase of the Project which has been annexed pursuant to the Declaration. The Association shall accept title to the Association Property as set forth in the Declaration.

ARTICLE XIII

FHA APPROVAL

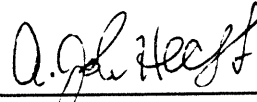
The Federal Housing Authority ("FHA") shall have the same approval rights as are provided to VA in these Bylaws during such period of time as FHA is insuring a Mortgage encumbering a Condominium within the Project.

I, the undersigned, do hereby certify:

1. That I am the incorporator of WINDHAM AT CARMEL MOUNTAIN RANCH ASSOCIATION, a California nonprofit mutual benefit corporation; and

2. That the foregoing Bylaws, comprising twenty-one (21) pages, constitute the Bylaws of said corporation duly adopted by Written Consent of Incorporator dated May 24, 1994.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this 24th day of May, 1994.



A. John Hecht, Incorporator