

RECORDING REQUESTED BY _____ 1603
MAIL TO: DEL MAR DOWNS HOMEOWNERS ASSOC
827 H DEL MAR DOWNS ROAD
SOLANA BEACH, CA 92075

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VERMILION
COUNTY RECORDER

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PREFACE

1. This document supercedes that Declaration of Restrictions recorded on File (Page No. 33061, Book 1972, Dec. 12, 9:00 AM) Official Records San Diego County, Calif.
2. "Real Property" is Lot 1 of Del Mar Downs as shown on Map No. 7413 filed in the Office of the County Recorder, San Diego County, California, File No. 224072, on August 23, 1972.

COVENANTS, CODES AND RESTRICTIONS
OF
DEL MAR DOWNS HOMEOWNERS ASSOCIATION

1. DEFINITIONS.

(a) "Corporation" shall mean and refer to Del Mar Downs Homeowners Association, a California Corporation not for profit, its successors and assigns.

(b) "Board" shall mean and refer to the Board of Directors of Del Mar Downs Homeowners Association.

(c) "Real Property" shall mean and refer to the real property hereinabove described.

(d) "Condominium Plan" shall mean and refer to the Condominium Plan recorded pursuant to Civil Code Section 1351 covering the Real Property, including such amendments thereto as may, from time to time, be recorded.

(e) "Living Unit" shall mean and refer to those portions of the Real Property shown and described as such on the recorded Condominium Plan covering the Real Property.

(f) "Common Area" shall mean and refer to all portions of the Real Property not located within a Living Unit.

(g) "Exclusive Use Area" shall mean and refer to those portions of the Common Area designated as such on said Condominium Plan and shall consist of carport space, patio space, and storage area and balcony, if any.

(h) "Owner" shall mean and refer to the owner of record, whether one or more persons or entities of fee simple title to any Living Unit which is a part of the Real Property, including contract sellers, but excluding those having such inter-

est merely as security for the performance of an obligation.

2. ARCHITECTURAL COMMITTEE.

There shall be an Architectural Committee consisting of three (3) persons to be appointed by the Board. Each of said persons so appointed shall be subject to removal at the direction of the Board at any time and from time to time, and all vacancies on said Committee shall be filled by appointment of the Board. In the event of the failure of the Board to appoint such Committee or to fill any vacancies therein, then in such event, the Owners of a majority in number of Living Units in said Real Property shall have the right by written document to appoint the members of said Committee or to fill any vacancies therein. The Chair person of the Architectural Committee shall be a member of the Board of Directors. In the event that additional members of the Architectural Committee are deemed necessary they may be appointed by the Board.

3. USE OF LIVING UNITS AND COMMON AREA AS DESCRIBED
IN SAID CONDOMINIUM PLAN.

(a) Each Living Unit shall be improved, used and occupied for private single-family dwelling purposes only.

(b) Each garage or carport shall be used for the storage of one (1) automotive passenger vehicle only and no truck, camper, trailer, boat of any kind, or other single or multi-purpose engine-powered vehicle other than a standard automobile shall be parked in any garage or car-port, except temporarily

and solely for the purpose of loading and unloading, except with the prior written approval of the Board.

(c) No Living Unit or improvements surrounding any Living Unit shall be occupied or used for any purpose or in any manner which shall cause such improvements 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 policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

(d) Not exceeding two (2) usual and ordinary household pets may be kept in any Living Unit by an owner, provided that such pets shall not be allowed on the Common Area except as may be permitted by rules made by the Board of Directors of the Corporation. Except as provided hereinabove, no animals, livestock, birds, or poultry shall be brought within said Real Property or kept in any Living Unit thereof. Tenants and/or Lessees shall not keep pets in the living unit or any common area attached to said unit.

(e) No living unit shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or annoy them by unreasonable noises or otherwise, nor shall any nuisance, or immoral or illegal activity be committed or permitted to occur on any Living Unit.

(f) No signs other than one sign of customary and reasonable dimensions advertising a Living Unit for sale shall be erected or displayed on any Living Unit. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board of Directors of the Corporation.

