

000 96

85-353152

Recording Requested By
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA
When Recorded Return To:

MCDONALD, HECHT & SOLBERG
Mr. Alex C. McDonald
1100 Financial Square
600 "B" Street
San Diego, California 92101

172N H 6
RECORDED IN
OFFICIAL RECORDS
1985 SEP 24 PM 2:33

VERA L. LYLE
COUNTY RECORDER

RF 39-
AR 35-
TLR
MG 2-

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WOODRIDGE ESCONDIDO
PLANNED UNIT DEVELOPMENT

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

TABLE OF CONTENTS

	<u>PAGE</u>
RECITALS	1
ARTICLE I	3
Section 1	3
Section 2	3
Section 3	3
Section 4	3
Section 5	3
Section 6	3
Section 7	3
Section 8	3
Section 9	3
Section 10	3
Section 11	3
Section 12	4
Section 13	4
Section 14	4
Section 15	4
Section 16	4
ARTICLE II	4
Section 1	4
Section 2	4
Section 3	6
ARTICLE III	6
Section 1	6
Section 2	6
ARTICLE IV	7
Section 1	7
Section 2	7
Section 3	7
Section 4	8
Section 5	9
Section 6	9
Section 7	9
Section 8	10

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORD

		<u>PAGE</u>
Section 9	Subordination of the Lien to First Mortgages	10
Section 10	Estoppel Certificate	11
Section 11	Personal Liability of Owner	11
Section 12	Exempt Property	11
Section 13	Capitalization of Association	11
ARTICLE V	ARCHITECTURAL CONTROL	12
ARTICLE VI	USE RESTRICTIONS	12
Section 1	Residential Purposes Only	12
Section 2	New Building Only	13
Section 3	Minimum Floor Area and Height of Dwellings	13
Section 4	Balconies and Decks	13
Section 5	No Second-Hand Materials, Painting Required	13
Section 6	Diligence in Construction Required	13
Section 7	Trees	13
Section 8	Fences, Hedges and Rails	14
Section 9	No Antennae	14
Section 10	Drying Yards	14
Section 11	No Tents, Shacks or Vehicles	14
Section 12	No Signs	14
Section 13	No Wells	15
Section 14	Animal Restrictions	15
Section 15	No Commercial Activity	15
Section 16	Drainage	15
Section 17	Slope Control, Use and Maintenance	15
Section 18	Leasing of Lots	16
Section 19	Equipment and Structure Repair	16
Section 20	Mailboxes	16
Section 21	Trash Disposal	16
Section 22	Parking and Storage	16
ARTICLE VII	INSURANCE AND CONDEMNATION	16
Section 1	Insurance	16
Section 2	Condemnation	17
ARTICLE VIII	COMMON MAINTENANCE AREA AND MAINTENANCE RESPONSIBILITIES	18
Section 1	Improvement of Common Maintenance Area	18
Section 2	Association Maintenance	18
Section 3	Owner Maintenance	18

	<u>PAGE</u>
Section 4 Association's Right to Repair Neglected Lots	19
Section 5 Transfer of Common Maintenance Area to Association	19
ARTICLE IX ANNEXATION	19
Section 1 By Association	19
Section 2 By Declarant	19
ARTICLE X RIGHTS OF LENDERS	20
Section 1 Payments of Taxes or Premiums by First Mortgagees	20
Section 2 Priority of Lien of Mortgage	20
Section 3 Curing Defaults	20
Section 4 Approval of First Mortgagees	20
Section 5 Restoration of Common Area	21
Section 6 Professional Management	21
Section 7 Notice to Eligible Mortgagees	21
Section 8 Documents to be Available	22
Section 9 Conflicts	22
ARTICLE XI GENERAL PROVISIONS	22
Section 1 Enforcement	22
Section 2 Severability	23
Section 3 Amendments	23
Section 4 Extension of Declaration	24
Section 5 FHA and VA Approval	24
Section 6 Encroachment Easement	24
Section 7 Reciprocal Side Yard Easements	25
Section 8 Special Responsibilities of Association	26
Section 9 Litigation	27
SUBORDINATION AGREEMENT	

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORD

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of September 20, 1985, by DOUGLAS ALLRED DEVELOPMENT COMPANY, a California corporation (hereinafter referred to as "Declarant"), with reference to the following

