

RECORDING REQUESTED BY:

SELTZER CAPLAN WILKINS & McMAHON

WHEN RECORDED, MAIL TO:

La Jolla Developers
3910 Chapman, Suite B
San Diego, California 92210

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RECORDED REQUEST OF

RECORDED BY: [illegible]

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OFFICIAL RECORDS
SAN DIEGO COUNTY, CALIF.
MARLEY F. GLOVER
RECORDER 21.00

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS

LA JOLLA DEVELOPERS, a limited partnership, referred to below as "Developer," is the owner of the real property located in the City of San Diego, County of San Diego, State of California, described on Exhibit "A" attached hereto and by this reference made a part hereof.

Developer hereby desires and intends, in connection with the creation of a condominium project upon the Exhibit A real property to impose on said real property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the condominiums in the project and their future owners, as follows:

1. Declaration. Developer hereby declares that the Exhibit A real property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions and provisions, all of which covenants, conditions, restrictions and provisions are hereby declared and agreed to be in furtherance of a plan for the improvement and sale of said real property and the condominium project, and are hereby established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and the condominium project. An association is hereby created among the condominium owners in order to accomplish the purposes of this Declaration of Covenants, Conditions and Restrictions.

2. Definitions. The following terms shall have the following meanings:

a. "Condominium means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential building on the real property.

b. "Project" means the entire parcel of real property divided or to be divided into condominiums, including all structures thereon.

c. "Unit" means the elements of a condominium which are not owned in common with the owners of other condominiums in the project.

d. "Common areas" means the entire project excepting all units therein granted or reserved.

e. "Association" means the organization created by this Declaration of Covenants, Conditions and Restrictions, among the condominium owners, for the purpose of maintaining and operating the project.

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other than the individual units. The association shall, through its Board of Governors, have control of the project, other than the individual units, and, as set forth herein, the condominium owners shall have reciprocal rights of use of the project, other than the individual units.

3. Incidents of Condominiums. The incidents of the condominiums include the following:

a. The units in the project include the dwelling spaces and their correspondingly numbered patios and parking spaces, all as designated and described in the Condominium Plan recorded in the Office of the County Recorder of San Diego County, California, on April 20, 1978, as File/Page No. 77-10524, or any Amended Condominium Plan(s) recorded in the Office of the County Recorder pursuant to the provisions of Section 1350 to 1359 inclusive of the California Civil Code.

b. The boundaries of each dwelling space are its interior surfaces of the perimeter walls, floors, ceilings, windows and doors and as shown on the Condominium Plan. The vertical dimensions of all dwelling spaces are the relative distance between floor and ceiling.

c. The boundaries of each patio are as set forth in the Condominium Plan.

d. No dwelling unit shall have a floor square foot area, exclusive of carport, of less than 800 square feet.

e. The following are not part of the units: bearing walls, columns, floors, roofs, foundations, any central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except their outlets when located within the units. The physical boundaries of the units as constructed, or of any unit reconstructed in substantial accordance with the original plans, shall be conclusively presumed to be the boundaries rather than any metes and bounds description expressed in any deed or plan, regardless of settlement or lateral movement of the building and regardless of any minor variance between boundaries shown in any deed or plan and those of the building.

f. The common areas are owned by the owners of the units as tenants in common, in equal shares, one for each unit.

g. A non-exclusive easement for ingress, egress and support through the common areas is appurtenant to each unit, and the common areas are subject to such easements.

4. Partition. An action may be brought by one or more of the condominium owners for partition thereof by sale of the project, or otherwise in accordance with law, as if the owners of all of the condominiums in the project were tenants in common in the project in the same proportion as their interests in the common areas; provided, however, a partition, or judicial sale in lieu of partition, shall be made only upon the showing that:

a. Three years after damage to or destruction of the project which renders a material part of it unfit for its use ~~or~~ ~~therefore~~, the project has not been rebuilt or ~~repaired~~

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substantially to its state prior to its damage or destruction; or

b. Three-fourths (3/4) or more of the project has been destroyed or substantially damaged, and condominium owners holding in aggregate more than fifty percent (50%) interest in the common areas are opposed to repair or restoration of the project; or

c. The project has been in existence in excess of sixty (60) years, it is obsolete and uneconomic and condominium owners holding in aggregate more than a fifty percent (50%) interest in the common areas are opposed to repair or restoration of the project, provided that the consent of the San Diego City Council, if then required by law so to do be obtained.

The component elements comprising a condominium shall not be severable nor separately transferred until the expiration of sixty (60) years from the date of this Declaration of Covenants, Conditions and Restrictions, nor shall such component elements be partitioned except pursuant to a partition made in accordance with the foregoing provisions of this paragraph. The foregoing shall not be deemed to prevent partition of a co-tenancy in a condominium. The Board of Governors shall have, and is hereby given, a power of attorney to sell the project for the benefit of all the condominium owners when partition thereof may be had pursuant to paragraph 4. The power of attorney shall be binding upon all the condominium owners and may be exercised by a majority of the members of the Board of Governors. The power of attorney is hereby declared to be irrevocable, and one coupled with an interest.