(g) There shall be no outside television or radio antenna constructed, installed or maintained on the Real Property.

(h) Each Owner shall have the right to place furniture upon the patio which he has the exclusive right to use. Except as otherwise provided in this Declaration of Restrictions, nothing herein contained shall give the Owner the right to paint, decorate, remodel, landscape, or adorn any patio or any other part or parcel of the Common Area without the written consent of the Board of Directors of the Corporation.

(i) No noxious or offensive activity shall be carried on in any Living Unit or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners. Nothing shall be done in any Living Unit or in, on, or to the Common Area which will impair the structural integrity of any building, or which would structurally change any building located therein. Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board of Directors of the Corpor-

ation. All equipment, garbage cans, wood piles, or storage piles shall be kept screened and concealed from view of neighboring Living Units, streets, and Common Area. All rubbish, trash, or garbage shall be regularly removed from each Living Unit and shall not be allowed to accumulate thereon or on the adjacent Common Area. No fences, hedges, or walls, shall be erected or maintained upon said Real Property, except as are installed in accordance with the initial construction of the buildings located on said Real Property, or as provided by the Board of Directors of the Corporation and said Architectural Committee. No exterior clothes lines shall be erected or maintained and there shall be no outside drying or laundering of clothes on the patios or any other party of the Common Area.

(j) The owner or owners of each Living Unit are responsible for trees, shrubs, etc. in their own yard areas. They must keep them trimmed and prevent them from overhanging onto the common area and they are responsible for insuring that roots do not damage fencing, utilities, or crack walkways of the common grounds. They are responsible to insure that they do not damage fencing around the yard. The owner or owners of each living unit shall not be permitted to have or maintain more than two (2) automotive passenger vehicles on the Real Property and then only in Owner's garage or carport which he has the exclusive right to use, except with the written consent of the Board of Directors.

No power equipment, appliances, hobby shops, or carpenter shops shall be maintained in said Real Property except with the prior written approval of the Architectural Committee. No automobile overhaul or maintenance work, other than emergency work, shall be permitted on said Real Property.

(k) The Common Area, except the buildings and those areas in which there exists an exclusive right to use in one of Owners, shall be improved and used only for the following purposes:

(i) Affording vehicular passage to the garages or carport and pedestrian movement within the said Real Property including access to the Living Units.

(ii) Recreational use by the Owners and occupants of Living Units in the Common Area and their guests, subject to rules established by the Board of Directors of the Corporation.

(iii) Beautification of the Common Area and providing privacy to the residents of Living Units through landscaping and such other means as the Board of Directors of the Corporation shall deem appropriate.

(iv) No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance

equipment used exclusively to maintain the Common Area), or in any manner which shall increase the rate at which insurance against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury or property damage liability insurance, covering the Common Area and improvements situated thereon, may be obtained, or cause such premises to be uninsurable against such risks, or any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

(l) Except as otherwise provided herein, no Owner shall make any alteration or improvements to the Common Area, or remove any planting, structure, furnishing or other object therefrom except with the written consent of the Board of Directors of the Corporation.

(m) The Owner of each Living Unit shall be legally liable to the Corporation for all damages to the Common Area or to any improvements thereof or thereto, including but not limited to the buildings, recreation facilities, and landscaping, caused by such Owner or any occupant of such Owner's Living Unit.

4. MANAGEMENT CORPORATION.

(a) Each Owner and/or Owners of a Living Unit shall

be a regular member of the Corporation, which said membership shall be appurtenant to such Living Unit, and the transfer of title to such Living Unit shall automatically transfer the regular membership appurtenant to such Living Unit to the transferee or transferees.

(i) Each such owner and/or owners are obligated to promptly, fully and faithfully comply with and conform to the Articles of Incorporation and Bylaws of the Corporation, and the rules and regulations from time to time prescribed thereunder by the Board of Directors of the Corporation or its officers and to promptly pay in full all dues, fees or assessments levied by the corporation on its members, whether such dues, fees, or assessments were levied prior to, or subsequent to the date of acquisition of title.