RECITALS:

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

Lots 1 through 28, inclusive, of ESCONDIDO TRACT NO. 499A according to Map thereof No. 10981 filed in the Office of the County Recorder of San Diego County, California, on June 29, 1984;

Lots 29 through 55, inclusive, of ESCONDIDO TRACT NO. 499B according to Map thereof No. 10982 filed in the Office of the County Recorder of San Diego County, California, on June 29, 1984;

Lots 56 through 95, inclusive, of ESCONDIDO TRACT NO. 499C according to Map thereof No. 10983 filed in the Office of the County Recorder of San Diego County, California, on June 29, 1984; and

Lots 96 through 125, inclusive, of ESCONDIDO TRACT NO. 499D according to Map thereof No. 10984 filed in the Office of the County Recorder of San Diego County, California, on June 29, 1984; together with the real property described on Exhibit "A" attached hereto and made a part hereof.

B. The property described in Recital A above is a planned unit residential development and is planned to be developed in five (5) or more phases. The first phase is planned to be constructed on residential Lots 7 through 13 and 17 through 26 and on Common Area Lots 27 and 28 of ESCONDIDO TRACT NO. 499A according to Map thereof No. 10981 filed in the Office of the

ORIGINAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

County Recorder of San Diego County, California, on June 29, 1984 ("Phase 1"). The phases are planned to be developed as follows:

<u>Phase</u>	<u>Residential Lots</u>	<u>Common Area Lots</u>	<u>Number of Residential Lots</u>
1	7-13; 17-26	27, 28	17
2	29-54	55	26
3	56-66; 78-85	95	19
4	67-77; 86-94		20
5	1-6; 96-124; 14-16	125	38

Additional phases are planned to be developed on the real property described on Exhibit "A" attached to the Declaration. The additional phases will contain approximately sixteen (16) residential units. 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 WOODRIDGE ESCONDIDO PROPERTY OWNERS 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 portions of the residential lots ("Common Maintenance Area").

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 described above, under which said covenants, conditions and restrictions each ownership interest therein shall be hereafter, held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of said 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 said 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.

REAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

ARTICLE I

DEFINITIONS

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 2. "Association" shall mean and refer to WOODRIDGE ESCONDIDO PROPERTY OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 5. "Common Area" shall mean all real property (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot in Phase 1 consists of Lots 27 and 28 of ESCONDIDO TRACT NO. 499A according to Map thereof No. 10981 recorded in the Office of the County Recorder of San Diego County, California, on June 29, 1984.

Section 6. "Common Maintenance Area" shall mean and refer to those portions of Lots over which easements for common maintenance are conveyed to the Association. All Lots will be subject to a Common Maintenance Area easement.

Section 7. "Declarant" shall mean and refer to DOUGLAS ALLRED DEVELOPMENT COMPANY, a California corporation, its successors and assigns.

Section 8. "Declaration" shall mean and refer to this enabling Declaration of Covenants, Conditions and Restrictions as it may from time to time be amended.

Section 9. "FHA" shall mean and refer to the Federal Housing Administration.

Section 10. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

Section 11. "Member" shall mean and refer to an Owner as defined in Section 14, Article I of the Declaration, who is enti-

tled to membership in the Association as provided in the Declaration.

Section 12. "Mortgage" shall mean and refer to a Deed of Trust as well as a mortgage.

Section 13. "Mortgagee" shall mean and refer to the beneficiary of a Deed of Trust as well as the mortgagee of a mortgage encumbering a Lot.

Section 14. "Owner" shall mean and refer to the record owners, whether one (1) or more persons or entities, of fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 15. "Properties" shall mean and refer to that certain 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 16. "VA" shall mean and refer to the Veterans Administration.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREA

Section 1. Title to the Common Area. Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area in Phase 1 to the Association, free and clear of all encumbrances and liens, except real property taxes which may be due but are not delinquent and easements, covenants, conditions and reservations then of record, including those set forth on the Final Subdivision Map for ESCONDIDO TRACT NO. 499A and in the Declaration, prior to the conveyance of the first Lot to an Owner. Declarant further covenants for itself, its successors and assigns that it will convey fee simple title to the Common Area, if any, in subsequent phases to the Association free and clear of all encumbrances and liens, except real property taxes and assessments which may be due but are not delinquent and easements, covenants, conditions and reservations then of record, including those set forth on the Final Subdivision Map of which the Common Area is a part and in the Declaration prior to the conveyance of the first Lot in the subsequent phases to an Owner.

