

Declaration of Covenants, Conditions and Restrictions

for

**The Crest of Calavera Hills
Homeowners Association**

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

We hereby certify that _____ a full, true and correct copy of the original document as the same appears in the Office of the County Recorder of San Diego County, State of California.

Recorded on September 16, 1983
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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE CREST OF CALAVERA HILLS
PLANNED UNIT DEVELOPMENT

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of this 18th day of August, 1983, by TREETOPS UNLIMITED, a joint venture (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 Carlsbad, County of San Diego, State of California, which is more particularly described as:

Lots 1 through 118, inclusive, of CARLSBAD TRACT NO. 82-8 according to Map thereof No. 10663 filed in the Office of the County Recorder of San Diego County, California, on June 21, 1983.

B. The property described in Recital A above is a planned unit residential development and is planned to be developed in three (3) phases. The first phase is planned to be constructed on residential Lots 39 through 82 and on Common Area Lots 109, 113, 114 and 115 of CARLSBAD TRACT NO. 82-8 according to Map thereof No. 10663 filed in the Office of the County Recorder of San Diego County, California, on June 21, 1983 ("Phase 1"). Phase 1 is planned to consist of forty-four (44) residential units of wood frame and stucco construction designed in a traditional style with composition roofs. The residential units are planned to consist of three (3) floor plans with floor areas ranging in size from approximately 952 square feet to 1,534 square feet. The Common Area Lots in Phase 1 are planned to be improved with paving, parking spaces and landscaping (Lots 113, 114 and 115) and with a swimming pool, spa, bathhouse and landscaping (Lot 109). The subsequent 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>
2	1-38	110, 111, 112	38
3	83-108	116, 117, 118	26

The residential units in phases 2 and 3 are planned to be of the same size and type as are planned for Phase 1. 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 THE CREST OF CALAVERA HILLS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), the members of which will be the owners of the residential Lots. The Association will also maintain the exterior of the residential units built on the residential Lots.

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, phases 2 and 3 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, phases 2 and 3 described above, 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.

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 THE CREST OF CALAVERA HILLS HOMEOWNERS 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 109, 113, 114 and 115 of CARLSBAD TRACT NO. 82-8 according to Map thereof No. 10663 recorded in the Office of the County Recorder of San Diego County, California, on June 21, 1983.

Section 6. "Declarant" shall mean and refer to TREETOPS UNLIMITED, a joint venture, its successors and assigns.

Section 7. "Declaration" shall mean and refer to this enabling Declaration of Covenants, Conditions and Restrictions as it may from time to time be amended.

Section 8. "FHA" shall mean and refer to the Federal Housing Administration.

Section 9. "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 10. "Member" shall mean and refer to an Owner as defined in Section 13, Article I of the Declaration, who is entitled to membership in the Association as provided in the Declaration.

Section 11. "Mortgage" shall mean and refer to a Deed of Trust as well as a mortgage.

Section 12. "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 13. "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 14. "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 15. "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 CARLSBAD TRACT NO. 82-8 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 in phases 2 and 3, respectively, 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 phases 2 and 3, respectively, 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 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 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. No such suspension shall be effective unless the Owner has been given fifteen (15) days' prior notice of the suspension and the reasons therefor and the Owner has been given an opportunity to be heard by the Board, orally or in writing, not less than five (5) days prior to the effective date of the suspension. Notice may be given the Owner by any method reasonably calculated to provide actual notice, but if given by mail must be given by first-class or registered mail sent to the last address of the Owner shown on the records of the Association.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by one hundred percent (100%) of each class of Members agreeing to such dedication or transfer, has been recorded.

(d) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the 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 the open space easements, if any, dedicated to the City of Carlsbad, California, on the Final Subdivision Map covering the Properties.

(f) The right of Owners to the exclusive use of parking spaces as provided in Section 3 of this Article II.

(g) 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 or to the residences on Lots, provided access thereto is otherwise not reasonably available, and for the purpose of constructing, marketing and maintaining the project, including phases 2 and 3.

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

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner to the exclusive use of the covered carport and the uncovered parking space located on the Common Area which bear the same number as the Lot as shown on Exhibit "A" attached hereto, together with the right of ingress thereto and egress therefrom over the Common Area. The right to use the covered carport and the uncovered parking space shall be limited to the storage of one motor vehicle in each such space of a size not to exceed

nine (9) feet in width, eight (8) feet in height and twenty (20) feet in length.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 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 vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one 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; or

(iv) on July 31, 1987.

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 exterior of the residential units, 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 exterior of the residential units, 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 \$1,150.00 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 in an amount not more than 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, without a vote of the membership of the Association.

(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 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 exterior of a residential unit, 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, which special assessment may be levied upon the vote of the Board; provided, however, such special assessment 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 the Member by any method reasonably calculated to provide actual notice, but if given by mail must be given by first-class or registered mail sent to the last address of the 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 Sec-

tion 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 from 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 the 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 phases 2 and 3, respectively, on the first day of the month following the conveyance of the first Lot in phases 2 and 3, respectively, to an Owner, or on the first day of the month following the conveyance of the Common Area in phases 2 and 3, respectively, 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.

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 six percent (6%) 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. Such 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, such 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.