(ii) Upon any transfer of title to a living unit, excluding transfers of interests without consideration or foreclosures in which no assistance or information is requested from the association, the transferee shall pay to the Association a "transfer fee" in an amount of \$100.00. The transfer fee, the first month's maintenance fee and related charges payable before transfer of title will whenever possible be collected through escrow and amounts

not so collected will be billed in the normal manner.

(b) Except as otherwise provided herein, the Corporation acting through its Board of Directors and officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements, trees, shrubbery, plants, and grass thereon, all as more fully set forth in the Articles of Incorporation or the Bylaws of said Corporation. The Corporation shall be responsible for the maintenance and repair of all utilities leading to the units outer wall. The Board may select a management corporation if deemed necessary.

(c) The Board of Directors of the Corporation shall have the right to adopt reasonable rules, not inconsistent with the covenants contained in this Declaration, and to amend the same from time to time, relating to the use of the Common Area and the recreational and other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets, and other activities, which, if not so regulated, might detract from the

appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein.

Such rules may provide that the Owner of a Living Unit whose occupant leaves property on the Common Area in violation of the rules, may be assessed to cover the expense incurred by the Corporation in removing such property and storing or disposing thereof.

(d) The Board of Directors of the Corporation shall have the right to enter upon any Living Unit to the extent such entry is necessary to carry out the repainting or repair of the exterior surfaces of the building, or to perform any work required in the maintenance and upkeep of the Common Area, or for any other purpose reasonably related to the performance by the Board of its responsibilities under the terms of this Declaration. Such right of entry shall be exercised in such manner as to interfere with the possession and the enjoyment of the occupant of such Living Unit as little as is reasonably possible, and shall be preceded by reasonable notice wherever the circumstances permit.

(e) In discharging their duties and responsibilities, the Board of Directors of the Corporation acts on behalf of and as representative of the Living Unit Owners and no member thereof shall be individually or personally liable or obligated for performance or failure of performance

of such duties or responsibilities unless he fails to act in good faith.

5. RESPONSIBILITIES OF OWNERS.

(a) Each Owner of a Living Unit shall be responsible for the maintenance and repair of the doors, windows, and screens enclosing his Living Unit, the interior of his Living Unit, and the interior of all areas which he has the exclusive right to use, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems servicing his Living Unit and located within or underneath the outside perimeter of the exterior bearing walls of said Living Unit, including television cable equipment and connections, and all appliances and equipment located in said Living Unit. The Association shall be responsible for utilities leading to the units. Each owner shall have the right, at his 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 Living Unit and the surfaces of the bearing walls and partitions located within said Living Unit. Said Owners shall have the right to substitute new finished surfaces in place of those existing on said ceiling, floors and walls. In the event an Owner

fails to maintain the interior of his Living Unit, and balcony, and the interior of all areas which he has the exclusive right to use, and the plumbing, electrical, heating and air conditioning systems thereof, or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board of Directors of the Corporation to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required, and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be done and shall assess the cost thereof such Owner.

(b) No Owner may sell, assign, lease or convey any area which he has the exclusive right to use, or any interest in the Common Area separate and apart from his Living Unit.

6. BREACH.

(a) A breach of any of the covenants contained in this Declaration which is not cured within fifteen (15) days from the date notice of such breach is given by Board of Directors of said Corporation to the Owner on whose Living Unit such breach occurs, or whose act or

omission constitutes such breach, shall give to the Board of Directors of said Corporation or its successors the right to immediate re-entry upon such real property.

(b) Breach of any of the covenants contained in this Declaration and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by any Owner, as the Owners of the right of re-entry provided for in the foregoing paragraph or by the Board of Directors of the Corporation. It is hereby agreed that damages at law for such breach are inadequate. The breaching party is liable for any and all attorneys fees incurred in the enforcement of the provisions of this covenant.

(c) The result of every act or omission whereby any of the covenants contained in the Declaration are violated in whole or in part is hereby declared and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Board or its successor in interest as the Owners of said right of re-entry.