Section 2. Owners' Easements of Enjoyment. Every Owner of a Lot shall have a right and easement of ingress, egress and of enjoyment in and to the Common Area which shall be appurtenant to

REAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

and shall pass with the title to every such 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.

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

(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; provided, however, that the granting of utility easements over the Common Area shall not require the vote or consent of the Members.

(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 in aid thereof, and with the assent of two-thirds (2/3) of each class of Members, hypothecate any or all real or personal property owned by the Association.

(e) The provisions of any open space easements dedicated to the City of Escondido, California, on the Final Subdivision Map or otherwise covering the Properties.

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

(i) a non-exclusive easement over the 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

REAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDED IN

of the Common Area by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association.

(g) The right of the Association to establish and enforce reasonable rules and regulations pertaining to the use and enjoyment of the Common Area and the facilities located thereon.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the Common Area 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 1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 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 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. 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 earliest of the following to occur:

(i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(ii) 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

(iii) 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 1. Creation of Lien and Personal Obligation for Assessments. Declarant, for each Lot owned within the Properties, hereby 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 and agrees 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, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall (except as otherwise provided in Section 4 below) be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title, unless expressly assumed by them.

Section 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 and 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 3. Maximum Annual Assessment.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$1,400.00 per Lot.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year without a vote of the membership of the Association in an amount not more than

CALIFORNIA RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

the greater of (i) five percent (5%), or (ii) the percentage by which the United States Bureau of Labor Statistics San Diego Consumer Price Index for All Urban Consumers has increased as of the date of the increase over the level of the Index as of the date the maximum annual assessment was last established.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount provided in Subparagraph (b) above by the vote or written assent of fifty-one percent (51%) of each class of Members of the Association; provided, however, that following the conversion of the Class B membership to Class A membership, the maximum annual regular assessment may be increased more than the amount provided in Subparagraph (b) above by the vote or written assent of (i) a majority of the voting power of the Members of the Association, and (ii) at least a majority of the voting power of Members of the Association other than Declarant.

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

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Common Maintenance Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, any such assessment shall have the vote or written assent of (i) a majority of the voting power of Members of the Association, and (ii) at least a majority of the voting power of Members of the Association other than Declarant. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of the Declaration, Articles, Bylaws and rules and regulations adopted by the Board; provided, however, such special assessment (other than a special assessment assessed to pay the cost of collecting assessments) shall not constitute a lien against the Member's Lot. No such assessment shall be effective unless the Member has been given fifteen (15) days' prior notice of the assessment and the reasons therefor and the Member 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 assessment. Notice may be given to the Member by any method reasonably calculated to provide actual notice, but if given by

ORIGINAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

mail must be given by first-class or registered mail sent to the last address of the Member shown on the records of the Association.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and Section 4. Any action authorized under Section 3 or Section 4 requiring the vote of the Members, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of each class of Members entitled to vote on such action. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days following the date of such meeting.

Section 6. 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 basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots in Phase 1 on the first day of the month following the conveyance of the first Lot in Phase 1 to an Owner, or on the first day of the month following conveyance of the Common Area in Phase 1 to the Association, whichever shall first occur. The annual assessments provided for herein shall commence as to all Lots in the subsequent phases on the first day of the month following the conveyance of the first Lot in the subsequent phase to an Owner, or on the first day of the month following conveyance of the Common Area, if any, in the subsequent phase to the Association, whichever shall first occur. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each 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 subject thereto. The due dates shall be established by the Board.

AL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

Section 8. Effect of Non-Payment of Assessments; Remedies of Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Lot from the time the assessment is due. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and in addition thereto, or in lieu thereof, may foreclose the lien against the Lot.