5. Voting Power. There shall be one person designated as "voting owner" for each condominium, who shall be designated by the condominium owner by notice to the Board of Governors. The voting owner need not, but may, be a condominium owner and if the voting owner is not a condominium owner, his designation shall be by written notice given by the condominium owner to the Board of Governors. The designation, as to any condominium, shall be revocable at any time by actual notice to the Board of Governors of the death or judicially declared incompetency of the condominium owner, or by written notice or revocation to the Board of Governors by the condominium owner. Such power of designation and revocation may be exercised by the guardian of the condominium owner's estate or by his conservator, or in the case of a minor having no guardian, by the parent entitled to his custody, or during the administration if his condominium is subject to administration in his estate. If no such designation is made as to a condominium, or where a designation has been made but is revoked and no new designation has been made, the voting owner shall be the condominium owner. "Condominium owner" as referred to in this paragraph shall be deemed to mean the record owner of a condominium as reflected in the official records of the San Diego County Recorder, and also to mean Developer so long as it retains or holds an ownership interest in the project. In the event as to any condominium there is more than one condominium owner, the power of designation and revocation, and the right to vote in the absence of a current designation, must be exercised by a majority

of such condominium owners. There shall be one vote for each condominium which shall be exercised by its voting owner in accordance with the foregoing. In the event there are two owners of a condominium and no current designation of one as voting owner has been made the owner appearing at the meeting shall have the right to vote in the absence of the other, but if both are present at the meeting there must be unanimity between them in order to have a vote. A voting owner may vote either in person or by written proxy given to any other voting owner or to a condominium owner.

6. Meetings of Voting Owners. The first regular meeting of the voting owners shall be held within thirty (30) days after the close of escrows for the sale of a majority of the condominiums in the project, or within six (6) months after the close of escrow for the sale of the first condominium in the project, whichever first occurs. Thereafter regular meetings of the voting owners shall be held annually commencing one (1) year after the first regular meeting at such reasonable time, place, (either at the project itself or at another meeting place located within three miles of the project) and date (not exceeding thirty [30] days before or after the anniversary date of the first regular meeting), as may be designated by the Board of Governors. After the first regular meeting a special meeting of the voting owners may be called at any reasonable time, place and date by the Board of Governors, or by twenty-five (25) or more of the voting owners. The presence at any meeting of the voting owners of a majority of the condominiums shall constitute a quorum. If a quorum is not present at such meeting, the voting owners present may adjourn the meeting to a time not less than forty-eight (48) hours nor more than thirty (30) days from the date for which such meeting was set, and the presence at any such resumed meeting of the voting owners of twenty-five percent (25%) of the condominiums shall constitute a quorum. Unless otherwise expressly provided herein, any action authorized to be taken at any meeting of the voting owners shall require the affirmative vote of the voting owners having a majority of the total votes present at such meeting. At each regular meeting the Board of Governors shall present a written statement relative to the maintenance fund, which shall itemize receipts and disbursements for the preceding fiscal year, and their allocation to each condominium owner.

7. Board of Governors. At the first regular meeting of the voting owners, the voting owners shall elect 5 persons to act without compensation as the Board of Governors, 3 of whom shall serve for terms of two (2) years or until their successors are elected, and 2 of whom shall serve for a term of one (1) year or until their successors are elected. The 3 persons nominated receiving the largest number of votes at the first regular meeting shall be deemed elected for terms of two (2) years. At each subsequent regular meeting, the voting owners shall elect 2 or 3 members of the Board of Governors, as the case may be, to fill the vacancies caused by the then expiring terms, and to serve for terms of two (2) years or until their successors are elected. Every voting owner entitled to vote at any election for members of the Board of Governors shall have one vote for each vacancy on the Board of Governors which is to be filled at such election, and every voting owner may cumulate his votes and give one candidate a number of votes equal to the number of such members to be elected multiplied by the number of votes to which such voting owner is otherwise entitled, or distribute such votes on the same principle among more than one candidate. The candidates receiving the highest

number of votes, up to the number of members of the Board of Governors to be elected, shall be deemed elected. Each member of the Board of Governors must be an owner of one of the condominiums, and shall automatically be deemed to be removed from the Board of Governors upon either the sale or transfer of his condominium or his establishment of residence elsewhere for a continuous period of ninety (90) days. The Board of Governors shall elect one of its members to serve as chairman, who shall preside at all regular and special meetings of the voting owners and Board of Governors. Any member of the Board of Governors may resign at any time by delivering written notice of resignation to each member of the Board of Governors. The voting owners may remove any one or more members of the Board of Governors at any meeting by an affirmative vote of a majority of the voting owners of all of the condominiums; however, unless the entire Board of Governors is removed, an individual member shall not be removed if the number of votes cast against the motion for his removal exceeds the quotient arrived at when the total outstanding votes entitled to be cast by all voting owners is divided by the sum of one plus the authorized number of members of the Board of Governors and in all events, the cumulative voting provisions with respect to election of members of the Board of Governors shall also be applicable to their removal. In the event of a vacancy in the Board of Governors created by death, incompetency, resignation, removal, or otherwise, such vacancy shall be filled for the unexpired term by the remaining members of the Board of Governors, or upon their refusal to do so within thirty (30) days after the vacancy arises, by the voting owners. Until such time as the first Board of Governors has been elected, its rights, duties and functions may be exercised by Developer or by any management body or agent named by Developer; however, any management body or agent named by Developer shall be employed to manage only until the first regular meeting of the voting owners. The owners of a majority of the condominiums may certify, acknowledge and record in the Office of the County Recorder of San Diego County, California, from time to time, a certificate of identity of the persons then comprising the Board of Governors, which shall set forth the names and addresses of such persons. The certificate shall be conclusive evidence of the above facts stated in it in favor of any person relying on it in good faith. The members of the Board of Governors and Developer, during the time it exercises the duties and functions of the Board of Governors, shall not be personally responsible for their failure to perform the duties or responsibilities of the Board of Governors, unless such failure results from their bad faith, gross negligence or willful misconduct.

