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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CREEKWOOD  
(Condominium/Planned Unit Development)

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 4th day of September, 1984 by PUEBLOS DEL RIO, LTD., a California limited partnership (hereinafter referred to as "Declarant"), with reference to the following

RECITALS:

A. Declarant is the owner of that certain real property located in The City of San Diego, County of San Diego, State of California, which is more particularly described as:

Parcel 4 of PARCEL MAP NO. 13238 filed in the  
Office of the County Recorder of San Diego  
County, California, on April 19, 1984

(hereinafter called the "Condominium Property").

B. Declarant has or intends to improve the Condominium Property by establishing thereon fifty-six (56) condominiums and to establish a condominium project under the provisions of the California Condominium Act providing for separate title to Living Units (hereinafter defined) appurtenant to which will be an undivided fractional interest in the Common Area (hereinafter defined). The Living Unit portion of the condominium project will be of contemporary California architectural style and will consist of four (4) floor plans of approximately 690 to 1,010 square feet.

C. The development of the Condominium Property is the first phase of a planned four (4) phase condominium project as follows:

| <u>Phase No.</u> | <u>Property Within Phase</u>     | <u>Number of Condominiums</u> | <u>Undivided Fractional Interest in Common Area in Phase</u> |
|------------------|----------------------------------|-------------------------------|--|
| 1                | Parcel 4 of PARCEL MAP NO. 13238 | 56                            | 1/56th   |
| 2                | Parcel 3 of PARCEL MAP NO. 13238 | 56                            | 1/56th   |
| 3                | Parcel 5 of PARCEL MAP NO. 13238 | 70                            | 1/70th   |
| 4                | Parcel 1 of PARCEL MAP NO. 13238 | 70                            | 1/70th   |

The Common Area amenities in each phase will consist of landscaping, driveways and parking.

D. There is no guarantee that all phases will be completed or that the number of Condominiums or the amenities in each phase will be developed as described above. The project will be consistent with the overall development plan submitted to the Veterans Administration and Federal Housing Administration.

E. Each Condominium shall have appurtenant to it a Class A membership in CREEKWOOD CONDOMINIUM ASSOCIATION, a California nonprofit mutual benefit corporation, which will be the management body for the overall condominium project.

F. The overall condominium project is also a planned unit development pursuant to which the Recreation Area (hereinafter defined) will be owned by the Association for the use and enjoyment of the owners of Condominiums within the project. The Recreation Area (Parcel 2 of PARCEL MAP NO. 13238) will be improved with a swimming pool, spa, clubhouse and landscaping, together with parking, some of which will be for the exclusive use of certain condominiums located in Phase 4. The Recreation Area will be conveyed to the Association in connection with Phase 2 of the project. There is no guarantee that Phase 2 of the project will be completed. If Phase 2 is not completed, the Recreation Area will not be conveyed to the Association and the facilities described above will not be constructed.

Before selling or conveying any interests in the Condominium Property, Declarant desires to subject the Condominium Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future owners of the Condominium Property.

NOW, THEREFORE, Declarant hereby declares that all of the Condominium Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Condominium Property and be binding on all parties having any right, title or interest therein, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1.1. "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 1.2. "Association" shall mean and refer to CREEKWOOD CONDOMINIUM ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 1.3. "Board" or "Board of Directors" shall mean and refer to the governing body of said Association.

Section 1.4. "Boundaries" shall mean that in interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

Section 1.5. "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 1.6. "Common Area" shall mean and refer to all portions of the Condominium Property not located within a Living Unit.

Section 1.7. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Condominium Property and Recreation Area and any reasonable reserve for such purposes.

Section 1.8. "Condominium" shall mean and refer to a fee simple estate in the Condominium Property as defined in Section 783 of the California Civil Code and shall consist of a separate interest in a Living Unit and an undivided fractional interest as tenant in common in the Common Area.

Section 1.9. "Condominium Building" shall mean a residential structure containing condominium Living Units.

Section 1.10. "Condominium Plan" shall mean and refer to the Condominium Plan or Plans recorded pursuant to California Civil Code Section 1351 covering the Condominium Property, or portion thereof, including such amendments thereto as may from time to time be recorded.

Section 1.11. "Condominium Property" shall mean and refer to that certain real property located in The City of San Diego, County of San Diego, State of California, more particularly described as:

Parcel 4 of PARCEL MAP NO. 13238 filed in the  
Office of the County Recorder of San Diego  
County, California, on April 19, 1984,

and such additions as may be annexed thereto as provided in the Declaration.

Section 1.12. "Declarant" shall mean and refer to PUEBLOS DEL RIO, LTD., a California limited partnership, its successors and assigns if such successors or assigns should acquire one or more undeveloped lots in the Condominium Property (or property which may be annexed thereto as provided in the Declaration) from Declarant for the purposes of development.

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

Section 1.14. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters of which such insurer or guarantor is entitled to notice by reason of the Declaration or the Bylaws.

Section 1.15. "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters of which such holder is entitled to notice by reason of the Declaration or the Bylaws.

Section 1.16. "Exclusive Use Area" shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner as shown and described on the Condominium Plan and shall consist of Decks, Storage and Covered Parking Spaces.

Section 1.17. "FHA" shall mean and refer to the Federal Housing Administration.

Section 1.18. "Living Unit" shall mean and refer to those portions of the Condominium Property shown and described as such on the Condominium Plan; provided, however, that the following are not part of any Living Unit: Bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Living Unit.

Section 1.19. "Member of Association" shall mean and refer to an Owner as defined in Section 1.22, Article I herein.

Section 1.20. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage.



Section 1.21. "Mortgagee" shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgagee.

Section 1.22. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Condominium which is part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.23. "Project" shall mean and refer to the entire real property above described, including all structures and improvements erected or to be erected thereon, and such additions as may hereafter be brought within the jurisdiction of the Association.