Any assessment not paid within thirty (30) days after the due date shall be delinquent. Except as otherwise provided in Section 4 above, the amount of any such delinquent assessment plus any other charges thereof, as provided for in this Declaration, shall be and become a lien upon the Lot when the Association causes to be recorded with the County Recorder a Notice of Delinquent Assessment, which shall state the amount of such delinquent assessment and such other charges thereon as may be authorized by this Declaration, a description of the Lot against which the same has been assessed and the name of the record owner thereof. The notice shall be signed by the President or Vice President and the Secretary or Assistant Secretary of the Association. Upon payment of such delinquent assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.

Unless sooner satisfied and released, or the enforcement thereof initiated as hereinafter provided, the lien shall expire and be of no further force and effect one (1) year following the date of recordation of the Notice of Delinquent Assessment. The one (1) year period may be extended by the Association for not to exceed one (1) additional year by recording a written extension thereof.

The lien may be enforced by sale by the Association after failure of the Owner to pay the assessment in accordance with its terms, the sale to be conducted in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) 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 same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees may be maintainable without foreclosing or waiving the lien securing the same.

Section 9. Subordination of the Lien to First Mortgages.
The lien of assessment herein shall be subordinate to the lien of

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

any first Mortgage upon any Lot, and the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of the assessments as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage or other purchaser of a Lot obtains title to the same 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 became due prior to the acquisition of title to the Lot by such acquirer, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Lots.

Section 10. 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 11. Personal Liability of Owner. No Member may exempt himself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Lot owned by him from the liens and charges hereof by waiver of the use and enjoyment of the Common Area, or by abandonment of his Lot.

Section 12. Exempt Property. All properties dedicated to and accepted by a local public authority, and all properties owned by a charitable non-profit organization exempt from taxation by the laws of the State of California, shall be exempt from the assessment created herein. However, no land or improvements devoted to dwelling use shall be exempt from the assessments.

Section 13. 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. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed from the escrow to the Association upon close of the escrow. The same procedure shall be followed in connection with sales of Lots in subsequent phases. The payments required under this Section 13 are in addition to and not in lieu of annual and special assessments of the Association.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall, patio, patio cover or other structure or improvement, nor exterior painting, nor any landscaping shall be commenced, erected, placed, installed or altered upon any Lot until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color, have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board, or by an architectural committee composed of three (3) representatives appointed by the Board from the membership of the Association; provided, however, that in the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other request made of it within thirty (30) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so to be erected or altered conforms to all other conditions and restrictions herein contained and is in harmony with similar structures erected within the Properties. The grade, level or drainage characteristics of the Lot or any portion thereof shall not be altered without the prior written consent of the Board or its designated committee. Anything contained herein to the contrary notwithstanding, no construction on any Lot following completion of the dwelling unit by Declarant, including porches, patios, cabanas or fences, shall be commenced until the plans therefor have been submitted to and approved by the Planning Department of the City of Escondido as being in compliance with applicable zoning ordinances and the condition to approval of the Final Maps in which the Lot is included.

The provisions of this Article V shall not apply to the construction by Declarant of dwellings or other improvements on Lots and neither the Board nor any committee appointed by the Board nor any Owner (other than Declarant) shall have any authority or right to approve or disapprove thereof.

ARTICLE VI

USE RESTRICTIONS

Section 1. Residential Purposes Only. No Lot shall be used, except for residential purposes, and no building or buildings shall be erected, constructed, altered or maintained on any Lot other than one (1) single-family dwelling; provided, however, Declarant may use any of the Lots owned by it for model homes and sales office purposes for a period of five (5) years following the close of sale by Declarant of the first Lot or until the

FINAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

close of sale by Declarant of all Lots, whichever shall first occur.

Section 2. New Building Only. No building of any kind shall be moved from any other place onto any Lot, nor from one Lot to another Lot, without the prior written permission of the Board or the architectural committee appointed thereby.

Section 3. Minimum Floor Area and Height of Dwellings. The floor area of the main structure located on any Lot, exclusive of open porches, patios and exterior stairways, shall not be less than 750 square feet.

Section 4. Balconies and Decks. No balcony or deck on any Lot shall be higher above the ground than the highest dwelling floor level, except with the written approval of the Board or the architectural committee appointed by the Board.

Section 5. No Second-Hand Materials, Painting Required. No second-hand materials shall be used in the construction of any building or other structure on any Lot without the prior written approval of the Board or the architectural committee appointed thereby. All buildings and fences on any Lot which are of frame construction shall be painted or stained upon completion with the paint or stain coverage (including the number of coats) as provided in the approval of the plans therefor by the Board or the architectural committee appointed thereby.