(d) The remedies herein provided for breach of the covenants contained in the Declaration shall be deemed cumulative, and none of such remedies shall be

deemed exclusive.

(e) The failure of the Board of Directors of the Corporation, or any Owner to enforce any of the covenants contained in this declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability on the Board of Directors.

(f) A breach of the covenants contained in this declaration shall not affect or impair the lien or change of any bona fide mortgage or deed of trust made in good faith and for value on any Living Unit and the undivided interest of the Owner thereof in the Common Area; provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired title by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of the Covenants which occurred prior to such acquisition of title if such breach was or is noncurable or was a type of breach which is not practical or feasible to cure.

7. ENFORCEMENT

If the Board concludes that the alleged breach did in fact occur, the Board may, in its discretion, take the following action.

Impose a reasonable monetary penalty upon such voting owner which penalty shall constitute an additional assessment due and payable to the Association, together with the next regular monthly assessment in which, if not timely made, shall become a lien on said voting owners condominium pursuant to paragraph 8 below.

8. LIENS

(a) In the event any dues to the Corporation, maintenance fund payment or assessment shall be unpaid and not otherwise satisfied fifteen (15) days after the same becomes due and payable, the same shall be and become delinquent, and shall remain delinquent until the amount of such payment, together with all costs, including attorney's fees, penalties and interest as herein provided, shall be fully paid or otherwise satisfied.

(b) At any time after any dues, maintenance fund payment or assessment affecting any Living Unit has become delinquent the Board of Directors of the Corporation may file for recording in the office of the San Diego County Recorder a notice of delinquency as to such Living Unit, which notice shall state all amounts which have become delinquent with respect to such Living Unit and the costs (including attorneys fees) penalties and interest which have accrued thereon, the amount of any

maintenance fund payments or assessments relating to such Living Unit which is due and payable, although not delinquent, a description of the Living Unit in respect to which the delinquent payment or assessment is owed, and of the interest in the Common Area belonging to the Owner thereof, and the name of the record or reputed record Owner of such Living Unit. Such notice shall be signed by the President or other officer of the Board of Directors of the Corporation, or by a majority of the members of the Board. In the event the delinquent payment or assessment and all other maintenance fund payments and/or assessments which have become due and payable with respect to the same Living Unit, together with all costs (including attorneys fees), penalties 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 subparagraph (c) of this paragraph, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing such lien.

(c) Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Article, the amounts delinquent, as well as any amounts then due and payable, although not delinquent, as set forth in such notice, together with the costs (including attorney's fees), penalties and interest accruing thereon,

shall be and become a lien upon the Living Unit, garage stalls, garages, carports, or car spaces and interest in the Common Area described therein, which lien shall also secure all other maintenance fund payments and/or assessments which shall become due and payable with respect to said Living Unit following such recording, and all costs (including attorney's fees), penalties and interest accruing thereon. Said lien shall continue until all amounts secured thereby are fully paid or otherwise satisfied. Said lien shall be subordinate to the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on said Living Unit.

(d) Each lien established pursuant to the foregoing provisions of this Article may be foreclosed as and 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 Section 2932, subject to the limitations contained in Section 2924, of the California Civil Code, and to that end a power of sale is hereby conferred upon the Corporation.

(e) There shall be a late payment penalty of ten percent (10%) of the amount due and owing, assessed fifteen (15) days after the due date.

(f) The Corporation may bring an action at law against the Owner personally obligated to pay the dues or maintenance fund assessment in addition to foreclosing said lien. No Owner may waive or otherwise escape liability for the dues, maintenance fund payments or assessments provided for herein by non-use of the Common Area or the abandonment of his Living Unit.

9. SEVERABILITY. Should any covenants contained in this Declaration be void or be or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

10. PARTITION PROHIBITED. Each of the Owners of Living Units in the Real Property, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in said Real Property, except upon the showing that (1) three years after damage or destruction to the project which renders a material part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or (2) that three-fourths (3/4) or more of the project has been destroyed

or substantially damaged, and that condominium Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the project; or (3) that the project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the project; provided, however, that if any Living Unit shall be owned by two (2) or more co-tenants as tenants-in-common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition as between such co-tenants.