8. Meetings of the Board of Governors. Regular meetings of the Board of Governors shall be held monthly at the project, or at such other place (within the City of San Diego) as may be designated by the Board of Governors. A special meeting of the Board of Governors may be called at any reasonable time, place and date by any member of the Board of Governors. The presence at any meeting of three (3) members of the Board of Governors shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Board of Governors present at such meeting. Any action required or permitted to be taken by the Board of Governors may be taken without a meeting, with the same effect as a unanimous vote, if all members of the Board of Governors shall consent in writing to such action.

9. Notices. Any notice permitted or required to be delivered as provided in this Declaration of Covenants, Conditions and Restrictions may be delivered either personally or by mail. If delivery is made by mail, such notice shall be deemed to have been delivered to a person twenty-four (24) hours after a copy of it was deposited in the United States mail, postage prepaid, certified or registered, addressed to such person at the address given by him to the Board of Governors for the purpose of such service of notice, or at the address of the condominium owned or represented by such person, if no other address had been given to the Board of Governors. Such address may be changed from time to time by written notice delivered to the Board of Governors in accordance with the foregoing. Written notice shall be given to each voting owner of each regular and special meeting of the voting owners at least ten (10) days prior to any regular meeting, and at least fifteen (15) days prior to any special meeting, and not earlier than forty-five (45) days prior to any meeting. Each such notice shall specify the time, place and date of the meeting, and the general nature of the business to be transacted at each special meeting.

10. Powers and Duties of Board of Governors. Developer (or its management body or agent), until the first Board of Governors has been elected, and thereafter the Board of Governors, for the benefit of all of the condominium owners shall acquire and/or pay for out of the maintenance fund, the following:

a. Garbage and trash disposal, and water, sewer, electricity, telephone, gas, television cable antenna and other utility services necessary or proper for the common areas only and, if not separately metered or charged, water and sewer for the individual units; and maintenance service for the common areas including but not limited to all private streets within the project.

b. A policy or policies of fire insurance, with standard extended coverage endorsement, for the full insurable value (replacement cost) of the structures and improvements in the project, and for the fair market value of any personal property owned jointly by all of the condominium owners for use in the common areas. The Developer or the Board of Governors may elect to have the condominium owners pay separately for the fire insurance policy or policies concerning their own condominiums.

c. A policy or policies of insurance insuring the Board of Governors and all of the condominium owners, against any liability to the public or to the condominium owners, their invitees, guests and tenants, incident to the ownership or use of the common areas. The liability under such coverage shall not be less than two hundred thousand dollars (\$200,000.00) for any one person injured, three hundred thousand dollars (\$300,000.00) for any one occurrence, and twenty-five thousand dollars (\$25,000.00) for property damage. Such policy limits shall be

reviewed at least every five (5) years by the Board of Governors and may be adjusted in its discretion.

d. A policy of workmen's compensation insurance to the extent necessary to comply with applicable laws.

e. Services of a person or firm to manage the project to the extent deemed necessary or proper by the Board of Governors, and the services of such other personnel as the Board of Governors shall deem necessary or proper for the operation of the project.

f. Legal and accounting services necessary or proper for the operation of the project, or for the enforcement of this Declaration of Covenants, Conditions and Restrictions.

g. Maintenance, gardening and repair of the common areas, including but not limited to all private streets within the project, slopes, pools, recreation facilities, landscaping, drainage facilities, and painting and maintenance of the exteriors of the buildings and the parking spaces (including the interiors of enclosed patios and the carports, unless the Developer or Board of Governors imposes such obligation on the condominium owners directly involved). The Board of Governors shall cause the maintenance fund to be reimbursed for the cost of repairs by any condominium owner who causes damages to the project, making such repairs necessary or proper. The Board of Governors shall for the benefit of the maintenance fund, levy a special assessment against such owner's condominium for the costs of any such repairs.

h. Any other materials, supplies, furnishings, equipment, labor, services, maintenance, repairs, structural alterations or insurance which the Board of Governors deems necessary or proper for the operation of the project.

i. Taxes and assessments, if any, levied or assessed against the common areas, or levied and assessed against any unit if resulting in a lien against the common areas; and any other liens or encumbrances which affect the common areas including, but not limited to, mechanic's liens. Such taxes, assessments, liens or encumbrances which shall be paid by the Board of Governors from the maintenance fund, however, shall not include any levied or assessed against, or which affects, merely the interest of one or more (but less than all) of the condominiums and not the interest of all of the condominium owners in the common areas; the Board of Governors shall levy a special assessment against any condominium for the amount of such tax, assessment, lien or encumbrance which is applicable specifically

to such condominium to the extent the amount is separately determinable.

j. Maintenance or repair of any unit, if such maintenance or repair is required by this Declaration of Covenants, Conditions and Restrictions or is necessary in the discretion of the Board of Governors to complement, or to preserve or protect the common areas or another unit from damage, destruction or unusual depreciation, and if the owner of any such unit (as to which such maintenance or repair is necessary) shall have failed or refused to perform the maintenance or repair within a reasonable time after delivery to him by the Board of Governors of written notice of demand for the maintenance or repair. The Board of Governors shall levy a special assessment against the condominium of which such unit is a part of the cost of any such maintenance or repair paid for from the maintenance fund by the Board of Governors in accordance with the foregoing.