Section 6. Diligence in Construction Required. The work of constructing and erecting any building or other structure on any Lot shall be prosecuted diligently from the commencement thereof, and the same shall be completed within a reasonable time in accordance with the requirements herein contained. No outbuilding shall be completed prior to the completion of the dwelling, except that temporary storage and convenience facilities may be erected for workmen engaged in building a dwelling on the Lot, but such temporary facilities shall be removed as soon as the dwelling is completed.

Section 7. Trees. All trees, hedges and other plant materials (other than those located within the Common Maintenance Area) shall be trimmed by the Owner of the Lot upon which the same are located so that the same shall not exceed the height of the house on the Lot; provided, however, that where trees do not obstruct the view from any other of the Lots in the Properties, which determination shall be within the sole judgment of the Board or the architectural committee appointed thereby, 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 Board or the architectural committee appointed

ORIGINAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

thereby. 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 Lot.

Section 8. Fences, Hedges and Rails. Where trellises, fences or hedges are allowed, review by the Board or the architectural committee in relation to normal enjoyment of view by other Lot Owners shall be required.

Section 9. No Antennae. There shall be no outside television or radio antennae constructed, installed or maintained on any Lot for any purpose whatsoever.

Section 10. Drying Yards. No drying yards shall be permitted unless screened from all views exterior to the Lot on which the drying yard is located by fence, hedge or shrubbery, which screening and the adequacy thereof shall be subject to the approval of the Board or the architectural committee appointed thereby.

Section 11. No Tents, Shacks or Vehicles. No tent, shack, trailer, basement or outbuilding shall at any time be used on any Lot as a residence, either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot. No recreational vehicles, including motor homes, campers, boats, travel trailers or similar vehicles shall be parked or stored on any Lot or on the Common Area. The door to each garage shall be kept closed except upon entering or leaving the garage. No garage shall be converted to any use which prevents the storage of two (2) standard automobiles therein and no garage shall be used for living purposes. No commercial vehicles or equipment shall be parked or stored on any Lot or on the Common Area, except vehicles or equipment necessary for maintenance of Lots or Common Area.

Section 12. No Signs. No sign other than one (1) sign of customary and reasonable dimensions advertising a Lot for sale or lease and numerals identifying the address of the residence on the Lot shall be erected or displayed upon any of said Lots or upon any building or other structure thereon without the prior written permission of the Board or the architectural committee appointed thereby. No sign of a permanent nature shall be allowed except house numbers indicating the street address of such Lots. Anything herein to the contrary notwithstanding, so long as Declarant retains ownership of any Lot, but not longer than five (5) years following the close of sale by Declarant of the first Lot, it may erect such signs, poles and flags as it reasonably determines is necessary for the sales promotion of such Lots. All signs shall be subject to the regulations set forth in the City of Escondido Municipal Code.

Section 13. No Wells. No well for the production of, or from which there is produced, water, oil or gas shall be operated upon any Lot, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business. No slant drilling shall be permitted on any Lot above a plane 500 feet below the surface of the land.

Section 14. Animal Restrictions. No turkeys, geese, chickens, ducks, pigeons or fowl of any kind, goats, rabbits, hares, horses or animals usually termed "farm animals" shall be kept or allowed to be kept on any Lot.

Section 15. No Commercial Activity. No commercial business shall be conducted on any Lot, and nothing shall be done upon any Lot which may become an annoyance or nuisance to the neighborhood or other Lot Owners; provided, however, that ordinary and usual techniques of construction of improvements permitted hereunder shall not be deemed a nuisance. No external speakers, bells or horns shall be permitted on any Lot.

Section 16. Drainage. The Owner of a Lot shall not in any way interfere with or change the established drainage pattern over his Lot from adjoining or other Lots; provided, however, each Owner will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot. For the purpose hereof, "established drainage" is defined as the drainage which occurred at the time the overall grading of said Lot was completed by Declarant. Any change in grading or drainage on any Lot shall first be approved by the Board or architectural committee appointed thereby and by the City of Escondido. Each Lot Owner shall permit free access by Owners of adjacent or adjoining Lots to slopes or drainageways located on his Lot when such access is necessary for the maintenance of permanent stabilization on said slopes or of the drainage facilities to protect property other than the Lot on which the slope or drainageway is located.