Such lien may be enforced by sale by the Association after failure of the Owner to pay such assessment in accordance with its terms, such 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 shall 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 any first Mortgage upon any Lot, and the sale or transfer of any Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such 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, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such 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 and facilities thereof, 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 said 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 as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and, except as otherwise provided herein, disbursed from the escrow to the Association. Declarant shall, sixty (60) days following the conveyance of record of the first Lot to an Owner, deliver to the Association an amount equal to one-sixth (1/6) of the then annual assessment for any and all Lots which have not then been conveyed of record to an Owner. Upon the close of escrow of any Lot for which the capitalization fund was prepaid by Declarant, escrow shall remit the capitalization fee collected from the buyer to Declarant. 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, shall be commenced, erected, placed 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) or more but not to exceed five (5) 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. 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 shall have any authority or right to approve or disapprove thereof. No building additions shall be permitted without the prior approval of the Planning Director of the City of Carlsbad.

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 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 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 900 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 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 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 boat, camper, recreational vehicle, trailer, van, moped, motorcycle or motor vehicle of any type shall be stored or parked on any Lot, except in the garage, the door to which 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.

Section 12. No Signs. No sign other than one 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 Carlsbad 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. No Owner of a Lot shall 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 San Diego. 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 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. No Subdivision of Lots. No Lot shall be resubdivided into building sites having a frontage of less than shown on the recorded Final Subdivision Map for CARLSBAD TRACT NO. 82-8 of which the Lot is a part, filed for record in the Office of the County Recorder of San Diego County, California.

Section 19. 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 20. 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 21. Mailboxes. There shall be no mailboxes detached from the dwelling structure on any Lot without the prior written approval of the Board of an architectural committee appointed by the Board or unless the United States Postal Service so requires.

ARTICLE VII

INSURANCE AND CONDEMNATION

Section 1. Insurance.

(a) The Association shall keep (i) any improvements in the Common Area insured against loss by fire and the risks covered by a Standard All Risk of Loss Perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Common 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. 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 dam-

age resulting from any occurrence in or about the Common Area in an amount not less than \$1,000,000.00 in indemnity against the claims of one or more persons in one 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 and fidelity bonds, 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 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

MAINTENANCE RESPONSIBILITIES

Section 1. Association Maintenance.

(a) The Association shall, in perpetuity, maintain and provide for the maintenance of all the Common Area and all improvements thereon, including all private streets, covered carports, uncovered parking spaces, guest parking spaces, private drainage systems and concrete terrace drains, in good repair, appearance and working order. The Association shall provide landscaping and gardening properly to maintain and periodically replace when necessary the trees, plants, grass and other vegeta-

tion originally placed in the Common Area by Declarant pursuant to landscape plans submitted to the City of Carlsbad 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, if necessary, for the benefit of the Owners in common.

(b) In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon the residential unit on each Lot as follows: paint, repair, replacement and care of roofs, gutters, downspouts and exterior building surfaces. Such exterior maintenance shall not include glass surfaces. In the event that the need for maintenance is caused through the willful or negligent acts of an Owner or the family, guests or invitees of the Owner of the Lot needing the maintenance, the cost of such exterior maintenance shall be added to and become a part of the assessment to which the Lot is subject. The Association shall have the right to enter onto any Lot (but not within the dwelling located thereon) as may be necessary for the maintenance of the exterior of the residential unit as provided herein.

Section 2. Owner Maintenance. Each Owner shall, in perpetuity, 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, wall or concrete terrace drain, 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 interfere with or impede Declarant or the Association in connection with the maintenance thereof as provided herein.

Section 3. Association's Right to Repair Neglected Lots. In addition to maintenance of the Common 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.

ARTICLE IX

ANNEXATION

Section 1. By Association. Additional residential property 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 as Lots and Common Area to the Declaration and to the jurisdiction of the Association by Declarant without the consent of Members of the Association or the Board at any time within three (3) years following the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a phase of the development of the Properties; provided, however, that the FHA and VA shall determine that the annexation is in accord with the general plan approved by each.

ARTICLE X

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

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.

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 seventy-five percent (75%) 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) seventy-five percent (75%) of the total voting power of the Association, and (b) at least fifty-one percent (51%) of the voting power of Members of the Association other than Declarant. Anything herein stated to the contrary notwithstanding, no material amendment may be made to this Declaration without the prior written consent of sixty-seven percent (67%) or more of the Mortgagees of first Mortgages encumbering Lots within the Properties (based upon one (1) vote for each such 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 maintenance, repair and replacement of the Common Area or exterior of residential units.
- (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.
- (h) Leasing of Lots.
- (i) The boundaries of any Lot.
- (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 or insurers or guarantors of first Mortgagees on Lots.

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.

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 or mortgaging of Common Area, special assessments and any amendment to this Declaration.

Section 6. Encroachment Easement. In the event any improvement to a Lot, including balconies, popout windows and fireplaces, 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 such encroachments due to design, construction, engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, 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, except as originally constructed or reconstructed in accordance with the original design, no easement for encroachment shall 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. 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 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 8. Mortgage Protection. No breach of any of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any first Mortgage encumbering any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or a trustee's sale, or otherwise.

Section 9. Litigation. In the event of litigation arising out of or in connection with this Declaration, the prevailing party shall be entitled to receive costs of suit and such sum for attorney's fees as the Court deems reasonable.

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

TREETOPS UNLIMITED, a joint venture

BY: FINANCIAL SCENE INCORPORATED,
a California corporation

By *Brooke Halloway*
Brooke Halloway

By *M.E. Taylor*
M.E. Taylor

BY: PACIFIC SCENE, INC.; a
California corporation

By *Gary Carter*
Gary Carter

By *Wilbur E. Johnson*
Wilbur E. Johnson