The Board of Governors shall levy a special assessment against a unit for reimbursement of the cost of any such discretionary maintenance or repair paid for from the maintenance fund by the Board of Governors in accordance with subparagraph j above, or for any damage to the common areas or portions of units which the Board of Governors is hereby required to maintain caused by the owner, thereof, or by a member of his family or guests. The Board of Governors shall have the exclusive right to contract for and/or acquire all services, materials and other items for which payment is to be made from the maintenance fund (with the term of any service contract limited to a duration of one year, except with the approval of a majority of the voting owners). The Board of Governors may reasonably delegate its powers, or some of them, to committees of the condominium or voting owners, or to employees hired by the Board of Governors. Notwithstanding anything in this Declaration of Covenants, Conditions and Restrictions to the contrary, except pursuant to the provisions of paragraph 19, no alterations, additions, or improvements, in connection with the common areas of the project shall be made at a cost of more than one thousand dollars (\$1,000.00) without the approval of at least two-thirds (2/3) of the voting owners (excluding Developer which shall not be entitled to a vote on such matter irrespective of the number of condominium units owned by Developer at the time of the vote) present at a special meeting. The Board of Governors shall have the power to enforce the provisions of this Declaration of Covenants, Conditions and Restrictions.

11. Rules and Regulations. The Board of Governors shall have the right, from time to time, to adopt reasonable rules and regulations not inconsistent with the provisions of this Declaration of Covenants, Conditions and Restrictions, relating to the use of the common areas by the owners and other occupants of the condominiums and their guests, and to the conduct of such persons regarding the swimming pools and garbage disposal, laundry, pets and other activities as to which such conduct might adversely affect the project or its appearance or might offend, inconvenience or endanger the owners or other occupants of the condominiums or their guests. A copy of the rules and regulations shall be delivered to the owner of each condominium either personally or by mail, and a copy shall be posted in the common areas at a place where it may be conveniently observed. The rules and regulations shall be binding upon

the owners and occupants of the condominiums, and their guests, and shall be enforceable, to the same extent as if they were specifically set forth as provisions in this Declaration of Covenants, Conditions and Restrictions.

12. Entry by Board of Governors. The Board of Governors or its agents or other persons duly authorized by it may enter any unit when reasonable necessary in order to perform maintenance, repair, construction or other work for which the Board of Governors has authority, or for any other purpose related to its responsibilities, pursuant to this Declaration of Covenants, Conditions and Restrictions. Any such entry shall be accomplished with as little inconvenience to the condominium owners as practicable, and, except in the event of an emergency, upon reasonable notice to the condominium owner.

13. Books and Records. The Board of Governors shall keep and maintain complete and accurate books of account relative to its operation of the project, and the books and records shall be available for inspection in San Diego or Orange County at such location as may be approved from time to time by the Board of Governors by any condominium owner at all reasonable times. The Board of Governors shall cause an independent audit to be made annually of such books and records by a certified public accountant, and a copy of each audit, including a statement of income and disbursements, shall be delivered to each condominium owner, within ninety (90) days after the end of the fiscal year. Any condominium owner may at any reasonable time, at his own cost and expense, cause an audit or inspection to be made of the books and records by an accountant or other representative duly authorized by him.

14. Assessments. Immediately following the first regular meeting of the voting owners, and thereafter at least thirty (30) days prior to the end of the fiscal year adopted by the Board of Governors, the Board of Governors shall estimate the total charges to be assessed against the project and to be expended by the Board of Governors during the succeeding year, which shall constitute the maintenance fund (including a reasonable provision for contingencies and adequate reserves for replacements, less any expected surplus from the prior year's fund). The estimated amount required for the maintenance fund shall constitute the aggregate regular assessment, which shall be assessed to and paid by the condominium owners as follows: The amount of the initial regular monthly assessment for each condominium shall be \$30.00, although Developer reserves the right to increase said monthly assessments, at any time and from time to time until the first meeting of the voting owners, so long as the Developer first obtains consent to such adjustment from the Department of Real Estate of the State of California. The model number of each condominium shall be such as designated on the Condominium Plan. Any increase or decrease from the amount of the initial aggregate regular assessment shall be assessed to and paid by, or shared by (in the case of a decrease), the condominium owners equally. Except for the rights of Developer referred to above, the aggregate regular assessments shall not be increased more than ten percent (10%) over the preceding year's aggregate regular assessment without the approval of at least two-thirds (2/3) of the voting owners present at a special meeting. If the estimated cash requirement proves to be inadequate for any reason, including nonpayment of