Section 17. Slope Control, Use and Maintenance. Each Lot Owner will keep, maintain, water, plant and replant all slope banks located on such Owner's Lot (other than that portion, if any, located within the Common Maintenance Area) so as 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 of said 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.

Section 18. Leasing of Lots. Each Owner shall have the right to lease his Lot, provided that all such leases must be in writing and shall provide that the lease is subject in all respects to the provisions of this Declaration and to the Articles and Bylaws, and that any failure of the lessee to comply with the provisions of each such document shall constitute a default under the lease. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. No Owner may lease his Lot or improvements thereon for hotel, motel or transient purposes. Any lease which is either for a period of fewer than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

Section 19. Equipment and Structure Repair. No automobile or other equipment may be dismantled, repaired or serviced on any Lot or on the Common Area. No structure on any Lot shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair, and adequately painted or otherwise finished.

Section 20. Mailboxes. There shall be no mailboxes detached from the dwelling structure on any Lot without the prior written approval of the Board or an architectural committee appointed by the Board or unless the United States Postal Service so requires.

Section 21. Trash Disposal. Except as provided herein, all trash shall be stored within the residential unit. After night-fall of the day preceding trash collection, each Owner may place trash outside the residential unit. All such trash shall be in sealed plastic bags unless other containers are approved by the Board.

Section 22. Parking and Storage. There shall be no outside storage in the Common Area and all vehicle parking area shall be permanently maintained for parking purposes only.

ARTICLE VII

INSURANCE AND CONDEMNATION

Section 1. Insurance.

(a) The Association shall keep (i) any improvements in 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

PUBLIC RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the 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 and Common Maintenance Area. In the event the cost of such replacement, repair or rebuilding of Common Area (1) exceeds the insurance proceeds available therefor, or (2) 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 of Article IV above.

(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 and Common Maintenance Area in an amount not less than \$1,000,000.00 in indemnity against the claims of one (1) or more persons in one (1) accident or event, and not less than \$100,000.00 for damage to property.

(c) The Association shall maintain a fidelity bond in an amount equal to one hundred fifty percent (150%) 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 such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners.

(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 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

REAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORD 116

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 VIII

COMMON MAINTENANCE AREA AND
MAINTENANCE RESPONSIBILITIES

Section 1. Improvement of Common Maintenance Area.
Declarant will landscape the Common Maintenance Area in accordance with the requirements of the City of Escondido, California.

Section 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, including roads, private access ways, driveways, parking areas, private street lighting systems, storm drains, water mains and sewer mains, in good repair and appearance and in a manner approved by the City of Escondido. The Association shall provide landscaping and gardening properly to maintain in a flourishing manner 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 submitted to the City of Escondido and approved by said City in connection with approval of the subdivision 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. The Association shall be responsible to the City of Escondido for all damage to City of Escondido utilities caused by the Association in connection with the Association's repair or replacement of private utilities. The Association shall also maintain and provide for the maintenance of all brow ditches and slopes off-site of the Common Area and Common Maintenance Area. All street parkways shall be maintained by the Association in a manner approved by the City of Escondido.

Section 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), 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) so that the same presents a neat and attractive appearance. No Owner shall interfere with or damage the Common Area nor Common

REAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDED 121

Maintenance Area nor interfere with or impede the Declarant or Association in connection with the maintenance thereof as herein provided.

Section 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. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association. 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.

Section 5. Transfer of Common Maintenance Area to Association. The Common Maintenance Area over portions of Lots in each phase of development of the Properties shall be conveyed by easement from the Declarant to the Association prior to the conveyance of record by Declarant of the first lot in that phase to an Owner.

ARTICLE IX

ANNEXATION

Section 1. By Association. Additional residential property, Common Maintenance Area and Common Area may be annexed to the Properties or 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 such approval, the owner of the property wishing it to be annexed may file of record a Declaration of Annexation which shall extend the scheme of this Declaration to such property.

