

# State of California

OFFICE OF THE SECRETARY OF STATE

## CORPORATION DIVISION

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this

JAN 20 1989



*March Fong Eu*

Secretary of State

JAN 19 1989

ARTICLES OF INCORPORATION

MARCE FONG EU, Secretary of State

OFWESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATIONARTICLE I

The name of this corporation (hereinafter called the "Association") is WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION.

ARTICLE II

The principal office for the transaction of business of the Association is located in San Diego County, State of California.

ARTICLE III

The Association is a Nonprofit Mutual Benefit Corporation organized pursuant to the Nonprofit Mutual Benefit Corporation Law. The purpose of the Association is to engage in any lawful act or activity for which a corporation may be organized under such Law. More specifically, the Association will provide for the management, administration, maintenance, preservation and architectural control of a planned residential development project within that certain real property located in The City of San Diego, County of San Diego, California, more particularly described as:

Lots 1 through 107, inclusive, of WESTWOOD VALLEY UNIT NO. 6 according to Map thereof No. 11943 filed in the Office of the County Recorder of San Diego County, California, on November 4, 1987, and

Lots 1 through 75, inclusive, and Lots 77 through 122, inclusive, of WESTWOOD VALLEY UNIT NO. 7 according to Map thereof No. 11941 filed in the Office of the County Recorder of San Diego County, California, on November 4, 1987.

The Association will fix, levy, collect and enforce payment of all charges and assessments of the Association pursuant to the Declaration (hereinafter defined) and will promote the health, safety and welfare of all of its members.

#### ARTICLE IV

The Association shall have the power to perform all of the duties and obligations of the Association set forth in the Declaration of Covenants, Conditions and Restrictions ("Declaration") applicable to the property, the owners of which are required by the Declaration to be members of the Association, and recorded or to be recorded in the Office of the County Recorder of San Diego County, California. The Association shall have and exercise all the powers granted to a nonprofit mutual benefit corporation as set forth in California Corporations Code § 7140. In addition, the Association may exercise the powers granted to the Association by California Code of Civil Procedure § 374 and the Davis-Stirling Common Interest Development Act (California Civil Code §§ 1350-1372, inclusive).

Notwithstanding any of the above statements of purposes and powers, the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Association.

#### ARTICLE V

The name and address in this state of the Association's initial agent for service of process is JAMES D. McMENAMIN, 4920 Carroll Canyon Road, San Diego, California 92121.

#### ARTICLE VI

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an

obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

#### **ARTICLE VII**

The Association shall have two classes of voting membership:

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

**Class B.** The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) two (2) years following the date of original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report covering any portion of the property described in Article III above; or

(b) 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 property described in Article III above.

#### **ARTICLE VIII**

The affairs of the Association shall be managed by a Board of five (5) directors. At the first annual meeting of members, three (3) directors shall be elected for a term of one year and two (2) directors shall be elected for a term of two years. Thereafter, directors shall be elected at each annual meeting of members to fill the vacancies of those directors whose term then expires, and the term of each such director so elected shall be two years.

#### ARTICLE IX

Upon dissolution of the Association, other than incident to a merger or consolidation, the net assets of the Association shall be distributed to the members of the Association as their interests may appear.

#### ARTICLE X

Amendment to these Articles of Incorporation shall require the assent (by vote or written consent) of (a) a bare majority of the Board of Directors of the Association, and (b) members representing seventy-five percent (75%) or more of the voting power of each class of members of the Association; provided, however, after conversion of the Class B membership to Class A membership, amendment to these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Association, (ii) seventy-five percent (75%) or more of the total voting power of members of the Association, and (iii) seventy-five percent or more of the voting power of members of the Association other than Declarant.

DATED: January 16, 1989.

/s/ Alex C. McDonald

ALEX C. McDONALD, Incorporator

I declare that I am the person who executed the above Articles of Incorporation and that this instrument is my act and deed.

/s/ Alex C. McDonald

ALEX C. McDONALD

SAVE \* SAVE \* SAVE \* SAVE \* SAVE \* SAVE \* SAVE \* SAVE \* SAVE \* SAVE  
PLEASE RETAIN WITH YOUR COPY OF THE BYLAWS

FIRST AMENDMENT TO BYLAWS

This amendment to the bylaws of the Westwood Valley Legends Homeowners Association is made on the day and year hereinafter written, by the WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation, hereinafter referred to as "Association", and its membership with respect to the following:

RECITALS

A. The Association is vested with the responsibility for the management and control of that certain real property in the City of San Diego, County of San Diego, State of California, described as:

Lots 1 through 107, inclusive of WESTWOOD VALLEY UNIT NO. 6 according to Map thereof No. 11943 filed in the Office of the County Recorder of San Diego County, California, on November 4, 1987; and

Lots 1 through 75, inclusive, and Lots 77 through 122, inclusive, of WESTWOOD VALLEY UNIT NO. 7 according to Map thereof No. 11941 filed in the Office of the County Recorder of San Diego County, California, on November 4, 1987.

hereinafter referred to as the "Property".

B. The Property was developed as a Planned Residential Development, as defined in Section 1351(f) of the California Civil Code, and consists of separate interests and related Common Areas. The membership of the Association is made up of individual Owners of separate interests within the Property.

C. The affairs of the Association are controlled by a Declaration of Covenants, Conditions and Restrictions and a set of bylaws.

D. The bylaws, in Article XV, Section 15.1, provides that it may be amended by the affirmative vote of a majority of the voting power of the membership of the Association, and whenever the amendment is material to the rights of Mortgagees, by the affirmative vote of seventy-five percent (75%) of the holders of first mortgages. This amendment is not material to the rights of the mortgagees as defined in Section 15.1. In accordance with Article XV and Section 1355(a) of the California Civil Code, the undersigned President and Secretary of the Association hereby certify that the approval of at least the required percentage of the Owners of separate interests has been obtained.

**BYLAWS**  
**OF**  
**WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION**

## TABLE OF CONTENTS

|              | <u>PAGE</u>   |
|--------------|---|
| ARTICLE I    | NAME AND LOCATION . . . . . 1                       |
| ARTICLE II   | DEFINITIONS . . . . . 1                             |
| Section 2.1  | Articles . . . . . 1                                |
| Section 2.2  | Association . . . . . 1                             |
| Section 2.3  | Board . . . . . 1                                   |
| Section 2.4  | Bylaws . . . . . 1                                  |
| Section 2.5  | Common Area . . . . . 1                             |
| Section 2.6  | Common Maintenance Area . . . . . 1                 |
| Section 2.7  | Declarant . . . . . 1                               |
| Section 2.8  | Declaration . . . . . 2                             |
| Section 2.9  | FHA . . . . . 2                                     |
| Section 2.10 | Lot . . . . . 2                                     |
| Section 2.11 | Member . . . . . 2                                  |
| Section 2.12 | Mortgage . . . . . 2                                |
| Section 2.13 | Mortgagee . . . . . 2                               |
| Section 2.14 | Owner . . . . . 2                                   |
| Section 2.15 | Properties . . . . . 2                              |
| Section 2.16 | VA . . . . . 2                                      |
| ARTICLE III  | VOTING RIGHTS IN ASSOCIATION . . . . . 2            |
| ARTICLE IV   | MEMBERSHIP ASSESSMENTS AND LIENS . . . . . 2        |
| Section 4.1  | Annual Assessments . . . . . 2                      |
| Section 4.2  | Special Assessments . . . . . 3                     |
| Section 4.3  | Lien Rights . . . . . 3                             |
| Section 4.4  | Payment of Assessments by Declarant . . . . . 3     |
| Section 4.5  | Commencement of Annual Assessments . . . . . 3      |
| ARTICLE V    | MEMBERSHIP RIGHTS, PRIVILEGES AND PENALTIES . . . 3 |
| Section 5.1  | Rights and Privileges . . . . . 3                   |
| Section 5.2  | Suspensions and Penalties . . . . . 3               |
| ARTICLE VI   | MEETINGS OF MEMBERS . . . . . 4                     |
| Section 6.1  | Place of Meeting . . . . . 4                        |
| Section 6.2  | Annual Meetings . . . . . 4                         |
| Section 6.3  | Special Meetings . . . . . 4                        |
| Section 6.4  | Notice of Meetings . . . . . 4                      |
| Section 6.5  | Quorum . . . . . 4                                  |
| Section 6.6  | Proxies . . . . . 5                                 |
| Section 6.7  | Presumption of Notice . . . . . 5                   |
| Section 6.8  | Consent of Absentees . . . . . 5                    |
| Section 6.9  | Action Without Meeting . . . . . 5                  |
| Section 6.10 | Voting . . . . . 6                                  |

|               |   | <u>PAGE</u> |
|---------------|---|-------------|
| ARTICLE VII   | TERM OF OFFICE OF DIRECTORS .....                         | 6           |
| Section 7.1   | Number .....  | 6           |
| Section 7.2   | Term of Office .....                                      | 6           |
| Section 7.3   | Removal .....   | 6           |
| Section 7.4   | Vacancies .....   | 6           |
| Section 7.5   | Compensation .....  | 7           |
| ARTICLE VIII  | NOMINATION AND ELECTION OF DIRECTORS .....                | 7           |
| Section 8.1   | Nomination .....  | 7           |
| Section 8.2   | Election .....  | 7           |
| ARTICLE IX    | MEETINGS OF DIRECTORS .....                               | 8           |
| Section 9.1   | Place of Meeting .....                                    | 8           |
| Section 9.2   | Regular Meetings .....                                    | 8           |
| Section 9.3   | Special Meetings .....                                    | 8           |
| Section 9.4   | Notice of Meetings .....                                  | 8           |
| Section 9.5   | Quorum .....  | 8           |
| Section 9.6   | Attendance .....  | 9           |
| Section 9.7   | Action Without Meeting .....                              | 9           |
| ARTICLE X     | POWERS AND DUTIES OF THE BOARD OF DIRECTORS ....          | 9           |
| Section 10.1  | Right to Enforce .....                                    | 9           |
| Section 10.2  | Payment of Taxes .....                                    | 9           |
| Section 10.3  | Insurance .....   | 9           |
| Section 10.4  | Goods and Services .....                                  | 10          |
| Section 10.5  | Delegation .....  | 11          |
| Section 10.6  | Budgets and Financial Statements .....                    | 11          |
| Section 10.7  | Rules .....   | 11          |
| Section 10.8  | Disciplinary Proceedings .....                            | 11          |
| Section 10.9  | Right to Enter .....                                      | 11          |
| Section 10.10 | Select Officers .....                                     | 11          |
| Section 10.11 | Fill Vacancies on Board .....                             | 11          |
| Section 10.12 | Capital Expenditures .....                                | 11          |
| Section 10.13 | Sale of Association Property .....                        | 12          |
| Section 10.14 | Management of Business .....                              | 12          |
| Section 10.15 | Management of Property .....                              | 12          |
| Section 10.16 | Notification to Mortgagees .....                          | 12          |
| Section 10.17 | Notice to Federal Home Loan Mortgage<br>Corporation ..... | 12          |
| Section 10.18 | General Rights and Powers .....                           | 13          |
| ARTICLE XI    | OFFICERS AND THEIR DUTIES .....                           | 13          |
| Section 11.1  | Enumeration of Officers .....                             | 13          |
| Section 11.2  | Election of Officers .....                                | 13          |
| Section 11.3  | Term .....  | 13          |
| Section 11.4  | Special Appointments .....                                | 13          |
| Section 11.5  | Resignation and Removal .....                             | 13          |
| Section 11.6  | Vacancies .....   | 13          |
| Section 11.7  | Multiple Offices .....                                    | 13          |

|              |   | <u>PAGE</u> |
|--------------|---|-------------|
| Section 11.8 | Duties .....                                | 13          |
| Section 11.9 | Compensation .....                          | 14          |
| ARTICLE XII  | COMMITTEES .....                            | 15          |
| ARTICLE XIII | BOOKS AND RECORDS .....                     | 15          |
| ARTICLE XIV  | CORPORATE SEAL .....                        | 15          |
| ARTICLE XV   | AMENDMENTS .....                            | 16          |
| Section 15.1 | Amendments .....                            | 16          |
| Section 15.2 | Conflict Between Documents .....            | 17          |
| ARTICLE XVI  | MISCELLANEOUS .....                         | 17          |
| Section 16.1 | Fiscal Year .....                           | 17          |
| Section 16.2 | Financial Statements .....                  | 17          |
| Section 16.3 | Budget .....                                | 18          |
| Section 16.4 | Operating and Reserve Accounts .....        | 19          |
| Section 16.5 | Withdrawal From Reserve Account .....       | 20          |
| Section 16.6 | Voting After Conversion of Membership ..... | 20          |
| ARTICLE XVII | NOTICE TO LENDERS .....                     | 20          |

**BYLAWS**  
**OF**  
**WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION**

**ARTICLE I**

**NAME AND LOCATION**

The name of the corporation is WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION, hereinafter referred to as the "Association". The principal office of the Association shall be located in the County of San Diego, California.