any condominium owner's assessment or unforeseen expenditures, the Board of Governors may at any time levy a special assessment which shall be assessed to the condominium owners equally unless otherwise provided in this Declaration of Covenants, Conditions and Restrictions, but in the event of a vote by the voting owners for any special assessment for capital improvement, Developer shall be excluded from the right to vote thereon. Each condominium owner shall be obligated to pay to the Board of Governors his regular assessment in twelve (12) equal monthly installments on or before the fifteenth day of each calendar month, and to pay special assessments within thirty (30) days after their levy or at such other terms as the Board of Governors shall designate. All assessments shall be paid at such place as the Board of Governors shall designate. The regular assessment for all condominiums in the Exhibit A real property shall commence upon the close of escrow for the sale of the first condominium in the project; regular assessments chargeable to or payable for each unsold condominium shall be charged to and paid by, and be the debt of Developer or its successor in ownership of each such unsold condominium. All regular and special assessments levied upon any condominium shall constitute a personal debt of the owner of such condominium at the time of the assessment and shall be paid promptly. Interest at the legal rate of ten percent (10%) per annum shall accrue on all delinquent assessments.

15. Assessment Lien. The amount of all regular and special assessments, plus interest thereon and any expenses reasonably incurred in collecting and/or enforcing such assessments, including reasonable attorneys' fees, shall be and become when due a lien upon the condominium so assessed. The Board of Governors may cause to be recorded as to any delinquent assessment in the Office of the County Recorder of San Diego County, California, a Notice of Assessment Lien, which shall state the amount of the assessment and such related charges as may be authorized by this Declaration of Covenants, Conditions and Restrictions, a description of the condominium against which the lien has been assessed, and the name of the record or reputed owner of the condominium. The notice shall be signed by any member of the Board of Governors. The assessment lien shall also be deemed to secure all of the foregoing items which shall become due and/or incurred relative to the condominium subsequent to the recordation of the Notice of Assessment Lien until the completion of the enforcement of the lien or the payment of the full amount secured by the lien, or other satisfaction to be made in connection therewith. No proceeding or action shall be instituted to foreclose the lien, either judicially or under the power of sale granted herein, until notice of intention to proceed to foreclose the lien shall have been delivered by the Board of Governors to the voting owner of the condominium affected by the lien at least thirty (30) days prior to the commencement of any such action or proceeding. The assessment lien may be enforced by judicial foreclosure, or by sale by the Board of Governors conducted in accordance with the applicable provisions of law relative to the exercise of powers of sale in mortgage and deeds of trust, or any other manner permitted by law. The Board of Governors is hereby expressly given the power to sell any condominium as to which any assessment has not been paid, in order to effect collection thereof. Upon any such default in payment, the Board of Governors may cause to be served and recorded any necessary notice of default and notice of sale which may then be required by law, and after the lapse of time as may be then required by law

the Board of Governors may sell such condominium at the time and place fixed in such notice of sale, or at such other time and place to which such sale may be postponed by public pronouncement at the time and place so fixed. The sale shall be made at public auction to the highest bidder for cash, or its equivalent, payable in lawful money of the United States at the time of sale. After deduction all costs and expenses of sale, including cost of evidence of title, the Board of Governors shall apply the proceeds of the sale to the payment of all sums secured by the assessment lien, plus accrued interest to the date of sale at the rate of ten percent (10%) per annum; the remainder of such proceeds, if any, shall be paid to the person legally entitled thereto. The foregoing rights of enforcement shall not be exclusive, but shall be in addition to any other rights and remedies which the condominium owners and the Board of Governors may have under this Declaration of Covenants, Conditions and Restrictions, or otherwise in accordance with law. The Board of Governors shall have the right to bid at any foreclosure sale and to hold, lease, mortgage and convey such condominium upon its purchase. Upon payment of the full amount secured by an assessment lien, including all authorized charges in accordance with the foregoing, or upon any other satisfaction duly made in connection therewith, the Board of Governors shall cause to be recorded a notice setting forth the fact of such payment and/or satisfaction and of the release of the assessment lien. Any assessment lien as to any condominium shall at all times be subject and subordinate to any recorded first mortgage or deed of trust on the condominium which is created in good faith and for value and which is recorded prior to the date of recordation of the assessment lien. In the event any assessment lien is destroyed by reason of the foreclosure of any prior mortgage or deed of trust on a condominium, the interest in the condominium of the purchaser at the foreclosure sale shall be subject to a lien to secure future assessments levied upon the condominium subsequent to the date of the foreclosure. Each condominium owner shall and hereby does waive and subordinate the benefits of any homestead or exemption law in favor of all the assessment liens, which shall be prior to the rights of any condominium owner under any applicable homestead or exemption laws.

16. Separate Taxes and Assessments. Each condominium owner shall execute such documents and take such action as may be reasonably required, as determined by the Board of Governors, to obtain separate assessments for real and personal property taxes and assessments for each condominium. In the event any real or personal property taxes or assessments shall for any reason not be separately levied upon the individual condominium responsible therefor, such taxes and/or assessments shall be paid by the Board of Governors and thereupon specifically assessed by the Board of Governors to the individual condominium owners equally, or to any specific condominium owner who may be particularly responsible therefor, as the case may be. Each condominium owner shall pay promptly the amount of any real and personal property taxes or assessments levied against his condominium.