Section 1.24. "Recreation Area" shall mean and refer to all real property (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Recreation Area to be owned by the Association at the time of the conveyance of the first Condominium in the second phase of the Project consists of that certain real property located in The City of San Diego, County of San Diego, State of California, more particularly described as:

Parcel 2 of PARCEL MAP NO. 13238 filed in the  
Office of the County Recorder of San Diego  
County, California, on April 19, 1984.

Section 1.25. "VA" shall mean and refer to the Veterans Administration.

## ARTICLE II

### PROPERTY RIGHTS IN RECREATION AREA

Section 2.1. Title to the Recreation Area. Declarant covenants for itself, its successors and assigns that it will convey fee simple title to the Recreation Area in the second phase of the Project to the Association free and clear of all encumbrances and liens, except real property taxes which may be due but are not delinquent, and easements, covenants, conditions and reservations then of record, including those set forth on the Parcel Map within which the Recreation Area is located and in the Declaration, prior to the conveyance of the first Condominium in Phase 2 to an Owner.

Section 2.2. Owners' Easements of Enjoyment. Every Owner of a Condominium shall have a right and easement of ingress, egress and of enjoyment in and to the Recreation Area which shall be appurtenant to and shall pass with the title to every such Condominium, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated on the Recreation Area.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Condominium remains unpaid; and, for a period not to exceed thirty (30) days for any infraction of its published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board which satisfies the minimum requirements of Section 7341 of the California Corporations Code as set forth in the Bylaws.

(c) The right of the Association to dedicate or transfer all or substantially all of its assets, including all or any part of the Recreation Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding any contrary provisions in the Articles or Bylaws, so long as there is any Recreation Area for which the Association is obligated to provide management, maintenance, preservation or control, no such dedication or transfer shall be effective unless an instrument signed by one hundred percent (100%) of the Members agreeing to such dedication or transfer, has been recorded.

(d) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Recreation Area and in aid thereof, and with the assent of two-thirds (2/3) of each class of Members, hypothecate any or all real or personal property owned by the Association.

(e) The right of certain Owners to the exclusive use of Covered Parking Spaces as provided in Section 2.3 of this Article II.

(f) Subject to a concomitant obligation to restore, Declarant and its sales agents, employees and independent contractors shall have:

(i) a non-exclusive easement over the Recreation Area for the purpose of making repairs to the Recreation Area or to the Common Area and Living Units, provided access thereto is otherwise not reasonably available, and for the purpose of constructing, marketing and maintaining Phases 1 through 4, respectively.

(ii) the right to the non-exclusive use of the Recreation Area for the purpose of maintaining sales offices and signs reasonably necessary to market the Condominiums, for a period of not more than five (5) years after conveyance

of the Recreation Area to the Association, or the sale of all Condominiums within the Project, whichever is first to occur. The use of the Recreation Area by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association.

Section 2.3. Parking Rights. Ownership of certain condominiums in Phase 4 shall entitle the owner to the exclusive use of the Covered Parking Space located on the Recreation Area which bears the same number as shown on Exhibit "A" attached hereto as the Living Unit of the condominium as shown on the Condominium Plan covering Phase 4, together with the right of ingress and egress thereto. The right to use the Covered Parking Space shall be limited to the storage of one motor vehicle in each Covered Parking Space of a size not to exceed eight and one-half (8½) feet in width, eight (8) feet in height and twenty (20) feet in length.

Section 2.4. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the Recreation Area and facilities thereon to the members of his family, his tenants or contract purchasers who reside in his Living Unit.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

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

Section 3.2. Voting Rights. The Association shall have two (2) classes of voting membership:

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

Class B. Class B Member(s) shall be Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) Two (2) years following the date of original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a phase of development of the Project; or

(c) Four (4) years following the date of original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the first phase of development of the Project.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 4.1. Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Recreation Area and Common Area, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall (except as otherwise provided in Section 4.4 below) be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them, however, the assessment shall remain a lien on the Condominium for the period set forth in Section 4.8 below.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project, and for the improvement and maintenance of

the Recreation Area and Common Area for the common good of the Project and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Articles, Bylaws, Declaration and rules and regulations adopted by the Board.

Section 4.3. Maximum Annual Assessment. Until January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment shall be \$1,150.00.

(a) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased each year by not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased greater than ten percent (10%) by the vote or written assent of fifty-one percent (51%) of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, the maximum annual assessment may be increased more than ten percent (10%) above the maximum annual assessment for the previous year by 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.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 4.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of improvement upon the Recreation Area or Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, any such assessment shall have the vote or written assent of (i) fifty-one percent (51%) of the total voting power of Members of the Association, and (ii) fifty-one percent (51%) of the total voting power of Members of the Association other than Declarant. The Association may also impose a non-lien assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Condominium into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws and the Association rules and regulations, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing; provided,

however, such special assessment shall not constitute a lien against the Condominium owned by the Member so assessed and no such special assessment shall be effective unless the Member receives fifteen (15) days' prior written notice (given by any method reasonably calculated to give actual notice) of the proposed special assessment and the reasons therefor, and is given an opportunity to be heard, either orally or in writing, before the Board not less than five (5) days before the effective date of the special assessment.

Section 4.5. Notice and Quorum for Any Action Authorized Under Section 4.3 or 4.4. Any action authorized under Section 4.3 or 4.4 above requiring the vote of Members, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting; provided, however, if notice is given by mail and the notice is not mailed by first class, registered or certified mail, then notice shall be given not less than twenty (20) days before the meeting. A quorum for such meeting shall be a majority of the voting power of the Members of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the membership of the Association; provided, however, if (i) the meeting so adjourned is an annual meeting, and (ii) the adjourned annual meeting is actually attended in person or by proxy by less than thirty-three and one-third percent (33-1/3%) of the voting power of the membership of the Association, then the only matters which may be voted upon at the subject meeting are matters notice of the general nature of which was duly given. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is less than the requisite fifty-one percent (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days following the date of such meeting.