**ARTICLE II**

**DEFINITIONS**

**Section 2.1.** "Articles" - The Articles of Incorporation of the Association.

**Section 2.2.** "Association" - WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation.

**Section 2.3.** "Board" - The Board of Directors of the Association.

**Section 2.4.** "Bylaws" - The Bylaws of the Association.

**Section 2.5.** "Common Area" - All real property owned by the Association.

**Section 2.6.** "Common Maintenance Area" - Those portions of Lots and adjacent public rights of way, the maintenance for which the Association is responsible.

**Section 2.7.** "Declarant" - McCOMIC-WESTWOOD, LTD., a California limited partnership, its successors and assigns, if such successors or assigns should acquire more than five (5) Lots for the purpose of development, and the rights of "Declarant" are assigned to them.

**Section 2.8. "Declaration"** - The Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the Office of the County Recorder of San Diego County, California.

**Section 2.9. "FHA"** - The Federal Housing Administration.

**Section 2.10. "Lot"** - Any plot of land shown as a separate parcel upon any recorded Final Map or Parcel Map of any portion of the Properties with the exception of the Common Area.

**Section 2.11. "Member"** - Those persons entitled to membership in the Association as provided in the Declaration.

**Section 2.12. "Mortgage"** - A deed of trust as well as a mortgage encumbering a Lot.

**Section 2.13. "Mortgagee"** - The beneficiary of a deed of trust as well as the mortgagee of a Mortgage.

**Section 2.14. "Owner"** - The record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 2.15. "Properties"** - The real property described as such in the Declaration, Owners of which are required to be Members of the Association, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 2.16. "VA"** - The Veterans Administration.

### **ARTICLE III**

#### **VOTING RIGHTS IN ASSOCIATION**

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

### **ARTICLE IV**

#### **MEMBERSHIP ASSESSMENTS AND LIENS**

**Section 4.1. Annual Assessments.** The Board shall fix and determine from time to time annual assessments to be paid by each Owner as set forth in the Declaration.

**Section 4.2. Special Assessments.** In addition to annual assessments, the Board may levy special assessments to be paid by each Owner as set forth in the Declaration.

**Section 4.3. Lien Rights.** The Association shall have a lien against the interest of an Owner in the Owner's Lot to secure the full and prompt payment of all assessments levied by the Association as set forth in the Declaration.

**Section 4.4. Payment of Assessments by Declarant.** Declarant shall pay all assessments levied by the Association against any Lot owned by it as set forth in the Declaration.

**Section 4.5. Commencement of Annual Assessments.** The annual assessments shall commence and be payable as set forth in the Declaration.

## **ARTICLE V**

### **MEMBERSHIP RIGHTS, PRIVILEGES AND PENALTIES**

**Section 5.1. Rights and Privileges.** No Member shall have the right without the prior approval of the Board to exercise any of the powers or to perform any of the acts delegated to the Board in Article X of the Bylaws. Unless otherwise provided in the Declaration and subject to the rules and regulations adopted by the Board, each Member, his immediate family, guests and tenants shall have the right to use and enjoy the Common Area. If a Lot has been leased, the tenant and not the Member shall have the rights to use and enjoy the Common Area.

**Section 5.2. Suspensions and Penalties.** The membership rights and privileges, together with the voting rights of any Member, may be suspended by the Board for any period of time during which the assessment on his Lot remains unpaid, and for a period not to exceed thirty (30) days for any infraction of the Association's published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board. The Board may adopt rules and regulations imposing reasonable monetary penalties for breach or non-compliance. Should the Board believe grounds may exist for any suspension or imposition of monetary penalties, the Board shall give to the Member believed to be in violation at least fifteen (15) days' prior written notice of the intended suspension or proposed monetary penalty and the reasons therefor. The Member shall be given an opportunity to be heard before the Board either orally or in writing not less than five (5) days before the effective date of suspension or penalty. The notice required hereby may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first class or registered mail sent to the last address of the Member shown on the Association's records. No suspension shall affect the rights

of the Member to access to his Lot. A monetary penalty, other than a penalty for non-payment of assessments, shall not be a lien against the Member's Lot.

## **ARTICLE VI**

### **MEETINGS OF MEMBERS**

**Section 6.1. Place of Meeting.** Meetings of Members shall be held within the Properties or at such other location in San Diego County, California, in reasonable proximity to the Properties, as may be designated in the notice of the meeting.

**Section 6.2. Annual Meetings.** The first annual meeting of Members shall be held within forty-five (45) days after close of escrow for the sale by Declarant of fifty-one percent (51%) of the Lots in the first phase of development of the Properties, but not later than six (6) months after the first close of escrow for the sale of a Lot by Declarant. Subsequent annual meetings of the Members shall be held each year thereafter within fifteen (15) days before or after the anniversary date of the first annual meeting of Members. If the day for any annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

**Section 6.3. Special Meetings.** Special meetings of Members, for any purpose, may be called at any time by the president or by a majority of a quorum of the Board, and shall be called by the Board upon receipt of a written request for a special meeting of five percent (5%) or more of the voting power of the Members.

**Section 6.4. Notice of Meetings.** Written notice of a meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting by mailing a copy of the notice by first class mail, postage prepaid, at least ten (10) but not more than ninety (90) days before the meeting to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association or supplied by the Member to the Association for the purpose of notice, and to the holder of a first Mortgage encumbering any Lot who has requested in writing such notice. The notice shall specify the place, day and hour of the meeting and those matters which the Board at the time of the mailing of the notice intends to present for action by the Members. The holder of a first Mortgage encumbering any Lot shall be entitled to designate a representative who shall have the right to attend all meetings of Members.

**Section 6.5. Quorum.** The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, a majority of the total voting power of Members shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration or the Bylaws. The Members present at a duly called or held meeting at

which a quorum is present may continue to do business until adjournment notwithstanding the withdrawal of enough voting power to leave less than a quorum. If, however, a quorum shall not be present or represented at any meeting, the Members present in person or by proxy may not transact business but shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented or, unless otherwise provided by law, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days following the time the original meeting was called, at which meeting the quorum requirement shall be twenty-five percent (25%) of the total voting power of Members. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

**Section 6.6. Proxies.** Every person entitled to vote or execute consents shall have the right to do so either in person or by a written proxy executed by the person and filed with the secretary of the Association. Any form of proxy or written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the governing body be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid. The transfer of title to any Lot shall void any outstanding proxy pertaining to the voting rights of the membership appurtenant to that Lot.

**Section 6.7. Presumption of Notice.** A recitation in the minutes of a membership meeting that notice of the meeting had been properly given shall be prima facie evidence that notice was so given.

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

**Section 6.9. Action Without Meeting.** Any action, which under the provisions of the California Corporations Code may be taken at a meeting of the Members, except the election of directors where cumulative voting is a requirement, may be taken without a

meeting if done in compliance with the provisions of §7513 of the California Corporations Code.

**Section 6.10. Voting.** Voting of the Members at a meeting may be by voice or by ballot, except that the election of directors shall be by secret written ballot.

## **ARTICLE VII**

### **TERM OF OFFICE OF DIRECTORS**

**Section 7.1. Number.** The affairs of the Association shall be managed by a Board of five (5) directors, who need not be Members of the Association.

**Section 7.2. Term of Office.** At the first annual meeting of Members, the Members shall elect three (3) directors for a term of one (1) year and two (2) directors for a term of two (2) years. Thereafter, directors shall be elected at each annual meeting of Members to fill the vacancies of those directors whose term then expires for a term of two (2) years. If any annual meeting is not held or the directors are not elected at the meeting, the directors may be elected at any special meeting of Members held for that purpose. All directors shall hold office until their successors are elected.

**Section 7.3. Removal.** The entire Board may be removed from the Board, with or without cause, by a majority vote of the Members. Unless the entire Board is removed, an individual director shall not be removed if the number of votes against the resolution for his removal or not consenting in writing to his removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the most recent election of directors were then being elected. However, any director elected to office solely by the votes of Members other than Declarant may be removed from office prior to the expiration of his term only upon the vote of a simple majority of the voting power of Members other than Declarant.

**Section 7.4. Vacancies.**

(a) Vacancies on the Board created by death or resignation may be filled by a majority of the remaining directors, though less than a quorum, and each director so elected shall hold office until his successor is elected by the Members.

(b) Vacancies on the Board created by the removal of any director may be filled only by the vote of the Members.

(c) The Members may at any time elect directors to fill any vacancy not filled by the directors, and may elect the additional directors at the meeting at which an amendment of the Bylaws is voted, authorizing an increase in the number of directors. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his term of office.

**Section 7.5. Compensation.** No director shall receive compensation for any services he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

## **ARTICLE VIII**

### **NOMINATION AND ELECTION OF DIRECTORS**

**Section 8.1. Nomination.** Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at a meeting of Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two (2) or more Members. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not fewer than the number of vacancies that are to be filled. Nominations may be made from among the Members or non-members. Anything herein to the contrary notwithstanding, at the first annual meeting nominations for election of the Board shall be made only from the floor. Each nominee shall be given a reasonable opportunity to communicate to the Members the nominee's qualifications and the reasons for the nominee's candidacy. Each nominee shall be given a reasonable opportunity to solicit votes and the Members shall be given a reasonable opportunity to choose among the nominees.

**Section 8.2. Election.** Election to the Board shall be by secret written ballot. No Member shall have the right to cumulate his votes unless the candidates' names have been placed in nomination prior to the voting and the Member has given notice to the meeting prior to the voting of the Member's intention to cumulate votes. If one Member is entitled to cumulate votes, all Members shall have the right to cumulate votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which he is entitled, or to distribute his votes on the same principle among as many candidates as he shall think fit. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected. Anything contained herein to the contrary notwithstanding, at the first election of directors

by Members and thereafter for so long as a majority of the voting power of Members is held by Declarant, or so long as there are two (2) outstanding classes of membership, not fewer than twenty percent (20%) of the directors shall be elected solely by the votes of Members other than Declarant.

## **ARTICLE IX**

### **MEETINGS OF DIRECTORS**

**Section 9.1 Place of Meetings.** Meetings of the Board shall be held within the Properties unless adequate space for the meeting is not available, in which event, the meeting shall be held at the nearest reasonable location which has adequate space.

**Section 9.2. Regular Meetings.** Regular meetings of the Board shall be held bi-monthly, at such place and hour as may be fixed from time to time by resolution of the Board. Should the meeting day fall upon a legal holiday, then the meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 9.3. Special Meetings.** Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) directors other than the president.

**Section 9.4. Notice of Meetings.**

(a) Notice of regular meetings of the Board shall be posted in a prominent place within the Properties and communicated to the directors not fewer than four (4) days before the meeting; provided, however, notice of a regular meeting of the Board need not be given to a director who has signed a waiver of notice or a written consent of the holding of the meeting.

(b) Notice of special meetings of the Board shall be posted in a prominent place within the Properties and sent to the directors not fewer than seventy-two (72) hours before the meeting; provided, however, notice of a special meeting of the Board need not be given to a director who has signed a waiver of notice or a written consent to the holding of the meeting. Notice of a special meeting of the Board shall specify the time and place of the meeting and the nature of any business to be conducted.

**Section 9.5. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**Section 9.6. Attendance.** Regular and special meetings of the Board shall be open to all Members; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized by the vote of a majority of a quorum of the Board. The Board may, upon the vote of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and other matters of business of a similar nature. Only members of the Board shall be entitled to attend executive sessions. The nature of any and all business to be considered in executive session shall first be announced in open session.

**Section 9.7. Action Without Meeting.** Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board consent in writing to the action. Action by written consent shall have the same force and effect as a unanimous vote of the Board. Written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action to be taken or actually taken by the Board shall be given to the Members of the Association within three (3) days after all written consents have been obtained. The explanation shall be given in the same manner as provided in the Bylaws for the giving of notice of regular meetings of the Board. Failure to give notice shall not render the action to be taken or actually taken invalid.

## **ARTICLE X**

### **POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Subject to the provisions of the Declaration, the Articles and the California Nonprofit Mutual Benefit Corporation Law, the Board shall have the following powers and duties:

**Section 10.1. Right to Enforce.** To enforce the provisions of the Declaration, Articles, Bylaws, rules and regulations adopted by the Board, any agreement to which the Association is a party and other instruments for the ownership, management and control of the Properties.

**Section 10.2 Payment of Taxes.** To pay taxes and assessments which are, or could become, a lien on the Common Area or any portion of the Common Area.

**Section 10.3. Insurance.** To procure and maintain fire, casualty, liability, fidelity and other insurance adequately insuring the Common Area, the Association and property owned or maintained by the Association as required by the Declaration.

**Section 10.4 Goods and Services.** To contract and pay for goods and services relating to the Common Area and Common Maintenance Area, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services. Anything herein to the contrary notwithstanding:

(a) The term of any contract with a third person for supplying goods or services to the Common Area, Common Maintenance Area or for the Association shall not exceed a term of one year unless a longer term is approved by a majority of the voting power of each class of Members of the Association, with the following exceptions:

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

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

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

(4) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years' duration, provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(5) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years' duration, provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(6) Agreements for the sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years' duration, provided that the supplier or suppliers are not entities in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Any agreement for management or other services by Declarant shall be terminable for cause upon thirty (30) days' written notice, and without cause or payment of a termination fee upon not more than ninety

(90) days' written notice. Agreements shall be renewable with the consent of the Board and the management agent.

(c) The Board shall not terminate professional management and assume self-management without the prior written approval of Mortgagees holding the first Mortgages encumbering seventy-five percent (75%) or more of the Lots which are encumbered by a Mortgage.

(d) No contract with the Association negotiated by Declarant shall exceed a term of one year except as may otherwise be provided in this Section 10.4.

**Section 10.5. Delegation.** To delegate any of its rights and duties to others, including committees, officers or employees.

**Section 10.6. Budgets and Financial Statements.** To prepare budgets and financial statements as provided in the Bylaws.

**Section 10.7. Rules.** To adopt rules and regulations governing the use of the Common Area and Common Maintenance Area and facilities owned or controlled by the Association.

**Section 10.8. Disciplinary Proceedings.** To initiate and execute disciplinary proceedings against Members for violations of the provisions of the Articles, Bylaws, Declaration, and rules and regulations adopted by the Board.

**Section 10.9. Right to Enter.** To enter onto any Lot as necessary in connection with construction, maintenance or repair of the Common Area or Common Maintenance Area or for the benefit of the Owners in common.

**Section 10.10. Select Officers.** To select, remove and supervise officers, agents and employees of the Association and prescribe their powers and duties.

**Section 10.11. Fill Vacancies on Board.** To fill vacancies on the Board, except for a vacancy created by the removal of a member of the Board by vote of the Members.

**Section 10.12. Capital Expenditures.** To make capital expenditures for and on behalf of the Association; provided, however, expenditures during any fiscal year for capital improvements to the Common Area and Common Maintenance Area shall not exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year without the vote or written consent of a majority of the voting power of each class of members.

**Section 10.13. Sale of Association Property.** To sell property of the Association; provided, however, sales of property of the association during a fiscal year having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for a fiscal year shall not be made without the vote or written consent of a majority of the voting power of each class of members.

**Section 10.14. Management of Business.** To conduct, manage and control the affairs and business of the Association.

**Section 10.15. Management of Property.** To manage, operate, maintain and repair the Common Area and Common Maintenance Area and all improvements located on the Common Area and Common Maintenance Area.

**Section 10.16. Notification to Mortgagees.** To give, upon written request to the Association identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any first Mortgage holder or insurer or guarantor of a Mortgage encumbering the Lot timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or any Lot on which there is a first Mortgage held, insured or guaranteed by the Mortgage holder or insurer or guarantor, as applicable.

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot encumbered by a first Mortgage held, insured or guaranteed by the Mortgage holder or insurer or guarantor, which remains uncured for a period of sixty (60) days.

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

(d) Any proposed action which would require the consent of a specified percentage of first Mortgage holders as required in the Bylaws or the Declaration.

**Section 10.17. Notice to Federal Home Loan Mortgage Corporation.** To give notice in writing to the Federal Home Loan Mortgage Corporation ("FHLMC"), in care of the servicers of FHLMC loans on Lots, provided the servicers have informed the Association in writing of their addresses, of any loss to or taking of the Common Area if the loss or taking exceeds \$10,000, and of any damage to a Lot if the damage exceeds \$1,000.

**Section 10.18. General Rights and Powers.** To exercise for the Association all powers and duties vested in or delegated to the Association and not reserved to the Members by the Articles, Bylaws or Declaration.

## **ARTICLE XI**

### **OFFICERS AND THEIR DUTIES**

**Section 11.1. Enumeration of Officers.** The officers of the Association shall be a president and vice president, who shall at all times be members of the Board, a secretary and a chief financial officer, and such other officers as the Board may from time to time by resolution create.

**Section 11.2. Election of Officers.** The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

**Section 11.3. Term.** The officers of the Association shall be elected annually by the Board, and each shall hold office until he shall resign, or be removed, or is otherwise disqualified to serve.

**Section 11.4. Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

**Section 11.5. Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. A resignation shall take effect on the date of receipt of the resignation or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 11.6. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to fill a vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 11.7. Multiple Offices.** One (1) person may hold two (2) or more offices.

**Section 11.8. Duties.** The duties of the officers are as follows:

### **President**

(a) The president shall preside at all meetings of the Board, shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes unless others are so authorized by resolution of the Board.

### **Vice President**

(b) The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

### **Secretary**

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring the seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members together with their addresses; and shall perform such other duties as required by the Board.

### **Chief Financial Officer**

(d) The chief financial officer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board unless others are so authorized by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association's books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy to each of the Members.

**Section 11.9. Compensation.** No officer of the Association shall receive compensation for his services performed in the conduct of the business of the Association; provided, however, any officer may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE XII

### COMMITTEES

The Board shall appoint a Nominating Committee, as provided in the Bylaws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE XIII

### BOOKS AND RECORDS

The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, the Board and Committees of the Board, shall, during reasonable business hours, be subject to inspection and copying by any Member or by his duly appointed representative, and by the holder of any first Mortgage encumbering a Lot, at the principal office of the Association or at another location within the Properties as the Board may prescribe. The Board shall establish reasonable rules with respect to:

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

Every director of the Association shall have the absolute right at any reasonable time to inspect the Common Area and Common Maintenance Area and all books, records and documents of the Association. The right of inspection by a director shall include the right at his expense to make extracts and copies of documents.

## ARTICLE XIV

### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION, a California corporation.

## ARTICLE XV

### AMENDMENTS

**Section 15.1. Amendments.** Except as may otherwise be stated in the Bylaws, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote or written consent of the Members entitled to exercise a majority or more of the voting power of each class of Members of the Association. Anything herein stated to the contrary notwithstanding, no material amendment to the Bylaws shall be made without the prior written approval of Mortgagees holding first Mortgages encumbering seventy-five percent (75%) of the Lots which are subject to Mortgages; provided further, that so long as there remains a Class B membership in the Association, amendment of the Bylaws shall require the prior approval of the VA and/or FHA, and a draft of the proposed amendment shall be submitted to the VA for its approval before its adoption by the Members of the Association. "Material amendment" shall mean, for purposes of this Article XV, any amendments to provisions of the Bylaws governing any of the following subjects:

- (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 repair and replacement of the Common Area and Common Maintenance Area.
- (d) Property maintenance obligations.
- (e) Insurance and fidelity bonds.
- (f) Reconstruction in the event of damage or destruction.
- (g) Rights to use the Common Area and Common Maintenance Area.
- (h) Expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties.
- (i) Boundaries of any Lot or Common Area.
- (j) The interests in the Common Area or Common Maintenance Area.

(k) Convertibility of Lots into Common Area or of Common Area into Lots.

(l) Leasing of Lots.

(m) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Lot.

(n) Voting.

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

Notwithstanding the above provisions, the percentage of the voting power necessary to amend a specific clause or provision in the Bylaws shall not be less than the percentage of affirmative votes necessary for action to be taken under that clause or provision.

**Section 15.2. Conflict Between Documents.** In the case of any conflict between the Articles and the Bylaws, the Articles shall control; in the case of any conflict between the Declaration and the Bylaws, the Declaration shall control.

## **ARTICLE XVI**

### **MISCELLANEOUS**

**Section 16.1. Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association. The fiscal year of the Association may be changed by the Board.

**Section 16.2. Financial Statements.** The Board shall cause:

(a) a financial statement (including a balance sheet and income and expense statement) of the affairs of the Association to be made as of the last day of the month closest in time to the date six (6) months following close of escrow for the sale of the first Lot by Declarant to an Owner. The financial statement shall reflect the financial condition of the Association as of that date and shall summarize the financial transactions in which the Association was involved during the period between the first close of a sale and the date of the financial statement. The financial statement shall include a schedule of assessments received or receivable itemized by Lot and shall include the name of the person or entity assessed. A copy of the

financial statement shall be distributed personally or by mail to each of the Members and, upon written request, to all first Mortgagees, within sixty (60) days after the date of the financial statement.

(b) an annual report consisting of the following to be distributed to the Members within one hundred twenty (120) days after close of the Association's fiscal year:

(1) a balance sheet as of the end of the fiscal year;

(2) an income and expense statement for the fiscal year;

(3) a statement of changes in financial position for the fiscal year;

(4) any information required to be reported under §8322 of the California Corporations Code;

(5) for any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

If the annual report referred to above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the report was prepared from the books and records of the Association without independent audit or review.