17. Maintenance of Units. Each condominium owner shall have the exclusive right and the obligation, at his own cost and expense, to repair, maintain, paint, repaint, tile, wax, paper or otherwise refinish and decorate, the inner surfaces of the walls, ceilings, floors, windows, doors, and trim of this unit (but

excluding the balconies) and to maintain, repair, paint, finish, alter, substitute, add or remove any fixtures attached to the interior surfaces of the ceilings, floors, or walls of his unit. Each condominium owner shall have the obligation, at his own cost and expense, to maintain and repair all pipes, ducts, flues, chutes, conduits, water heaters, furnaces, wires and systems supplying utility and/or convenience services to his condominium, which are located in, under or upon his unit, or the ceilings, roof, floors or walls within or surrounding his units. The foregoing shall not be deemed to permit any condominium owner to interfere with or damage the structural integrity of any building in the project, or to interfere with the use or enjoyment of the common areas or any of the other units in the project.

18. Use of Condominiums. The condominiums shall be used and occupied only in accordance with the following:

a. Each unit shall be used as a single family residence and for no other purpose, except that a sales office, sales display area, and/or construction office may be maintained by Developer in any of the units, and any of the units may be used as a display model, until sales of all of the condominiums in the Exhibit "A" real property have been consummated.

b. For a period of three (3) years after the close of escrow for the first sale of a condominium in the project, Developer may maintain at no charge or cost (except for the cost of utilities incurred in connection with such use) sales offices, sales display areas, and/or construction offices in any permanent or temporary structures, and may erect and maintain appropriate signs.

c. Airconditioning units and fireplaces may be installed within the project only with the prior consent of the Developer or the Board of Governors.

d. No condominium owner shall store, plant, or construct anything on, or obstruct the common areas except with the prior written consent of the Board of Governors.

e. No condominium owner shall do anything which shall increase the rates of insurance, or result in cancellation of insurance relative to the project or any portion of it.

f. No condominium owner shall permit any part of the project to be used for commercial or related purposes.

g. No condominium owner shall commit any waste in the common areas, nor do anything in or about or in connection with the project which would be in violation of any statute, law, ordinance or governmental rule or regulation.

h. Each condominium owner shall be given the exclusive use of one of the parking spaces within the carports constructed in the project and one of the uncovered parking spaces.

i. No condominium owner shall do anything in the project which would obstruct or interfere with the rights of, or annoy or be offensive to, other condominium owners, including but not limited to the failure to maintain properly any landscaping within the patios, the storage or parking of automobiles, campers, trailers, mobile homes, boats or other vehicles in private streets or other areas except for carports assigned for exclusive use by a condominium owner; provided that automobile temporary parking only shall be permitted for reasonable periods of time by condominium owners and their guests in designated parking spaces as determined by the Board of Governors.

j. All equipment, tools, trash and/or garbage containers, wood and/or storage piles shall be kept concealed from view of the other units, the common areas and the adjacent streets. No exterior clothes lines or individual outdoor television or radio antennas, shall be erected or maintained in the project. No automobile overhaul or maintenance work, in the absence of an emergency, shall be performed in the project or on adjacent streets. The interior of carports shall be kept clean and properly maintained and painted by the individual condominium owners. Carports may be used only for the parking of vehicles, storage and related purposes.

k. No sign of any nature, except as provided in Section 712 of the Civil Code, shall be displayed to the public view on or from any condominium without the prior written approval of the Board of Governors as to size, shape, color and content; however, Developer may place reasonable signs upon the project in connection with the sale, transfer or rental of the condominiums owned by it or in which it has a security interest.

l. No livestock, poultry or animals of any nature shall be raised, bred, or kept in any condominium, except caged birds, and not exceeding two (2) domesticated household pets (such as dogs or cats) may be kept in a unit provided that they are not kept or maintained for any commercial purposes. Such household pets shall not be permitted in the common areas except as may be allowed by rules and regulations of the Board of Governors.

m. No condominium owner shall install or maintain any water softener which discharges effluent brine.

n. No condominium owner shall paint, refinish, alter, construct or remove any portion of the common areas or affix or attach anything thereto, including the roofs, patios, carports, and the exterior surfaces of the windows and exterior walls of any unit, without the prior written consent of the Board of Governors.

o. Each condominium owner shall keep clean and in good condition and repair the windows and interior of his unit and the patio (including, but not limited to any landscaping in the patio), and shall not permit laundry or other unsightly items to extend from or hang over the windows or balcony, if any, of his unit. All draped windows shall have, facing the exterior, either draperies, drapery lining or casements of a neutral color approved by the Board of Governors.

Nothing contained in this paragraph 18 shall be deemed or construed to apply in any way to the activities of Developer in the development or construction of improvements on the Exhibit "A" real property.

19. Destruction of Project. In the event the project, or any portion of it, is damaged by fire or other casualty, the Board of Governors shall take such steps as are proper to make the necessary repairs and reconstruction of the damage. In the event any insurance proceeds paid as a result of the damage do not exceed the sum of five thousand dollars (\$5,000.00) then the insurance proceeds shall be held by the Board of Governors and used for the purpose of paying for the repairs and reconstruction. In the event the insurance proceeds do exceed the sum of five thousand dollars (\$5,000.00), then all of the insurance proceeds shall be paid to the holder of any mortgage or deed of trust upon the project or any portion of it, in trust, however, for the purpose of making payment upon the cost of repairs and reconstruction; but if there be no holder of such mortgage or deed of trust, then the insurance proceeds shall be paid to an insurance trustee, for the purpose of making payment for the costs of the repairs and reconstruction, which insurance trustee shall be a bank or trust company located in the City of San Diego, California, selected by the Board of Governors. Any insurance proceeds in excess of the amount required to pay such costs shall be disbursed to the Board of Governors and placed in the maintenance fund for the benefit of the condominium owners. In the event the insurance proceeds are insufficient to pay all of the costs of the repairs and reconstruction, the Board of Governors shall levy a special assessment against the condominium owners so as to acquire funds in the amount of the deficiency.

20. Enforcement. The provisions of this Declaration of Covenants, Conditions and Restrictions shall be deemed covenants, conditions, restrictions and equitable servitudes, which may be enforced by any condominium owner or the Board of Governors, and which shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a multiple residential condominium project. In the event of a default in the performance of any of the provisions of this Declaration of Covenants, Conditions and Restrictions, such provisions may be enforced by all appropriate legal proceedings, including but not limited to,

by injunction, abatement of nuisance, and damages. In addition thereto, in the event a condominium owner shall fail to pay when due any assessment payable pursuant to the provisions of this Declaration of Covenants, Conditions and Restrictions, during the period wherein such default is not cured, the voting owner for the condominium involved shall not have the right to vote at any regular or special meetings of the voting owners, and the condominium owner, occupants of the condominium and their guests shall not have the right to use any of the recreational or other facilities of the condominium project. If any condominium owner or other occupant of the condominium owned by him shall fail to observe any of the other provisions of this Declaration of Covenants, Conditions and Restrictions, or any of the rules or regulations adopted by the Board of Governors, the Board of Governors shall give written notice of such fact to the condominium owner in accordance with the provisions of paragraph 9 above. Any such notice so given shall contain a specification of the alleged violation of this Declaration of Covenants, Conditions and Restrictions, or of such rule or regulation, as the case may be, and such notice shall also specify a date not less than ten nor more than 20 days after the date of the notice for a hearing before the Board of Governors to review the alleged violation as set forth in the notice. At such hearing, the Board of Governors shall accept such evidence and take such testimony as may be reasonable under the circumstances, reach a decision with respect thereto, and if the Board of Governors conclude that the alleged violation did in fact occur, the Board of Governors may in its discretion deny to the voting owner, the other occupants of the condominium, and his guests, the right to use the recreational or other facilities for a period of time which in no event shall exceed 30 days for any such violation.

21. Waiver. Failure to enforce any provision of this Declaration of Covenants, Conditions and Restrictions or any waiver of any breach shall not constitute a waiver of that or any other provision of any past or future breach, or of the future right to enforce that or any other provision.

22. Rights of Lenders. Any condominium owner may encumber his condominium by deed of trust or mortgage. The beneficiary of the deed of trust or the mortgagee of a mortgage is referred to in this paragraph as a "lender". A breach of any of the provisions of this Declaration of Covenants, Conditions and Restrictions shall not affect or impair the lien or charge of any bona fide deed of trust or mortgage made in good faith and for value encumbering any of the condominiums. A lender who acquires title by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of this Declaration of Covenants, Conditions and Restrictions which is noncurable or of a type which is not practical or feasible to cure. It is intended that any loan to facilitate the resale of any condominium after foreclosure or deed in lieu of foreclosure is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other lenders. All liens created pursuant to this Declaration of Covenants, Conditions and Restrictions, including but not limited to any regular or special assessments for the payment of money, shall be subordinate to the lien created by any such bona fide deed of trust or mortgage given to any lender. It is specifically understood, however, that a lender is liable for

all such assessments during the actual period of time the lender holds title to a condominium. This liability for assessments on the part of the lender is on a prorata basis with the prorata period commencing on the date the lender acquires title and ending upon resale or other transfer by the lender, whereupon the liability will attach to the transferee. No amendment to this Declaration of Covenants, Conditions and Restrictions shall affect any lender to the extent it defeats the lender's then priority position with respect to its lien or which would convert the lender's loan to an illegal status under such governmental regulations then applicable to the lender involved, unless the approval in writing of any such lender is obtained. Any other amendment to this Declaration of Covenants, Conditions and Restrictions adopted in accordance with paragraph 23 shall affect all lenders provided written notice of the proposed amendment is sent to all lenders then of record and the written approval is obtained from the lenders holding the beneficial interest of at least seventy-five percent (75%) of the number of mortgages or trust deeds of record constituting valid first liens against the project or any portion of it. Because of its financial interest in the project, a lender may appear at meetings of the voting owners and of the Board of Governors to present objections if violations of this Declaration of Covenants, Conditions and Restrictions have not been enforced. A lender is authorized to furnish information to the Board of Governors concerning the status of any loan encumbering a condominium. All applicable fire and extended coverage insurance policies shall contain loss payable clauses naming the lenders who encumber condominiums by deed of trust or mortgage, as their interests may appear.

23. Amendments. This Declaration of Covenants, Conditions and Restrictions may be amended by an instrument in writing, signed and acknowledged by the owners of at least three-fourths (3/4) of the condominiums in the project after approval of the amendment at a meeting of the voting owners duly called for such purpose, whereupon the amendment shall become effective upon its recordation in the Office of the County Recorder of San Diego County, California; but no such amendment shall affect the rights of the holder of any mortgage or deed of trust recorded prior to the recordation of the amendment, unless approved in accordance with paragraph 22.

24. Attorneys' Fees. In the event an attorney is engaged by the Board of Governors for the enforcement or defense of any of the provisions of this Declaration of Covenants, Conditions and Restrictions, then the prevailing party in any resulting litigation shall be entitled to recover from the other party to the controversy a reasonable sum for attorneys' fees.

25. Interpretation. As used in this Declaration of Covenants, Conditions and Restrictions the masculine gender shall include the feminine, and the singular number shall include the plural, as the context may require. The titles or headings of the paragraphs of this Declaration of Covenants, Conditions and Restrictions are not a part of it and shall have no effect upon the interpretation of any of its provisions.

26. Severability of Provisions. The provisions of this Declaration of Covenants, Conditions and Restrictions shall be deemed independent and severable, and the partial or

complete invalidity or unenforceability of any provisions shall not affect the validity or enforceability of any other provision.

27. Binding on Successors. The provisions of this Declaration of Covenants, Conditions and Restrictions shall bind and run with the property and shall inure to the benefit of, and be binding upon the heirs, legatees, devisees, executors, administrators, guardians, conservators, successors in interest, purchasers, lessees, encumbrancers, donees, grantees, mortgagees, lienors, assigns of and from each condominium owner, and each person having or acquiring any right, title or interest in the project or any portion of it.

28. Duration of Restrictions. This Declaration of Covenants, Conditions and Restrictions shall terminate and its provisions shall be of no further effect upon the expiration of sixty (60) years from the date of the recordation of this Declaration of Covenants, Conditions and Restrictions.

29. Amendment and Granting of Easements. Developer shall have the absolute right and power, at any time, to enter into any written agreement with the City of San Diego, a municipal corporation, changing the location of any of the easements granted to said City, and to grant easements to the City of San Diego and other third parties in connection with the development and/or improvement of the Exhibit "A" real property, or any portion or portions thereof. Each condominium owner of the project appoints Developer as his attorney-in-fact for the purposes of effecting such amendment and also to grant easements affecting the Exhibit "A" real property to other third parties in connection with the development and/or improvement of the Exhibit "A" real property and the power herein granted to Developer shall be and is a power coupled with an interest.

Dated: 19 April, 1973.

LA JOLLA DEVELOPERS,
a limited partnership

By: The Odmark Company,
General Partner

By: 

By: 

By: Saratoga Development Corporation,
General Partner

By: 

By: 

EXHIBIT "A"

Parcels "B" and "C", according to Parcel Map No. 458, filed in the Office of the County Recorder of San Diego County, February 17, 1971, being a portion of Lots 6 and 7 of GENESEE VISTA, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 6311, filed in the Office of the County Recorder of San Diego County, February 27, 1969.

Return for

1629

Playmor La Jolla Homeowners Assn.
8923 Complex Dr.
San Diego, Ca 92123

EXHIBIT "A"

79-081768
FILE/PAGE NO
BOOK 1979
RECORDED REQUEST OF

FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
PLAYMOR, LA JOLLA HOMEOWNERS ASSOCIATION

ADDRESSEE
FEB 25 12 50 PM '79

OFFICIAL RECORDS
RECORDER
SAN DIEGO COUNTY, CALIF.

\$3.00

THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PLAYMOR, LA JOLLA HOMEOWNERS ASSOCIATION executed by La Jolla Developers, and recorded in the Official Records of San Diego County, California, on April 20, 1973, as File/Page No. 73-105342, in the absence of Articles of Association, By-Laws or other organizing document, is hereby modified and amended pursuant to Article 23 of said Declaration as follows:

1. Paragraph 1a of Article I is hereby amended as follows:

"1a. PURPOSE OF THE ASSOCIATION

The Association does not contemplate pecuniary gain or profit to the members thereof, and the specific primary purposes for which it is formed are to provide for maintenance and preservation of the common area."

2. Except as modified or amended hereby, said Declaration of Covenants, Conditions and Restrictions shall and does remain in full force and effect.

Dated: February 9, 1979

Joan Corwin, President
Playmor La Jolla Home
owners Association

79-081768

STATE OF CALIFORNIA }
COUNTY OF San Diego }

ON February 24, 1979

before me, the undersigned, a Notary Public in and for said State, personally appeared Joan Corwin

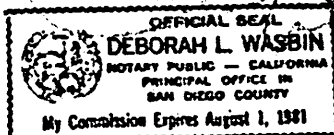
known to me,
to be the person whose name is subscribed to the within instrument,
and acknowledged to me that she executed the same.

WITNESS my hand and official seal.

Deborah L. Wasbin

Notary Public in and for said State.

DEBORAH L. WASBIN



NDK