11. POWER OF ATTORNEY. The Corporation is hereby granted an irrevocable power of attorney to sell the Real Property for the benefit of all the Owners thereof. when partition of the Owner's interest in said Real Property may be had pursuant to paragraph 11 hereof. The power of attorney herein granted may be exercised upon the vote of the Owners holding in the aggregate at least two-thirds (2/3rds) of the interest in the Common Area by any two (2) members of the Board of Directors of the Corporation who are hereby authorized to record a certificate of exercise in the Office of the County Recorder,

San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

12. DAMAGE AND DESTRUCTION OF COMMON AREA. If any portion of the Common Area 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 One Thousand Dollars (\$1,000.00), the Board of Directors of the Corporation shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor;

(b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than One Thousand Dollars (\$1,000.00), and if the Owners holding in aggregate more than fifty percent (50%) interest in the Common Area agree to the repair or restoration of the project, then the Board of Directors of the Corporation shall contract as provided in subparagraph (a) above. If said Owners do not so agree, then all insurance proceeds shall be paid to the account of the Corporation, to be held for the benefit of the Owners and their Mortgagees as their respective interests shall appear;

(c) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment in proportion to the interest of each Owner in the Common Area 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 Corporation, to be used for such rebuilding. If any Owner shall fail to pay the special assessment within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the maintenance fund. This payment by the Board in no way releases the non-paying Owner of paying his share of repairs, and the Board may impose a lien on the non-paying Owner for the total amount of his special assessment.

13. DAMAGE AND DESTRUCTION OF LIVING UNITS. In the event of damage or destruction to any Living Unit, the Owner thereof shall reconstruct the same as soon as reasonably practical and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board of Directors of the Corporation, reconstruct or repair his Living Unit pursuant to new or

changed plans and specifications. In the event the Board of Directors fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved.

14. INTERPRETATION OF RESTRICTIONS. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board of Directors and its decision shall be final, binding and conclusive on all of the parties affected.

15. AMENDMENTS. These Restrictions may be amended at any time and from time to time by an instrument in writing signed by the Owners of a majority of responding Owners of the Living Units located on the Real Property, which said written instrument shall become effective upon the recording of the same in the Recorder's Office of the County of San Diego, California.

16. NO WAIVER. That a waiver of a breach of any of the foregoing conditions or restrictions shall not be construed as a waiver of any succeeding breach or violation thereof or any other condition or restriction.

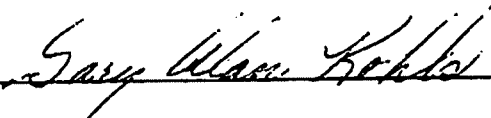
17. OWNERSHIP OF COMMON AREA. The Common Area will be owned by the Owners of the Living Units as tenants in common subject to the exclusive right to use the areas designated as such on said Condominium Plan by each of the Owners of the Living Units, respectively.

Said exclusive right to use said areas and said tenancy in common ownership interest shall be appurtenant to the Living Unit in question and title thereto shall pass with the title to the Living Unit to which it is appurtenant.

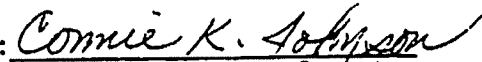
The Board of Directors intends to construct the improvements on said Real Property as shown on said Condominium Plan in one (1) phase. There will be fifty four (54) Living Units constructed on said Real Property and each of the Owners of a Living Unit will own an undivided 1/54 fee simple title as tenant-in-common in said Common area in addition to his Living Unit and the exclusive right to use area or areas appurtenant thereto, subject to the exclusive right to use area easements appurtenant to the other Living Units on said Real Property not owned by him.

-23-

GARY ALAN KOHLS



DEL MAR DOWNS ASSOCIATION, INC.

BY: 
Connie K. Johnson, Secretary

SEAL