Section 2. By Declarant. Additional land within the Properties may be annexed by Declarant as Lots, Common Area and Common Maintenance Area 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 origi-

REAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

nal 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. Declarant shall have the right to amend or revoke any Declaration of Annexation which annexes property to this Declaration without the consent of the Association or its Members at any time before the conveyance of record by Declarant of a Lot annexed by that Declaration of Annexation.

ARTICLE X

RIGHTS OF LENDERS

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

Section 2. Priority of Lien of Mortgage. No breach of the covenants, conditions or restrictions herein contained 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 said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot.

Section 3. Curing Defaults. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable 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 noncurable or not feasible to cure shall be final and binding on all Mortgagees.

Section 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, the Association shall not 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 such Common Area.

Section 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 this Declaration and original plans and specifications unless other action is approved by eligible holders of Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to eligible Mortgage holders. "Eligible Mortgage holder" as used in this Article, means a holder of a first Mortgage on a Lot who has requested notice from the Association of those matters described in Section 7 below.

Section 6. Professional Management. When professional management has been previously required by any eligible Mortgage holder, whether such entity became an eligible Mortgage holder at that time or later, any decision to establish self-management by the Association shall require the prior consent of at least sixty-seven percent (67%) of the voting power of the Association and the approval of eligible holders of Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Mortgages of eligible Mortgage holders.

Section 7. Notice to Eligible Mortgagees. Upon written request to the Association identifying the name and address of

006 121

the holder and the Lot number or address, any eligible 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 such eligible Mortgage holder.

(b) Any delinquency in the payment of assessments or charges owed by an Owner subject to a first Mortgage held by such eligible 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 eligible Mortgage holders as specified above.

Section 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 such financial statement so requested shall be furnished within a reasonable time following such request.

Section 9. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

ARTICLE XI

GENERAL PROVISIONS

Section 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 this Declaration. Failure by the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

LOCAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDED

Section 2. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 3. Amendments. Except as may otherwise be stated in this 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 an instrument in writing signed by sixty-six and two-thirds percent (66-2/3%) of the voting power of each class of Members of the Association, any which amendment shall become effective upon the recording thereof 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 an instrument in writing signed by (a) sixty-six and two-thirds percent (66-2/3%) of the total voting power of the Association, and (b) at least sixty-six and two-thirds percent (66-2/3%) of the voting power of Members of the Association other than Declarant. No amendment shall be made to Articles V, VI or VIII of this Declaration without the written consent of the City of Escondido. Anything herein stated to the contrary notwithstanding, no material amendment may be made to this Declaration without the prior written consent of first Mortgagees of first Mortgages encumbering sixty-seven percent (67%) of the Lots within the Properties which are encumbered by a Mortgage. "Material amendment" shall mean, for purposes of this Section 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) Casualty and liability 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.

AL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORD

0.6 123

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

Section 4. Extension of Declaration. Each and all of these covenants, conditions and restrictions shall run with and bind the land for a term of twenty (20) years from the date this 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 said 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 said restrictions shall terminate at the end of said twenty (20) year period or at the end of any such ten (10) year period.

Section 5. FHA and VA Approval. As long as there is a Class B membership in the Association, the following actions will require the prior approval of the FHA and the VA: Annexation of additional property to the Properties, mergers and consolidations, dedications and mortgaging of Common Area, special assessments and amendment of this Declaration.

Section 6. Encroachment Easement. In the event any improvement to a Lot encroaches upon the Common 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. Each Owner of a Lot within the Properties is hereby granted an easement over all adjoining Lots for the purpose of accommodating roof and eave overhangs as constructed by Declarant or reconstructed in substantial conformance therewith and as approved by the Board or the architectural committee appointed by the Board, encroachments due to design,

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

construction or engineering errors, errors in original construction, settlement or shifting of the building, architectural or other appendants and drainage of rain water from roofs. There shall be easements for the maintenance of said encroachments so long as they shall exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then rebuilt, or repaired, the Owners of such Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for maintenance of such encroachments so long as they shall exist.

Section 7. Reciprocal Side Yard Easements.

(a) At the time Declarant conveys certain Lots, appurtenant side yard easements shall be granted and reserved in the deeds by which Declarant conveys the Lots. Each Lot to which an appurtenant side yard easement is granted over an adjacent Lot is hereinafter referred to as a "Dominant Tenement." Each Lot from which an appurtenant side yard easement is reserved for the benefit of an adjacent Lot is hereinafter referred to as a "Servient Tenement."