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

**Section 16.3. Budget.** The Board shall cause a pro forma operating statement (budget) for the Association to be prepared for the second and each succeeding fiscal year of the Association, a copy of which shall be distributed personally or by mail to the Members not fewer than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year to which the budget relates. The budget shall include the following information:

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

(b) The amount of the total cash reserves of the Association currently available for the replacement or major repair of the Common Area and for contingencies.

(c) An itemized estimate of the current replacement costs of, the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the Common Area for which the Association is responsible.

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

In lieu of the distribution of the budget to Members, the Board may elect to distribute a summary of the budget to Members with a written notice that the budget is available at the business office of the Association or at another suitable location within the Properties, and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association within five (5) days following receipt of the request. The written notice that is distributed to Members shall be in at least 10-point bold type on the front page of the budget summary.

**Section 16.4. Operating and Reserve Accounts.** The Board shall review, at least quarterly:

(a) a current reconciliation of the Association's operating accounts.

(b) a current reconciliation of the Association's reserve accounts.

(c) the current year's actual reserve revenues and expenses compared to the current year's budget.

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

(e) an income and expense statement for the Association's operating and reserve accounts.

**Section 16.5. Withdrawal From Reserve Account.** The signatures of at least two persons, either two members of the Board or one member of the Board and an officer who is not a member of the Board, shall be required for the withdrawal of monies from the Association's reserve accounts. As used in this Section 16.5, "reserve accounts" means monies the Board has identified from the annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

**Section 16.6. Voting After Conversion of Membership.** Any procedure, action or matter for which the Bylaws require the vote or written assent of a percentage of the voting power of each class of Members, shall, after conversion of the Class B membership in the Association to Class A membership, require the vote or written assent of (i) that percentage of the voting power of Members of the Association, and (ii) at least that percentage of the voting power of Members of the Association other than Declarant.

## **ARTICLE XVII**

### **NOTICE TO LENDERS**

Upon the written request of the holder of a first Mortgage encumbering any Lot, the Association shall give to the holder (i) prior written notice of any action of the Association taken in connection with any material amendment to the Declaration, the Bylaws or the Articles, the effectuation of a decision to terminate professional management of the Common Area and the abandonment or termination of the project composed of the Lots and Common Area; (ii) written notice of any substantial damage to or destruction of any improvement located on a Lot or any part of the Common Area promptly upon such damage or destruction; (iii) written notice of any condemnation or eminent domain proceeding or proposed acquisition in lieu thereof of any Lot or the Common Area or any part thereof, promptly upon the commencement thereof; and (iv) written notification of any default by the Owner of a Lot encumbered by a first Mortgage, the holder of which requests such notice, in the performance of such Owner's obligations under the Declaration or these Bylaws which is not cured within sixty (60) days.

IN WITNESS WHEREOF, the undersigned, being the Incorporator of the Association, hereby adopts these Bylaws as the Bylaws of the Association.

  
\_\_\_\_\_  
ALEX C. McDONALD

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

On this 24<sup>th</sup> day of March, 1989, before me,  
Katie Jacobsen, a Notary Public in and for said state,  
personally appeared ALEX C. McDONALD, personally known to me (or proved to me  
on the basis of satisfactory evidence) to be the person whose name is subscribed to the  
within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.



Katie Jacobsen  
NOTARY PUBLIC

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation; and,

2. That the foregoing Bylaws, comprising twenty-one (21) pages, constitute the Bylaws of said corporation duly adopted by Written Consent of the Incorporator dated February 23, 1989.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said corporation this 24th day of February, 1989.

*Kathy Courtney, VP Marketing*  
KATHY COURTNEY

**CERTIFICATE OF SECRETARY**

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of **WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION**, a California nonprofit mutual benefit corporation; and,

2. That the following is a true and correct imprint of the corporate seal of said corporation as duly adopted at the first meeting of the Board of Directors thereof, duly held on February 24, 1989:

Kathy Courtney, V.P. Marketing  
KATHY COURTNEY

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
  
FOR  
  
WESTWOOD VALLEY LEGENDS  
PLANNED UNIT DEVELOPMENT

TABLE OF CONTENTS

|   | <u>PAGE</u> |
|---|-------------|
| RECITALS .....  | 1           |
| ARTICLE I   |             |
| DEFINITIONS .....   | 2           |
| Section 1.1 Articles .....  | 2           |
| Section 1.2 Association .....   | 2           |
| Section 1.3 Board .....   | 2           |
| Section 1.4 Bylaws .....  | 2           |
| Section 1.5 Club .....  | 2           |
| Section 1.6 Common Area .....   | 2           |
| Section 1.7 Common Maintenance Area .....                                       | 2           |
| Section 1.8 Declarant .....   | 2           |
| Section 1.9 Declaration .....   | 2           |
| Section 1.10 FHA .....  | 2           |
| Section 1.11 Lot .....  | 3           |
| Section 1.12 Member .....   | 3           |
| Section 1.13 Mortgage .....   | 3           |
| Section 1.14 Mortgagee .....  | 3           |
| Section 1.15 Owner .....  | 3           |
| Section 1.16 Properties .....   | 3           |
| Section 1.17 VA .....   | 3           |
| ARTICLE II  |             |
| PROPERTY RIGHTS IN COMMON AREA .....  | 3           |
| Section 2.1 Title to the Common Area .....                                      | 3           |
| Section 2.2 Owners' Easements of Enjoyment .....                                | 3           |
| Section 2.3 Maintenance and Use of Common Area .....                            | 6           |
| Section 2.4 Delegation of Use .....   | 6           |
| ARTICLE III   |             |
| MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION .....                               | 7           |
| Section 3.1 Membership .....  | 7           |
| Section 3.2 Voting Rights .....   | 7           |
| ARTICLE IV  |             |
| COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION .....                       | 7           |
| Section 4.1 Creation of Lien and Personal Obligation for Assessments .....      | 7           |
| Section 4.2 Purpose of Assessments .....  | 8           |
| Section 4.3 Annual and Special Assessments .....                                | 8           |
| Section 4.4 Individual Special Assessments .....                                | 9           |
| Section 4.5 Uniform Rate of Assessment .....                                    | 9           |
| Section 4.6 Date of Commencement of Annual Assessments; Due Dates .....         | 9           |
| Section 4.7 Effect of Non-Payment of Assessments; Remedies of Association ..... | 9           |
| Section 4.8 Subordination of the Lien to First Mortgages .....                  | 10          |
| Section 4.9 Estoppel Certificate .....  | 11          |
| Section 4.10 Personal Liability of Owner .....                                  | 11          |
| Section 4.11 Exempt Property .....  | 11          |
| Section 4.12 Capitalization of Association .....                                | 11          |

|              |  | <u>PAGE</u> |
|--------------|--|-------------|
| ARTICLE V    | MEMBERSHIP IN CLUB .....                                   | 11          |
| Section 5.1  | Membership .....   | 11          |
| Section 5.2  | Voting Rights .....  | 11          |
| Section 5.3  | Compliance With Club Bylaws .....                          | 11          |
| Section 5.4  | Assessments by Club .....                                  | 12          |
| Section 5.5  | Additional Members of Club .....                           | 12          |
| ARTICLE VI   | ARCHITECTURAL CONTROL .....                                | 12          |
| Section 6.1  | Architectural Committee .....                              | 12          |
| Section 6.2  | Committee Approval .....                                   | 12          |
| Section 6.3  | Approved Conditions .....                                  | 13          |
| Section 6.4  | Notification .....   | 13          |
| Section 6.5  | Waiver .....   | 13          |
| Section 6.6  | No Liability .....   | 13          |
| Section 6.7  | Design Criteria .....                                      | 14          |
| Section 6.8  | Variances .....  | 14          |
| Section 6.9  | Rules .....  | 14          |
| Section 6.10 | Declarant Exemption .....                                  | 15          |
| ARTICLE VII  | USE RESTRICTIONS .....                                     | 15          |
| Section 7.1  | Antennae .....   | 15          |
| Section 7.2  | Nuisances .....  | 15          |
| Section 7.3  | Exterior Maintenance and Repair; Owner's Obligations ..... | 15          |
| Section 7.4  | Drainage .....   | 15          |
| Section 7.5  | Water and Sewer Systems .....                              | 16          |
| Section 7.6  | No Hazardous Activities .....                              | 16          |
| Section 7.7  | Unightly Articles .....                                    | 16          |
| Section 7.8  | Temporary and Prefabricated Structures .....               | 16          |
| Section 7.9  | Mining and Drilling .....                                  | 16          |
| Section 7.10 | View Impairment .....                                      | 16          |
| Section 7.11 | Residential Use .....                                      | 17          |
| Section 7.12 | Residential Area Improvements .....                        | 17          |
|              | (a) Residence .....  | 17          |
|              | (b) Utilities .....  | 17          |
|              | (c) Fences .....   | 17          |
| Section 7.13 | Landscaping .....  | 18          |
| Section 7.14 | Parking and Vehicular Restrictions .....                   | 18          |
| Section 7.15 | Further Subdivision .....                                  | 19          |
| Section 7.16 | Animals .....  | 19          |
| Section 7.17 | Signs .....  | 19          |
| Section 7.18 | Trees .....  | 20          |
| Section 7.19 | Slope Control, Use and Maintenance .....                   | 20          |
| ARTICLE VIII | INSURANCE AND CONDEMNATION .....                           | 20          |
| Section 8.1  | Insurance .....  | 20          |
| Section 8.2  | Condemnation .....   | 21          |

|              |   |    |
|--------------|---|----|
| ARTICLE IX   | COMMON MAINTENANCE AREA AND MAINTENANCE                 |    |
|              | RESPONSIBILITIES .....                                  | 22 |
| Section 9.1  | Common Maintenance Area .....                           | 22 |
| Section 9.2  | Association Maintenance .....                           | 22 |
| Section 9.3  | Owner Maintenance .....                                 | 22 |
| Section 9.4  | Association's Right to Repair Neglected Lots .....      | 23 |
| ARTICLE X    | ANNEXATION .....  | 23 |
| Section 10.1 | By Association .....                                    | 23 |
| Section 10.2 | By Declarant .....                                      | 23 |
| ARTICLE XI   | RIGHTS OF LENDERS .....                                 | 24 |
| Section 11.1 | Payments of Taxes or Premiums by First Mortgagees ..... | 24 |
| Section 11.2 | Priority of Lien of Mortgage .....                      | 24 |
| Section 11.3 | Curing Defaults .....                                   | 24 |
| Section 11.4 | Approval of First Mortgagees .....                      | 24 |
| Section 11.5 | Restoration of Common Area .....                        | 25 |
| Section 11.6 | Professional Management .....                           | 25 |
| Section 11.7 | Notice to Mortgagees .....                              | 25 |
| Section 11.8 | Documents to be Available .....                         | 26 |
| Section 11.9 | Conflicts .....   | 26 |
| ARTICLE XII  | GENERAL PROVISIONS .....                                | 26 |
| Section 12.1 | Enforcement .....                                       | 26 |
| Section 12.2 | Severability .....                                      | 26 |
| Section 12.3 | Amendments .....  | 26 |
| Section 12.4 | Extension of Declaration .....                          | 28 |
| Section 12.5 | FHA and VA Approval .....                               | 28 |
| Section 12.6 | Encroachment Easement .....                             | 28 |
| Section 12.7 | Special Responsibilities of Association .....           | 29 |
| Section 12.8 | Litigation .....  | 30 |
| Section 12.9 | Documents to be Provided to Prospective Purchaser ..... | 30 |

## SUBORDINATION AGREEMENT

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of January 18, 1989, by McCOMIC-WESTWOOD, LTD., a California limited partnership (hereinafter referred to as "Declarant"), with reference to the following

**RECITALS:**

A. Declarant is the owner of real property located in The City of San Diego, County of San Diego, California, described as:

Lots 1 through 107, inclusive, of WESTWOOD VALLEY UNIT NO. 6 according to Map thereof No. 11943 filed in the Office of the County Recorder of San Diego County, California, on November 4, 1987; and

Lots 1 through 75, inclusive, and Lots 77 through 122, inclusive, of WESTWOOD VALLEY UNIT NO. 7 according to Map thereof No. 11941 filed in the Office of the County Recorder of San Diego County, California, on November 4, 1987.

B. The property described in Recital A above is planned to be developed as a Common Interest Development described in §1351(k) of the California Civil Code as a "Planned Development" consisting of single-family detached homes, together with common areas as described in this Declaration. The development will be consistent with the overall development plan submitted to and approved by The City of San Diego, California. The Planned Development is planned to be developed in nine (9) phases as follows:

| <u>Phase</u> | <u>Residential<br/>Lots</u> | <u>Common Area<br/>Lots</u> | <u>Number of<br/>Residential Lots</u> |
|--------------|-----------------------------|-----------------------------|---------------------------------------|
| 1            | 8-16; 78-83;<br>91-98 (#6)  |                             | 23                                    |

|   |  |                 |    |
|---|--|-----------------|----|
| 2 | 57-77 (#6)                                       |                 | 21 |
| 3 | 30-56 (#6)                                       |                 | 27 |
| 4 | 18-29; 84-90;<br>99-105 (#6)                     | 17,106,107 (#6) | 26 |
| 5 | 1-25 (#7)  |                 | 25 |
| 6 | 26-43 (#7)                                       | 120 (#7)        | 18 |
| 7 | 44-54; 77-85<br>(#7)                             |                 | 20 |
| 8 | 55-75 (#7)                                       |                 | 21 |
| 9 | 1-7 (#6)<br>86-119 (#7)<br><i>114-119 - Shea</i> | 121,122 (#7)    | 41 |

The Common Area lots are planned to be maintained as natural open space. There is no guarantee that all phases will be completed or that the phasing will occur as planned.

C. The Common Area lots will be owned and maintained by WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), the members of which will be the owners of the residential Lots. The Association will also maintain certain easement areas over portions of the residential lots, adjacent parkways and non-vehicular trails ("Common Maintenance Area"). The owners of each residential lot will also be a regular member of THE WESTWOOD CLUB, a California nonprofit mutual benefit corporation ("Club") which owns recreational facilities for the use of its members.

D. Before selling any of the residential Lots, Declarant wishes to impose on each the following plan of covenants, conditions and restrictions.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the real property described above and has fixed and does hereby fix the following protective covenants, conditions and restrictions upon each and every ownership interest in the real property described as Phase 1 above and, upon annexation, each subsequent Phase, under which covenants, conditions and restrictions each ownership interest shall be held,

used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of the covenants, conditions and restrictions are for the purpose of protecting the value and desirability of and shall inure to the benefit of all of the real property described as Phase 1 above and, upon annexation, each subsequent Phase, and shall run with and be binding upon and pass with the real property and each and every ownership interest therein and shall inure to the benefit of, apply to and bind the respective successors in title or interest of Declarant.

## ARTICLE I

### DEFINITIONS

**Section 1.1.** "Articles" - The Articles of Incorporation of the Association.

**Section 1.2.** "Association" - WESTWOOD VALLEY LEGENDS HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation.

**Section 1.3.** "Board" - The Board of Directors of the Association.

**Section 1.4.** "Bylaws" - The Bylaws of the Association.

**Section 1.5.** "Club" - THE WESTWOOD CLUB, a California Nonprofit Mutual Benefit Corporation.

**Section 1.6.** "Common Area" - All real property owned by the Association.

**Section 1.7.** "Common Maintenance Area" - Those portions of Lots and adjacent public rights of way and non-vehicular trails for which the Association is responsible for maintenance.

**Section 1.8.** "Declarant" - McCOMIC-WESTWOOD, LTD., a California limited partnership, its successors and assigns, if such successor or assign should acquire more than five (5) Lots for the purpose of development, and the rights of "Declarant" are assigned to them.

**Section 1.9.** "Declaration" - This Declaration of Covenants, Conditions and Restrictions.

**Section 1.10.** "FHA" - The Federal Housing Administration.

**Section 1.11. "Lot"** - Any plot of land shown as a separate parcel upon any recorded Final Map or Parcel Map of any portion of the Properties, with the exception of the Common Area.

**Section 1.12. "Member"** - An Owner who is entitled to membership in the Association as provided in the Declaration.

**Section 1.13. "Mortgage"** - A Deed of Trust as well as a mortgage encumbering a Lot.

**Section 1.14. "Mortgagee"** - The beneficiary of a Deed of Trust as well as the mortgagee of a Mortgage.

**Section 1.15. "Owner"** - The record owners, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

**Section 1.16. "Properties"** - The real property described in Recital A to the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 1.17. "VA"** - The Veterans Administration.

## **ARTICLE II**

### **PROPERTY RIGHTS IN COMMON AREA**

**Section 2.1. Title to the Common Area.** Declarant will convey fee simple title to the Common Area in Phase 4, Phase 6 and Phase 9, respectively, to the Association, prior to the first conveyance of a Lot in Phase 4, Phase 6 and Phase 9, respectively, to an Owner other than Declarant, 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 Final Maps 11941 and 11943 and in the Declaration.

**Section 2.2. Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of ingress, egress and of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to the Owner's Lot, 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

Common Area; however, there are no plans to construct recreational facilities on the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of any recreational facilities on the Common Area by an Owner for any period during which any Association assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of the published rules and regulations of the Association. No suspension shall be effective unless the Owner has been given fifteen (15) days' prior notice of the suspension and the reasons therefor and the Owner has been given an opportunity to be heard by the Board, orally or in writing, not less than five (5) days prior to the effective date of the suspension. Notice may be given to the Owner by any method reasonably calculated to provide actual notice, but if given by mail must be given by first-class or registered mail sent to the last address of the Owner shown on the records of the Association.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No dedication or transfer of all or substantially all of the assets of the Association shall be effective unless approved in accordance with the California Corporations Code.

(d) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area 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 access, ingress and egress over the Common Area and the right of installation and use of utilities on the Common Area, for the benefit of all Lots.

(f) The right of the Association to grant maintenance and utility easements over the Common Area to others.

(g) Subject to the obligation to restore and repair any damage, Declarant and its sales agents, employees and independent contractors shall have:

(i) a non-exclusive easement over the Common Area for the purpose of making repairs to the Common Area, provided access

thereto is otherwise not reasonably available, and for the purpose of constructing, marketing and maintaining the project, including all phases within the Properties.

(ii) the right to the non-exclusive use of the Common Area for the purpose of maintaining sales offices and signs reasonably necessary to market the Lots for a period of not more than five (5) years after conveyance of the Common Area to the Association, or the sale of all Lots within the Properties, whichever is first to occur. The use of the Common Area by Declarant and its agents shall not unreasonably interfere with the use of the Common Area by the Class A Members of the Association.

**Section 2.3. Maintenance and Use of Common Area.** The Association shall maintain the Common Area in accordance with the following standards:

(a) All litter and debris that collects or is deposited on the Common Area shall be promptly removed and the Common Area shall be kept clear and clean of litter and debris at all times.

(b) Firebreaks within the Common Area shall be maintained and cleared as required by the Fire Marshall of The City of San Diego, California.

(c) Vegetation on the Common Area shall not be removed or disturbed except for the purposes of control and prevention of fires, erosion and pests, and for maintenance as required by the Declaration.

No buildings, structures or other improvements (other than public utility lines) shall be constructed, erected, placed or maintained on the Common Area, except as may be permitted by The City of San Diego, California. No vehicles shall be permitted on the Common Area, except for the purposes of maintenance required or permitted by the Declaration.

**Section 2.4. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

**Section 3.1. Membership.** Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Lot.

**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 (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for the Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

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

(i) 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 Properties; or

(ii) four (4) years following the date of the original issuance by the California Department of Real Estate of the Final Subdivision Public Report for Phase 1 of the development of the Properties.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

**Section 4.1. Creation of Lien and Personal Obligation for Assessments.** Declarant, for each Lot owned, covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association: (a) annual assessments or charges which shall include an adequate reserve fund for the periodic maintenance, repair and replacement

of the Common Area and Common Maintenance Area; and (b) special assessments. 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 land and shall be a continuing lien upon the Lot against which each such assessment is made. The lien shall be effective upon recordation of a notice of delinquent assessment. Each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the assessment is due. The personal obligation for delinquent assessments shall not pass to successors in title of a Lot, unless expressly assumed by them.

**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 the residents of the Properties, for the improvement and maintenance of the Common Area and Common Maintenance Area, 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. Annual and Special Assessments.** The Board shall levy annual and special assessments sufficient to perform the obligations of the Association as provided in the Declaration and Bylaws; provided, however, except for assessment increases necessary for emergency situations, the Board may not impose an annual assessment that is more than twenty percent (20%) greater than the annual assessment for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California Corporations Code and §7613 of the California Corporations Code at which a quorum was present or participated. For purposes of this Section 4.3, "quorum" means more than fifty percent (50%) of the Owners. An emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Properties or any part of it for which the Association is responsible where a threat to personal safety on the Properties is discovered;
- (c) An extraordinary expense necessary to repair or maintain the Properties or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget pursuant to Civil Code §1365. However, prior to the imposition or collection of an assessment under this

subdivision, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

**Section 4.4. Individual Special Assessments.** The Association may also impose a special assessment against a Member to reimburse the Association for costs incurred in bringing a Member or his Lot into compliance with the provisions of the Declaration, 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 which satisfy the requirements of §7341 of the California Corporations Code; provided, however, that except to the extent the special assessment is to reimburse the Association for the cost of collecting assessments, a special assessment levied pursuant to this Section 4.4 shall not constitute a lien on the Owner's Lot.

**Section 4.5. Uniform Rate of Assessment.** Both annual and special assessments (other than a special assessment levied against an Owner to bring the Owner or his Lot into compliance with the Declaration, Articles, Bylaws or rules and regulations of the Board) shall be fixed at a uniform rate for all Lots and may be collected on a monthly or other periodic basis as determined by the Board.

**Section 4.6. Date of Commencement of Annual Assessments; Due Dates.** Annual assessments shall commence as to all Lots in Phase 1 on the first day of the month following the first conveyance of a Lot in Phase 1 to an Owner, or on the first day of the month following the conveyance of the Common Area in Phase 1 to the Association, whichever shall first occur. The annual assessments provided herein shall commence as to all Lots in each subsequent phase of the development of the Properties on the first day of the month following the first conveyance of a Lot to an Owner other than Declarant in the subsequent phase, or upon the first day of the month following conveyance of the Common Area in that phase, if any, 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 Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due dates for payment of assessments shall be established by the Board.

**Section 4.7. Effect of Non-Payment of Assessments; Remedies of Association.** Any assessment made in accordance with the Declaration shall be a debt of the Owner of a Lot at the time the assessment is due. Any assessment not paid within thirty (30) days after the due date shall bear interest from thirty (30) days following the due date at the rate of twelve percent (12%) per annum. The Association may bring an action

2109

at law against the Owner personally obligated to pay the assessment and, in addition thereto or in lieu thereof, may foreclose the lien against the Lot.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent. Except as otherwise provided in Section 4.4 above, the amount of any delinquent assessment plus costs of collection, late charges, penalties, interest and attorney's fees, shall be and become a lien upon the Lot when the Association causes to be recorded with the County Recorder of San Diego County, California, a Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall state the amount of the delinquent assessment and the other charges as may be authorized by the Declaration, a description of the Lot against which the assessment has been made, the name of the record owner of the Lot and, in order for the lien to be foreclosed by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by the person designated by the Association for that purpose or, if no one is designated, by the President of the Association. Upon payment of the delinquent assessment and charges in connection with which the Notice of Delinquent Assessment has been recorded, or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the assessment lien.

The assessment lien may be enforced by sale by the Association after failure of the Owner to pay the assessment. The sale shall be conducted in accordance with the provisions of §§2924, 2924b and 2924c of the California Civil Code applicable to the exercise of powers of sale in mortgages or in any other manner permitted by law. The Association shall have the power to purchase the Lot at the foreclosure sale and to hold, lease, mortgage and convey the Lot. 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 assessment.

**Section 4.8. Subordination of the Lien to First Mortgages.** The assessment lien shall be subordinate to the lien of any first Mortgage, and the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of the assessment as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve the Lot from lien rights for any assessments thereafter becoming due. When the Mortgagee of a first Mortgage or other purchaser of a Lot obtains title to the Lot as a result of foreclosure, the 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 the Lot which was due prior to the acquisition of title to the Lot by such acquirer, except for a share of the charges or assessments resulting from a re-allocation of the charges or assessments which are made against all Lots.

**Section 4.9. Estoppel Certificate.** The Association shall furnish or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 4.10. Personal Liability of Owner.** No Member may exempt himself from personal liability for assessments levied by the Association, nor release the Lot owned by him from the liens and charges for assessments by waiver of the use and enjoyment of the Common Area or by abandonment of his Lot.

**Section 4.11. Exempt Property.** All properties dedicated to and accepted by a local public authority, and all properties owned by a charitable nonprofit organization exempt from taxation by the laws of the State of California, shall be exempt from assessment by the Association. However, no land or improvements devoted to dwelling use shall be exempt from assessments by the Association.

**Section 4.12. Capitalization of Association.** Upon acquisition of record title to a Lot 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 Lot as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed from the escrow to the Association. The same procedure shall be followed in connection with sales of Lots in subsequent phases of development of the Properties. The payments required under this Section 4.12 are in addition to and not in lieu of annual and special assessments of the Association.

## **ARTICLE V**

### **MEMBERSHIP IN CLUB**

**Section 5.1. Membership.** Every Owner of a Lot shall be a Regular Member of the Club. Membership is appurtenant to and may not be separated from ownership of a Lot. Transfer of title to a Lot shall automatically transfer the Regular Membership in the Club appurtenant to the Lot to the transferee.

**Section 5.2. Voting Rights.** The voting rights of members of the Club are set forth in the Bylaws of the Club.

**Section 5.3. Compliance With Club Bylaws.** The Owner of each Lot shall promptly, fully and faithfully comply with and conform to the provisions of the Bylaws of the Club and the rules and regulations prescribed by the Board of Directors and officers of the Club.

**Section 5.4. Assessments by Club.** The Owner of each Lot shall pay to the Club all dues, fees and assessments levied by the Club on the members of the Club as set forth in the Bylaws of the Club. Assessments by the Club shall commence as to all Lots within each phase of the development of the Properties on the first day of the month following the first conveyance of a Lot within that phase to an Owner other than Declarant.

**Section 5.5. Additional Members of Club.** It is contemplated that the number of Regular Members of the Club will approximate 2,400 when all of the real property potentially subject to Club membership has been developed. The Bylaws of the Club also provide for Associate Memberships in the Club.

## **ARTICLE VI**

### **ARCHITECTURAL CONTROL**

**Section 6.1. Architectural Committee.** No construction, development, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of the visible exterior of any improvement, including a residence, on any Lot shall be commenced or maintained until the plans and specifications therefor showing the nature, design, kind, shape, height, width, color, materials and location have been submitted to and approved in writing by a committee of not less than three (3) nor more than five (5) members ("Committee"). Until the first anniversary of the issuance of the original Final Subdivision Public Report by the California Department of Real Estate for the first phase of development of the Properties, Declarant shall have the right to appoint and remove all members of the Committee. Thereafter, Declarant shall have the right to appoint and remove a majority of the members of the Committee until ninety percent (90%) of all Lots within the Properties have been conveyed to others or until the fifth (5th) anniversary date of the original issuance of the Final Subdivision Public Report for the first phase of development of the Properties, whichever shall first occur. Thereafter, members of the Committee shall be appointed or removed by the Club. Members of the Committee appointed by the Club shall be members of the Club. In the event the Club fails or refuses to appoint members of the Committee within sixty (60) days following commencement of its right to do so, then members of the Committee may be appointed and removed by the Board. Members of the Committee appointed by the Board shall be Members of the Association. Persons submitting proposals or plans and specifications to the Committee (each person is referred to as the "Applicant") must obtain a dated, written receipt for such plans and specifications and furnish the Committee with the address to which further communications from the Committee to the Applicant are to be directed.

**Section 6.2. Committee Approval.** The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alteration, addition or other construction activity contemplated thereby in the locations indicated will not be detrimental to the appearance of the Properties and surrounding real property as a whole, and that the appearance of any structure or other improvement will be in harmony with the surrounding structures and improvements.

**Section 6.3. Approved Conditions.** The Committee may condition its approval of proposals or plans and specifications on such changes thereto as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may adopt, amend or supplement the architectural rules (i) concerning design and materials standards, rules and guidelines for construction activities, (ii) setting forth procedures for the submission of plans for approval, (iii) requiring a reasonable fee ("Review Fee") payable to the Committee for any costs involved to accompany each application for approval, and (iv) specifying additional factors which it will take into consideration in reviewing submissions. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of plantings, exterior materials and colors. Until receipt by the Committee of all plans, specifications or other materials deemed necessary by the Committee, the Committee may postpone review of any plans submitted for approval.

**Section 6.4. Notification.** Decisions of the Committee and the reasons therefor shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval within forty-five (45) days after receipt by the Committee of all materials required by the Committee. Any application submitted pursuant to this Article VI shall be deemed approved, unless the Committee's written disapproval or a request for additional information or materials is transmitted to the Applicant within forty-five (45) days after the date of receipt by the Committee of all required materials.

**Section 6.5. Waiver.** The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

**Section 6.6. No Liability.** Neither the Committee, nor any members thereof, nor their duly authorized representatives, shall be liable to any Applicant or Lot Owner for any loss, damage or injury arising out of or in any way connected with the perfor-

mance of the Committee's duties hereunder, unless due to the willful misconduct of the Committee.

**Section 6.7. Design Criteria.** The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, addition or other construction activity on the basis of satisfaction of the Committee with the grading plan, location of the improvements on the Lot, the finished ground elevation, the color scheme, finish, design, proportions, architecture, shape, height, style, appropriateness of proposed improvements, affect on adjoining Lots, the materials to be used, the kinds, pitch or type of roof proposed, the planting, landscaping, size, height or location of vegetation on a Lot, and on the basis of aesthetic considerations and the overall benefit or detriment to the Properties and surrounding real property generally which would result from such improvement, alteration, addition or other construction activity. Although the Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color, schemes, exterior finishes and materials, and similar features, it shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of any plan or design from the standpoint of adequacy of drainage, structural safety or conformance with building or other codes. The Committee approval of any particular construction activity shall expire and the plans and specifications therefor shall be resubmitted for Committee approval if substantial work pursuant to the approved plans and specifications is not commenced within six (6) months after the Committee's approval of such construction activity. All construction activities shall be performed as promptly and as diligently as possible and shall be completed within such reasonable period of time specified by the Committee.

**Section 6.8. Variances.** The Committee may authorize variances from compliance with any of the architectural provisions of this Article VI, including, without limitation, restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be in writing, and must be signed and acknowledged by at least a majority of the members of the Committee. The granting of such a variance shall not operate to waive any of the terms and provisions of this Article VI for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all laws and regulations of any governmental authority affecting the use of his Lot, including, but not limited to, zoning and building requirements of any governmental agency or entity having jurisdiction over the Lot.

**Section 6.9. Rules.** The architectural rules of the Committee may provide for the pre-approval of certain specified types or categories of construction activities, provided that such pre-approved construction activities are implemented by the affected

Owner in conformance with the standards for design, materials and other criteria established in the architectural rules for such pre-approved construction activities. The Committee may from time to time adopt, supplement or amend architectural rules to establish, expand, limit or otherwise modify the categories and criteria for any pre-approved construction activities.

**Section 6.10. Declarant Exemption.** Neither this Article VI nor the Committee shall have application to improvements made by Declarant.

## **ARTICLE VII**

### **USE RESTRICTIONS**

**Section 7.1. Antennae.** No exterior radio antenna, television antenna, "C.B." antenna, satellite dish, earth receiving station or other antenna, transmitting or receiving device of any type shall be erected or maintained on any Lot.

**Section 7.2. Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within a Lot, and no odor shall be permitted to arise therefrom so as to render the Lot or any portion thereof unsanitary, unsightly or offensive from any street or to any portion of the Properties, or vicinity thereof, or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of a the Lot so as to be unreasonably offensive or detrimental to any other part of the Properties or to their occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, unlicensed off-road motor vehicles or other items which may unreasonably disturb other owners or their tenants shall be located, used or placed on any Lot. No vehicles may be operated upon any portion of the Properties not improved as a street, driveway or parking area. Alarm devices used exclusively to protect the security of a residence and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

**Section 7.3. Exterior Maintenance and Repair; Owner's Obligations.** No improvement within a Lot shall be permitted to fall into disrepair, and each improvement shall at all times be kept in good condition and repair by the Owner thereof.

**Section 7.4. Drainage.** There shall be no interference with the established drainage pattern over any Lot so as to affect any other portion of the Properties, unless an adequate alternative provision is made for proper drainage and it is in accordance with all applicable governmental codes and ordinances. For the purpose hereof, "established drainage" is defined as the drainage which exists at the time the overall grading

and landscaping of the Properties pursuant to grading plans approved by The City of San Diego, California.

**Section 7.5. Water and Sewer Systems.** No individual water supply system, water softener system or sewage disposal system shall be permitted on Lot unless the system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water district and any applicable governmental health authority having jurisdiction.

**Section 7.6. No Hazardous Activities.** No activities shall be conducted nor shall any improvements be constructed anywhere on a Lot which are or might be unsafe or hazardous to any person or property.

**Section 7.7. Unsightly Articles.** No unsightly articles, including clotheslines, shall be permitted to remain on any portion of a Lot so as to be visible from any street or from any other Lot within the Properties. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in covered, sanitary containers commercially designed for such purpose (i.e., oil drums or similar substitutes for commercially designed refuse receptacles are prohibited) and located within an enclosed area or areas appropriately screened from the view of any other Lot within the Properties. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). There shall be no exterior fires, except barbecue fires contained within receptacles designed therefor which do not create a fire hazard.

**Section 7.8. Temporary and Prefabricated Structures.** No tent, shack, trailer or any temporary building, improvement or structure shall be placed upon any portion of a Lot. The foregoing excludes construction trailers and other temporary or prefabricated structures or improvements utilized during construction and sales activities.

**Section 7.9. Mining and Drilling.** The surface of a Lot shall not be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, geothermal heat, minerals, rocks, stones, gravel or earth, nor shall oil wells, tanks, tunnels, mineral or geothermal excavations or shafts be permitted upon the surface of any portion of a Lot.

**Section 7.10. View Impairment.** Each Owner, by accepting a deed to a Lot, acknowledges that grading of, construction on or installation of improvements on other property within the Properties and surrounding real property may impair the view of such Owner, and consents to such impairment.

**Section 7.11. Residential Use.** All Lots within the Properties shall be improved and used solely for single-family residential use; provided, however, that this provision shall not preclude any Owner from renting or leasing all of his Lot by means of a written lease or rental agreement. No lease shall be for a term of less than thirty (30) days. No Lot shall be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other non-residential purposes; except Lots may be used for model home sites and display and sales office purposes during the construction and sales period. The provisions of this Section shall not preclude professional or administrative occupations without external evidence thereof, for so long as such occupations (i) are conducted in conformance with all applicable governmental ordinances, (ii) are merely incidental to the use of the Lot as a residence, and (iii) the patrons or clientele of such professional or administrative occupation do not regularly visit or conduct business on the Lot.

**Section 7.12. Residential Area Improvements.**

(a) **Residence.** No Lot shall be improved except with one residence designed to accommodate no more than a single family and its servants and occasional guests, plus a garage, fencing and such other improvements as are necessary or customarily incident to a single-family residence. Subject to applicable requirements of any governmental agency or entity having jurisdiction over the Lot, no part of the construction on any Lot shall exceed two (2) stories in height above the finished pad. Chimneys, railings, vent stacks, pediments and similar architectural features of normal size, height and distribution may rise above the two (2) story construction limit. No projections of any type shall be placed or permitted to remain above the roof of any building within the Lot, except chimneys, railings, vent stacks, pediments and similar architectural features. No basketball backboard or other sports apparatus shall be constructed or maintained on any Lot so as to be visible from any other Lot or street within the Properties or surrounding real property. No patio cover, wiring or air conditioning fixture, water softeners or other devices shall be installed on the exterior of a residence or be allowed to protrude through the walls or roof of the residence (with the exception of those items installed during the original construction of the residence).

(b) **Utilities.** All utility and storage areas or structures must be (i) completely concealed from the view of any other Lot or street, or (ii) constructed of such design, materials, configuration and in such location as to be compatible with the residence and other improvements on the Lot.

(c) **Fences.** All fences within a Lot shall be painted or stained.

**Section 7.13. Landscaping.** Within six (6) months after the later to occur of (i) close of escrow for the sale of a Lot to a retail purchaser, or (ii) issuance of a Certificate of Occupancy for a residence constructed on such Lot, the Owner thereof shall install and shall thereafter maintain plants, shrubs, trees and any other appropriate landscaping improvements, pursuant to plans and specifications approved by the Committee, on those portions of the Lot which are visible from any street within the Properties. Each Owner shall properly maintain and periodically replace when necessary all trees, plants, grass, vegetation and other landscaping improvements located on the Owner's Lot. No plants or seeds infected with insects or plant diseases, shall be brought upon, grown or maintained upon any Lot. If any Owner fails to install or maintain landscaping in conformance with architectural rules or allows his landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Committee, upon thirty (30) days' prior written notice to the Owner, shall have the right either to seek any remedies at law or in equity which it may have or to correct such condition and to enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Committee for the cost thereof.

**Section 7.14. Parking and Vehicular Restrictions.** None of the following (collectively "Prohibited Vehicles") shall be parked, stored or kept on any street (public or private) within the Properties: any large commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck); any recreational vehicle (including, but not limited to, any camper unit, house/car or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; any inoperable vehicle or any other similar vehicle; or any vehicle or vehicular equipment, mobile or otherwise, constituting a nuisance. No Prohibited Vehicle shall be parked, stored or kept on any Lot except wholly within an enclosed garage, and then only if the garage door is capable of being fully closed. Prohibited Vehicles shall not be allowed in any driveway or other exposed parking areas, or any street (public or private), except for the purposes of loading, unloading, making deliveries or emergency repairs ("Transitory Use"), provided that no Transitory Use shall extend over more than twenty-four hours during any seven (7) consecutive days. Vehicles owned, operated or within the control of an Owner, or of a resident of Owner's Lot, shall be parked in the garage or other assigned parking space to the extent of the maximum designed capacity of the garage or parking space. Garages or other parking areas shall be used only for parking authorized vehicles, and shall not be used for storage, living, recreational, business or other purposes. There shall be no parking in the driveways if the Owner's garage is not being utilized to the maximum designed capacity for the parking of authorized vehicles, or if to do so obstructs free traffic flow, constitutes a nuisance or otherwise creates a safety hazard. Garage doors shall be kept closed at all times, except as reasonably required for ingress to and egress from the interiors of the garages. No repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle or equipment

shall be conducted upon any street (public or private), Lot or elsewhere within the Properties, except wholly within an enclosed garage; provided, however, that such activity is not undertaken as a business, and provided further that such activity may be prohibited entirely if it constitutes a nuisance. These restrictions shall not be interpreted in such a manner so as to permit any activity which would be contrary to any ordinance of The City of San Diego or other governmental agency having jurisdiction over the Properties.

**Section 7.15. Further Subdivision.** No Lot may be further subdivided (including division into time-share estates or time-share uses) without the prior written approval of the Board; provided, however, that nothing in this Section shall be deemed to prevent an Owner from selling a Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property, or leasing or renting by any Owner of all of his Lot by means of a written lease or rental agreement.

**Section 7.16. Animals.** No animals, fowl, poultry, fish, reptiles or insects of any kind ("animals") shall be raised, bred or kept on any Lot, except that a reasonable number of birds, fish, dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable law or ordinance. No animal shall be maintained in any Lot which constitutes a nuisance to other Owners of Lots in the Properties. Animals belonging to Owners, occupants or their licensees, tenants or invitees must be either kept within the enclosure, an enclosed yard, or on a leash or bridle being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the duty and responsibility of each Owner to clean up after such animals which have used any portion of the Properties.

**Section 7.17. Signs.** No sign, poster, billboard, balloon or other display or advertising device of any kind shall be displayed on, over or from any portion of the Properties, except (i) such signs (regardless of size or configuration) as may be used by Declarant in connection with the development of the Properties and the sale, lease or other disposition thereof, (ii) entry monuments and similar community identification signs, and (iii) one sign which may be displayed on each Lot advertising the Lot for sale or lease; provided that such for sale or lease signs (a) shall not be larger than 18" by 30" in size; (b) shall not be attached to the ground by means other than a conventional single vertical stake which shall not exceed 2" by 3" in diameter (i.e., posts, pillars, frames or similar arrangements are prohibited); and (c) shall not exceed 3' in height above the ground level.

**Section 7.18. Trees.** All trees, hedges and other plant materials shall be trimmed by the Owner of the Lot upon which they are located so that they shall not exceed the height of the house on the Lot; provided, however, that where trees do not obstruct the view from any of the other Lots in the Properties, which determination shall be within the sole judgment of the Committee, they shall not be required to be so trimmed. Before planting any trees, the proposed location of such trees shall be approved in writing by the Committee. No trees, hedges or other plant materials shall be so located or allowed to reach a size or height which will interfere with the view from any other Lot.

**Section 7.19. Slope Control, Use and Maintenance.** Each Lot Owner will keep, maintain, water, plant and replant all slope banks located on the Owner's Lot (other than slopes within the Common Maintenance Area) to prevent erosion and to create an attractive appearance. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any slope banks which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels.

## **ARTICLE VIII**

### **INSURANCE AND CONDEMNATION**

#### **Section 8.1. Insurance.**

(a) The Association shall keep (i) any improvements on the Common Area and Common Maintenance Area insured against loss by fire and the risks covered by a Standard All Risk of Loss Perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Common Area and Common Maintenance 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 Common Area or Common Maintenance Area. In the event the cost of such replacement, repair or rebuilding of Common Area or Common Maintenance Area (A) exceeds the insurance proceeds available therefor, or (B) 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 4.3

above. In the event of any loss, damage or destruction to improvements on a Lot (other than that portion thereof within the Common Maintenance Area), the Owner of the Lot shall cause the same to be replaced, repaired or rebuilt.

(b) The Association shall procure and keep in force public liability insurance in the name of the Association and the Owners against any liability for personal injury or property damage resulting from any occurrence in or about the Common Area or Common Maintenance Area in an amount not less than \$1,000,000 in indemnity against the claims of one or more persons in one accident or event, and not less than \$100,000 for damage to property.

(c) The Association shall maintain a fidelity bond in an amount equal to the amount of funds held by the Association during the term of the bond but not less than one-fourth (1/4) of the annual assessments, plus reserves, naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

(d) Copies of all insurance policies (or certificates) 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 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.

(e) 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 Lot.

**Section 8.2. Condemnation.** In the event the Common 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.

**ARTICLE IX****COMMON MAINTENANCE AREA  
AND MAINTENANCE RESPONSIBILITIES**

**Section 9.1. Common Maintenance Area.** The Common Maintenance Area includes portions of certain Lots, together with those landscaping areas which are within the public right of way between the street curb and sidewalk along Poblado Road which is adjacent to the Lots or Common Area and the area within Final Map 11943 shown and described as "Pedestrian and Non-Motor Vehicle Right of Way". The Common Maintenance Area in each phase of development of the Properties may be conveyed by easement or other appropriate document to the Association prior to the first conveyance of a Lot in that phase. Anything contained herein to the contrary notwithstanding, an easement over the area which otherwise would be Common Maintenance Area may be conveyed to a public maintenance assessment district, in which event the area shall be maintained by the district.

**Section 9.2. Association Maintenance.** The Association shall maintain and provide for the maintenance of all the Common Area and Common Maintenance Area and all improvements thereon in good repair and appearance as set forth in the Declaration. 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 Common Area and Common Maintenance Area by Declarant pursuant to landscape plans approved by The City of San Diego, California, and approved by the City in connection with approval of the Final Map covering the Properties. The Association shall have the right to enter onto any Lot (but not within the dwelling thereon) as may be necessary for the construction, maintenance or emergency repair of the Common Area or Common Maintenance Area or, if necessary, for the benefit of the Owners in common. Any damage caused to a Lot by entry of the Association shall be repaired by the Association at its expense.

**Section 9.3. Owner Maintenance.** Each Owner shall keep and maintain in good repair and appearance all portions of his Lot and improvements thereon (other than that portion the maintenance of which is the responsibility of the Association or a public maintenance assessment district), including, but not limited to, any fence or wall which is located thereon. The Owner of each Lot shall water, weed, maintain and care for the landscaping located on his Lot (other than that portion the maintenance of which is the responsibility of the Association or a public maintenance assessment district) so that the same presents a neat and attractive appearance. No Owner shall interfere with or damage the Common Maintenance Area nor interfere with or impede Declarant, the Association or a public maintenance assessment district in connection with the maintenance of the Common Maintenance Area as herein provided.

**Section 9.4. Association's Right to Repair Neglected Lots.** In addition to maintenance of the Common Area and Common Maintenance Area, in the event an Owner of any Lot should fail to maintain his Lot and improvements situated thereon in a manner satisfactory to the Board, the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right through its agents and employees, to enter on said Lot and to repair, maintain and restore the Lot and exterior of the building and any other improvements erected thereon. However, no entry into a dwelling unit may be made without the consent of the Owner, and such entry shall be made only after not less than three (3) days notice has been given to the Owner. Entry by the Association shall be made with as little inconvenience to the Owner as possible and any damage caused by the Association shall be repaired by the Association. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject. There is hereby created an easement in favor of the Association to enter onto each Lot which is subject to assessment hereunder to provide maintenance as hereinabove stated, subject to the foregoing notice and consent requirements.

## **ARTICLE X**

### **ANNEXATION**

**Section 10.1. By Association.** Additional residential property, Common Area and Common Maintenance Area may be annexed to the Properties and to the Declaration upon the vote or written assent of two-thirds (2/3) of the voting power of Members of the Association, excluding the vote of Declarant. Upon approval by Members of the Association, the Owner of the property wishing it to be annexed may file of record a Declaration of Annexation which shall extend the provisions of this Declaration to the property being annexed.

**Section 10.2. By Declarant.** Additional land within the Properties may be annexed as Lots, Common Area and Common Maintenance Area and to the jurisdiction of the Association by Declarant without the consent of Members of the Association or the Board at any time within three (3) years following the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a phase of the development of the Properties; provided, however, that the FHA and VA shall determine that the annexation is in accord with the general plan approved by each. Annexation shall be made by Declaration of Annexation executed by the Owner of the land being annexed. The Declaration of Annexation may be revoked or amended at any time before the first close of sale of a Lot in the annexed property.

**ARTICLE XI****RIGHTS OF LENDERS**

**Section 11.1. Payments of Taxes or Premiums by First Mortgagees.** First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless the taxes or charges are separately assessed against the Owners, in which case, the rights of first Mortgagees shall be governed by the provisions of their Mortgages. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Common Area; first Mortgagees making such payments shall be owed immediate reimbursement from the Association. Entitlement to reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

**Section 11.2. Priority of Lien of Mortgage.** No breach of the covenants, conditions or restrictions in the Declaration shall affect, impair, defeat or render invalid the lien or charge of any first Mortgage made in good faith and for value encumbering any Lot, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title to a Lot is derived through foreclosure or trustee's sale, or otherwise.

**Section 11.3. Curing Defaults.** A first Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on Mortgagees.

**Section 11.4. Approval of First Mortgagees.** Unless the Mortgagees of first Mortgages encumbering sixty-seven percent (67%) or more of the Lots which are subject to a Mortgage have given their prior written approval, neither the Owners nor the Association shall be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this Subsection.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of residences, the exterior maintenance of residences, the maintenance of Common Area walks or common fences and driveways, or the upkeep of lawns and plantings in the project.

(d) Fail to maintain fire and extended coverage insurance on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

(e) Use hazard insurance proceeds for losses to any portion of the Common Area for other than the repair, replacement or reconstruction of the Common Area.

**Section 11.5. Restoration of Common Area.** Any restoration or repair of the Common Area after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with the Declaration and original plans and specifications unless other action is approved by holders of first Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Mortgage holders.

**Section 11.6. Professional Management.** When professional management has been previously required by a first Mortgage holder, a decision to establish self-management by the Association shall require the consent of at least sixty-seven percent (67%) of the voting power of Members of the Association and the approval of holders of first Mortgages on Lots, the Owners of which have at least fifty-one percent (51%) of the votes of Lots encumbered by Mortgages.

**Section 11.7. Notice to Mortgagees.** Upon written request to the Association identifying the name and address of the holder and the Lot number or address, any first Mortgage holder will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a first Mortgage held by the Mortgage holder.

(b) Any delinquency in the payment of assessments or charges owed by an Owner subject to a first Mortgage held by the Mortgage holder which remains uncured for a period of sixty (60) days.

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

(d) Any proposed action which would require the consent of a specified percentage of Mortgage holders.

**Section 11.8. Documents to be Available.** The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any first Mortgage, current copies of the Declaration, the Bylaws, other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The holders of first Mortgages encumbering fifty-one percent (51%) or more of the Lots subject to a Mortgage shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any financial statement so requested shall be furnished within a reasonable time following the request.

**Section 11.9. Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of the Declaration, the provisions of this Article shall control.

## **ARTICLE XII**

### **GENERAL PROVISIONS**

**Section 12.1. Enforcement.** The Association, Declarant and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of the Declaration. The Club shall have the right to enforce the provisions of Articles V, VI and VII of the Declaration. Failure by the Association, the Club, Declarant or any Owner to enforce any covenants or restrictions contained in the Declaration shall be deemed a waiver of the right to do so thereafter.

**Section 12.2. Severability.** Should any provision in the Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions shall be and remain in full force and effect.

**Section 12.3. Amendments.** Except as may otherwise be stated in the Declaration, during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written consent of seventy-five percent (75%) of the voting power of each class of Members of the Association, any which amendment shall become effective upon recording with 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 at any time and from time to time by the vote or written consent of (a) seventy-five percent (75%) of the total voting power of the Association, and (b) at least seventy-five percent (75%) of the voting power of Members of the Association other than Declarant. Anything herein stated to the contrary notwithstanding, no material amendment may be made to this Declaration without the prior written consent of Mortgagees of first Mortgages encumbering seventy-five percent (75%) or more of the Lots within the Properties which are subject to a Mortgage. "Material amendment" shall mean, for purposes of this Section 12.3, any amendments to provisions of this Declaration governing any of the following subjects:

- (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 repair and replacement of the Common Area or Common Maintenance Area.
- (d) Property maintenance obligations.
- (e) Insurance and fidelity bonds.
- (f) Reconstruction in the event of damage or destruction.
- (g) Rights to use the Common Area or Common Maintenance Area.
- (h) Leasing of Lots.
- (i) The boundaries of any Lot or the Common Area.
- (j) Convertibility of Lots into Common Area or of Common Area into Lots.
- (k) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Lot.
- (l) Voting.
- (m) Expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties.

(n) The interests in the Common Area or Common Maintenance Area.

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

Notwithstanding the above provisions, the percentage of the voting power necessary to amend a specific clause or provision in the Declaration shall not be less than the percentage of affirmative votes necessary for action to be taken under that clause or provision.

The percentage of membership votes or written consents required to amend the Declaration may be reduced under certain circumstances by Court Order obtained pursuant to California Civil Code §1356.

**Section 12.4. Extension of Declaration.** Each and all of the covenants, conditions and restrictions shall run with and bind the land for a term of twenty (20) years from the date the Declaration is recorded, 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 the end of the twenty (20) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a written instrument in which it is agreed that the restrictions shall terminate at the end of the twenty (20) year period or at the end of any the ten (10) year period.

**Section 12.5. FHA and VA Approval.** As long as there is a Class B membership in the Association, the following actions require the prior approval of the FHA and the VA: Annexation or de-annexation of additional property to the Properties, mergers or consolidations of the Association, dedications or mortgaging of Common Area and special assessments.

**Section 12.6. Encroachment Easement.**

(a) In the event any improvement to a Lot encroaches upon the Common Area or Common Maintenance Area as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion thereof, an easement for the encroachment and for maintenance of the same shall exist so long as the encroachment exists; provided, however, in no event shall an easement for encroachment be created in favor of an Owner or Owners if the encroachment occurred due to the willful misconduct of the Owner or Owners. In the event a structure on a Lot is partially

or totally destroyed and then rebuilt or repaired, the minor encroachments over adjoining Common Area and Common Maintenance Area shall be permitted and there shall be easements for maintenance of the encroachments so long as they shall exist.

(b) Each Owner of a Lot is granted an easement over adjoining Lots for the purpose of accommodating encroachments due to design, construction, engineering errors, errors in construction, settlement or shifting of the building, roof overhangs, architectural or other appendants and drainage of water from roofs. There shall be easements for the maintenance of said encroachments so long as they shall exist; provided, however, that no easement is created in favor of an Owner if the encroachment occurred due to the willful misconduct of the Owner. In the event a structure on any Lot is partially or totally destroyed and then rebuilt or repaired, the minor encroachments over adjoining Lots shall be permitted and there shall be easements for maintenance of the encroachments so long as they shall exist.

**Section 12.7. Special Responsibilities of Association.** In the event improvements to be installed by Declarant to the 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 Properties, and in the further event the Association is the obligee under a bond to secure the obligation of Declarant to complete the improvements, then if the 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 improvement, then the Board shall consider and vote on the question if the 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 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 event, upon petition signed by Members representing five percent (5%) or more of the voting power of the Association (excluding the voting power of Declarant), 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. The 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 the meeting, a vote of a majority of the voting power of 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. Nothing contained herein shall indicate or imply that the VA has or would approve any bonding arrangement.

**Section 12.8. Litigation.** In the event of litigation arising out of or in connection with the Declaration, the prevailing party shall be entitled to receive costs of suit and such sum for attorney's fees as the Court deems reasonable.

**Section 12.9. Documents to be Provided to Prospective Purchaser.** Each Owner, other than Declarant, shall, as soon as practicable before transfer of title to a Lot, provide to the prospective purchaser the following:

- (a) A copy of the Articles, Bylaws and Declaration.
- (b) A copy of the most recent financial statements of the Association.
- (c) A true statement in writing from an authorized representative of the Association as to the amount of any assessments levied upon the Lot which are unpaid as of the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Lot.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has set its hand and seal as of the date first hereinabove written.

McCOMIC-WESTWOOD, LTD., a California  
limited partnership

BY: R.B. McCOMIC, INC., a California  
corporation, General Partner

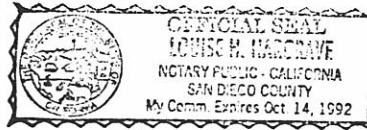
By Kathleen R. Country  
V.P. Marketing

By Kevin J. [Signature]

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

On this 30th day of January, 1989 before me,  
Louise H. Hargrave, a Notary Public in and for said state, personal-  
 ly appeared Ross M. Felber, personally known to me (or  
 proved to me on the basis of satisfactory evidence) to be the Senior Vice  
President, and Kathleen R. Courtney, personally known to me (or  
 proved to me on the basis of satisfactory evidence) to be the V.P. of Marketing  
Secretary of R.B. McCOMIC, INC., the corporation that executed the within instrument  
 and known to me to be the persons who executed the within instrument on behalf of  
 said corporation, said corporation being known to me to be the general partner of  
 McCOMIC-WESTWOOD, LTD., the limited partnership that executed the within  
 instrument, and acknowledged to me that such corporation executed the same as such  
 partner and that such partnership executed the same.

WITNESS my hand and official seal.



Louise H. Hargrave  
 NOTARY PUBLIC

SUBORDINATION AGREEMENT

GREAT AMERICAN FIRST SAVINGS BANK, a California corporation, being the beneficiary under those deeds of trust recorded June 30, 1988 and August 25, 1988 as File/Page Nos. 88-316680 and 88-422739, respectively, with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of the deeds of trust are and shall be subordinate and inferior to the Declaration of Covenants, Conditions and Restrictions to which this Subordination Agreement is attached.

GREAT AMERICAN FIRST SAVINGS BANK,  
a California corporation

By Kenneth M. Shook  
Kenneth M. Shook, Vice President

By Timothy C. McCullaugh  
Timothy C. McCullaugh, Asst. Vice Pres.

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

On this 20th day of January, 1989, before me, Kerstin Rumar, a Notary Public in and for said state, personally appeared Kenneth M. Shook, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice President, and Timothy M. McCullaugh, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Asst. Vice Pres. 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.



Kerstin Rumar  
NOTARY PUBLIC  
Kerstin Rumar