Section 4.6. Rate of Assessments. Both annual and special assessments (other than (i) special assessments imposed by reason of noncompliance with the Condominium documents, or (ii) special assessments to raise funds for the rebuilding or major repair of a portion of the structural Common Area) shall be levied upon each Condominium at a uniform rate, and may be collected on a monthly basis or otherwise as determined by the Board. A special assessment against Members to raise funds for the rebuilding or major repair of a portion of the structural Common Area shall be levied upon the basis of the ratio of the square footage of the floor area of the Living Unit of the Condominium to the total square footage of the aggregate floor area of the Living Units in all Condominiums to be assessed: A special assessment against a

Member to reimburse the Association for costs incurred in bringing the Member and his Condominium into compliance with the provisions of the Condominium documents shall be assessed only against that Member and his Condominium. Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of ten percent (10%) per annum from the due date until paid in full.

Section 4.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Condominiums in each phase of the Project on the first day of the month following the conveyance of the first Condominium to an Owner in that phase, or on the first day of the month following the conveyance of record of the Recreation Area in that phase to the Association, whichever shall first occur. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Condominium at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

Section 4.8. Effect of Non-Payment of Assessments; Remedies of the Association. Any annual or special assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a notice of delinquency as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorney's fees) and interest which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, and the name of the record or reputed record Owner of such Condominium. Such notice shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees) and interest accruing thereon, shall (except as otherwise provided in Section 4.4 above) be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs (including attorney's fees) and interest accruing thereon. Said lien shall continue for a period

of one year unless extended for a period of an additional year by the recording of a written extension by the Association. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including attorney's fees) and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1356 of the California Civil Code, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 4.9. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, interest, penalties, costs and attorney's fees provided for herein shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Condominiums, including such acquirer, his successors and assigns.



Section 4.10. Treatment of Monetary Penalty. A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Declaration or Bylaws or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Recreation Area or Common Area for which the Member was allegedly responsible or in bringing the Member and his Condominium into compliance with the Declaration or Bylaws, shall not be treated as an assessment which may become a lien against the Member's Condominium enforceable as provided in Section 1356 of the Civil Code. This Section shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

Section 4.11. Estoppel Certificate. The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

Section 4.12. Personal Liability of Owner. No Owner may exempt himself from personal liability for assessments levied by the Association, nor release the Condominium owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Recreation Area or Common Area or by abandonment of his Condominium.

Section 4.13. Taxation of Association. In the event that any taxes are assessed against the Recreation Area or Common Area or the personal property of the Association, rather than against the individual Condominiums, said taxes shall be added to the annual assessments and, if necessary, a special assessment may be levied against the Condominium in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

Section 4.14. Capitalization of Association. Upon acquisition of record title to a Condominium from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6) the amount of the then annual assessment for that Condominium as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association. Amounts paid pursuant to this Section 4.14 shall not be considered as advance payments of regular assessments and are in addition to and not in lieu of annual and special assessments of the Association.

## ARTICLE V

### RESPONSIBILITIES OF MAINTENANCE

Section 5.1. Owner Maintenance of Living Unit. Each Owner of a Condominium shall be responsible for the maintenance and repair of the glass doors and windows enclosing his Living Unit, the interior of his Living Unit and all appliances whether "built-in" or freestanding within the Living Unit, the interior surfaces of the Living Unit, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems servicing his Living Unit and located within the outside perimeter of the exterior bearing walls, floors and ceilings thereof, including television cable equipment and connections, and all appliances and equipment located within or without said Living Unit, so long as those systems are used exclusively by such Owner and not in common. Each Owner shall also be responsible for the maintenance and repair of the Deck and Storage which he has the exclusive right to use, including the interior surfaces of any fence or railing (but not the exterior surfaces), and shall make such repairs as the Board deems necessary to preserve the attractive appearance and protect the value thereof.

Section 5.2. Owner's Grant of Easements. Each Owner hereby grants easements to other Owners to enter into each Living Unit and to have utility companies enter into Living Units to repair the plumbing, heating and electrical systems located thereon, subject to the following limitations. Entry into a Living Unit for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Entry into a Living Unit for other than emergency repairs shall be made only after three (3) days notice has been given to the Owner and shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party.

Section 5.3. Association Maintenance of Common Area. Except as otherwise provided herein, the Association acting through the Board and its 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 this Declaration, the Articles and the Bylaws. The Association shall permanently maintain the Covered Parking Spaces which are Exclusive Use Areas and the unassigned covered and uncovered parking spaces located on the Common Area. The Association shall arrange for trash pickup from designated areas of the Common Area not fewer than one time each week.

Section 5.4. Association Maintenance of Recreation Area.

The Association shall maintain and provide for the maintenance of all the Recreation Area and all improvements thereon in good repair and appearance. The Association shall provide landscaping, and gardening properly to maintain and periodically replace when necessary the trees, plants, grass and other vegetation originally placed in the Recreation Area by Declarant or Declarant's successor, pursuant to landscape plans submitted to The City of San Diego and approved by said City in connection with approval of the subdivision map covering the Project.

Section 5.5. Association Right of Entry. For the purpose of performing the maintenance of the Recreation Area or Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association agents and employees shall have the right to enter any Living Unit or upon any portion of the Common Area to effect emergency repairs. For other than emergency repairs, the Association agents and employees shall have the right to enter any Living Unit or any Exclusive Use Area portion of the Common Area to effect repairs, improvements, replacements or maintenance which the Association, after approval by two-thirds (2/3) vote of the Board, reasonably deems necessary. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association. Further, such entry for other than emergency repairs shall be made only after no less than three (3) days' notice has been given to the Owner.

Section 5.6. Association Right to Adopt Rules. The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Recreation Area and 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 Condominium whose occupant leaves property on the Recreation Area or Common Area in violation of the rules may be assessed (on a non-lien basis) to cover the expense incurred by the Association in removing such property and storing or disposing thereof, after appropriate notice and an opportunity for a hearing before the Board and a two-thirds (2/3) vote of approval by the Board. The Board may suspend the voting rights and right to use the recreational facilities located on the Recreation Area and Common Area of a Member who is in default

in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws which satisfies the minimum requirements of Section 7341 of the California Corporations Code.

Section 5.7. Association Right to Grant Permits. The Board shall have the right to grant permits, licenses and easements over, under, upon and across the Recreation Area and Common Area for utilities, roads and other purposes reasonably necessary or useful for the property maintenance or operation of the Project. The Board shall, upon written request from an Owner, grant permits, licenses and easements over, under and across the Common Area for purposes of permitting the installation and maintenance of solar heating systems to serve the Living Unit owned by such Owner, subject only to reasonable rules adopted by the Board with regard to maintenance, applicable zoning regulations, the Uniform Building Code and associated ordinances, and reasonable architectural standards adopted by the Board or the architectural committee appointed by the Board pursuant to Article VI below.

## ARTICLE VI

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure or improvement shall be commenced, erected, placed or altered upon the Recreation Area or Common Area until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board, or by an architectural committee appointed by the Board and composed of three (3) or more, but not to exceed five (5), representatives. In the event the Board or its designated committee fails to approve or disapprove such locations, plans and specifications or other requests within thirty (30) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so erected or altered conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Project. The grade, level or drainage characteristics of the Condominium Property or any portion thereof, shall not be altered without the prior written consent of the Board or its designated committee. The provisions of this Article shall not apply to the initial construction by Declarant of Condominiums or other improvements to the Condominium Property or Recreation Area, and neither the Board nor any committee appointed by the Board shall have any

authority or right to approve or disapprove the initial construction by Declarant of Condominiums or other improvements to the Condominium Property or Recreation Area.

## ARTICLE VII

### SEPARATION OF INTEREST AND PROHIBITION OF PARTITION

Section 7.1. Separation of Interest. No Owner may sell, assign, lease or convey (i) his interest in the Common Area separate and apart from his Living Unit, nor (ii) his interest in any Exclusive Use Area separate and apart from his interest in the Common Area and Living Unit.

Section 7.2. Prohibition of Partition. Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant in common, is hereby prohibited from partitioning or in any way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that: (i) more than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part thereof was unfit for its use and the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or (ii) that three-fourths (3/4) or more of the Project has been destroyed or substantially damaged, 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, or (iii) 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 Condominium 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 and no Condominium may be partitioned or subdivided without the prior written approval of the Mortgagee holding the first Mortgage on that Condominium.

Section 7.3. Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when the partition of the Owners' interests in said Condominium Property may be had pursuant to Section 7.2 above. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of San Diego County, which certificate shall be conclusive evidence thereof in favor

of any person relying thereon, in good faith; provided, however, that said power of attorney shall not apply to the Administrator of Veterans Affairs, an officer of the United States of America.

## ARTICLE VIII

### RIGHT OF MORTGAGEES

Provided that the Mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless the first Mortgagees of Mortgages encumbering at least sixty-seven percent (67%) of the Condominiums which are encumbered by Mortgages have given their prior written approval:

(a) Seek, by act or omission, to abandon the Condominium Project or to terminate the Condominium Plan or this Declaration (whether or not because of any destruction of the Project), or change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or the exterior appearance or maintenance of Living Units, the Recreation Area or the Common Area;

(b) Change the prorata interest or obligations of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the prorata share of the Common Area appurtenant to each Living Unit;

(c) Partition or subdivide any Condominium;

(d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Recreation Area or Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Recreation Area or Common Area shall not be deemed a transfer within the meaning of this provision;

(e) Use hazard insurance proceeds for losses to any portion of the Condominium Property or Recreation Area for other than the repair, replacement or reconstruction of the Condominium Property or Recreation Area, except as may be provided by statute upon substantial loss to the Living Unit, Recreation Area or Common Area;

(f) Fail to maintain fire and extended coverage insurance on the Common Area and improvements thereto and the Recreation Area and improvements thereto on a current replacement cost

basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.

## ARTICLE IX

### DESTRUCTION OF COMMON AREA, RECREATION AREA OR LIVING UNITS

Section 9.1. Casualty 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 the available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding is necessitated, the Board shall 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 five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding is necessitated, 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 shall contract as provided in (a) above.

(c) If the Owners do not so agree to the repair or rebuilding of the Common Area as provided in (b) above, then each Owner (and his Mortgagee(s) as their respective interests then appear) shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of his Condominium as compared to the aggregate decrease in the fair market values of all the Condominiums caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a member of the American Institute of Real Estate Appraisers selected by the Board and hired by and at the expense of the Association. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) Anything in the immediately preceding paragraph to the contrary notwithstanding, the Board shall contract for such repair or rebuilding of Common Area which consists of Condominium Building(s) containing Living Units (or portions thereof and/or improvements thereto) if fifty percent (50%) or more of the Owners owning Living Units in said Condominium Building(s) agree to the repair or restoration of said Condominium Building(s).

(e) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium in the proportion the Condominiums are assessed, pursuant to Section 4.6 of Article IV of this Declaration, for purposes of raising funds for the rebuilding or major repair of a portion of the structural 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 Association to be used for such rebuilding.

Section 9.2. Taking of Common Area. If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award therefor is not apportioned among the Owners (and their Mortgagees as their respective interests then appear) by court judgment or by agreement between the condemning authority and each of the affecting Owners, then the Owners of the Common Area (and their Mortgagees as their respective interests then appear) shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds will be distributed pursuant to Subsection (c) of Section 9.1 above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Section 9.1 of this Article IX for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Section 9.1 of this Article IX for determining whether to rebuild or repair following damage or destruction.

Section 9.3. Casualty Destruction of Living Unit. In the event of damage or destruction to any Living Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable 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, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board 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.

Section 9.4. Taking of Living Unit. In the event of any taking of a Living Unit, the Owner (and his Mortgagees as their interests may then appear) of the Living Unit shall be entitled to receive the award for such taking and after acceptance thereof he (and his Mortgagee) shall be divested of any further interests in the Condominium Property if such Owner shall vacate his Living



Unit as the result of such taking. In such event, said Owner shall grant his remaining interests in the Common Area appurtenant to the Living Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant, to be in proportion to the fractional interest in the Common Area then owned by each.

Section 9.5. Taking of Recreation Area. In the event the Recreation Area or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

Section 9.6. Association Insurance. The Association shall obtain and continue in effect the following insurance:

(a) A master fire insurance policy with glass coverage and extended coverage endorsement for the full insurable value of all of the improvements within the Project. "Improvements" means and refers to the Common Area together with those appliances and improvements located within the Living Units provided by Declarant to the initial Owners of Condominiums and only includes items provided by Declarant. The form and content of such policy must be satisfactory to all institutional first Mortgagees and shall meet the maximum standards of the various institutional first Mortgagees whose loan(s) encumber any of the Condominiums.

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

(c) If requested by Members of the Association who have at least ten percent (10%) of the Association's voting power or any first Mortgagee or any insurer or governmental guarantor of any first Mortgage, a fidelity bond covering Members of the Board, officers and employees of the Association, and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves.

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

(e) A standard all risk of loss perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value of all improvements to the Recreation Area, a policy covering all loss to personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Recreation Area and personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction, the Association shall cause the same to be replaced, repaired or rebuilt if it occurred in the Recreation Area. In the event the cost of such replacement, repair or rebuilding of Recreation Area (i) exceeds the insurance proceeds available therefor, or (ii) no insurance proceeds are available therefor, the deficiency or full cost thereof shall be assessed to the Owners as a special assessment pursuant to Section 4.4 of Article IV above.

Insurance premiums for the insurance policies set forth above shall be a Common Expense to be included in the annual assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to his Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within his Unit. No Owner shall insure his Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision he shall be responsible to the Association for any such diminution. Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners. Anything contained herein to the contrary notwithstanding, the Association shall maintain such insurance coverage as may be required by the Federal National Mortgage Association ("FNMA") so long as FNMA holds a mortgage on or owns any Condominium.

Section 9.7. Mortgagee Approval. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

## ARTICLE X

### USE OF LIVING UNITS AND COMMON AREA AS DESCRIBED IN CONDOMINIUM PLAN

Section 10.1. Residential Purposes. Each Living Unit shall be improved, used and occupied for private, single-family dwelling purposes only, and no portion thereof nor the Common Area shall be used for any commercial purpose whatsoever; provided, however, Declarant may use any of the Living Units and Exclusive Use Areas owned or leased by Declarant as model homes and sales offices during that period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate owners thereof or five (5) years after the first escrow closes, whichever first occurs.

Section 10.2. Lease of Condominium. Each Owner shall have the right to lease his Condominium, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and that the failure to comply with the provisions of these documents shall be a default under the lease. With the exception of a lender in possession of a Condominium following a default under a first Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall lease his Condominium for transient or hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

Section 10.3. No Use Causing Loss of Insurance. No Living Unit, Exclusive Use Area or improvements situated therein 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 such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof.

Section 10.4. Pets. Not exceeding one usual and ordinary household pet (exclusive of caged birds or aquarium fish) may be kept in any Living Unit or Exclusive Use Area without the prior written consent of the Board. Pets shall not be allowed on other portions of the Recreation Area or Common Area except as may be permitted by rules made by the Board. Except as provided hereinabove, no animals, livestock, birds or poultry shall be brought within the Condominium Property or kept in any Living Unit or on any portion of the Common Area. No pet shall be permitted to be

kept within any portion of the Condominium Property if it makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners.

Section 10.5. Nuisance. No Living Unit or Exclusive Use Area shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Living Unit nor on the Common Area.

Section 10.6. Sign Control. No signs other than one sign of customary and reasonable dimensions advertising a Condominium for sale or lease shall be erected or displayed in any Living Unit so that it is visible from without such Living Unit without the prior written permission of the Board, and all signs must conform with applicable governmental ordinances. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain during the sales period set forth in Section 10.1 above, such signs, poles and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.

Section 10.7. Outside Antennae. There shall be no outside television or radio antennae, masts, poles or flag poles constructed, installed or maintained on the Condominium Property for any purpose whatsoever without the prior written consent of the Board.

Section 10.8. Owner Not to Alter Common Area. Except as otherwise specifically provided herein, nothing herein contained shall give the Owner the right to paint, decorate, remodel, landscape or adorn any part or parcel of the Common Area without the written consent of the Board.

Section 10.9. No Offensive Activity. No noxious or offensive activity shall be carried on in any Living Unit or on the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements made at the Board's instruction or at Declarant's instruction. 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. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an architectural committee appointed by the Board. 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 the Condominium Property except such as are installed in accordance with the initial construction of the buildings located on the Condominium Property or as allowed by the Board. No exterior clotheslines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area, except in areas which may be approved by the Board.

Section 10.10. Power Equipment. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted on the Condominium Property, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

Section 10.11. Use of Common Area. Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(i) affording vehicular passage and pedestrian movement within the Condominium Property, including access to the Living Units;

(ii) recreational use by the Owners and occupants of Living Units in the Condominium Property and their guests, subject to rules established by the Board;

(iii) beautification of the Common Area and providing privacy to the residents of the Condominium Property through landscaping and such other means as the Board shall deem appropriate;

(iv) parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board; provided, however, no charge or fee may be imposed for use of vehicular parking spaces located on the Common Area nor may any of such parking spaces be converted to any other use;

(v) as Exclusive Use Areas to be used in the manner hereinafter described. Nothing herein shall be deemed to allow persons other than the Owner of a Living Unit to

which an Exclusive Use Area is appurtenant (or his tenants and lessees) to enjoy the use thereof.

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 storage areas designated by the Board), nor in any manner which shall increase the rate of 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.

Section 10.12. Additional Use. The Board shall have the right to allow one or more Owners to exclusively use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Exclusive Use Area(s) or Living Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

Section 10.13. Owners Liable for Damage. Each Owner shall be legally liable to the Association for all damages to the Recreation Area and Common Area or to any improvements thereof or thereto, including, but not limited to, the buildings, recreation facilities and landscaping caused by such Owner, his licensee(s) or any occupant of such Owner's Living Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of his Living Unit, and shall, after written notice and an opportunity for a hearing, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his guests, lessees and occupants of his Living Unit.

Section 10.14. Interior Surfaces. 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 the Living Unit. Said Owners shall have the right to substitute new finished surfaces in place of those existing on said ceiling, floors, walls and doors of said Living Unit.

Section 10.15. Exclusive Use Areas Appurtenant. Each Exclusive Use Area shall be (i) appurtenant to the Living Unit with which the Exclusive Use Area is conveyed, and (ii) used only for the purposes set forth in the Declaration. The right to so use an Exclusive Use Area shall be exercisable only by the Owner(s) of the Condominium appurtenant thereto and/or said Owner's tenants and licensee(s). Conveyance of a Condominium shall effect conveyance of Exclusive Use Areas appurtenant thereto and transfer of all rights thereto to the vested Owner of the Condominium. Any license(s) thereto shall be terminated upon such conveyance. No Exclusive Use Area or any rights thereto (other than said revokable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which they are appurtenant. Each Exclusive Use Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this Article X or Article V.

Section 10.16. Use of Exclusive Use Areas: Each Owner shall have the right to place furniture, barbeque equipment and potted plants upon the Deck which he has the exclusive right to use. Each Owner shall also have the right to install and maintain an air conditioning compressor on the Deck which he has the exclusive right to use, subject to such installation conditions for sound and vibration insulation as may be imposed by the Board. Each Owner shall have the right to store items of personal property in the Storage which he has the exclusive right to use.

Each Owner shall have the right to park one (1) standard automobile in each Covered Parking Space which he has the exclusive right to use.

Except as provided in this Section 10.16, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Areas or any other part of the Common Area without the prior written consent of the Board.

Section 10.17. Noise Mitigation. Except as otherwise provided in this Section 10.17, each Owner shall install and maintain carpeting (with an underlying pad not less than 9/16th of an inch thick) on all floor surfaces of the Owner's Living Unit which are located directly above another Living Unit. A carpet need not be installed on the floor of any entry, kitchen or laundry area nor on any floor surface on which there is installed and maintained sound proofing material approved by Declarant or, after the conveyance of record by Declarant of all Condominiums, by the Board.

## ARTICLE XI

### GENERAL PROVISIONS

Section 11.1. Enforcement. The Association and any Owner shall have the right to enforce by any proceedings at law or in equity, all covenants, conditions, restrictions and reservations now or hereafter imposed by the provisions of this Declaration. Each Owner shall have a right of action against the Association for any failure of the Association to comply with the provisions hereof or of the Bylaws or Articles. Failure by the Association or any Owner to enforce any covenant, condition, restriction or reservation herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

Section 11.2. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 11.3. Amendments. During the period of time prior to conversion of the Class B membership to Class A membership in the Association, this Declaration may be amended by an instrument in writing signed by seventy-five percent (75%) of the voting power of each class of Members of the Association, which amendment shall become effective upon the recording thereof by the Office of the County Recorder of San Diego County, California. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by (i) seventy-five percent (75%) of the total voting power of the Association, and (ii) at least seventy-five percent (75%) of the voting power of Members of the Association other than Declarant. Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Condominium Property which are subject to Eligible Mortgage Holder Mortgages. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee":

(a) The fundamental purpose for which the Project was created (such as a change from residential use to a different use).

(b) Assessments, assessment liens and subordination thereof.

(c) The reserve for maintenance, repair and replacement of the Recreation Area and Common Area.



- (d) Property maintenance and repair obligations.
- (e) Casualty, liability insurance and fidelity bonds.
- (f) Reconstruction in the event of damage or destruction.
- (g) Rights to use the Recreation Area and Common Area.
- (h) Annexation.
- (i) Voting.
- (j) The percentage interest of the Owners in the Common Area.
- (k) Boundaries of any Living Unit.
- (l) The interests in Exclusive Use Areas and other portions of the Common Area.
- (m) Leasing of Condominiums.
- (n) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey his Condominium.
- (o) Any provision which, by its terms, is specifically for the benefit of the first Mortgagees, or specifically confers rights on first Mortgagees.

An amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification. 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.

Section 11.4. Extension of Declaration. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2030, after which date they shall automatically be extended for successive periods of ten (10) years unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2030, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2030 or at the end of any such ten (10) year period.

Section 11.5. FHA and VA Approval. So long as there is a Class B membership in the Association, the following shall require prior approval of the FHA and VA: annexation of additional properties to the Project, mergers and consolidations, special assessments and any amendment to this Declaration.

Section 11.6. Encroachment Easement. In the event any portion of the Recreation Area or Common Area encroaches upon any Living Unit or any Living Unit encroaches upon the Recreation Area or Common Area or another Living Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Said valid easement shall apply only to minor encroachments not exceeding one (1) foot. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure on the Condominium Property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Living Units, Recreation Area or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 11.7. Litigation. In the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, or contained in the Bylaws, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the court may adjudge reasonable and proper. The "prevailing party" shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover his costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover his costs or attorney's fees.

Section 11.8. Annexation of Additional Property.

(a) Upon approval in writing of the Association, pursuant to two-thirds (2/3) of the voting power of each class of Members of the Association, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation which shall extend the scheme of this

Declaration to such property. After conversion of the Class B membership in the Association 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.

(b) If, within three (3) years of the date of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a phase of the Project, Declarant should develop additional lands within the property described above in Recital C, such additional lands or any portion thereof may be added to the Condominium Property and included within this Declaration and the jurisdiction of the Association by action of Declarant without the assent of Members of the Association; provided, however, that the development of the additional lands shall be in accord with the plan of development submitted to (i) the Department of Real Estate prior to the time a Final Subdivision Public Report is issued in connection with the Condominium Property, and (ii) the VA. Said annexation may be accomplished by the recording of a Declaration of Annexation or by the recording of a separate Declaration of Covenants, Conditions and Restrictions which requires Owners of Condominiums therein to be Members of the Association. The obligation of Condominium Owners to pay dues to the Association and the right of such Condominium Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that particular phase of development so annexed. Prior to any annexation under this Subsection 11.8(b), detailed plans for the development of the additional property must be submitted to the VA, and the VA must determine that such detailed plans are in accordance with the general plan and so advise Declarant. Subject to annexation of additional property as set forth in this Subsection 11.8(b):

(i) Declarant hereby reserves, for the benefit of and appurtenant to the Condominiums hereinafter located in Phases 2, 3 and 4, respectively, and their respective Owners, nonexclusive easements to use the Common Area (other than any building or Exclusive Use Area) in the Condominium Property, pursuant to and in the manner set forth in this Declaration, to the same extent and with the same effect as if each of the Owners of a Condominium in Phases 2, 3 and 4, respectively, owned an undivided interest in the Common Area in the Condominium Property.

(ii) Declarant hereby grants, for the benefit of and appurtenant to each Condominium in the Condominium Prop-

erty and their Owners, the nonexclusive easement to use the Common Area (other than any building or Exclusive Use Area) in Phases 2, 3 and 4, respectively, pursuant to the provisions of and in the manner prescribed by this Declaration, to the same extent and with the same effect as if each of the Owners of a Condominium in the Condominium Property owned an undivided interest in the Common Area of the property so annexed.

The reciprocal cross-easements set forth herein shall be effective as to each phase, respectively, and as to the Condominium Property, only at such time as each phase, respectively, has been annexed by the recording of a Declaration of Annexation or separate Declaration of Covenants, Conditions and Restrictions by Declarant, and prior to that time, neither the Condominium Property nor Phases 2, 3 or 4, respectively, shall be affected hereby nor shall the Owners in Phases 2, 3 or 4, respectively, have such rights in the Common Area within the Condominium Property.

Section 11.9. Owner Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

Section 11.10. Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to the Recreation Area or Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Condominium Property, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting

power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 11.11. Limitation of Restrictions on Declarant.

Declarant is undertaking the work of construction of residential Condominium dwellings and incidental improvements upon the Condominium Property and on the Recreation Area. The completion of that work, and the sale, rental and other disposal of said Condominium dwellings is essential to the establishment and welfare of said Condominium Property as a residential community. In order that said work may be completed and said Condominium Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Condominium Property or in any Living Unit whatever is reasonably necessary or advisable in connection with the completion of said work; or

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

(c) Prevent Declarant from conducting on any part of the Condominium Property or Recreation Area its business of completing said work, and of establishing a plan of Condominium ownership and of disposing of said Condominium Property in Condominium dwellings by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any of the Condominium Property and Recreation Area as may be necessary for the sale, lease or disposition thereof; provided, however, that the maintenance of any such sign shall not

unreasonably interfere with the use by any Owner of his Living Unit, the Recreation Area or the Common Area.

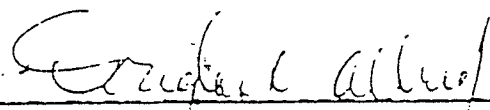
The rights of Declarant provided in Subparagraphs (a) through (d) above, may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate owners, or five (5) years following the date of conveyance of the first Condominium in the Project from Declarant to a retail purchaser, whichever shall first occur. So long as Declarant, its successors and assigns owns one or more of the Condominiums established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration. Declarant, in executing its rights under this Section 11.11, shall not unreasonably interfere with the use of the Recreation Area or Common Area by any Owner.

Section 11.12. Liens Not Invalid. No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise.

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

PUEBLOS DEL RIO, LTD., a California  
limited partnership

BY: THE DOUGLAS ALLRED COMPANY,  
a California corporation,  
General Partner

By   
Douglas O. Allred, President

By \_\_\_\_\_

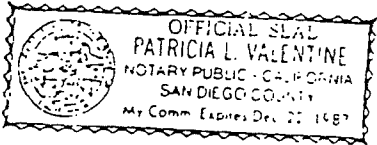
STATE OF CALIFORNIA

)  
) ss.  
)

COUNTY OF SAN DIEGO

On this 17<sup>th</sup> day of September, 1984, before me,  
Patricia L. Valentine, a Notary Public in and for said  
state, personally appeared Douglas O. Allred, per-  
sonally known to me (or proved to me on the basis of satisfactory  
evidence) to be the \_\_\_\_\_ President, ~~and~~  
\_\_\_\_\_, personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the \_\_\_\_\_ Secre-  
tary of THE DOUGLAS ALLRED COMPANY, the corporation that executed  
the within instrument and known to me to be the persons who exe-  
cuted the within instrument on behalf of said corporation, said  
corporation being known to me to be one of the general partners  
of PUEBLOS DEL RIO, LTD., the limited partnership that executed  
the within instrument, and acknowledged to me that such cor-  
poration executed the same as such limited partnership and that  
such limited partnership executed the same.

WITNESS my hand and official seal.



Patricia L. Valentine  
 NOTARY PUBLIC

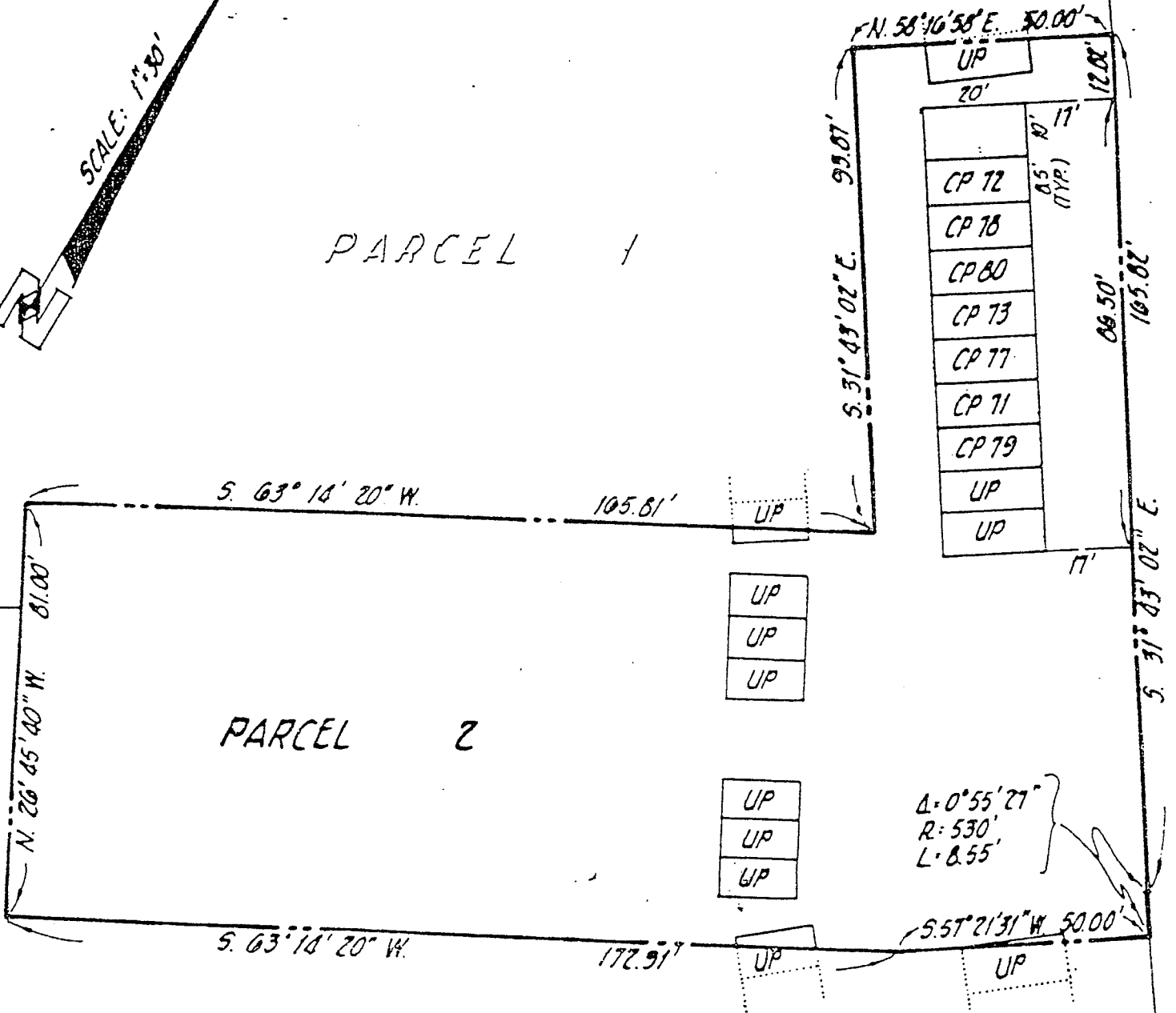
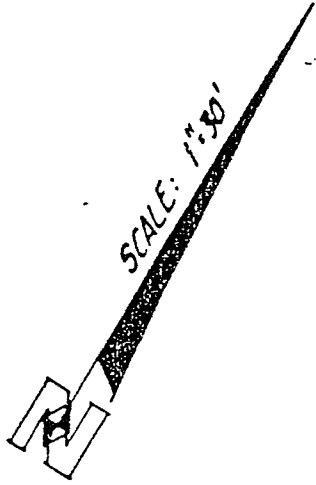
# CREEKWOOD

PARCEL 2

PARCEL 1

PARCEL 2

PARCEL 3



**NASLAND ENGINEERING**  
 1855 RUFFNER STREET  
 SAN DIEGO, CA 92111  
 (619) 292-7770



SUBORDINATION AGREEMENT

FIRST INTERSTATE BANK OF CALIFORNIA, a California corporation, being the beneficiary under that certain deed of trust dated May 15, 1984 and recorded May 22, 1984 as File/Page No. 84-189190 with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said deed of trust is and shall be subordinate and inferior to the Declaration of Covenants, Conditions and Restrictions to which this Subordination Agreement is attached.

FIRST INTERSTATE BANK OF  
CALIFORNIA

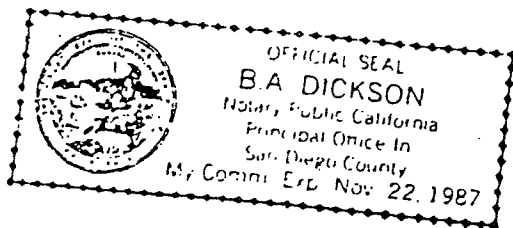
By W.B. Bailey  
W. B. Bailey, Vice President

By Judith M. Scott  
Judith M. Scott, Assistant Vice President

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

On this 14<sup>TH</sup> day of SEPTEMBER, 19 84, before me, B.A. Dickson, a Notary Public in and for said state, personally appeared W.B. BAILEY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the VICE President, and JUDITH M. SCOTT, personally known to me (or proved to me on the basis of satisfactory evidence) to be the ASST. VICE PRESIDENT ~~SECRETARY~~ of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



B.A. Dickson  
NOTARY PUBLIC