(b) Each side yard easement shall be appurtenant to the Dominant Tenement and shall be exclusively for the benefit of the Dominant Tenement, subject to the rights set forth in this Declaration, utility easements and licenses, and the rights set forth in all documents recorded prior to the recordation of the deed in which such side yard easement is granted or reserved.

(c) Each side yard easement may be used by the Owner(s) of the Dominant Tenement to which it is appurtenant for access, landscaping (including irrigation systems) and recreational purposes only. The Owner(s) of the Dominant Tenement shall not use the appurtenant side yard easement in violation of any law or for the installation or maintenance of any permanent structure other than irrigation systems. The Owner(s) of the Dominant Tenement shall maintain the side yard easement area at no expense to the Owner(s) of the Servient Tenement.

(d) The Owner(s) of the Servient Tenement shall retain the following rights with respect to the side yard easement located on the Servient Tenement:

(i) At all reasonable times to enter the side yard easement area for purposes of inspecting, maintaining and repairing any structure located on the Servient Tenement,

ORIGINAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDS

provided that such entry does not unreasonably interfere with the use thereof by the Owner(s) of the Dominant Tenement. The right of entry shall include the right of reasonable access across the Dominant Tenement to enter the side yard easement area.

(ii) To drain water on, over and across the side yard easement area so long as such drainage results from the normal use of the Servient Tenement. The Owner(s) of the Dominant Tenement shall not alter nor interfere with the drainage established by Declarant.

(iii) To install and maintain in the side yard easement area roof overhangs, eaves, rain gutters and other appurtenances which are a part of the structure located on the Servient Tenement, provided that such appurtenances (other than down spouts) are not located below a height of seven (7) feet measured from the finished grade elevation of the side yard easement area as established by Declarant; down spouts may extend to said finished grade elevation.

Section 8. Special Responsibilities of Association. In the event that the 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 that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement, then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing 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. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDS

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 such bonding arrangement.

Section 9. Litigation. In the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions contained in this Declaration, the prevailing party in such litigation shall be entitled to costs of suit and such sum for attorney's fees as the Court may deem reasonable.

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

DOUGLAS ALLRED DEVELOPMENT COMPANY

By *Douglas Allred*
By *Wm B Scott Jr*

ORIGINAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDS

STATE OF CALIFORNIA

) ss.

COUNTY OF SAN DIEGO

On this 20th day of September, 1985, before me,
Rosalinda M. Bruning, a Notary Public in and for said
 state, personally appeared Douglas O. Allred, per-
 sonally known to me (or proved to me on the basis of satisfactory
 evidence) to be the _____ President, and William B.
Scott, Sr., personally known to me (or proved to me on the
 basis of satisfactory evidence) to be the Vice President Secre-
tary of the DOUGLAS ALLRED DEVELOPMENT COMPANY, the corporation
 that executed the within instrument, known to me to be the per-
 sons who executed the within instrument on behalf of the cor-
 poration 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.



Rosalinda M. Bruning
 NOTARY PUBLIC

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDING

EXHIBIT "A"

The westerly 240.00 feet of the northeast quarter of Lot 2 in Section 6, Township 12 south, Range 2 west, San Bernardino Meridian, according to official plat thereof.

RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

SUBORDINATION AGREEMENT

GREAT AMERICAN FIRST SAVINGS BANK, a California corporation, being the beneficiary under that certain deed of trust dated September 27, 1984 and recorded September 28, 1984 as File/Page No. 84-370447 with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said deed of trust is and shall be subordinate and inferior to the Declaration of Covenants, Conditions and Restrictions to which this Subordination Agreement is attached.

GREAT AMERICAN FIRST SAVINGS BANK,
a California corporation

By Michael D. Schafer
Michael D. Schafer, Senior V.P.

By Dianne A. Lowe
Dianne A. Lowe, Administrative Officer

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.

On this 23rd day of September, 1985, before me, Theresa M. Leitch, a Notary Public in and for said state, personally appeared Michael D. Schafer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Senior Vice President, and Dianne A. Lowe, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Administrative Officer 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.



Theresa M. Leitch
NOTARY PUBLIC

Theresa M. Leitch

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER