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FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
VACATION OWNERSHIPS IN CARLSBAD SEAPOINTE RESORT

This FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CARLSBAD SEAPOINTE RESORT (the "First Amendment") is made on August 7, 1995, in San Diego County, California, by CARLSBAD SEAPOINTE RESORT L.P., a California limited partnership (the "Declarant"), for the purpose of correcting that certain DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR VACATION OWNERSHIPS IN CARLSBAD SEAPOINTE RESORT dated July 14, 1995, and recorded in the Office of the Recorder of San Diego County, San Diego, California, on July 18, 1995, as Document No. 1995-0305021 of the Official Records of said County (the "Declaration"), and hereby amends the Declaration as follows:

1. Paragraph 2.08 of the Declaration, currently entitled "Easements and Certain Other Rights Reserved by Declarant or by Continental Commercial Corporation to which Owners Take Subject" is hereby deleted and in its place is substituted the following new Paragraph 2.08:

2.08 Easements and Certain Other Rights Reserved by Declarant or Held by Continental Commercial Corporation to Which Owners Take Subject.

a. Easements Reserved by Declarant with Respect to Development. Declarant, on behalf of itself, its successors and/or assigns, and its and their respective agents, employees, concessionaires, contractors, subcontractors, invitees, patrons, and authorized personnel, has reserved, for the respective terms provided for below, certain nonexclusive easements in gross to Declarant, its successors and assigns, and its and their respective agents, employees, concessionaires, contractors, subcontractors, invitees, patrons, and authorized personnel, to, from, over, under, across and through the Property for the following purposes:

(1) For doing and performing all acts related to constructing, completing, and/or repairing the Project, including without limitation, maintaining temporary construction-related structures and operating and storing construction equipment, tools, and vehicles;

(2) For enabling the discharge of any duty of Declarant, and any of Declarant's successors and/or assigns, under this Declaration or under any Purchase Agreement, or as otherwise may be imposed by law;

(3) For offering for sale, selling, leasing, renting, or otherwise transferring any Vacation Ownership in any Unit in the Property or in any vacation ownership unit upon any Annexed Property (including any Vacation Ownership reacquired by Declarant through foreclosure or a deed-in-lieu of foreclosure);

(4) For maintaining customer relations and for providing post-sale service to Owners;

(5) For displaying signs and erecting, maintaining, and operating, in connection with sales of Vacation Ownerships and for administrative purposes, both as to Units in the Property and units upon any Annexed Property, model units, and a customer service, sales office and/or administration office complex;

(6) For showing unoccupied Units and the Common Area in both the Property and in any Annexed Property to prospective purchasers, lessees, tenants, business visitors and/or guests; and

(7) For having and providing switchboard, registration, laundry, mail, and maintenance services in and to the Property, and in and to any Annexed property, prior to such services being provided by the Association.

Declarant covenants to use each of the above easements in a manner that will reasonably minimize any adverse impact therefrom upon the possession, use, and enjoyment of the Project by the Owners.

The terms (duration) for each of the above listed easements shall commence from the date of recordation of this Declaration in the Official Records of San Diego County, California (called here the "Commencement Date"), and shall continue:

-- As to the easements referred to in number (1) above, until the earliest of: (i) 10 years from the Commencement Date, or (ii) the date upon which all Vacation Ownerships in the Property have been sold (and their escrows closed) by Declarant and/or its successors and assigns if any, and all security interests (such as deeds of trust) representing security held by Declarant and/or its successors and assigns, if any, for credit sales of Vacation

Ownerships have been released or reconveyed; and

-- As to the easements referred to in numbers (3), (5), (6), and (7) above, until the earliest of: (i) 10 years from the Commencement Date, unless Declarant has recorded during said 10 year-period in the Official Records of San Diego County, California, a Declaration of Annexation as described in Article 14 of this Declaration, by which, the Declaration may be imposed on any remaining Annexable Property, or (ii) if Declarant has recorded the foregoing Declaration of Annexation, until the earliest of 10 years from the date of recordation of any such Declaration of Annexation, or the date upon which all vacation ownerships in any such Annexed Property have been sold (and their escrows closed) by Declarant and/or its successors and assigns, if any, and all security interests (such as deeds to trust) representing security held by Declarant and/or its successors and assigns, if any, for credit sales of such vacation ownerships have been released or reconveyed; and

-- As to the easements referred to in numbers (2) and (4) above, for the duration of the Project.

b. Limited Encroachment Right and Irrevocable Special Power of Attorney in Favor of Continental Commercial Corporation. Each Vacation Ownership is accepted subject to those certain limited encroachment easements and certain other rights regarding boundary adjustments, lot consolidations, and/or certificates of compliance, and all other rights and powers granted under that certain accompanying Irrevocable Special Power of Attorney, in connection with the possible development of the Annexable Property, as such development may affect the Property described in Exhibit "A" to this Declaration, which rights were granted by Declarant to Continental Commercial Corporation, a California corporation (being the General Partner of Grantor herein), as provided under Paragraph 1., entitled "GRANT OF LIMITED ENCROACHMENT EASEMENTS AND SPECIAL POWER OF ATTORNEY", of its Easement Grant Deed and Grantee's Special Power of Attorney to Continental Commercial Corporation dated August 7, 1995, and subsequently recorded in the Office of the Recorder of San Diego County, San Diego, California (called in this Paragraph 2.08, the "Easement Grant Deed").

The above referred to Paragraph 1. of the Easement Grant Deed provides as follows:

1. GRANT OF LIMITED ENCROACHMENT EASEMENTS AND IRREVOCABLE SPECIAL POWER OF ATTORNEY.

(a) Grant of Easements. Grantor grants to Grantee, for Grantee and for its successors and/or assigns, if any, as may be the case (and only for itself and for its successors and/or assigns, if any, and not

for any other persons or entities) in connection with its or their constructing in the future any buildings, structures, and other improvements (called here "Improvements") upon any portion of either or both of those two (2) parcels of real property which are legally described on Exhibit "B" attached hereto and made a part hereof and called therein, respectively, "Annexable Property # 1" and "Annexable Property # 2":

(1) exclusive easements authorizing and enabling the legal encroachment (called here an "Encroachment") of any portion of any such Improvements, upon that certain real property legally described on Exhibit "A" attached hereto and made a part hereof (called the "Exhibit 'A' Property") [which is the Property described in Exhibit "A" to this Declaration], including the right to enter upon such Exhibit "A" Property to construct such encroaching Improvements upon, over, under, across, and through the Exhibit "A" Property, and retaining for itself and/or themselves such other exclusive easements and rights as may be reasonably related thereto (collectively called here the "Encroachment Easements," or singularly an "Encroachment Easement"); and

(2) the right to Grantee to formally grant or assign, as need may arise, such encroachment easements of the same type as the Encroachment Easements described under (1) above to any of its successors and/or assigns, if any such successor or assign should acquire Annexable Property # 1 and/or Annexable Property # 2.

Upon development of Annexable Property # 1 and/or Annexable Property # 2 by Grantee and/or its successor(s) and/or assign(s), and only upon such development, each such Encroachment Easement shall be for the benefit of and become appurtenant to Annexable Property # 1 to the extent Improvements are constructed on Annexable Property # 1 which encroach upon the Exhibit "A" Property, and for the benefit of and appurtenant to Annexable Property # 2 to the extent Improvements are constructed on Annexable Property # 2 which encroach upon the Exhibit "A" Property. Such Improvements may include, but are not necessarily limited to, buildings which contain timeshare units, underground parking garage structures, and utility conduits and receptacles, and landscaping.

(b) Rights Regarding Boundary Adjustments, Lot Consolidations, and/or Certificates of Compliance. In connection with, or in lieu of the need for, any such Encroachment Easement, Grantor, for itself and for its successors and/or assigns, if any, as may be the case, hereby grants to Grantee, for Grantee and for its successors and/or assigns, if any, as may be the case, the right to act on behalf and in place of itself (Grantor) and all subsequent then owners of the Exhibit "A" Property (including all owners of vacation ownerships therein) (that is, owners at the time such Improvements are being constructed), to initiate, apply for approval with each appropriate governmental entity or agency, cause to be obtained, and put into effect, any such number of legal boundary adjustments ("Boundary Adjustments"), lot consolidations, ("Lot Consolidations"), and/or certificates of compliance ("Certificates of Compliance") which would have the effect of changing the boundaries between the Exhibit "A" Property and Annexable Property # 1 and/or between the Exhibit "A" Property and Annexable Property # 2, in order to include within the boundaries of Annexable Property # 1 and/or Annexable Property # 2, as the case may be, any such Improvements which would otherwise constitute Encroachments into the Exhibit "A" Property, as Grantee, and/or its successors and/or assigns may consider beneficial for both Annexable Property # 1 and/or Annexable Property # 2, and the Exhibit "A" Property.

(c) Limitations on Foregoing Rights: Notwithstanding anything in the foregoing to the contrary with respect to the above referred to Encroachment Easements and/or Boundary Adjustments, Lot Consolidations, and/or Certificates of Compliance:

(1) They shall affect only three (3) areas within the Exhibit "A" Property;

(2) the three (3) approximate areas within the Exhibit "A" Property which shall be subject to (affected by) such Encroachment Easements, Boundary Adjustments, Lot Consolidations, and/or Certificates of Compliance are legally described on Exhibit "C" attached hereto and made a part hereof, and are called here, respectively, Parcel "A" (on page 1 of Exhibit "C"), Parcel "B" (on page 2 of Exhibit "C") and Parcel "C" (on page 3 of Exhibit "C");

(3) the approximate maximum size of each of these three (3) respective Parcels is, as to Parcel "A": 0.08 acres; as to Parcel "B": 0.025 acres; and as

to Parcel "C": 0.013 acres (for an approximate maximum aggregate area of 0.118 acres (or approximately 5,140 square feet);

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(4) the approximate relative location of each of these three (3) Parcels within the Exhibit "A" Property is as indicated on the plat attached as page 4 to Exhibit "C";

(5) with specific reference to Parcel "A" (which is or will presently be used as a landscaping portion of the common area within the timeshare project to be constructed upon the Exhibit "A" Property [currently slated to be called the "Carlsbad Seapointe Resort"]), the Parcel "A" property will, upon any development of Annexable Property # 2, be used for the purpose of extending an underground parking garage, and upon completion of the garage extension, the surface of this Parcel "A" property shall be fully restored to its use as a landscaping area;

(6) with specific reference to Parcel "B" (which also is or will presently be used as a landscaping portion of the common area referred to above), the Parcel "B" property will, upon any development of Annexable Property # 1, be used for the purpose of containing a slight encroaching portion of a building comprised of timeshare units; and

(7) with specific reference to Parcel "C" (which also is or will presently be used as a landscaping portion of the common area referred to above), the Parcel "C" property will, upon any development of Annexable Property # 1, be used for the purpose of containing a slight encroaching portion of a building comprised of timeshare units and an underground parking garage.

(d) Reservation and Grant of Irrevocable Special Power of Attorney. To facilitate and accommodate the making and obtaining from the appropriate governmental entity or agency of any such Boundary Adjustment, Lot Consolidation, and/or Certificate of Compliance, or for purposes of granting of any such Encroachment Easement to Grantee's successors and/or assigns, if any such successor or assign should acquire Annexable Property # 1 and/or Annexable Property # 2, and/or to enable the doing by Grantee and/or by any of Grantee's successors and/or assigns of any other act in connection with any such Boundary Adjustment, Lot Consolidation, and/or Certificate of Compliance, and/or any Encroachment Easement which may by its nature or by

law, require the authority, approval, and/or signatures of the owners of any portion of the Exhibit "A" Property (including each and every owner of a vacation ownership therein), Grantor, for itself, and for each of Grantor's deed of trust holders, optionees, grantees (including, but not limited to, each grantee who acquires from Grantor a vacation ownership in any portion of the Exhibit "A" Property, and each successive owner of each such vacation ownership), licensees, trustees, receivers, judgment creditors, legal representatives, successors, and/or assigns, whether voluntary or involuntary, hereby gives and grants to the Grantee, and to Grantee's successors and/or assigns, the following Irrevocable Special Power of Attorney:

Grantee's Irrevocable Special Power of Attorney

Grantor, for itself, and for each of its deed of trust holders, optionees, grantees (including, but not limited to, each grantee who acquires from Grantor a vacation ownership [timeshare estate] in any portion of the Exhibit "A" Property, and each successive owner of each such vacation ownership), licensees, trustees, receivers, judgment creditors, legal representatives, and other successors and/or assigns, whether voluntary or involuntary, hereby irrevocably appoints Grantee and/or Grantee's successors and assigns, if any, as may be the case, as Grantor's, and each of Grantor's deed of trust holders', optionees', grantees' (including, but not limited to, each grantee who acquires from Grantor a vacation ownership in any portion of the Exhibit "A" Property, and each successive owner of each such vacation ownership), licensees', trustees', receivers', judgment creditors', legal representatives', successors', and/or assigns', whether voluntary or involuntary, Attorney-in-Fact, with full and exclusive right, power and authority to do and perform the following acts for and on behalf of Grantor, and for and on behalf of each of Grantor's deed of trust holders, optionees, grantees (including, but not limited to, each grantee who acquires from Grantor a vacation ownership in any portion of the Exhibit "A" Property, and each successive owner of each such vacation ownership), licensees, trustees, receivers, judgment creditors, legal representatives, successors, and/or assigns, whether voluntary or involuntary:

- (1) to initiate, apply for approval with each appropriate governmental entity or agency, cause to be obtained, and put into effect, any number of "Boundary Adjustments," "Lot Consolidations," and/or "Certificates of Compliance" as those terms

are defined in Subparagraph 1.(a) above, entitled "Grant of Easements";

(2) to give and grant exclusively to Grantee and/or its successors and assigns, as may be the case, the exclusive right to make and put into effect any decision on any issue and/or any course of action with respect to any Encroachment Easement as referred to in said Subparagraph 1.(a), including, without limitation, the right to grant such Encroachment Easements to its successors and/or assigns, where such action, by its nature or by law, may require the authority, approval and/or signatures of the owners of the Exhibit "A" Property (including, without limitation, any owners of vacation ownerships therein); and

(3) to do any and all other things and acts, including, but not limited to, executing any necessary signatures on behalf of Grantor, and each of Grantor's deed of trust holders, optionees, grantees (including, but not limited to, each grantee who acquires from Grantor a vacation ownership in any portion of the Exhibit "A" Property, and each successive owner of each such vacation ownership), licensees, trustees, receivers, judgment creditors, legal representatives, successors, and/or assigns, whether voluntary or involuntary, which things and acts may be reasonably related to carrying out the powers granted under (1) and (2) above.

This Special Power of Attorney is irrevocable and coupled with an interest; is a durable power of attorney which shall survive any incompetency of Grantor, and each of Grantor's deed of trust holders, optionees, grantees (including, but not limited to, each grantee who acquires from Grantor a vacation ownership in any portion of the Exhibit "A" Property, and each successive owner of each such vacation ownership), licensees, trustees, receivers, judgment creditors, legal representatives, successors, and/or assigns, whether voluntary or involuntary; and shall be binding upon each of Grantor's deed of trust holders, optionees, grantees (including, but not limited to, each grantee who acquires from Grantor a vacation ownership in any portion of the Exhibit "A" Property, and each successive owner of each such vacation ownership), licensees, trustees, receivers, judgment creditors, legal representatives, successors and assigns, whether voluntary or involuntary, and shall inure to the benefit of Grantee and any and all of Grantee's successors and/or assigns.

In connection with the foregoing, each Owner of a Vacation Ownership understands and acknowledges that Continental Commercial Corporation shall most likely have the occasion and need to exercise the foregoing Special Power of Attorney, and that by its terms, Continental Commercial Corporation may exercise this Special Power of Attorney on behalf of each such Owner acquiring a Vacation Ownership from Declarant and each and every successive Owner of such Vacation Ownership for all the purposes set forth in its terms.

c. Limited Right to Use Timeshare Units in Favor of Continental Commercial Corporation. Each Vacation Ownership is further accepted subject to the limited right of Continental Commercial Corporation and its successors and/or assigns to use Vacation Ownership Units in the Property described in Exhibit "A" to this Declaration, which right was granted by Declarant to Continental Commercial Corporation under Paragraph 2., entitled "GRANT OF LIMITED RIGHT TO USE TIMESHARE UNITS", of the Easement Grant Deed referred to above.

The above referred to Paragraph 2. of the Easement Grant Deed provides as follows:

2. **GRANT OF LIMITED RIGHT TO USE TIMESHARE UNITS.**
 In the event and upon the condition that Grantee and/or its successors and/or assigns should develop any portion of either Annexable Property # 1 and/or Annexable Property # 2, as legally described on Exhibit "B" attached hereto, and offer for sale and sell vacation ownerships therein, Grantor hereby grants to Grantee, for Grantee and for its successors and/or assigns, if any, as may be the case (and only for itself and for its successors and/or assigns, if any, and not for any other persons or entities), non-exclusive easements in gross to use and occupy the timeshare units in the timeshare project (currently slated to be called the "Carlsbad Seapointe Resort") to be developed upon a portion of the Exhibit "A" Property, to use the common furnishings in these units, and to use the common area in such timeshare project, which rights of such non-exclusive use and/or occupancy Grantee and/or its successors and/or assigns may assign to another owner(s) of, and/or to its or their grantees of vacation ownerships in any portion of Annexable Property # 1 and/or Annexable Property # 2, so long as reciprocal non-exclusive rights to use and occupy timeshare units, the common furnishings therein, and the common area in any portion of Annexable Property # 1 and/or Annexable Property # 2 developed for timeshare project use, are concurrently given to the owners of vacation ownerships in the timeshare project to be built upon the Exhibit "A" Property; provided, however, in no

event shall any such retention of these rights by Grantee and/or its assignment of such rights to any owner of any interest in any portion of Annexable Property # 1 and/or Annexable Property # 2 disturb any right of any owner of a vacation ownership in any portion of the Exhibit "A" Property to use and enjoy a timeshare unit in the Exhibit "A" Property, as provided for in the Declaration of Covenants, Conditions, and Restrictions for Vacation Ownerships in Carlsbad Seapointe Resort which relates to this Exhibit "A" Property.

d. View Impairment Right in Favor of Continental Commercial Corporation. Each Vacation Ownership is further accepted subject to the rights of Continental Commercial Corporation and its successors and/or assigns to impair and/or obstruct various views from various Vacation Ownership Units in the Property described in Exhibit "A" to this Declaration, which rights were granted by Declarant to Continental Commercial Corporation under Paragraph 3., entitled "GRANT OF RIGHT REGARDING VIEW IMPAIRMENT", of the Easement Grant Deed referred to above.

The above referred to Paragraph 3. of the Easement Grant Deed provides as follows:

3. **GRANT OF RIGHT REGARDING VIEW IMPAIRMENT.** Further, in the event and upon the condition that Grantee and/or its successors and/or assigns should develop any portion of either Annexable Property # 1 and/or Annexable Property # 2, as legally described on Exhibit "B" attached hereto, for timeshare project use, and actually construct timeshare units thereon, and offer for sale and sell vacation ownerships therein, Grantor hereby grants to Grantee, for Grantee and for its successors and/or assigns, if any, and for its or their respective agents, employees, contractors and subcontractors, as may be the case (and only for itself and for its successors and/or assigns, if any, and not for any other persons or entities except as above stated), the exclusive right for the benefit of any such portion of Annexable Property # 1 and/or Annexable Property # 2 developed for timeshare project use, to impair and/or obstruct various views from various timeshare units constructed upon the Exhibit "A" Property.

e. Certain Other Rights in Favor of Continental Commercial Corporation in Connection with Development of the Annexable Property. Each Vacation Ownership is further accepted subject to the limited rights of Continental Commercial Corporation and its successors and/or assigns relating to development of the Annexable Property, as such development may affect the Property described in Exhibit "A" to this Declaration, which rights were

granted by Declarant to Continental Commercial Corporation under Paragraph 4., entitled "GRANT OF CERTAIN OTHER RIGHTS IN CONNECTION WITH DEVELOPMENT OF ANNEXABLE PROPERTY", of the Easement Grant Deed referred to above.

The above referred to Paragraph 4. of the Easement Grant Deed provides as follows:

4. GRANT OF CERTAIN OTHER RIGHTS IN CONNECTION WITH DEVELOPMENT OF ANNEXABLE PROPERTY. Further, in the event and upon the condition that Grantee and/or its successors and/or assigns should develop any portion of either Annexable Property # 1 and/or Annexable Property # 2, as legally described on Exhibit "B" attached hereto, for timeshare project use, for the respective terms provided for below, Grantor hereby grants to Grantee, for Grantee and for its successors and assigns, and its and their respective agents, employees, concessionaires, contractors, subcontractors, invitees, patrons, and authorized personnel, certain non-exclusive easements in gross to, from over, under, across, and through the Exhibit "A" Property for the following purposes:

(1) For doing and performing all acts related to the possible imposition of the Declaration of Covenants, Conditions and Restrictions for Vacation Ownerships in Carlsbad Seapointe Resort recorded in the Office of the Recorder of San Diego County, San Diego California on July 18, 1995, as Document No. 1995-0305021 of the Official Records of said County, and any and all amendments which may be made thereto (collectively, the "Declaration") upon any portion of the Annexable Property, including, without limitation, temporarily utilizing portions of the common area of the Exhibit "A" Property for storing construction equipment, tools, and vehicles, making and constructing road and/or garage connections and link-ups and/or other forms of connections of various utilities and improvements between the Exhibit "A" Property and any portion of any Annexed Property, and for enabling the construction of any expansion and/or enlargement of any facilities then existing upon the Exhibit "A" Property in connection with improving, unifying, and maximizing the resort-potential of the Property and the Annexable Property as a whole;

(2) For offering for sale, selling, leasing, renting, or otherwise transferring any vacation ownership in any unit in the project on the Exhibit "A" Property or in any vacation ownership unit upon any Annexed Property (including any vacation ownership reacquired by Grantor or by Grantee through foreclosure or a deed-in-lieu of

foreclosure);

(3) For maintaining customer relations with and for providing post-sale service to owners of vacation ownerships in any portion of the Annexed Property;

(4) For displaying signs and erecting, maintaining, and operating, in connection with sales of vacation ownerships and for administrative purposes, both as to units in the Exhibit "A" Property and units upon any Annexed Property, model units, and a customer service, sales office and/or administration office complex;

(5) For showing unoccupied units and the common area in both the Exhibit "A" Property and in any Annexed Property to prospective purchasers, lessees, tenants, business visitors and/or guests; and

(6) For having and providing switchboard, registration, laundry, mail, and maintenance services in and to the Exhibit "A" Property, and in and to any Annexed property, prior to such services being provided by the Association.

Grantee covenants to use each of the above easements in a manner that will reasonably minimize any adverse impact therefrom upon the possession, use, and enjoyment of the project on the Exhibit "A" Property by owners of vacation ownerships therein.

The terms for each of the above listed easements shall commence from the date of recordation of the Declaration in the Official Records of San Diego County, California (called here the "Commencement Date"), and shall continue:

-- As to the easements referred to in numbers (1), (3), (4), (5) and (6) above, until the earliest of: (i) 10 years from the Commencement Date, or (ii) if Grantee has recorded during said 10 year-period in the Official Records of San Diego County, California, a Declaration of Annexation as described in Article 14 of the Declaration, by which, the Declaration may be imposed on any Annexable Property, until the earliest of 10 years from the date of recordation of any such Declaration of Annexation, or the date upon which all vacation ownerships in any such Annexed Property have been sold (and their escrows closed) by Grantee and/or its successors and assigns, if any, and all security interests (such as deeds to trust) representing security held by Grantee and/or its

successors and assigns, if any, for credit sales of such vacation ownerships have been released or reconveyed; and

-- As to the easements referred to in number (2) above, for the duration of any timeshare project to be constructed upon any portion of the Annexed Property.

f. Certain Rights in Favor of Continental Commercial Corporation to Use (1) The Exchange Office, (2) The Video/Vending Room, (3) The Food Service/BBQ Area, and (4) The Car Rental Desk in project. Each Vacation Ownership is further accepted subject the rights of Continental Commercial Corporation and its successors and/or assigns to use (1) the exchange office, (2) the video/vending room, (3) the food service/BBQ area, and (4) the car rental desk to be constructed upon the Property described in Exhibit "A" to this Declaration, which rights were granted by Declarant to Continental Commercial Corporation under Paragraph 5., entitled "GRANT OF RIGHTS TO USE (1) THE EXCHANGE OFFICE, (2) THE VIDEO VENDING ROOM, (3) THE FOOD SERVICE/BBQ AREA, AND (4) THE CAR RENTAL DESK TO BE CONSTRUCTED UPON THE EXHIBIT "A" PROPERTY", of the Easement Grant Deed referred to above.

The above referred to Paragraph 5. of the Easement Grant Deed provides as follows:

5. **GRANT OF RIGHTS TO USE (1) THE EXCHANGE OFFICE, (2) THE VIDEO VENDING ROOM, (3) THE FOOD SERVICE/BBQ AREA, AND (4) THE CAR RENTAL DESK TO BE CONSTRUCTED UPON THE EXHIBIT "A" PROPERTY.** In connection with Grantor's forthcoming development of any portion of the Exhibit "A" Property into a timeshare project, for the duration of any such timeshare project (currently slated to be called the "Carlsbad Seapointe Resort"), Grantor hereby grants exclusive easements in gross to Grantee, for Grantee and for its successors and assigns, and its and their respective agents, employees, concessionaires, contractors, subcontractors, invitees, patrons, and authorized personnel, to use and occupy for business purposes, and to have ready access, both for persons and utilities, to and from, and to have the right to bring utilities to, and use them on, the following portions of the Common Area, each such portion being identified and so labeled upon the Project Diagram attached as Exhibit "C" to the Declaration (as defined above in Paragraph 4) and by this reference made a part hereof: (1) the Exchange Office, (2) the Video/Vending Room, (3) the Food Service/BBQ area, and (4) the Car Rental Desk (located in the Lobby portion of the Common Area). Each of the foregoing easements shall be freely assignable and transferable by Grantee and by any of Grantee's successors and/or assigns. Additional understandings

relating to these easements are as provided in that certain Easement Agreement between Grantor and the Carlsbad Seapointe Resort Owners, Inc., a California non-profit mutual benefit corporation, Association recorded in the Office of the Recorder of San Diego County, San Diego, California on July 19, 1995, as Document No. 1995-0306191 of the Official Records of said County.

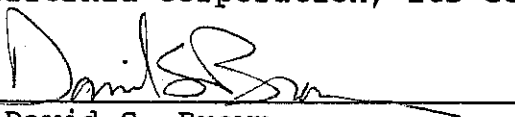
g. Owner's Acknowledgment of Easement Rights. Each Owner acquiring a Vacation Ownership referred to in this Declaration accepts his, her or its Vacation Ownership subject to each of the easement rights in favor of Declarant and Continental Commercial Corporation provided for in this Paragraph 2.08.

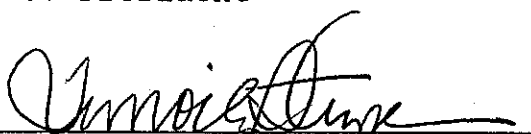
h. Indemnification of Owners. Declarant, for itself, and for each and every successor in interest, if any, hereby agrees to indemnify each Owner against, and hold each Owner harmless from, any and all claims, liabilities, and demands of any sort, which may arise against any such Owner out of the use by Declarant or Continental Commercial Corporation, and/or any of their respective successors in interest, and/or respective agents, employees, contractors, and subcontractors, of any of the easements referred to in this Paragraph 2.08.

All other provisions of the Declaration remain in full force and effect.

CARLSBAD SEAPOINTE RESORT L.P.,
a California limited partnership

By: CONTINENTAL COMMERCIAL CORPORATION,
a California corporation, its General Partner

By: 
David S. Brown,
Co-President

By: 
Timothy J. Stripe
Co-President

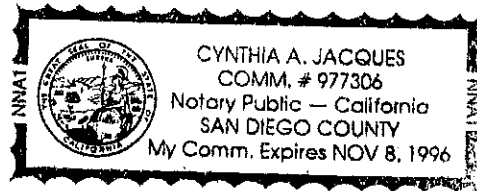
"Declarant"

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

On August 7, 1995 before me, Cynthia A. Jacques Notary Public, personally appeared DAVID S. BROWN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the co-president of CONTINENTAL COMMERCIAL CORPORATION, the general partner of CARLSBAD SEAPOINTE RESORT L.P., a California limited partnership, whose name is subscribed to the within instrument, and who acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. (Seal)

Signature Cynthia A. Jacques

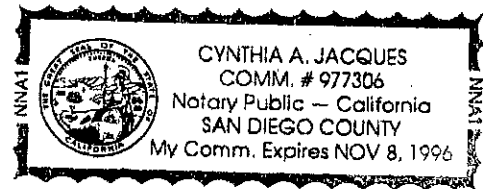


STATE OF CALIFORNIA)
)
) SS.
COUNTY OF SAN DIEGO)

On August 8, 1995 before me, Cynthia A. Jacques Notary Public, personally appeared TIMOTHY J. STRIPE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the co-president of CONTINENTAL COMMERCIAL CORPORATION, the general partner of CARLSBAD SEAPOINTE RESORT L.P., a California limited partnership, whose name is subscribed to the within instrument, and who acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. (Seal)

Signature Cynthia A. Jacques



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Chicago Title Company)
WHEN RECORDED MAIL TO:)
Carlsbad Seapointe Resort)
5050 Avenida Encinas, Suite 200)
Carlsbad, California 92008)
974877-50)

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY SMITH, COUNTY RECORDER
RF: 124.00 FEES: 348.00
AF: 221.00
TF: 3.00

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VACATION OWNERSHIPS IN CARLSBAD SEAPOINTE RESORT

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Exhibit "B"	Calendars of Use Weeks
Exhibit "C"	Project Diagram
Exhibit "D"	Description of Annexable Property
Exhibit "E"	Declaration of Annexation (form of)

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
VACATION OWNERSHIPS IN CARLSBAD SEAPOINTE RESORT

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CARLSBAD SEAPOINTE RESORT (the "Declaration"), is made on July 14, 1995, in San Diego County, California, by CARLSBAD SEAPOINTE RESORT L.P., a California limited partnership (the "Declarant"), with reference to the following facts, and is as follows:

RECITALS

A. Declarant is the owner of certain real property located at 6400 Ponto Road, in the City of Carlsbad, County of San Diego, State of California, legally described on Exhibit "A" attached hereto (the "Property"). A subdivision map is currently being processed by Declarant with the City of Carlsbad whereby the legal description of the Property will be changed from its present metes and bounds form of description into a subdivided lot description, the approximate form of which is also set forth in Exhibit "A". Declarant hereby reserves the right to substitute, and will so substitute, the new subdivision lot description for the present metes and bounds description upon recordation of such subdivision map.

B. Declarant has constructed, or is in the process of constructing, upon the Property a five (5)-building, 78-unit vacation ownership resort, called "Carlsbad Seapointe Resort" (the "Project").

C. At or about the time of completion of the development of the Property into the Project, Declarant intends to begin selling and conveying to members of the public 3,978 "Vacation Ownerships" (time-share estates) in and to this Property. Each such Vacation Ownership sold by Declarant, which shall be conveyed by an "Original Deed," shall be comprised of: (i) in the case of an Annual Ownership, an undivided 1/3978th fee title interest in the Property, or in the case of a Biennial Ownership, an undivided one-half (1/2) interest in an undivided 1/3978th fee title interest in the Property, (ii) the exclusive right to use and occupy a "Unit" of a particular "Unit Type," as delineated on the "Project Diagram" and the "Common Furnishings" in such "Unit," together with a nonexclusive right to use the "Common Area" of the Property, all for a "Use Week," subject to the grant of same in the Original Deed and to each of the covenants, conditions, and restrictions set forth in this Declaration and any "Rules and Regulations" made pursuant thereto, and (iii) automatic "Membership" in the Association.

The total number of Vacation Ownerships in the Project shall be 3,978, regardless of the respective numbers of Annual Ownerships and Biennial Ownerships conveyed in the Project. In this connection, for voting, Assessment and certain other purposes under this Declaration, each Annual Ownership shall be treated as being one (1) Ownership, and each Biennial Ownership shall be treated as being one-half (1/2) of an Ownership. Therefore, if, for example, the total number of Biennial Ownerships ultimately created in the "Project" is 1,000, they shall, for these purposes, constitute an aggregate of 500 Ownerships out of the total 3,978 Ownerships in the Project. (Each of the foregoing quoted terms is defined in Article 1 below.)

D. By this Declaration, Declarant intends to establish a common scheme and general plan of restrictions for the benefit of all "Owners" of Vacation Ownerships relating to the administration, ownership, holding, conveyance, hypothecation, mortgaging, encumbrancing, use, occupancy, enjoyment, operation, management, repair, leasing, renting, maintenance, upkeep, improvement, and restoration of the Project and the Units and Vacation Ownerships therein. (Each of the foregoing quoted terms is defined in Article 1 below.)

NOW, THEREFORE, in furtherance of such intent, Declarant hereby declares that the Property and Project, including, without limitation, each of the 78 Units, each Vacation Ownership, and any interest therein, are and shall be held, owned, conveyed, hypothecated, mortgaged, encumbered, used, occupied, enjoyed, leased, rented, operated, managed, administered, improved, and restored, subject to the covenants, conditions, and restrictions set forth in this Declaration, as this Declaration may from time to time be amended, and the Rules and Regulations made pursuant to this Declaration, all of which covenants, conditions, restrictions, and rules and regulations are hereby declared to be in furtherance of a common scheme and general plan established for the purpose of enhancing and perfecting the value, desirability, and enjoyment of the Property, the Project, the Units, the Vacation Ownerships, and any interest therein. All such covenants, conditions, restrictions, and rules and regulations are, in accordance with Section 1468 of the California Civil Code, made for the direct benefit of the Property, the Project, the Units, each Vacation Ownership, and any interest therein, and shall constitute covenants running with the land and equitable servitudes and liens, and shall be binding upon, and shall be for the benefit of the Property, the Project, the Units, each Vacation Ownership, and any interest therein, and shall further be binding upon, and shall inure to the benefit of, and be enforceable by the "Association," the Declarant, and all Owners, including without limitation any heirs, executors, administrators, successors, and assigns, including lessees, of any such parties. Each Owner, by his, her, or its accepting a conveyance of a Vacation Ownership, and Declarant, as to any "Declar-

ant Vacation Ownership," by virtue of Declarant's execution and recordation of this Declaration, shall be deemed to have covenanted and agreed to faithfully perform each and every obligation required to be performed by an Owner under this Declaration, the "Bylaws" and any Rules and Regulations made pursuant to this Declaration, including without limitation, the payment to the Association of any and all "Assessments" imposed hereunder and other moneys owing to the Association, and each Owner further shall be deemed to have covenanted and agreed that the Association shall have all of the rights, powers, duties, and remedies set forth in this Declaration. (Each of the foregoing quoted terms is defined in Article 1 below.)

ARTICLE 1

DEFINITIONS

In addition to other definitions provided for in this Declaration, the following terms, as used herein, shall have the following meanings:

1.01 "Annexable Property" means that real property described on Exhibit "D," any portion of which Declarant's General Partner, Continental Commercial Corporation, or respective successors or assigns may, but shall be under no obligation to, at some future date impose this Declaration.

1.02 "Annexed Property" means that a portion of any Annexable Property upon which Declarant's General Partner, Continental Commercial Corporation, or respective successors or assigns has actually imposed this Declaration.

1.03 "Annual Fixed Week/Floating Unit Vacation Ownership" means a "timeshare estate" as defined in Section 11003.5 of the California Business and Professions Code, being here comprised of (i) an undivided 1/3978th fee title interest in the Property, (ii) the exclusive right to use and occupy a Unit of a particular Unit Type, as delineated on the Project Diagram and the Common Furnishings in said Unit, together with a nonexclusive right to use the Common Area, as shown and defined on the Project Diagram, all for a Fixed Week in each Use Year, upon the condition that, before occurrence of any such use and/or occupancy, such Unit shall have first been reserved by the Owner in accordance with the applicable provisions of this Declaration and the Rules and Regulations, and (iii) Membership for each Owner thereof in the Association.

1.04 "Annual Floating Week/Floating Unit Vacation Ownership" means a "timeshare estate" as defined in Section 11003.5 of the California Business and Professions Code, being here comprised of (i) an undivided 1/3978th fee title interest in the Property, (ii) the exclusive right to use and occupy a Unit of a particular Unit

Type, as delineated on the Project Diagram and the Common Furnishings in said Unit, together with a nonexclusive right to use the Common Area, as shown and defined on the Project Diagram, all for a Use Week, during either High Season or Prime Summer Season, in each Use Year, upon the condition that, before occurrence of any such use and/or occupancy, such Unit and Use Week shall have first been reserved by the Owner in accordance with the applicable provisions of the Declaration and the Rules and Regulations, and (iii) Membership for each Owner thereof hereunder in the Association.

1.05 "Annual Owner" (or "Annual Vacation Ownership Owners") means an Owner of either an Annual Fixed Week/Floating Unit Vacation Ownership, or an Annual Floating Week/Floating Unit Vacation Ownership.

1.06 "Annual Ownership" means this same as "Annual Vacation Ownership" as defined in Paragraph 1.07.

1.07 "Annual Vacation Ownership" (or "Annual Ownership") means either an Annual Fixed Week/Floating Unit Vacation Ownership, or an Annual Floating Week/Floating Unit Vacation Ownership.

1.08 "Annual Vacation Ownership Owner" means the same as "Annual Owner" as defined in Paragraph 1.05.

1.09 "Articles" mean the Articles of Incorporation of the Association, which Articles have been, or shall be, filed in the office of the California Secretary of State, as same may be amended from time to time.

1.10 "Assessments" mean, collectively, the following types of financial charges which may be imposed upon the Owners by the Association, as described in Article 6 hereof: Regular Annual Assessments, Special Assessments, and Capital Improvement Assessments.

1.11 "Assigned Unit" means a particular Unit, of an Assigned Unit Type, to which an Owner (or his Permitted User) is entitled to exclusive use and occupancy for a Use Week, which has been assigned to such Owner by the Association (upon a "first-reserved, first-served basis") in accordance with the applicable provisions of the Rules and Regulations.

1.12 "Assigned Unit Type" means that particular Unit Type to which an Owner is entitled to use and occupy during such Owner's Use Week as is specified in such respective Owner's Original Deed (or subsequent deed, if a successor Owner).

1.13 "Association" means the CARLSBAD SEAPOINTE RESORT OWNERS ASSOCIATION, INC., a California nonprofit mutual benefit corporation, the Members of which shall be the Owners.

1.14 "Basic Expenses" means either the estimated aggregate amount of costs and expenses, as set forth in the Budget, to be incurred by the Association in connection with its day-to-day administration, management, and operation of the Project and the Use Program projected for a particular forthcoming Fiscal Year, or the actual aggregate amount of such costs and expenses incurred by the Association as a result of such activities during a particular Fiscal Year, including, without limitation, the costs and expenses required: (i) to manage, maintain, repair, keep clean, repaint, refinish, redecorate, restore, and/or replace, as may be applicable, any and all portions of the Project; (ii) to provide for adequate reserves which will insure that funds are on hand to pay the cost of needed repairs to, and restoration and replacement of, any and all portions of the Project; (iii) to administer and operate the Use Program; (iv) to obtain and pay the costs of all utility services to the Project, to the extent that such costs are not separately billed to the Owners; (v) to pay, as agent of the Owners, and not as principal, all taxes and assessments (real and personal) assessed against, affecting, and/or relating to the Vacation Ownerships, the Units, the Common Furnishings, the Project itself, and/or any other interest in the Project, to the extent that such taxes are not separately assessed to the Owners directly; (vi) to pay for assessments and/or other similar governmental charges levied on or attributable to the Project or Units including, without limitation, any hotel or bed tax or any governmental charge levied in lieu of such hotel or bed tax; (vii) to pay for insurance obtained pursuant to this Declaration; (viii) to compensate for the unpaid portion of any Assessment levied during the previous Fiscal Year against any Owner who has defaulted in payment thereof to the extent that the same is determined by the Board to be uncollectible; (ix) for wages, accounting and legal fees, maid service, cleaning fees, and other expenses of upkeep, maintenance, administration, management and operation of the Project and Use Program; (x) to provide for a fund to account for the possibility that some Assessments levied under Article 6 may not be paid on a current basis; (xi) to provide for the payment of the fee due to the Managing Agent; and (xii) to provide for any other services to the Owners or do any other acts not inconsistent with this Declaration in connection with the administration, management, and operation of the Project and the Use Program.

1.15 "Biennial Fixed Week/Floating Unit Vacation Ownership" means a "timeshare estate" as defined in Section 11003.5 of the California Business and Professions Code, being here comprised of (i) an undivided one-half (1/2) interest in an undivided 1/3978th fee title interest in the Property, (ii) the exclusive right to use and occupy a Unit of a particular Unit Type, as delineated on the

Project Diagram and the Common Furnishings in said Unit, together with a nonexclusive right to use the Common Area, as shown and defined on the Project Diagram, all for a Fixed Week in each Even Use Year or Odd Use Year, whichever is the case, upon the condition that, before occurrence of any such use and/or occupancy, such Unit shall have first been reserved by the Owner in accordance with the applicable provisions of this Declaration and the Rules and Regulations, and (iii) Membership for each Owner thereof in the Association.

1.16 "Biennial Floating Week/Floating Unit Vacation Ownership" means a "timeshare estate" as defined in Section 11003.5 of the California Business and Professions Code, being here comprised of (i) an undivided one-half (1/2) interest in an undivided 1/3978th fee title interest in the Property, (ii) the exclusive right to use and occupy a Unit of a particular Unit Type, as delineated on the Project Diagram and the Common Furnishings in said Unit, together with a nonexclusive right to use the Common Area, as shown and defined on the Project Diagram, all for a Use Week, during either High Season or Prime Summer Season, in each Even Use Year or Odd Use Year, whichever is the case, upon the condition that, before the occurrence of any such use and/or occupancy, such Unit and Use period shall have first been reserved by the Owner in accordance with the applicable provisions of this Declaration and any Rules and Regulations, and (iii) Membership for each Owner thereof in the Association.

1.17 "Biennial Owner" (or "Biennial Vacation Ownership Owner") means the Owner of either a Biennial Fixed Week/Floating Unit Vacation Ownership, or a Biennial Floating Week/Floating Unit Vacation Ownership.

1.18 "Biennial Ownership" means the same as "Biennial Vacation Ownership" as defined in Paragraph 1.19.

1.19 "Biennial Vacation Ownership" (or "Biennial Ownership") means either a Biennial Fixed Week/Floating Unit Vacation Ownership, or a Biennial Floating Week/Floating Unit Vacation Ownership.

1.20 "Biennial Vacation Ownership Owners" means the same as "Biennial Owners" as defined in Paragraph 1.17.

1.21 "Board" means the Board of Directors of the Association.

1.22 "Bonus Time/Rental Use" means each Use Week or portion thereof during which a particular Designated Unit is available for rental to Owners or members of the public by and for the benefit of the Association by virtue of the fact that either: (i) the Owner who was otherwise entitled to occupy such Unit for such Use Week or portion thereof fails to confirm with the Managing Agent at or

prior to Check-in Time that such Owner is taking occupancy of his, her, or its Assigned Unit pursuant to the requirements of the Rules and Regulations; (ii) the Owner who was otherwise entitled to occupy such Unit for such Use Week or portion thereof has had his, her, or its rights and privileges to use and occupy such Unit suspended by the Association in accordance with Paragraph 7.02 below because of failure to pay to the Association, when due, any Assessments or other charges levied by the Association or because of being in other violation of the provisions of this Declaration and/or the Rules and Regulations, and has failed to pay such past due Assessment or cure such other violation by not later than (a) forty-eight hours prior to the applicable Check-in Time for such occupancy, or (b) twenty days prior to the applicable Check-in Time for such contemplated occupancy, where the Owner whose rights and privileges had been suspended due to such Owner's failure to pay any Assessments when due, has had such rights and privileges suspended for a period of two (2) years or more; (iii) the Use Week or portion thereof fell within a scheduled Maintenance Week for such Unit, and the Managing Agent has determined that repairs and maintenance are not required to be made to said Unit during such Period; or (iv) the Use Week or portion thereof had occurred during the 53rd Use Week of a Use Year having 53 Use Weeks therein, the Association being deemed to be the Owner of all Vacation Ownerships which have Fixed Week occurring in the 53rd Use Week of Use Years having 53 Use Weeks.

1.23 "Budget" means the written estimate of the revenue and Basic Expenses which the Board believes will be received and incurred by the Association in connection with administering, managing, and operating the Project and the Use Program, for each forthcoming Fiscal Year, which Budget the Board must prepare prior to the commencement of each new Fiscal Year pursuant to Subparagraph 5.02 n. below.

1.24 "Bylaws" mean the Bylaws of the Association, as the same may be amended from time to time.

1.25 "Calendar" means each Calendar of Use Weeks established for each consecutive Use Year. The Calendars for Use Years 1996, 1997 and 1998 are attached hereto as Exhibit "B" and made a part hereof.

1.26 "Check-in Day" means either Saturday or Sunday, as specified in an Owner's Original Deed.

1.27 "Check-in Time" and "Check-out Time" means the scheduled times for Owners' arrival at and departure from their Assigned Units as set forth in the then current Rules and Regulations.

1.28 "Common Area" means all portions of the Property other than (i) the Units; (ii) the Support Areas within the Property.

Included within the Common Area are the: Adult Swimming Pool, Adult Jacuzzi, Family Swimming Pool, Children's Wading Pool, Gym, Sauna, Men's Locker Room, Women's Locker Room, Multi-Use Room, Clubhouse and Lobby, each being identified on the Project Diagram; and (iii) any encroaching Improvements under an easement for Encroachment as referred to in Subsection 2.08 c. below.

1.29 "Common Furnishings" mean all furniture, furnishings, appliances, fixtures, equipment, and all other personal property from time to time owned, leased, or held for use, by the Association and located upon any portion of the Property, including the Units.

1.30 "Declarant" means CARLSBAD SEAPOINTE RESORT L.P., a California limited partnership, and any successor in interest to any Declarant Vacation Ownerships in the Project; provided, however, an Owner who acquired a Declarant Vacation Ownership from CARLSBAD SEAPOINTE RESORT L.P. or any successor thereto by an Original Deed shall not be deemed to be a "Declarant."

1.31 "Declarant Annual Vacation Ownership" means each Annual Vacation Ownership owned by Declarant.

1.32 "Declarant Biennial Vacation Ownership" means each Biennial Vacation Ownership owned by Declarant.

1.33 "Declarant Vacation Ownership" means each Declarant Annual Vacation Ownership and each Declarant Biennial Vacation Ownership. Declarant shall be deemed to own Vacation Ownerships in each Nondesignated Unit as well as (Declarant's unsold Vacation Ownerships) in Designated Units. At any point in time, the number of Declarant Ownerships shall be the difference between 3,978 (the total number of Vacation Ownerships in the Project,) and the total number of Vacation Ownerships conveyed by Declarant to third parties by Original Deeds (and not thereafter reacquired in any manner by Declarant). In this connection, for voting, Assessment and certain other purposes under this Declaration, each Annual Ownership shall be treated as being one (1) Ownership and each Biennial Ownership being one-half (1/2) of an Ownership. Therefore, if, for example, the total number of Biennial Ownerships ultimately created in the Project is 1,000, they shall, for these purposes, constitute an aggregate of 500 Ownerships out of the total 3,978 Ownerships in the Project.

1.34 "Declaration" means this instrument, as same may be amended from time to time.

1.35 "Designated Units" means those particular Units, which Declarant, pursuant to the terms of Article 8 of this Declaration, has from time to time designated and made subject to the Use Program, and, in which, Declarant may offer for sale and/or sell

Vacation Ownerships under the authority given it by the California Department of Real Estate.

1.36 "Distributable Net Proceeds" means the total net proceeds which the Association receives under extraordinary circumstances as from, but not limited to, the sale of the Project or from insurance proceeds recovered in excess of the amount required to restore the Project, if damaged or destroyed, which are to be paid to the Owners in accordance with Paragraph 2.19.

1.37 "Even Use Year" means each Use Year which falls in an even-numbered calendar year.

1.38 "Exchange Program" means a service provided by an independent organization whereby Owners may exchange their Use Weeks in the Project for occupancy rights in other projects that have timesharing programs.

1.39 "Exchange User" means an owner of an occupancy right in another project that has a timesharing program who occupies an Assigned Unit in the Project during a Use Week pursuant to an Exchange Program.

1.40 "Fiscal Year" means the one (1)-year period commencing on January 1st of each year and ending on December 31st of that year, which shall be the fiscal year for the operation of the Association, which may be subsequently changed by the Board.

1.41 "Fixed Week" means, as to an Owner of an Annual Fixed Week/Floating Unit Vacation Ownership, that particular Use Week during each Use Year, and as to each Owner of a Biennial Fixed Week/Floating Unit Vacation Ownership, that particular Use Week during either each Even Use Year or each Odd Use Year, as applicable, as has been granted to such Owner by his, her, or its Original Deed (or subsequent deed, if a successor Owner), during which Use Week such Owner (or such Owner's Permitted User) has the exclusive right to use and occupy an Assigned Unit and the Common Furnishings therein, together with the nonexclusive right to use the Common Area.

1.42 "Floating Unit" means a Unit, the exclusive occupancy and use of which is to be assigned by the Association to an Owner for a Use Week (upon a "first-reserved, first-served basis").

1.43 "Floating Week" means a Use Week for use and occupancy of a Unit which is to be assigned by the Association to an Owner of an Annual or Biennial Floating Week/Floating Unit Vacation Ownership (upon "first-reserved, first-served basis").

1.44 "High Season" means as to an Annual Floating Week/Floating Unit Vacation Ownership or a Biennial Floating Week/

Floating Unit Vacation Ownership, Use Weeks 1 through 25, and 36 through 52.

1.45 "Maintenance Week" means, with respect to each particular Unit, a total of seven (7) Nights in each Use Year reserved by the Association as the period of time during which needed repairs and maintenance to such Unit and the Common Furnishing therein shall be made by the Association.

1.46 "Managing Agent" means the agent engaged by the Board pursuant to and in the manner provided in Paragraph 5.03 of this Declaration.

1.47 "Member" means a member of the Association. Each Owner is a Member.

1.48 "Membership" means the right of participation which each Member holds in the Association, by virtue of his, her or its ownership of a Vacation Ownership.

1.49 "Mortgage" means a deed of trust or mortgage encumbering any Vacation Ownership.

1.50 "Mortgagee" means the beneficiary of a recorded deed of trust or the holder of a recorded mortgage encumbering any Vacation Ownership.

1.51 "Night" means each successive 24-hour period commencing from Check-in Time during any Use Week, except that the last Night during any Use Week, or portion thereof, shall include only that number of hours from the end of the last 24-hour period to Check-out Time on the following day.

1.52 "Nondesigned Units" mean those particular Units, if any, which Declarant has not, pursuant to the terms of Article 8 of this Declaration, designated and made subject to the Use Program.

1.53 "Odd Use Year" means each Use Year which falls in an odd-numbered calendar year.

1.54 "Original Deed" means each grant deed from Declarant recorded after the date hereof which conveys a Vacation Ownership, excluding, however, any deed which conveys the entire interest in the Property then held by Declarant, which deed expressly recites that it is not an Original Deed within the meaning of this Declaration.

1.55 "Owner" means (i) the grantee or, collectively, the grantees named in the Original Deed conveying any Vacation Ownership; (ii) each and every successor in interest to each grantee or

grantees described in (i) above; and (ii) the Declarant, with respect to each Declarant Ownership.

1.56 "Ownership" means the same as "Vacation Ownership" as defined in Paragraph 1.71 below.

1.57 "Permitted User" means any person, other than an Exchange User, who occupies an Assigned Unit, along with, or independently of, an Owner, but in all cases by the express authority of the Owner(s) entitled to such occupancy or by the Association as to any Bonus Time/Rental Use, including, but not limited to, an Owner's family members, guests, lessees, tenants, renters, and/or other invitees, all as restricted by the Rules and Regulations.

1.58 "Prime Summer Season" means as to an Annual Floating Week/ Floating Unit Vacation Ownership or a Biennial Floating Week/ Floating Unit Vacation Ownership, Use Weeks 26 through 35.

1.59 "Project" means both (i) the Property while it is being, and after it has been, developed into and is operating as the 78-Unit vacation ownership resort referred to in Recital B above, and (ii) the Common Furnishings. The name of the Project is the "Carlsbad Seapointe Resort".

1.60 "Project Diagram" means the CARLSBAD SEAPOINTE RESORT PROJECT DIAGRAM identifying thereon the approximate location and number designation of each Unit and the approximate location and designation of the other improvements to be developed, or as developed, upon the Property. A copy of this Project Diagram, which is comprised of four (4) pages, is attached hereto as Exhibit "C" and made a part hereof. This Project Diagram is not a survey, nor is it based upon a survey, of the Property; and it contains only approximations of the locations, sizes, and configurations of the Units and other improvements upon or to be developed upon the Property.

1.61 "Property" means that certain real property legally described in Exhibit "A" above and includes all buildings, and improvements, appurtenances, and landscaping, now existing and/or to be constructed thereon or thereto.

1.62 "Purchase Agreement" means a Purchase and Sale Agreement and Escrow Instructions between Declarant and the person, persons, or other entity named therein as buyer providing for the sale by Declarant and the purchase by said buyer of one or more Vacation Ownerships.

1.63 "Rules and Regulations" mean the Rules and Regulations adopted and promulgated from time to time by the Board pursuant to Subparagraph 5.02 d of this Declaration relating to the use and/or occupancy by Owners and/or Permitted Users of the Units, the Common

Area, the Common Furnishings, and/or the operation of the Use Program.

1.64 "Special Expenses" means those extraordinary expenses of the Association which are not Basic Expenses and which are expenses for which Special Assessments and/or Capital Improvement Assessments are levied pursuant to Article 6 of this Declaration.

1.65 "Support Areas" mean those portions of the Property delineated on the Project Diagram, as the Front Desk, Office (behind front desk), Elevators, Stairs, Elevator Machine Room, Resort Manger's Office, Office (maintenance/housekeeping manager's office), Maintenance Storage, Maintenance Shop, Mechanical/Electrical Room, Trash Area, Underground Parking Garage, Housekeeping Area (at South end of the parking garage), Storage (maids' closets) and Laundry and Ice Areas.

1.66 "Unit" means each of the 78 areas built for use and occupancy, or to be built, in the buildings upon the Property, as delineated on the Project Diagram.

1.67 "Unit Type" means one of the four (4) different categories of Units, based upon a particular Unit's number of bedrooms and bathrooms, square footage, and configuration, described and identified on the Project Diagram, as an "A" Unit Type, "B" Unit Type, "C" Unit Type, or "D" Unit Type.

1.68 "Use Week" means each of the 52 (or in some instances 53) consecutively numbered seven (7) consecutive-Night periods of time listed on each Calendar for any particular Use Year, and includes either a Fixed Week or a Floating Week. Notwithstanding the fact that each Use Week on each Calendar is shown as being comprised of seven (7) consecutive Nights, the Board may, but is under no obligation to, adopt provisions in the Rules and Regulations which would allow Owners to occupy a Unit for periods of time which are less than seven (7) consecutive Nights (sometimes called "Split-Use Weeks"), so long as the total, accumulated time of such periods of occupancy does not exceed seven Nights, and so long as the seven (7) Nights occupied do not include more than two (2) Weekend Nights.

1.69 "Use Program" means the overall policy, system, and operation established by this Declaration, and the Rules and Regulations made pursuant thereto, which enables Owners to exclusively use, occupy, and enjoy an Assigned Unit and the Common Furnishings therein and to non-exclusively use the Common Area, for a Use Week, including, but not by way of limitation, the procedures for cancellation of reservations, splitting of Use Weeks, checking-in and checking-out of Units, and the exchange of occupancy rights between Owners or under an Exchange Program.

1.70 "Use Year" means the particular 52-Use Weeks (or 53-Use Week in each year in which there occurs 53-Use Weeks) length of time set forth on each Calendar.

1.71 "Vacation Ownership" (or "Ownership") means either (i) an Annual Fixed Week/Floating Unit Vacation Ownership, (ii) an Annual Floating Week/Floating Unit Vacation Ownership, (iii) a Biennial Fixed Week/Floating Unit Vacation Ownership, or (iv) a Biennial Floating Week/Floating Unit Vacation Ownership. The total number of Vacation Ownerships in the Project shall be 3,978, regardless of the respective numbers of Annual Ownerships and Biennial Ownerships conveyed in the Project. In this connection, for voting, Assessment and certain other purposes under this Declaration, each Annual Ownership shall be treated as being one (1) Ownership, and each Biennial Ownership shall be treated as being one-half (1/2) of an Ownership. Therefore, if, for example, the total number of Biennial Ownerships ultimately created in the Project is 1,000, they shall, for these purposes, constitute an aggregate of 500 Ownerships out of the total 3,978 Ownerships in the Project.

1.72 "Week Day" means any period of time beginning at Check-in Time on a Sunday, Monday, Tuesday, Wednesday, or Thursday and ending at Check-in Time on the next calendar day immediately following.

1.73 "Weekend" means any period of time beginning at Check-in Time on a Friday or Saturday and ending at Check-out Time on the next calendar day immediately following.

ARTICLE 2

USE RIGHTS, USE RESTRICTIONS, RENTAL, MORTGAGES, TRANSFERS, PARTITION AND OTHER RIGHTS AND DUTIES OF OWNERS AND DECLARANT

2.01 Nature of Rights to Use Units

a. Regular Right to Use a Use Week and Unit Dependent on Type of Vacation Ownership. Owners own one or more of the following types of Vacation Ownerships in this Project:

1. Annual Fixed Week/Floating Unit Vacation Ownership (as defined in Section 1.03);

2. Annual Floating Week/Floating Unit Vacation Ownership (as defined in Section 1.04);

3. Biennial Fixed Week/Floating Unit Vacation Ownership (as defined in Section 1.15);

4. Biennial Floating Week/Floating Unit Vacation Ownership (as defined in Section 1.16).

In the instance of categories 1. and 3. above (Fixed Week/Floating Unit Vacation Ownership), while an Owner has been granted (in the Original Deed) a particular Use Week (a "Fixed Week") during each Use Year, the Association for each Use Year will assign to such Owner an Assigned Unit for use and occupancy for such Owner's Fixed Week, subject to Owner's first having reserved such Unit on a "first-reserved, first-served" basis pursuant to the Declaration and the Rules and Regulations.

In the instance of categories 2. and 4. above (Floating Week/Floating Unit Vacation Ownerships) the Association for each Use Year will assign to such Owner both an Assigned Unit for his or her use and occupancy and the Use Week during which the Unit is to be used, subject to such Owner's first have reserved such Unit and Use Week on a "first-reserved, first-served basis pursuant to the Declaration and the Rules and Regulations. In this connection a reservation for a Use Week must be made prior to Check-in Time on the first day of the Use Week sought to be reserved, but not earlier than 12 months before the commencement of the Use Week desired by the Owner.

Under any of the four (4) types of Vacation Ownerships, if for any reason an Owner does not use his or her entire Fixed Week (in the case of Fixed Week/Floating Unit Vacation Ownerships) or assigned Use Week (in the case of Floating Week/Floating Unit Vacation Ownerships), there shall be no accrued or carryover of unused time ("Nights").

b. "Day-Use". In addition to the right granted to each Owner in such Owner's deed to use the amenities in the Common Area (called here the "Common Area Amenities") during such Owner's Use Week, each Owner also shall have the right to "day-use" of the Common Area amenities during such times, other than such Owner's Use Week as shall be stated in the Rules and Regulations. The "Common Area Amenities" shall include the Adult Swimming Pool, Adult Jacuzzi, Family Swimming Pool, Children's Wading Pool, Gym, Sauna, Men's Locker Room, Women's Locker Room, Multi-Use Room, Clubhouse and Lobby, but shall not include the underground parking garage, managers' offices, and the Support Areas, all as identified on the Project Diagram. Such day-use of the Common Area amenities by an Owner at times other than such Owner's Use Week shall be subject to any restrictions and limitations placed on such day use by this Declaration and by the Rules and Regulations, which restrictions and limitations may be modified from time to time.

c. Should Exercise of an Owner's Right Be Prevented. If any Owner is prevented from exercising any of such Owner's rights stated in subsections 2.01 a. or 2.01 b. above by failure of the

Managing Agent or the Association to fulfill its respective obligations to such Owner under this Declaration or the Rules and Regulations, such Owner shall be entitled to receive as compensation for such loss of use, at such Owner's option, (i) a cash payment equivalent to the then fair market rental value for such Owner's Assigned Unit Type; or (ii) the right to use and occupy a Unit of such Owner's Assigned Unit Type during a Use Week in place of the Use Week such Owner was prevented from using, to be mutually agreed upon by such Owner and the Managing Agent and subject to availability of Units of such Assigned Unit Type, at no additional charge but otherwise subject to the terms and conditions of this Declaration and the Rules and Regulations.

2.02 No Use or Occupancy Permitted if Owner is in Breach of Obligations. Notwithstanding anything to the contrary contained in Paragraph 2.01 above, but subject to any applicable procedural requirements set forth in Paragraph 7.02 below, no use or occupancy of a Unit, its Common Furnishings, and/or the Common Area, including the Common Area Amenities, shall be permitted an Owner, if such Owner is in breach of this Declaration or the Rules and Regulations.

2.03 Limited Period of Use and Occupancy. No Owner shall occupy a Unit, use the Common Furnishings therein, and/or use the Common Area during any time period other than his, her or their Use Week, unless expressly authorized by the Owner entitled to occupy the Unit in question during such time period.

2.04 Upkeep of Property and Certain Prohibitions. Each Owner: (i) shall keep his, her or their Assigned Unit and the Common Furnishings therein, in good, clean and neat condition, reasonable wear and tear excepted, and shall not damage or abuse any such property during his, her, or their Use Week; (ii) shall vacate his, her or their Assigned Unit at the expiration of his, her or their Use Week and remove all persons and his, her, or their property therefrom (excluding of course, the Common Furnishings therein); and (iii) shall otherwise comply with such Rules and Regulations as may be in effect at the time. In addition to the above, no Owner shall make or authorize any alterations, additions, or improvements to a Unit and/or to any other portion of the Property or remove, alter, or replace any portion of the Common Furnishings. The right to perform any and all of the foregoing Owner-prohibited acts is hereby delegated to the Association by this Declaration. The foregoing prohibitions, however, are in no way intended to modify or diminish the obligation that each Owner has to keep his Assigned Unit and the Common Furnishings therein, and the Common Area that he, she or they use(s), in good, clean, and neat condition during his, her or their Use Week. Owners are not authorized to enter Support Areas without the prior consent of the Association.

2.05 Use by Others; Owner Still Responsible. An Owner may permit his, her or their Assigned Unit, during his, her or their Use Week, to be occupied by said Owner's Permitted User(s) (but in no event shall the total occupants be in excess of the number of occupants permitted by the Rules and Regulations) for the purposes permitted by this Declaration during such Owner's Use Week, but such Owner shall be responsible for any loss, damage, destruction which occurs to the Unit, the Common Furnishings therein, the Common Area, and/or any other property in or on the Project as a result of such Permitted Use, or as a result of the violation of this Declaration or the Rules and Regulations which may occur during such occupancy, just as if such Owner, had personally occupied the Unit and had used the Common Furnishings therein and/or the Common Area or other property in or on the Project.

2.06 Failure to Vacate. If an Owner or his, her, or their Permitted User (the "Detaining Owner" or "Detaining User") fails to vacate his Assigned Unit at the end of his Use Week, or otherwise makes unauthorized use or occupancy of a Unit, or prevents another Owner, Permitted User, and/or Exchange User (called here the "Detained Owner" or "Detained User") from using or occupying a Unit during such Detained Owner's or User's Use Week, the Detaining Owner and/or Detaining User shall: (i) be subject to immediate removal, eviction, or ejection from the Unit wrongfully used or occupied; (ii) be deemed to have waived any notice required by law with respect to any legal proceedings regarding removal, eviction, or ejection (to the extent that such notices may be waived under California law); (iii) reimburse the Association and the Detained Owner and/or Detained User for all costs and expenses incurred by the latter as a result of such conduct, including but not limited to costs of alternate accommodations, travel costs, court costs, and reasonable attorneys' fees incurred in connection with removing, evicting, or ejecting the Detaining Owner and/or Detaining User from such Unit, and costs (including reasonable attorneys' fees) incurred in collecting such reimbursement(s); and (iv) pay to the Detained Owner and/or the Detained User entitled to use and occupy the Unit during such wrongful occupancy, as liquidated damages (in addition to the costs and expenses set forth above), a sum equal to 200 per cent of the then fair rental value per day of the Unit for each day or portion thereof, including the day of surrender, during which the Detaining Owner and/or Detaining User prevents use and occupancy of such Unit; provided, however, that if the Detaining User is an Exchange User, the Owner whose Use Week was used by the Exchange User shall have no liability pursuant to the provisions of clauses (i) through (iv) above. The Board shall have the sole discretion for determining the "fair rental value" of such a Unit; however "fair rental value" for any such Unit shall be based upon the costs of renting comparable accommodations located in the vicinity of the Property. The Association shall use maximum efforts to attempt to remove such Detaining Owner and/or Detaining User from a Unit, and/or to assist

the Detained Owner and/or Detained User in finding alternate accommodations during any such holdover period and to secure, at the expense of the Association, alternate accommodations for any Detained Owner and/or Detained User, which alternate accommodations shall be as near as possible in value to the value of the Detained Owner's and/or Detained User's Assigned Unit, and the cost thereof shall be assessed to the Detaining Owner (unless the Detaining User was an Exchange User) as a "Personal Charge" (as defined in Subparagraph 6.05 below). In the event that the Association, in its sole discretion, deems it necessary to contract with a holder of outside accommodations for a period greater than the actual period for which the use is being prevented in order to secure alternate accommodations as set forth above, the cost of the entire period shall be assessed to the Detaining Owner as a Personal Charge. By accepting any conveyance of a Vacation Ownership, each Owner agrees that, in the event of a wrongful occupancy or use by him, her, or them or by his, her, or their Permitted User, damages would be impracticable or extremely difficult to ascertain and that the measure of liquidated damages provided for above constitutes fair compensation to those who are deprived of occupancy. If an Owner and/or his, her or their Permitted User(s) by intentional or negligent act renders a Unit uninhabitable for subsequent Use Week(s), then (a) such Owner (and/or Permitted User, if applicable) shall be deemed a Detaining Owner (and/or Detaining User, if applicable); (b) the foregoing provisions of this Paragraph 2.06 shall apply; and (c) such Owner (and Permitted User, if applicable) shall be liable to the Owner(s) and/or Permitted User(s) of a subsequent Use Week(s), just as if such Owner (and Permitted User if applicable) had refused to vacate the Unit at the end of his, her or their Fixed Week(s). For the purposes of this Paragraph 2.06, the act or negligence of a Permitted User shall be deemed to be the act of the Owner authorizing occupancy of the Assigned Unit in question, and both parties shall be deemed liable for such act or negligence.

2.07 Rental of Units.

a. Designated Units.

1. By Owner other than Declarant. Each Owner, other than Declarant, may rent out to members of the public his, her or their Assigned Unit for such Owner's Use Week or a portion thereof, subject to any provisions relating thereto contained in the Rules and Regulations. Rental moneys therefrom shall be the sole property of such renting Owner. The cost of repair or replacement incurred by reason of damage or destruction to a Unit and/or the Common Furnishings therein, and/or to any other portion of the Property, which damage or destruction occurs during and as a result of the lease or rental of such Unit, shall be the responsibility of the Owner renting it.

2. By Association -- "Bonus Time/Rental Use". The Association is authorized at any time to rent out to Owners, on a strictly "first-come/first-served" reservation basis, and to members of the public, Bonus Time/Rental Use in Designated Units as defined in Paragraph 1.22 above. Any such rental shall be solely for the benefit of the Association, and all revenues derived shall be placed in the Association's operating account to be used to defray the costs of operating the Project. Each Owner, by virtue of his, her, or its becoming an Owner of a Vacation Ownership in the Project, understands and acknowledges that rentals of Bonus Time/Rental Use by the Association are primarily made as a convenience to the Owners, giving them the opportunity to enjoy additional time at the Project, and hereby represents that he, she, or it, as the case may be, is not purchasing his, her, or its Vacation Ownership with any intent to in any way profit from the possibility that, as a result of such rentals of Bonus Time/Rental Use, moneys shall accrue to the benefit of the Association and thereby, indirectly, to each Owner, and that no representations from Declarant and/or its agents have been made to any such effect. Procedures for notifying the Owners of available Units and for an Owner's reservation thereof shall be set forth in the Rules and Regulations. The cost of repair or replacement incurred by reason of damage or destruction to a Unit and/or the Common Furnishings therein, and/or to any other portion of the Property, which damage or destruction occurs during and as the result of the rental of such Unit, shall be the immediate responsibility of the Permitted User who rented and took occupancy of said Unit, and where a Unit is rented to a member of the public the ultimate responsibility for such damage or destruction shall lie with the Association.

(a) When an Owner reserves a Unit for Bonus Time/Rental Use, he or she shall pay a reasonable rental fee, which shall be fixed from time to time by the Association. The Association shall limit such rental fees to the proportionate cost of its operating such Unit for the period of Bonus Time/Rental Use in question. All rental revenues generated by Bonus Time/Rental Use of Units shall be deposited in the general account of the Association to defray the Project's operating expenses.

(b) Reservations for Bonus Time/Rental Use can only be made 21 days or less prior to Check-in-Time on the date which such reservation is sought.

(c) An Owner may only have one (1) Bonus Time/Rental Use reservation pending at a time for each Use Week he or she owns.

(d) An Owner may cancel a Bonus Time/Rental Use reservation up to 24 hours in advance of Check-in-Time on the first day of the Bonus Time/Rental Use Week so reserved without penalty. In the event, however, that an Owner's Bonus Time/Rental

Use reservation is canceled 24 hours or less prior to Check-in-Time on the first day of the period reserved, he or she shall be charged for Bonus Time/Rental Use for the initial day, and the reservation thereafter will be canceled.

(e) The Association also has a policy called "Blue Monday/Blue Tuesday". This is a policy/opportunity by which more Bonus Time/Rental Use is made available to Owners. At any time after 48 hours following an Owner's scheduled Check-in Day, if such Owner has not checked-in or made arrangements for late check-in, the balance of that Owner's Use Week shall be made available for Bonus Time/Rental Use to other Owners.

b. Nondesignated Units - Declarant's Right to Rent. Declarant reserves full right, authority and power to lease or rent out at any time to members of the public any or all of the Nondesignated Units. Any rental moneys collected from such rentals shall belong entirely to Declarant. The cost of repair or replacement incurred by reason of damage or destruction to a Unit and/or the Common Furnishings therein, and/or to any other portion of the Property, which damage or destruction occurs during and as the result of the lease or rental of such Unit, shall be the responsibility of the Declarant.

c. All Lease or Rental Agreements to Be in Writing. All leases and rentals of a Unit shall be subject to the restrictions of this Declaration and the then current Rules and Regulations. Except Bonus Time/Rental Use as described in Subparagraph 2.07 a. 2. above, each lease or rental of a Unit shall be in writing and shall, among other things, expressly provide that it is subject to all of the covenants, conditions, and restrictions of this Declaration and the Rules and Regulations, and that failure to use and occupy the Unit, the Common Furnishings therein, and/or any other portion of the Property in accordance with the foregoing shall be a default under the lease or rental agreement.

2.08 Easements and Certain Other Rights Reserved by Declarant or by Continental Commercial Corporation to Which Owners Take Subject.

a. Easements Reserved by Declarant with Respect to Development. Declarant, on behalf of itself, its successors and/or assigns, and its and their respective agents, employees, concessionaires, contractors, subcontractors, invitees, patrons, and authorized personnel, has reserved, for the respective terms provided for below, certain nonexclusive easements in gross to Declarant, its successors and assigns, and its and their respective agents, employees, concessionaires, contractors, subcontractors, invitees, patrons, and authorized personnel, to, from, over, under, across and through the Property for the following purposes:

(1) For doing and performing all acts related to constructing, completing, and/or repairing the Project, including without limitation, maintaining temporary construction-related structures and operating and storing construction equipment, tools, and vehicles;

(2) For enabling the discharge of any duty of Declarant, and any of Declarant's successors and/or assigns, under this Declaration or under any Purchase Agreement, or as otherwise may be imposed by law;

(3) For offering for sale, selling, leasing, renting, or otherwise transferring any Vacation Ownership in any Unit in the Property or in any vacation ownership unit upon any Annexed Property (including any Vacation Ownership reacquired by Declarant through foreclosure or a deed-in-lieu of foreclosure);

(4) For maintaining customer relations and for providing post-sale service to Owners;

(5) For displaying signs and erecting, maintaining, and operating, in connection with sales of Vacation Ownerships and for administrative purposes, both as to Units in the Property and units upon any Annexed Property, model units, and a customer service, sales office and/or administration office complex;

(6) For showing unoccupied Units and the Common Area in both the Property and in any Annexed Property to prospective purchasers, lessees, tenants, business visitors and/or guests; and

(7) For having and providing switchboard, registration, laundry, mail, and maintenance services in and to the Property, and in and to any Annexed property, prior to such services being provided by the Association.

Declarant covenants to use each of the above easements in a manner that will reasonably minimize any adverse impact therefrom upon the possession, use, and enjoyment of the Project by the Owners.

The terms (duration) for each of the above listed easements shall commence from the date of recordation of this Declaration in the Official Records of San Diego County, California (called here the "Commencement Date"), and shall continue:

-- As to the easements referred to in number (1) above, until the earliest of: (i) 10 years from the Commencement Date, or (ii) the date upon which all Vacation Ownerships in the Property have been sold (and their escrows closed) by Declarant and/or its successors and assigns if any, and all security interests (such as deeds of trust) representing security held by Declarant and/or its

successors and assigns, if any, for credit sales of Vacation Ownerships have been released or reconveyed; and

-- As to the easements referred to in numbers (3), (5), (6), and (7) above, until the earliest of: (i) 10 years from the Commencement Date, unless Declarant has recorded during said 10 year-period in the Official Records of San Diego County, California, a Declaration of Annexation as described in Article 14 of this Declaration, by which, the Declaration may be imposed on any remaining Annexable Property, or (ii) if Declarant has recorded the foregoing Declaration of Annexation, until the earliest of 10 years from the date of recordation of any such Declaration of Annexation, or the date upon which all vacation ownerships in any such Annexed Property have been sold (and their escrows closed) by Declarant and/or its successors and assigns, if any, and all security interests (such as deeds to trust) representing security held by Declarant and/or its successors and assigns, if any, for credit sales of such vacation ownerships have been released or reconveyed; and

-- As to the easements referred to in numbers (2) and (4) above, for the duration of the Project.

b. Limited Encroachment Right and Special Power of Attorney in Favor of Continental Commercial Corporation. Each Vacation Ownership is accepted subject to the Encroachment Easements and all rights and powers granted under that certain Special Power of Attorney, which were reserved and retained by Continental Commercial Corporation, a California corporation (and the General Partner of Grantor herein), under Paragraph 1. of the "SPECIAL RESERVATIONS" provisions contained in its Grant Deed of certain real property including the Project Property described in Exhibit "A" to Schedule 1 attached thereto, to Grantor herein (Carlsbad Seapointe Resort L.P.) recorded in the Office of the Recorder of San Diego County, San Diego, California, on May 31, 1995, as Document No. 1995-0226432, as has been or will be subsequently re-recorded with certain changes made thereto (called here, the "Continental Commercial Corporation Deed").

The above referred to Paragraph 1. of these SPECIAL RESERVATIONS provisions contained in the Continental Commercial Corporation Deed provides as follows:

1. **RESERVATION FOR LIMITED ENCROACHMENTS.**

(a) Encroachment Easements. Grantor [Continental Commercial Corporation] reserves for itself and for its successors and/or assigns, if any, as may be the case (and only for itself and for its successors and/or assigns, if any, and not for any other persons

or entities) in connection with its or their constructing in the future any buildings, structures, and other improvements (called here "Improvements") upon any portion of either or both of those two (2) parcels of real property which are legally described on Exhibit "B" attached hereto and made a part hereof and are called therein, respectively, "Annexable Property # 1" and "Annexable Property # 2":

(1) exclusive easements authorizing and enabling the legal encroachment (called here an "Encroachment") of any portion of any such Improvements, including the right to actually enter upon the Exhibit "A" Property and construct such encroaching Improvements, upon, over, under, across, and through the Exhibit "A" Property, and retaining for itself and/or themselves such other exclusive easements and rights as may be reasonably related thereto (collectively called here the "Encroachment Easements," or singularly an "Encroachment Easement"); and

(2) the right to formally grant, as need may arise, such encroachment easements of the same type as the Encroachment Easements described under (1) above to itself, and/or to its successors and/or assigns, if it or any such successor or assign should acquire Annexable Property # 1 and/or Annexable Property #2.

Each such Encroachment Easement shall be for the benefit of and appurtenant to Annexable Property # 1 to the extent Improvements are constructed on Annexable Property #1 which encroach upon the Exhibit "A" Property, and for the benefit of and appurtenant to Annexable Property #2 to the extent Improvements are constructed on Annexable Property #2 which encroach upon the Exhibit "A" Property. Such Improvements may include, but are not necessarily be limited to, buildings which contain timeshare units, underground parking garage structures, and utility conduits and receptacles, and landscaping.

(b) Rights Regarding Boundary Adjustments, Lot Consolidations, and/or Certificates of Compliance. In connection with, or in lieu of the need for, any such Encroachment Easement, or for some of such Encroachment Easements, Grantor, for itself and for its successors and/or assigns, if any, as may be the case, hereby reserves the right to act on behalf and in place of all then owners (that is, owners at the time such Improvements are being constructed) of the Exhibit "A" Property to initiate, apply for approval with each appropriate governmental entity or agency, cause to be obtained, and put into effect, any such number of legal boundary adjustments ("Boundary Adjustments"), lot consolidations, ("Lot Consolidations"), and/or certificates of compliance ("Certificates of Compliance") which would change the boundaries between this Exhibit "A" Property and Annexable Property # 1 and/or between this Exhibit "A" Property and Annexable Property # 2, in order to include within the boundaries of Annexable Property #1 and/or Annexable Property # 2, as the case may be, any such Improvements which would otherwise constitute Encroachments into this Exhibit "A" Property, as Grantor, and/or its successors and/or assigns may consider beneficial for both Annexable Property # 1 and/or Annexable Property # 2, and the Exhibit "A" Property.

(c) Limitations on Foregoing Rights: Notwithstanding anything in the foregoing to the contrary with respect to the above referred to Encroachment Easements and/or Boundary Adjustments, Lot Consolidations, and/or Certificates of Compliance:

(1) They shall affect only three (3) areas within the Exhibit "A" Property;

(2) the three (3) approximate areas within the Exhibit "A" Property which shall be subject to (affected by) such Encroachment Easements, Boundary Adjustments, Lot Consolidations, and/or Certificates of Compliance are legally described on Schedule "1" attached hereto and made a part hereof, and are called here, respectively, Parcel "A"

(on page 1 of Schedule "1"), Parcel "B" (on page 2 of Schedule "1") and Parcel "C" (on page 3 of Schedule "1");

(3) the approximate maximum size of each of these three (3) respective Parcels is, as to Parcel "A": 0.08 acres; as to Parcel "B": 0.025 acres; and as to Parcel "C": 0.013 acres (for an approximate maximum aggregate area of 0.118 acres (or approximately 5,140 square feet);

(4) the approximate relative location of each of these three (3) Parcels within the Exhibit "A" Property is as indicated on the plat attached as page 4 to Schedule "1";

(5) with specific reference to Parcel "A" (which is or will presently be used as a landscaping portion of the Common Area), the Parcel "A" property will, upon any development of Annexable Property # 2, be used for the purpose of extending an underground parking garage, and upon completion of the garage extension, the surface of this Parcel "A" property shall be fully restored to its use as a landscaping area;

(6) with specific reference to Parcel "B" (which is or will presently be used as a landscaping portion of the Common Area), the Parcel "B" property will, upon any development of Annexable Property # 1, be used for the purpose of containing a slight encroaching portion of a building comprised of timeshare units; and

(7) with specific reference to Parcel "C" (which is or will presently be used as a landscaping portion of the Common Area), the Parcel "C" property will, upon any development of Annexable Property # 1, be used for the purpose of containing a slight encroaching portion of a building comprised of timeshare units and an underground parking garage.

(d) Reservation and Grant of Special Power of Attorney. To facilitate and accommodate the making and obtaining from the

appropriate governmental entity or agency of any such Boundary Adjustment, Lot Consolidation, and/or Certificate of Compliance, or the granting of any such Encroachment Easement to Grantor (Continental Commercial Corporation), and/or to Grantor's successors and/or assigns, if Grantor or any such successor or assign should acquire Annexable Property # 1 and/or Annexable Property # 2, and/or to enable the doing by Grantor and/or by any of Grantor's successors and/or assigns of any other act in connection with any such Boundary Adjustment, Lot Consolidation, and/or Certificate of Compliance, and/or any Encroachment Easement which may by its nature or by law, require the authority, approval, and/or signatures of the owners of any portion of this Exhibit "A" Property, Grantee herein, by its acceptance of this Deed, hereby, for itself, and for each of Grantee's deed of trust holders, optionees, grantees (including, but not limited to, each grantee who acquires from Grantee a vacation ownership in any portion of the Exhibit "A" Property, and each successive owner of each such vacation ownership), licensees, trustees, receivers, judgment creditors, legal representatives, successors, and/or assigns, whether voluntary or involuntary, gives and grants to the Grantor, and to Grantor's successors and/or assigns, the Special Power of Attorney set forth above in this Deed.

In connection with the foregoing, each Owner of a Vacation Ownership understands and acknowledges that Continental Commercial Corporation shall most likely have the occasion and need to exercise the foregoing Special Power of Attorney, and that by its terms, Continental Commercial Corporation may exercise this Special Power of Attorney on behalf of each such Owner acquiring a Vacation Ownership from Declarant and each and every successive Owner of such Vacation Ownership for all the purposes set forth in its terms.

c. Limited Right to Use Timeshare Units in Favor of Continental Commercial Corporation. Each Vacation Ownership is further accepted subject to the limited right to use Vacation Ownership Units in the Project Property described in Exhibit "A" to Schedule 1 which were reserved and retained by Continental Commercial Corporation under Paragraph 2. of the **SPECIAL**

RESERVATIONS provisions contained in the Ccntinental Commercial Corporation Deed referred to above.

The above referred to Paragraph 2. of these SPECIAL RESERVATIONS provisions contained in the Continental Commercial Corporation Deed provides as follows:

2. RESERVATION FOR LIMITED USE OF TIMESHARE UNITS. Further, in the event and upon the condition that Grantor [Continental Commercial Corporation] and/or its successors and/or assigns should develop any portion of either Annexable Property # 1 and/or Annexable Property # 2, as legally described on Schedule "1" attached hereto, and offer for sale and sell vacation ownerships therein, Grantor reserves for itself and for its successors and/or assigns, if any, as may be the case (and only for itself and for its successors and/or assigns, if any, and not for any other persons or entities), non-exclusive easements in gross to use and occupy the timeshare units in the timeshare project to be developed upon a portion of the Exhibit "A" Property, to use the common furnishings in these units, and to use the common area in such timeshare project, which rights of such non-exclusive use and/or occupancy Grantor and/or its successors and/or assigns may assign to another owner(s) of, and/or to its or their grantees of vacation ownerships in any portion of Annexable Property # 1 and/or Annexable Property # 2, so long as reciprocal non-exclusive rights to use and occupy timeshare units, the common furnishings therein, and the common area in any portion of Annexable Property # 1 and/or Annexable Property # 2 developed for timeshare project use, are concurrently given to the owners of vacation ownerships in the timeshare project to be built upon the Exhibit "A" Property; provided, however, in no event shall any such retention of these rights by Grantor and/or its assignment of such rights to any owner of any interest in any portion of Annexable Property # 1 and/or Annexable Property # 2 disturb any right of any owner of a vacation ownership in any portion of the Exhibit "A" Property to use and enjoy a timeshare unit in this Exhibit "A" Property, as provided for in the Declaration of Covenants, Conditions, and Restrictions for

Vacation Ownerships in Carlsbad Seapointe Resort which relates to this Exhibit "A" Property.

d. View Impairment Right in Favor of Continental Commercial Corporation. Each Vacation Ownership is further accepted subject to the rights to impair and/or obstruct various views from various Vacation Ownership Units in the Project Property described in Exhibit "A" to Schedule 1 which were reserved and retained by Continental Commercial Corporation under Paragraph 3. of the **SPECIAL RESERVATIONS** provisions contained in the Continental Commercial Corporation Deed referred to above.

The above referred to Paragraph 3. of these **SPECIAL RESERVATIONS** provisions contained in the Continental Commercial Corporation Deed provides as follows:

3. **RESERVATION REGARDING VIEW IMPAIRMENT.** Further, in the event and upon the condition that Grantor [Continental Commercial Corporation] and/or its successors and/or assigns should develop any portion of either Annexable Property # 1 and/or Annexable Property # 2, as legally described on Schedule "1" attached hereto, for timeshare project use, and actually construct timeshare units thereon, and offer for sale and sell vacation ownerships therein, Grantor reserves for itself and for its successors and/or assigns, if any, and for its or their respective agents, employees, contractors and subcontractors, as may be the case (and only for itself and for its successors and/or assigns, if any, and not for any other persons or entities except as above stated), the exclusive right for the benefit of any such portion of Annexable Property # 1 and/or Annexable Property # 2 developed for timeshare project use, to impair and/or obstruct various views from various timeshare units constructed upon the Exhibit "A" Property.

e. Certain Other Rights in Favor of Continental Commercial Corporation in Connection with Development of the Annexable Property. Each Vacation Ownership is further accepted subject to the limited rights relating to development of the Annexable Property which were reserved and retained by Continental Commercial Corporation under Paragraph 4. of the **SPECIAL RESERVATIONS** provisions contained in the Continental Commercial Corporation Deed referred to above.

The above referred to Paragraph 4. of these **SPECIAL RESERVATIONS** provisions contained in the Continental Commercial Corporation Deed provides as follows:

4. **RESERVATION OF CERTAIN OTHER RIGHTS IN CONNECTION WITH DEVELOPMENT OF ANNEXABLE PROPERTY.** Further, in the event and upon the condition that Grantor and/or its successors and/or assigns should develop any portion of either Annexable Property # 1 and/or Annexable Property # 2, as legally described on Schedule "1" attached hereto, for timeshare project use, for the respective terms provided for below Grantor reserves for itself, its successors and assigns, and its and their respective agents, employees, concessionaires, contractors, subcontractors, invitees, patrons, and authorized personnel, certain non-exclusive easements in gross to, from over, under, across, and through the Exhibit "A" Property for the following purposes:

(1) For doing and performing all acts related to the possible imposition of that certain Declaration of Covenants, Conditions and Restrictions for Vacation Ownerships in Carlsbad Seapointe Resort recorded in the Office of the Recorder of San Diego County, San Diego California [referring to the Declaration containing this excerpt], and any and all amendments which may be made thereto (collectively, the "Declaration") upon any portion of the Annexable Property, including, without limitation, temporarily utilizing portions of the common area of the Exhibit "A" Property for storing construction equipment, tools, and vehicles, making and constructing road and/or garage connections and link-ups and/or other forms of connections of various utilities and improvements between the Exhibit "A" Property and any portion of any Annexed Property, and for enabling the construction of any expansion and/or enlargement of any facilities then existing upon the Exhibit "A" Property in connection with improving, unifying, and maximizing the resort-potential of the Property and the Annexable Property as a whole;

(2) For offering for sale, selling, leasing, renting, or otherwise transferring any vacation ownership in any unit in the project on the Exhibit "A" Property or in any vacation ownership unit upon any Annexed Property (including any vacation ownership reacquired by Grantee or Continental Commercial Corporation through foreclosure or a deed-in-lieu of foreclosure);

(3) For maintaining customer relations with and for providing post-sale service to owners of vacation ownerships in any portion of the Annexed Property;

(4) For displaying signs and erecting, maintaining, and operating, in connection with sales of vacation ownerships and for administrative purposes, both as to units in the Exhibit "A" Property and units upon any Annexed Property, model units, and a customer service, sales office and/or administration office complex;

(5) For showing unoccupied units and the common area in both the Exhibit "A" Property and in any Annexed Property to prospective purchasers, lessees, tenants, business visitors and/or guests; and

(6) For having and providing switchboard, registration, laundry, mail, and maintenance services in and to the Exhibit "A" Property, and in and to any Annexed property, prior to such services being provided by the Association.

Continental Commercial Corporation covenants to use each of the above easements in a manner that will reasonably minimize any adverse impact therefrom upon the possession, use, and enjoyment of the project on the Exhibit "A" Property by owners of vacation ownerships therein. The terms for each of the above listed easements shall commence from the date of recordation of the Declaration in the Official Records of San Diego County, California (called here the "Commencement Date"), and shall continue:

-- As to the easements referred to in numbers (1), (3), (4), (5) and (6) above, until the earliest of: (i) 10 years from the Commencement Date, or (ii) if Grantor has recorded during said 10 year-period in the Official Records of San Diego County, California, a Declaration of Annexation as described in Article 14 of the Declaration, by which, the Declaration may be imposed on any Annexable Property, until the earliest of 10 years from the date of recordation of any such Declaration of Annexation, or the date upon which all vacation ownerships in any such Annexed Property have been sold (and their escrows closed) by Grantor and/or its successors and assigns, if any, and all security interests (such as deeds to trust) representing security held by Grantor and/or its successors and assigns, if any, for credit sales of such vacation ownerships have been released or reconveyed; and

-- As to the easements referred to in number (2) above, for the duration of any timeshare project to be constructed upon any portion of the Annexed Property.

f. Certain Rights in Favor of Continental Commercial Corporation to Use (1) The Exchange Office, (2) The Video/Vending Room, (3) The Food/Service/BBQ Area, and (4) The Car Rental Desk in project. Each Vacation Ownership is further accepted subject the rights to use (1) the exchange office, (2) the video/vending room, (3) the food/service/BBQ area, and (4) the car rental desk to be constructed upon the Project Property described on Exhibit "A" to Schedule 1, which rights were reserved and retained by Continental Commercial Corporation under Paragraph 5. of the **SPECIAL RESERVATIONS** provisions contained in the Continental Commercial Corporation Deed referred to above.

The above referred to Paragraph 5. of these **SPECIAL RESERVATIONS** provisions contained in the Continental Commercial Corporation Deed provides as follows:

5. RESERVATION OF RIGHTS TO USE (1) THE EXCHANGE OFFICE, (2) THE VIDEO VENDING ROOM, (3) THE FOOD SERVICE/BBQ AREA, AND (4) THE CAR RENTAL DESK TO BE CONSTRUCTED UPON THE EXHIBIT "A" PROPERTY. Further, in connection with Grantee's forthcoming development of any portion of the Exhibit A" Property into a

timeshare project, for the duration of any such timeshare project (currently designated to be named "Carlsbad Seapointe Resort"), Grantor reserves exclusive easements in gross for itself and its successors and assigns, and its and their respective agents, employees, concessionaires, contractors, subcontractors, invitees, patrons, and authorized personnel, to use and occupy for business purposes, and to have ready access, both for persons and utilities, to and from, and to have the right to bring utilities to, and use them on, the following portions of the Common Area, each such portion being identified and so labeled upon the Project Diagram attached as Exhibit "C" to the Declaration (as defined above in Paragraph 4.) and by this reference made a part hereof: (1) the Exchange Office, (2) the Video/Vending Room, (3) the Food Service/BBQ area, and (4) the Car Rental Desk (located in the Lobby portion of the Common Area). Each of the foregoing easements shall be freely assignable and transferable by Grantor and any of Grantor's successors and/or assigns. Additional understandings relating to these easements are as provided in that certain Easement Agreement between Grantor and the Carlsbad Seapointe Resort Owners Association, Inc., a California non-profit mutual benefit corporation, to be recorded concurrently with the [herein] Declaration in the Office of the Recorder of San Diego County, San Diego, California.

g. Owner's Acknowledgment of Easement Rights. Each Owner acquiring a Vacation Ownership referred to in this Declaration accepts his, her or its Vacation Ownership subject to each of the easement rights in favor of Declarant and Continental Commercial Corporation provided for in this Paragraph 2.08.

h. Indemnification of Owners. Declarant, for itself, and for each and every successor in interest, if any, hereby agrees

to indemnify each Owner against, and hold each Owner harmless from, any and all claims, liabilities, and demands of any sort, which may arise against any such Owner out of the use by Declarant or Continental Commercial Corporation, and/or any of their respective successors in interest, and/or respective agents, employees, contractors, and subcontractors, of any of the easements reserved in this Paragraph 2.08.

2.09 Use of Support Areas by the Association. The Association shall have the exclusive right to use the Support Areas designated on the Project Diagram and shall be responsible for maintaining the same in good condition and repair. Owners shall not enter Support Areas without the prior consent of the Association.

2.10 Maintenance Week. Maintenance Weeks are those periods of time, occurring during each Use Year during which regular maintenance to the Units is to be made. The Association is given the exclusive right to possess each Unit during its respective Maintenance Weeks and/or to rent out such Unit to Owners or to members of the public during such Maintenance Weeks when repairs and maintenance to the Unit are not at that time required, as provided for in Subparagraph 2.07 a. 2. above.

2.11 Transfer of Vacation Ownership. No Owner shall sell, convey, hypothecate, or encumber less than all of his, her, its, or their Vacation Ownership. Any sale, conveyance, hypothecation, or encumbrance by any Owner of less than all of such Ownership shall be null, void, and of no effect. The transfer of any Ownership shall operate to transfer to a new Owner any and all interest of the prior Owner in all funds in the hands of the Association, even if not expressly mentioned or described in the instrument(s) of transfer and without further instrument of transfer.

2.12 Right to Mortgage Vacation Ownership and First Mortgagee Safety. Each Owner shall have the right to mortgage or otherwise encumber all, but not less than all, of his, her, its, or their Vacation Ownership. Any mortgage shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, assignment in lieu of foreclosure, tax deed or otherwise. Notwithstanding any other provisions of this Declaration, no breach of the provisions herein contained, nor the enforcement of any lien created pursuant to the provisions hereof shall defeat or render invalid the lien of any first Mortgage upon any Vacation Ownership, so long as such first Mortgage has been recorded in the Official Records, of San Diego County, California, and has been given in good faith and for value.

2.13 Subordination of Tenancy-in-Common Attributes. It is intended that this Declaration, the Articles, the Bylaws, the Rules

and Regulations, and the Original Deeds shall be determinative with respect to the use, possession, enjoyment, management, and disposition of the Property and the Vacation Ownerships therein. Any rights which an Owner might otherwise have as a tenant-in-common (including, but not limited to, any common law or statutory right jointly to use, possess, or manage commonly owned property), are hereby unconditionally and irrevocably subordinated to this Declaration for so long as this Declaration shall remain in effect.

2.14 No Partition Rights. Except as provided in Paragraph 12.02 below, no Owner or other person or entity acquiring any right, lien, or interest in any Unit in the Project shall seek or obtain, through any legal procedures, judicial partition of such Unit or the sale thereof in lieu of partition. If, however, any Vacation Ownership is owned by two or more persons as tenants-in-common, joint tenants, or community property, nothing herein contained shall prohibit a judicial sale of such Ownership in lieu of partition as between such co-tenants or joint tenants.

2.15 Owners' Obligations to Pay Taxes. Each Owner shall be obligated to pay all property taxes, assessments, and other charges (real or personal) related to his, her, its or their Vacation Ownership. If these taxes have not been segregated by the County Assessor of San Diego County, and billed separately to each Owner, and are instead, assessed only against the Association or the Project as a whole, they shall be deemed a Basic Expense of the Association and shall be paid for from moneys raised by the Regular Annual Assessments.

2.16 Common Furnishings Acquired by Association. The Association shall acquire from time to time and hold, for the benefit of the Owners, tangible and intangible personal property (defined broadly as "Common Furnishings") and may dispose of such property by sale or otherwise.

2.17 Right to Enter Other Units. Any Owner, or the Managing Agent or its agents, may enter any Unit at any time, without having to give notice to the occupant(s) thereof, in order to abate any nuisance or any suspected dangerous, unauthorized, prohibited, or unlawful activity being conducted or maintained therein, or to assist in the event of any emergency involving illness or existing or potential danger to life or property. Any such right of entry shall be exercised in such a manner as to avoid any unreasonable interference with the use and occupancy of the Unit in question.

2.18 Indemnification of Owners and Association. Each Owner shall be liable to the other Owners and/or the Association, as their respective interests appear, for any damage to the Units, the Common Furnishings, and/or any other portion of the Property that may be sustained by reason of the negligence or willful act of that Owner, and/or his Permitted User(s), to the extent that any such

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damage is not covered by insurance maintained by the Association. Each Owner, for himself, herself, itself and themselves and for such Owner's Permitted User(s), agrees to indemnify each and every other Owner and the Association, and to hold them harmless from, and to defend them against, any claim of any person for personal injury or property damage arising out of such Owner's or Permitted User's use and occupancy rights. Nothing in the foregoing shall be deemed to preclude the Association's purchase of insurance, on behalf of the Owners, which covers said risks.

2.19 Payment of Distributable Net Proceeds to Owners. Distributable Net Proceeds (defined in Paragraph 1.36) from any source, shall be distributed and paid by the Association to each Owner as follows: (a) Each Annual Owner shall receive 1/3978th of the aggregate amount of Distributable Net Proceeds then to be distributed for each Annual Ownership owned by such Owner; and (b) Each Biennial Owner shall receive one-half (1/2) of 1/3978th of the aggregate amount of Distributable Net Proceeds then to be distributed for each Biennial Ownership owned by such Owner; such amounts to be less any amount due the Association by such Owner, including, without limitation, any unpaid Assessments, and less any taxes due to any governmental authority, and subject further to the rights of any mortgagee(s) of such Owner. Notwithstanding anything in the foregoing to the contrary, where some Nondesignated Units remain in the Project at the time of the event giving rise to receipt by the Association of the proceeds in question, the Distributable Net Proceeds in such instance shall be distributed and paid as follows: (i) the portion thereof fairly allocable to the Designated Units shall be distributed and paid to each Owner, including Declarant as to Declarant Vacation Ownerships, as previously described and (ii) the portion thereof fairly allocable to the Nondesignated Units shall be distributed and paid to Declarant. If the Owners (excluding Declarant) and Declarant are unable to agree upon what is "fairly allocable," as that phrase is used above, such issue shall be determined by arbitration in accordance with Subparagraph 12.2 h. below.

2.20 Specific Use Restrictions. In addition to all of the other restrictions herein contained, the use of any portion of the Project, including, without limitation, the Common Area and the Units therein, is subject to the following conditions:

a. Use of Units. Each Unit shall be used strictly for the habitation and enjoyment of the Owners of Vacation Ownerships and their Permitted Users; provided, however, Declarant, and its successors and/or assigns, may use any Units as display models and/or as a sales office complex in connection with offering for sale Vacation Ownerships to the public, and any such Unit or Units may be used as Declarant's office for administering construction of the Project or other affairs of the Project, as provided more specifically in Paragraph 2.08 above.

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b. No Nuisances. No noxious, illegal, or offensive activities shall be carried on in any Unit or on any other part of the Project, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each Owner's respective Unit or of the Common Area, or which shall in any way increase the rate of insurance for any part of the Project, or cause any insurance policy to be canceled or cause a refusal to renew any such policy.

c. Signs. No sign of any kind shall be displayed for public view from any Unit therein or from the Common Area without the approval of the Board, except that signs, billboards, and other advertising devices or structures used by Declarant in connection with advertising for sale and selling Vacation Ownerships are expressly permitted.

d. No Animals. No animals of any kind shall be raised, bred, or kept in any Unit or on any other portion of the Property.

e. Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Units and from the Project, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall be kept in sanitary containers.

f. Antennae; External Fixtures. No television or radio poles, antennae, flag poles, or other external fixtures, other than those originally installed by Declarant or approved by the Board, and replacements thereof, shall be constructed, erected or maintained on or within the Common Area or any Unit.

g. No Clotheslines. No exterior clotheslines shall be erected or maintained anywhere on the Project, nor shall outside laundering or drying of clothes be permitted anywhere on the Project.

h. No Car Maintenance. No car maintenance of any nature, except for short-term emergency repairs, shall be permitted on the Project.

i. Compliance with Declaration. Each Owner and/or Permitted User of any Unit shall comply with the provisions of this Declaration and any Rules and Regulations made pursuant thereto.

2.21 Open Space Restriction Along Slope. No development, alteration of land forms, and/or removal of vegetation shall be permitted on the north edge slope on the Property, except for landscaping as may be approved by the California Coastal Commission.

2.22 Landscape Plans. All landscaping upon the Project shall be consistent with the landscape plan approved by the California

Coastal Commission for the Project, which includes planting of specimen trees compatible with the natural character of the area, with varying degrees of height and canopy to break up the westfacing building facade as viewed from Carlsbad Boulevard and the beach.

2.23 Exterior Color of Buildings. Any and all future modifications to the exterior of the building on the Project shall be done with materials of natural earthen tones including deep shades of grays, greens and browns similar to the initial color and materials, with no white or light shades except minor accents, to insure that the Resort harmonizes with the surrounding scenic natural areas.

ARTICLE 3

PROTECTION OF THE PROPERTY FROM LIENS

3.01 Vacation Ownerships and Property to Be Maintained Free of Liens. Except as provided in Paragraph 2.12 above, no Owner shall permit his, her, its or their Vacation Ownership to be subject to any lien (other than the liens of current real property taxes), claim or charge, the enforcement of which may result in a sale or threatened sale of the Property, or any portion thereof, and/or the Common Furnishings or any portion thereof, and/or the Vacation Ownership of any other Owner, or in any interference in the use or enjoyment of the Property and/or Common Furnishings by any other Owner. In the event of a threatened sale of the Property, Common Furnishings or any portion thereof, or the Vacation Ownership of any Owner, or any part thereof, or should the use and enjoyment of any portion of the Property and/or the Common Furnishing by any Owner be threatened by reason of any such lien, claim, or charge against the Vacation Ownership of an Owner, or should proceedings be instituted to effect such a sale or interference, any Owner or Owners, acting on behalf of any one or more Owners, or the Association acting on behalf of all Owners may, but shall not be required to, pay or compromise the lien, claim, or charge without inquiring into the proper amount or the validity thereof. In such event, the responsible Owner(s) whose Vacation Ownership(s) was subjected to such lien, claim, or charge shall forthwith pay the amount so paid or expended to the other Owner(s) and/or Association, whomsoever shall have paid or compromised such lien, claim, or charge, together with such reasonable attorneys' fees and related costs as may have been incurred. If the Association paid the lien, claim, or charge, it shall levy a Special Assessment against the responsible Owner(s) whose interest(s) was subjected to such claim, lien, or charge for the amount so paid, together with such reasonable attorneys' fees and related costs as may have been incurred. Furthermore, no Owner shall permit his, her, its, or their interest in any funds from time to time in the possession of the Association, to be subjected to any attachment, lien, claim, or

charge or other legal process; and each Owner shall promptly restore any funds held by the Association with respect to his, her, its or their Vacation Ownership to the extent depleted by reason of the assertion of any such attachment, lien, claim, charge, or other legal process and shall reimburse the Association for all reasonable attorneys' fees or other costs incurred with respect thereto.

3.02 Association to Defend Certain Actions. In the event that a lawsuit is brought against all or substantially all of the Owners which will or could result in a lien, claim, charge, or other encumbrance being levied against all or any portion of the Property and/or the Common Furnishings, and/or against the Vacation Ownership(s) of such Owners, the Association shall promptly cause such lawsuit to be defended and/or settled, and all costs of such defense and/or settlement shall be made a Special Assessment to be levied against all of the Owners joined as defendants in such lawsuit; provided, however, in the event that an insurance carrier is obligated to provide such defense under a policy of insurance carried by the Association, the Association shall be relieved of the obligation to provide such defense. Nothing contained herein shall in any way limit the rights of any such Owner(s) to retain counsel of his, her, its or their choice and expense to represent such Owner(s) in such lawsuit, but in such event, such Owner shall not be relieved of liability for the Special Assessment provided for in this paragraph.

3.03 Payment of Lien. In the event that a lien or encumbrance not covered by California Civil Code Section 1357 (pertaining to mechanics' liens) or any successor statute thereof attaches to all or any portion of the Property and/or the Common Furnishings by reason of a judgment or otherwise, the Association shall promptly take the appropriate steps to remove such lien, including, but not limited to, the payment of money and/or the posting of a bond. The Association shall have the power to borrow money and to take such other steps as are necessary to free the Property and/or the Common Furnishing from such liens. Simultaneously with any action taken pursuant to this paragraph, the Association shall levy a Special Assessment against (i) those Owners whose acts or omissions to act caused the lien to be attached to the Property and/or the Common Furnishing, to be paid by each such Owner on a pro rata basis, or (ii) all Owners, if the lien in question was not incurred by acts or omissions to act of any particular Owners, any such Special Assessment to be in the amount of all costs which were incurred by the Association in removing such lien.

3.04 Reimbursement to Association. Upon the Association's taking any of the actions (including, without limitation, paying moneys to defend against lawsuits and paying liens, claims, charges) under this article to prevent threatened liens, claims, or charges from being imposed against any portion of the Property

and/or the Common Furnishing and/or against Vacation Ownerships, or to remove said liens, claims, or charges once they have become attached thereto, the Association, notwithstanding anything in this Article to the contrary, shall have the right to levy Special Assessments to recoup such moneys paid out, against every Owner and not only against the particular Owners referred to in Paragraphs 3.01, 3.02, and 3.03 above (called here the "Responsible Owners"), in those instances where the Association believes that such Special Assessments against all Owners would be in the best financial interests of a majority of all Owners. In such event, however, the Association shall still be required to independently levy Special Assessments against the Responsible Owners for recoupment of such moneys.

ARTICLE 4

THE ASSOCIATION

4.01 Association. Administration and control of the Project and the Use Program, including the services to be made available to Owners, shall be vested in the Association, effective upon recordation of the Original Deed evidencing the initial completed sale and conveyance by Declarant of a Vacation Ownership.

4.02 Membership in Association. Each Owner, including Declarant as to all Declarant Vacation Ownerships, shall be a Member of the Association and shall remain a Member thereof until he, she, or it ceases to be an Owner. Ownership of any Vacation Ownership shall be the sole qualification for Membership. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exhaustive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws, and the Rules and Regulations to the extent that the provisions thereof are not in conflict with this Declaration.

4.03 Transfer of Membership. The Membership of each Owner in the Association is appurtenant to and inseparable from his, her, or its ownership of a Vacation Ownership and shall be automatically transferred upon any subsequent transfer or conveyance of such Owner's Vacation Ownership to his, her, or its transferee; otherwise, said Membership shall be nontransferable, and any attempt to make a prohibited transfer shall be void.

4.04 Classes of Membership. The Association shall have the following three classes of voting Membership:

a. Class "A" Membership. Class "A" Members shall be all Annual Owners, except Declarant as to Declarant Annual Vacation Ownerships (until Declarant as to such Ownerships, becomes a Class "A" Member pursuant to Subparagraph 4.04 c. below). Each Class "A" Member, as to Association matters, shall be entitled to two (2)

votes for each Annual Vacation Ownership owned; provided, however, that while an Annual Vacation Ownership may be owned by several Owners, and while all such Owners would be Members, multiple Owners of one (1) Annual Vacation Ownership shall have only two (2) votes, which votes shall be exercised in one block (that is, cast as two [2] votes for or against the matter at issue, and shall not be split), as these multiple Owners, among themselves, shall decide.

b. Class "B" Membership. Class "B" Members shall be all Biennial Owners, except Declarant as to Declarant Biennial Vacation Ownerships (until Declarant, as to such Ownerships, becomes a Class "B" Member pursuant to Subparagraph 4.04 c. below). Each Class "B" Member, as to Association matters, shall be entitled to one (1) vote for each Biennial Vacation Ownership owned; provided, however, that while a Biennial Vacation Ownership may be owned by several Owners, and while all such Owners would be Members, multiple Owners of one (1) Biennial Vacation Ownership shall have only one (1) vote, which collective vote shall be exercised as these multiple Owners, among themselves, shall decide.

c. Class "C" Membership. The Class "C" Member shall be the Declarant, who shall be entitled to two (2) votes for each Declarant Annual Vacation Ownership and to one (1) vote for each Declarant Biennial Vacation Ownership. Said Class "C" Membership shall cease and be automatically converted to Class "A" and/or Class "B" Membership, as appropriate, on the first of the following dates to occur: (1) on that date which is the second (2nd) anniversary of the recording date of the first conveyance (deed) of a Vacation Ownership in the most recent phase of the development (that is, in the case where the Declarant has imposed this Declaration on any portion of the Annexable Property), or (2) on that date which is the fourth (4th) anniversary of the recording of the first Original Deed of a Vacation Ownership in the first (present) phase of this development (that is, the phase encompassing the 78 Units to be constructed upon the Property described in Exhibit "A" to this Declaration).

At any point in time before the above conversion, Declarant shall be the Owner of Vacation Ownerships equal to the difference between the total number of Vacation Ownerships and the total number of then existing Vacation Ownerships conveyed by Declarant to third parties by Original Deeds (and not thereafter reacquired in any manner by Declarant), keeping in mind that Declarant shall be deemed to own Vacation Ownerships in each Nondesignated Unit as well as in each Designated Unit (the unsold Vacation Ownerships therein).

4.05 Member Voting: Quorum and Vote Required.

a. Where Class "C" Membership Has Not Yet Been Converted to Class "A" and/or Class "B" Membership. Where Class "C" Membership has not yet been converted to Class "A" and/or Class "B" Membership pursuant to Paragraph 4.04 above, the presence, either in person or by proxy (or a combination thereof) at any meeting of Members of both (1) the Declarant, and (2) Members entitled to cast at least 15 percent of the total votes in the Association then residing in Members other than Declarant, shall constitute a quorum for any action before the Association, unless a different requirement is imposed by this Declaration, the Bylaws, or the Articles; and the vote or written ballot cast in favor of, or against, the issue of Association business in question, as the case may be, at such meeting of both (i) the Declarant, and (ii) a majority of the other (Class "A" and Class "B") votes then present, in person and/or by proxy, shall constitute approval or disapproval, as the case may be, of the proposal or matter at issue, except where a greater portion of the voting power is required by this Declaration, the Bylaws, or the Articles.

b. Where Class "C" Membership Has Been Converted to Class "A" and/or Class "B" Membership. Where Class "C" Membership has been converted to Class "A" and/or Class "B" Membership pursuant to Paragraph 4.04 above, the presence, either in person or by proxy (or a combination thereof) at any meeting of Members of both (1) Members entitled to cast at least 15 percent of the total votes in the Association and (2) at least 15 percent of the total votes then residing in Members other than Declarant, shall constitute a quorum for any action before the Association, unless a different requirement is imposed by this Declaration, the Bylaws, or the Articles; and the vote or written ballot cast in favor of, or against, the issue of Association business in question, as the case may be, at such meeting of both (i) a majority of the total votes in the Association then present, in person or by proxy and (ii) a majority of the total votes held by Members other than Declarant then present, in person or by proxy, shall constitute approval or disapproval, as the case may be, of the proposal or matter at issue, except where a greater portion of the voting power is required by the Bylaws, the Articles or this Declaration.

c. Each Member to Vote. Each Member shall make his, her, or its best efforts, whether in person or by proxy, to attend each Association Member meeting and to vote on each Association matter of business.

4.06 Board of Directors. There shall be five (5) directors on the Board of Directors of the Association. The initial Board shall consist of directors appointed by Declarant. At the initial organization meeting of Members, which meeting shall be held not later than one (1) year after recordation of the Original Deed

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evidencing the initial completed sale and conveyance by Declarant of a Vacation Ownership, the Members (including Declarant) shall elect, in accordance with the Bylaws, directors to replace the initial Board. From and after the first election of the members of the Board by the Members of the Association, at least one (1) director on the Board shall be elected solely by the votes of Members of the Association other than Declarant, pursuant to the election procedures set forth in the Bylaws.

4.07 Further Procedural Rules. Further procedural rules relating to Member meetings, Member voting, nomination and election of directors to the Board, Board meetings, director voting, officers, and committees are contained in the Bylaws.

ARTICLE 5

ASSOCIATION RIGHTS, POWERS, AND DUTIES; AND MANAGING AGENT

5.01 General Rights, Powers, and Duties.

a. Administration and Services. Administration of the Project and the Use Program shall be vested in the Association. In this connection, the Association, acting alone and/or through its Board, its officers, and/or its other duly authorized representatives, shall, subject to the provisions of the Articles, the Bylaws and this Declaration, exercise all of the powers, rights, and duties herein enumerated and, except as specifically limited herein, all the rights, powers, and duties held by a nonprofit, mutual benefit corporation organized under the laws of the State of California. These rights, powers, and duties of the Association shall, reciprocally, constitute the services to be given by the Association to the Owners.

b. Power of the Board of Directors. The Association shall, generally, act through its Board, and the Board shall have the right, power, and duty to act for the Association except as to those actions which require the vote of the Members of the Association.

c. Vesting of Rights, Powers, and Duties. The powers, rights, duties, and limitations of the Association set forth in this Article 5 and elsewhere in this Declaration, and in the Articles and the Bylaws shall vest in and be imposed on the Association concurrently with recordation of the Original Deed evidencing the initial completed sale and conveyance by Declarant of a Vacation Ownership.

5.02 Specific Rights, Powers, and Duties of the Association and Services to the Owners. Without limiting the foregoing general rights, powers, and duties, or of any Association rights, powers,

and duties provided elsewhere in this Declaration, or in the Articles or Bylaws, the Association, for the benefit of the Owners, is hereby expressly authorized and directed to do all of the following (which shall, reciprocally, constitute the services to be rendered by the Association to the Owners):

a. Delegate Authority. To elect, employ, appoint, to assign, and to delegate the powers, rights, and duties of the Association to officers, employees, committees, agents, and independent contractors including, without limitation, the Managing Agent; provided, however, that no such delegation shall relieve the Association of any ultimate responsibility it may have to perform any delegated duty.

b. Enter Contracts. To enter contracts with third parties for the furnishing of goods or services to the Project and/or for the benefit of the Use Program.

c. Borrow Money. To borrow money as may be needed in connection with the discharge by the Association of its powers, rights, and duties.

d. Establish Rules and Regulations. To adopt reasonable Rules and Regulations not inconsistent with this Declaration, the Articles, or the Bylaws relating to the use and/or occupancy by the Owners and their Permitted Users and all Exchange Users of the Units, the Common Area, and the Common Furnishings. A copy of the Rules and Regulations shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Common Area. Declarant may establish and adopt such Rules and Regulations until the initial Board is selected. Thereafter, the Board shall have this responsibility.

e. Right to Enter. To: (i) enter at any time upon any portion of the Common Area; (ii) to enter any Unit, after giving reasonable notice to the Owner(s) or other occupants thereof, where the Unit is then being personally occupied (if the Unit is not then being personally occupied, entry may be immediate without any notice permission being required) for any purpose reasonably related to the exercise by the Association of its rights or performance of its duties under this Declaration including, without limitation, for making installations, for making permissible alterations, for cleaning, for maid service, for maintenance and repair, including emergency repairs; and (iii) enter any Unit at any time without having to give prior notice, in order to abate any nuisance or any suspected dangerous, unauthorized, prohibited, or unlawful activity being conducted or maintained therein, or to assist in the event of any emergency involving illness or existing or potential danger to life or property. Any such right of entry shall be exercised in such a manner as to avoid any unreasonable or

unnecessary interference with the use and occupancy of any Unit thereby affected.

f. Maintenance and Repair. To maintain, repair, repaint, keep clean, replace, and/or restore the Project, and each portion thereof, as may be necessary to keep said Project at all times in a clean, maintained, sanitary, workable, attractive, and "first-class" condition so that the appearance and value of the Project is preserved; to establish reserves for anticipated costs, including the costs of acquisition and replacement of Common Furnishings; and to acquire and pay for materials, supplies, labor, and/or services which the Association deems necessary or proper for the operation, maintenance, and repair of the Project and the administration of the Use Program.

g. Pay Taxes and Assessments. As agent of the Owners and not as principal, to pay all taxes and assessments, real or personal, relating to the Project and/or Use Program, to the extent that such taxes are not separately assessed and billed to the Owners, and to contest or compromise same provided they are paid or a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes. Until such time as (if ever) these taxes have not been separately assessed to each Owner, the moneys required to pay these taxes shall be a Basic Expense of the Association to be paid for from moneys raised by the levy of Regular Annual Assessments.

h. Provide and Pay for Utilities. To acquire, provide, and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas, and other utility services as may be required relating to the Project and/or the Use Program, to the extent that the cost of such utilities are not separately billed to the Owners. The moneys required to pay for these utility services shall be a Basic Expense of the Association to be paid from moneys raised by the levy of Regular Annual Assessments.

i. Enforce Declaration, Bylaws, and Rules and Regulations. To take all measures necessary to enforce the provisions of this Declaration, the Bylaws, and the Rules and Regulations.

j. Levy and Collect Assessments, Pay Expenses, and Change Fiscal Year. To levy, bill, collect, and enforce payment of Assessments against all Owners for the purposes and in the manner provided in Article 6 hereof, and to pay all Basic Expenses and Special Expenses of the Association. In this connection, the Board is given the discretion, right and power to change the Fiscal Year of the Association, should this be deemed advantageous for the Association.

k. Obtain and Pay Cost of Legal and Accounting Services. To obtain and pay the cost of legal and accounting services

deemed necessary or proper in connection with the administration and operation of the Project and the Use Program and in the performance of any other duties hereunder including enforcement of this Declaration, the Articles, the Bylaws, and/or the Rules and Regulations. In this connection, the Association is hereby granted the express authority to select legal counsel to represent the Association and the Owners collectively in Association legal matters, unless an Owner desires to retain his, her, or its own separate legal counsel at such Owner's own expense.

1. Obtain and Pay Cost of Insurance. To obtain, maintain, and pay the cost of the insurance policies on the Project as provided in Article 9 below.

m. Maintain Bank Accounts. To deposit (i) all funds collected from Owners' Assessments pursuant to Article 6 hereof, and (ii) all other amounts collected by the Association in connection with its rights, powers, and duties provided herein, as follows:

1. To deposit all Regular Annual Assessments, Special Assessments, Capital Improvement Assessments, and any other income of the Association into a separate account or accounts (called the "General Account or Accounts") with a bank, savings and loan association, readily accessible money market fund, Treasury Bills, or into another safe money depository selected by the Board. Funds deposited in the General Account(s) may be used by the Association only for the purposes for which such funds have been collected.

2. To redeposit that portion of any Regular Annual Assessments which the Association shall collect for reserves, within 30 days after their initial deposit into the General Account, into such safe, interest-bearing account or certificate or government obligation (such as a Treasury Bill) as the Board selects, taking into consideration when use of such funds is anticipated (called the "Reserve Account").

n. Prepare and Distribute Financial Information. To regularly prepare Association budgets and financial statements and to distribute copies thereof to each Member as follows:

1. Prepare Budget. To prepare and adopt for each forthcoming Fiscal Year a pro forma Budget of the revenue and Basic Expenses which the Board expects will be collected/incurred by the Association in connection with the Association's administering, managing, and operating the Project and the Use Program in such forthcoming Fiscal Year. Each such Budget shall be prepared by, or under the direction of, the Board, and a copy thereof shall be distributed to each Owner during the then ending Fiscal Year not more than 60 days nor less than 45 days, prior to the beginning of

the forthcoming Fiscal Year to which the Budget applies. Each such Budget shall consist of at least the following information: (i) the estimated revenue and Basic Expenses determined on an accrual accounting basis; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of any portion of the Project and for contingencies; (iii) an itemized estimate of the remaining life of, and the methods of funding to defray the costs of repair, replacement or additions to, major components of the Project; and (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to the property referred to in (iii) above.

2. Prepare Annual Report. To prepare and distribute to each Owner (including each director on the Board) an annual report within 120 days after the close of each Fiscal Year, consisting of the following: (i) a balance sheet of the Association as of the last day of such Fiscal Year; (ii) an operating (income) statement showing the financial results of the operations of the Association for such Fiscal Year; (iii) a statement of net changes in the financial position and operations of the Association for such Fiscal Year; (iv) for any Fiscal Year in which the gross income to the Association exceeds \$75,000, a copy of the review or certified audit, to be determined by the Board, of the annual report referred to herein prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy; and (v) a list of the names, mailing addresses, and telephone numbers of the directors on the Board. If such annual report is not prepared by an independent accountant, the annual report shall be prepared by an officer or the Managing Agent of the Association and shall be accompanied by the certificate of such officer or Managing Agent certifying that the statement was prepared from the books and records of the Association without independent audit or review.

o. Provide Minutes and Agenda. To provide each Owner with (i) a copy of the minutes of any Association or Board meeting within 60 days following the date of such meeting and (ii) a list of the items of business and the order in which they are to be considered, at each annual or special meeting of the Members of the Association not later than 30 days nor earlier than 90 days prior to the scheduled date of such meeting, which list shall also contain the name, address, and a brief biographical sketch of each person nominated to stand, or person who has announced his intention to stand, for election to the Board. Mailing of the information referred to in Subparagraph 5.02 n. above, and this Subparagraph 5.02 o.; and Subparagraph 5.02 p. below, may be combined where appropriate.

p. Prepare Statement of Assessment Enforcement Policy. To prepare and distribute to each Owner annually, within 60 days prior to the beginning of each Fiscal Year, a statement of the Association's policies and practices in enforcing its remedies against Owners for their defaults in the payment of Regular Annual Assessments, Special Assessments, and Capital Improvement Assessments including the recording and foreclosing of Liens (referred to in Subparagraph 7.02 c.) against such Owners' Vacation Ownerships in the Project.

q. Issue Statements of Status. Upon the request of any Owner, Mortgagee, prospective Mortgagee, purchaser, or other prospective transferee of a Vacation Ownership, to issue a written statement setting forth any amounts unpaid to the Association with respect to the Vacation Ownership in question (called "Statement of Status"). Such Statement of Status for which a reasonable fee may be charged, shall be binding upon the Association in favor of any person who may rely thereon in good faith.

r. Compile Register. To compile and keep current an accurate list of all Association Members (the "Register") which Register shall set forth the name, mailing address, and telephone number of each Member. Upon the written request by a Member, this Register shall be made available for inspection and copying by such Members - or his, her, or its duly appointed representative - at any reasonable time at the office of the Managing Agent upon the Project for a purpose reasonably related to Membership in the Association, all in accordance with the applicable provisions of the Bylaws. Each Member who inspects the Register hereby agrees that he, she, or it will not make any commercial use of same, will not use same for any purpose not reasonably related to the Association business and such Member's interest in the Association, and will not distribute a copy of the Register to any person who is not a Member.

s. Prepare Calendar. To cause to be prepared from time-to-time, as may be necessary, each Calendar of Use Weeks for each Use Year.

t. Do other Necessary or Proper Acts. To do all other things or acts which in the discretion of the Association are deemed necessary, desirable, helpful, and/or proper to the administration, management, and operation of the Project and the Use Program.

5.03 Right, Power, and Duty to Engage Managing Agent. The Association shall have the authority and duty to employ a reputable firm or proprietorship as the Managing Agent for the Project and Use Program pursuant to a written agreement (the "Management Agreement"), which Agreement shall meet the basic requirements of this Paragraph 5.03. The first Managing Agent shall be appointed

by Declarant. Each Management Agreement shall cover at least the following matters:

a. Delegation of Authority. Delegate to, authorize and obligate the Managing Agent to perform all of the duties and obligations of the Association specified in Paragraph 5.02 above, subject to the limitations set forth in Subparagraph 5.03 n. below.

b. Term. Provide for a term of management of not more than three (3) years, except that the Management Agreement shall provide that the term will be automatically renewed for successive one (1)-year terms unless a notice of non-renewal is given by either party thereunder at least 90 days prior to the end of the then existing term; provided, however, the Association may not make a determination not to renew said Management Agreement and give such notice of non-renewal, unless such action has been directed by the vote or written assent of a majority of the total votes in the Association held by Members other than Declarant.

c. Termination for Cause. Provide for termination of the Managing Agent for cause at any time by the Board with provision for arbitration of the issue of whether "cause" existed in accordance with the Commercial Arbitration Rules of the American Arbitration Association, if requested by the Managing Agent.

d. Resignation. Provide that the Managing Agent may resign; but, only after it has given to the Association at least 90 days prior written notice of such intention to resign.

e. Enumeration of Powers and Duties. Enumerate the powers and duties of the Managing Agent in the operation of the Project, including without limitation, administrative, fiscal, maintenance, and enforcement duties.

f. Compensation. Provide for compensation to be paid to the Managing Agent not to exceed ten percent of the actual Basic Expenses of the Association, including reserves, but excluding of the fee of the Managing Agent for the Fiscal Year in question. Such compensation may be increased (i) if so authorized by the vote or written consent of that number of Members' votes required by Paragraph 4.05 of this Declaration to approve a proposal, or (ii) by the Board, if the Association is unable to procure a reputable person or firm to act as Managing Agent without increasing such compensation. All overhead expenses of the Managing Agent attributable to its management of the Project shall be passed through to the Association and the Association shall reimburse the Managing Agent for such overhead expenses.

g. Record Maintenance. Provide what Association and/or Project records are to be maintained by the Managing Agent.

h. Reports. Provide what periodic reports and other information relating to the Project are to be communicated to the Association and/or Members by the Managing Agent.

i. Fidelity Bonding. Provide that Association shall cause the Managing Agent, and any of its employees who have charge of Association funds, to be fidelity bonded, at Association cost, if available, in accordance with Subparagraph 9.01 c. below.

j. Right of Entry. Delineate the authority of the Managing Agent and persons authorized by the Managing Agent to enter into the Units and other portions of the Project for the purposes set forth in Subparagraph 5.02 e. above.

k. Exchange Program. Delineate the authority, or provide an express statement in negation of any authority, of the Managing Agent with respect to administering an Exchange Program in connection with the Project.

l. Employment of Subagents. Grant authority to the Managing Agent to employ one or more subagents to assist Managing Agent perform its duties hereunder.

m. Limitation on Powers of the Managing Agent. Notwithstanding the powers of the Managing Agent set forth in this Paragraph 5.03, each Management Agreement shall provide that the Managing Agent shall not enter into any contract with a third person or entity whereby such person or entity will furnish goods or services to the Project for a term longer than one (1) year unless so authorized by the vote or written consent of that number of Members required by Paragraph 4.05 of this Declaration to approve a proposal, or unless the contract is terminable by any party thereto at the end of any one (1) year period, except for:

1. The Management Agreement itself;
2. A contract with a public utility company, if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;
3. Prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration, provided that the policy permits short-rate cancellation by the insured;
4. Any lease of Common Furnishings or for laundry room fixtures and equipment of not to exceed five (5) years' duration, provided that the lessor under any such agreement is not an entity in which the Declarant or the Managing Agent has a direct or indirect ownership interest of 10 percent or more; and

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

6. Any agreements for burglar alarm services and equipment of not to exceed five (5) years' duration, provided that the supplier is not an entity in which the Declarant or the Managing Agent has a direct or indirect ownership interest of 10 percent or more.

5.04 Limited Liability. Neither the Association nor the Managing Agent, nor any of their sub-agents or employees, shall be responsible for the acts, omissions to act, or conduct of any of the Owners or for the breach of any obligation of an Owner arising under this Declaration, the Bylaws, and/or the Rules and Regulations.

5.05 Notices of Public Hearing from City of Carlsbad. From time to time the City of Carlsbad (the "City") may be required under law to send notices of a forthcoming public hearing on a matter related to City zoning or land use requirements to property owners in the vicinity of the Project, including the Owners hereunder. Since to have to mail such notices to each Owner would impose a burden upon the City and since the content of such notices would similarly affect all Owners, each Owner, upon delivery or receipt of his Original Deed, or other deed to a Vacation Ownership, hereby automatically assigns to the Association his, her, or its right to otherwise receive from the City individual notices of forthcoming public hearings pertaining to matters related to City zoning or land use requirements, with the result that the City may send to the Association only one such notice, for each such forthcoming hearing, regardless of the actual number of Owners in the Project. The Association shall have the responsibility of examining each such notice of public hearing and taking such action thereon as is determined by the Association to be in the best interests of a majority of Owners, including, without limitation, participating in such hearing. Notwithstanding anything to the contrary above, any such Owner may require the City to mail individual notices to him, her, or it, if such Owner gives the City a written request that he, she, or it be placed on a list to receive such forthcoming notices.

ARTICLE 6ASSESSMENTS AND PERSONAL CHARGES6.01 Creation of Personal Obligations for Assessments, Purpose of Assessments, Basis for Assessments, and Required Special Prorations.

a. Creation of Personal Obligations. Declarant, for each Declarant Vacation Ownership, hereby covenants, and each other Owner by accepting the conveyance of a Vacation Ownership, whether or not it shall be so expressed in such Owner's deed, shall be deemed to have covenanted and agreed for each Vacation Ownership owned, to pay to the Association all Regular Annual Assessments, Special Assessments and Capital Improvement Assessments as these terms are hereinafter defined and described in Paragraphs 6.02, 6.03, and 6.04, respectively (all of which are collectively referred to as the "Assessments"), which Assessments shall be established, made, and collected as hereinafter provided. These Assessments, together with interest thereon and all costs of collection including reasonable attorneys' fees, shall be the personal obligation of each Owner at the time the Assessment becomes due and payable. This personal obligation for delinquent Assessments shall not pass to successors-in-title of a Vacation Ownership unless expressly assumed by them. In addition, a continuing lien (called the "Lien") is created on each Vacation Ownership in favor of the Association to secure its Owner's or Owners' prompt payment to the Association of each such Assessment, pursuant to Subparagraph 7.02 c. below. No Owner may waive or otherwise avoid liability for the Assessments by nonuse of a Unit or of any other rights given to such Owner by virtue of his, her, its or their deed or other conveyance instrument to a Vacation Ownership. Notwithstanding anything in the foregoing to the contrary, Declarant may, in lieu of paying certain Regular Annual Assessments and Special Assessments, enter into a subsidy agreement with the Association with respect to paying certain Basic Expenses and Special Expenses of the Association.

b. Purpose of Assessments. The purpose of the Assessments is to provide the Association with a vehicle for raising and paying all Basic Expenses and Special Expenses of the Association. All assessments shall be used exclusively to promote the health, safety, welfare and recreation of all Owners.

c. Apportionment of Assessments. All Assessments hereunder shall be levied against each Owner (including Declarant as to each Declarant Vacation Ownership), proportionally, based on: (i) the Assigned Unit Type owned ("A" Unit Type, "B" Unit Type, "C" Unit Type, and "D" Unit Type) and (ii) the type of Ownership owned (Annual or Biennial), except in those certain instances where such Assessments are to be levied only against certain, and not all,

Owners; namely, where Special Assessments are levied against Non-Complying Owner(s) or against Responsible Owner(s) as those terms are used in Paragraph 6.03 below, and where Capital Improvement Assessments are levied against Predominantly Benefitted Owner(s) as that term is used in Paragraph 6.04 below. The Board of Directors of the Association shall establish a formula, which may be modified from time to time, for the calculation of an equitable apportionment of Assessments in accordance with operational and maintenance costs attributable to each respective Unit Type. Such proportional assessments based on Unit Type shall be levied against Owners of each respective Assigned Unit Type in the ratio that the number of Use Weeks of that particular Assigned Unit Type to which each Owner is entitled during any two (2) consecutive Use Years bears to the total number of Use Weeks of that particular Assigned Unit Type constituting such two (2) consecutive Use Years. In other words, the general rule is that all Owners of a respective Assigned Unit Type are to be proportionally assessed, so that each Owner of an Assigned Unit of that particular Assigned Unit Type shall be assessed the amount of one full assessment share for each Annual Ownership of that particular Assigned Unit Type owned by such Owner and one-half the amount of one full assessment share for each Biennial Ownership of that particular Assigned Unit Type owned by such Owner. Notwithstanding anything to the contrary contained in the foregoing, the general rule of proportionality of assessments shall not be applicable where there are special circumstances which would make it unfair for Owners to pay such proportional Assessment. These special circumstances are discussed under "Special Assessments" in Paragraph 6.03 below.

6.02 Regular Annual Assessments.

a. Purpose of Regular Annual Assessments. Regular Annual Assessments shall be assessed against all Owners in accordance with paragraph 6.01 c. above, to provide the Association with the moneys necessary to pay for the Basic Expenses of the Association projected in the Budget for said Fiscal Year.

b. Preparation and Adoption of Final Budget and Determination of Aggregate Regular Annual Assessments Determination. Not more than 60 days, nor less than 45 days, before the beginning of each Fiscal Year, the Board, in accordance with Subparagraph 5.02 n. 1. above, shall prepare and adopt the Budget for such forthcoming Fiscal Year. Subject to the limitations imposed in Subparagraph 6.02 g. below, the Board shall then levy Regular Annual Assessments for such forthcoming Fiscal Year against all Owners in the aggregate amount of said adopted Budget.

c. Allocation and Levy of Regular Annual Assessments among Owners. The Board shall levy and assess the aggregate Regular Annual Assessments as above determined, against all Owners of Vacation Ownerships, including Declarant as to each Declarant

Ownership, in accordance with Subparagraph 6.01 c. above. Notwithstanding anything to the contrary hereinabove contained, for any Fiscal Year in which there is in effect a subsidy agreement between Declarant and the Association whereby Declarant agrees to pay to the Association certain Basic Expenses in lieu of Regular Assessments for such Fiscal Year, Declarant's obligation to pay such Regular Assessments for Declarant Vacation Ownerships for such Fiscal Year shall be deemed discharged, so long as there is no default under the terms of such subsidy agreement.

d. Notice of Assessment, Due Date(s), Delinquency Date(s), and Method of Payment. Upon the Board determining the amount of, and levying, the aggregate Regular Annual Assessments for a particular new Fiscal Year, the Board shall send to each Owner a written notice of assessment with a date thereon, providing therein: (i) the total amount of said Owner's respective portion of such aggregate Regular Annual Assessments; (ii) whether such Assessment may be paid in installments, and if so, the required amount of each such installment, and the months in which such installments are to be paid; (iii) that each such Assessment (or first installment thereof, if applicable) shall be due and payable within 10 days of the date of such written notice; and (iv) if such Assessment may be paid in installments, that each additional installment shall be due and payable in the month due within 10 days of that date of the month specified on such notice of assessment. Any Regular Annual Assessment (or installment thereof) not paid within 10 days after the due date specified in the notice shall bear interest from said due date until paid at the rate then established by the Board to be charged on delinquent Assessments and other delinquent charges (called the "Board Interest Rate"). Each Owner's Regular Annual Assessment shall be payable in one (1) lump sum, unless the Board elects to receive installments payable not more frequently than once each month.

e. Commencement of Accrual of Regular Annual Assessments. Regular Annual Assessments against all Owners, including Declarant as to Declarant Ownerships, shall commence accruing and shall be payable in advance (whether the entire Annual Assessment or an installment thereof, as the Board decides) on the Commencement Date as defined below. The "Commencement" Date shall be the first day of the first month following the date of the initial close of an escrow of a sale by Declarant of a Vacation Ownership in the Project. Notwithstanding anything in the foregoing to the contrary, no Regular Annual Assessment shall be assessed against an Owner whose escrow for the purchase of a Vacation Ownership has just closed, where such Owner will not be entitled to occupy a Unit, by virtue of such Owner's deed, until the Fiscal Year following the year in which such escrow was closed.

f. Excess Collections. Should the amount of Regular Annual Assessments levied and collected for a Fiscal Year be in

excess of the amount required to meet the actual Basic Expenses which were incurred for such Fiscal Year, such excess shall be applied by the Association to reduce the amount of the Regular Annual Assessments levied for the subsequent Fiscal Year or Years. No Owner shall, by reason of such reduction, be entitled to a refund by the Association of all or any portion of any Regular Annual Assessment he or she had previously paid; nor shall he or she thereby be relieved from any obligation to pay any past due Regular Annual Assessment.

g. Monetary Limitations on Regular Annual Assessments.

For each new Fiscal Year, the Board may levy without requiring the vote or written assent of the Owners, aggregate Regular Annual Assessments which are as much as 20 percent greater than the aggregate Regular Annual Assessments for the immediately preceding Fiscal Year. Aggregate Regular Annual Assessments for a forthcoming Fiscal Year which are more than 20 percent greater than those for the immediately preceding Fiscal Year may not be levied without the vote or written assent of (i) both (a) the Declarant, and (b) a majority of the total votes in the Association held by Members excluding votes held by Declarant (where Class "C" Membership has not yet been converted to Class "A" or Class "B" Membership); or (ii) Members holding both (a) a majority of the total votes in the Association, and (b) a majority of the total votes excluding Declarant votes (where Class "C" Membership has been converted to Class "A" or Class "B" Membership). Regardless of anything above stated to the contrary, an increase in the aggregate Regular Annual Assessments for a Fiscal Year attributable to an increase in real property taxes against the Property shall be excluded in determining whether the aggregate Regular Annual Assessments are more than 20 percent greater than the aggregate Regular Annual Assessments for the preceding Fiscal Year.

6.03 Special Assessments.

a. Purpose. Subject to obtaining any required vote of the Members provided for in subparagraph 6.03 b. below, the Association is hereby given the right, power, and duty to levy Special Assessments against all Owners (including Declarant as to Declarant Vacation Ownerships) of Vacation Ownerships for the purpose of paying certain Special Expenses of the Association. Such Special Expenses, by way of example and not by limitation, might include (i) the incurring of actual Basic Expenses which are in excess of the Regular Annual Assessments collected in the Fiscal Year in question; (ii) the cost to repair, rebuild, restore and/or replace any portion of the Project, where there are insufficient reserves for such, or where due to damage or destruction of the Project; (iii) the reimbursement to the Association of all costs (called "Compliance and Enforcement Costs") incurred by it in bringing, or attempting to bring, an Owner into compliance with, or otherwise in attempting to enforce against an Owner (called a "Non-

Complying Owner") the provisions of this Declaration, the Bylaws, and/or the Rules and Regulations; and (iv) the reimbursement to the Association of all moneys (called "Lien Prevention and Removal Costs") paid out in defending against law suits and paying claims, charges, and liens pursuant to Article 3 hereof to prevent threatened liens, claims, or charges from being imposed against the Property, and/or against Vacation Ownerships, or to remove said liens, claims, or charges once they had become attached thereto as a result of the acts or omissions to act by the Responsible Owners; provided, however, while the Association is not required to levy Special Assessments against all Owners for reimbursement of Lien Prevention and Removal Costs as provided in Paragraph 3.04 hereof, the Association shall be required to levy a Special Assessment for such purpose directly against the Responsible Owners; and provided, further, the Association shall be required to levy Special Assessments directly against any Non-Complying Owners to obtain reimbursement of Compliance and Enforcement Costs in item (iii) above.

b. How Special Assessments Imposed. Except as provided below, the imposition of Special Assessments against Owners shall require the vote or written assent in favor of such imposition of (i) both (a) Declarant, and (b) a majority of the total votes in the Association held by Members excluding votes held by Declarant (where Class "C" Membership has not yet been converted to Class "A" or Class "B" Membership); or (ii) Members holding both (a) a majority of the total votes in the Association, and (b) a majority of the total votes excluding Declarant votes (where Class "C" Membership has been converted to Class "A" or Class "B" Membership). The Board, however, is hereby empowered to impose the following types of Special Assessments without such vote or written assent of the Members:

1. Special Assessments against all Owners (other than Special Assessments to raise moneys for repairing, rebuilding, restoring, and/or replacing all or any portion of the Project because of damage or destruction thereto), where the total of such Special Assessments levied against all Owners during any Fiscal Year, together with the total of any Capital Improvement Assessments also levied against all Owners during said Fiscal Year, does not exceed, in the aggregate, five percent (5%) of the Basic Expenses in the Budget of the Association for the Fiscal Year in which such Assessments are levied;

2. Special Assessments against all Owners to raise moneys for repairing, rebuilding, restoring and/or replacing all or any portion of the Project because of damage or destruction thereto, where the total of such Special Assessments levied against all Owners during any Fiscal Year, together with the total of any Capital Improvement Assessments also levied against all Owners during said Fiscal Year, does not exceed, in the aggregate, ten

percent (10%) of the Basic Expenses in the Budget of the Association for the Fiscal Year in which such Assessments are levied; and

3. Special Assessments against all Owners, and/or the Non-Complying Owner or Responsible Owners for the purpose of reimbursing the Association for all Compliance and Enforcement Costs or Lien Protection and Removal Costs, as referred to above.

c. Method of Levy.

1. Where Levy Is Against All Owners. Where the Special Assessments in question are to be levied against all Owners, they shall be levied upon, allocated between, and paid by all Owners of Vacation Ownerships, including Declarant as to Declarant Ownerships, in the same manner as the levy of Regular Annual Assessments, in accordance with Subparagraph 6.02 c. above. Notwithstanding anything to the contrary hereinabove contained, for any Fiscal Year in which there is in effect a subsidy agreement between Declarant and the Association whereby Declarant agrees to pay to the Association certain Special Expenses in lieu of Special Assessments for such Fiscal Year, Declarant's obligation to pay such Special Assessments for Declarant Vacation Ownerships for such Fiscal Year shall be deemed discharged, so long as there is no default under the terms of such subsidy agreement.

2. Where Individual Special Assessment Is Involved. A Special Assessment may be levied solely against a Non-Complying Owner(s) or Responsible Owners(s) as those terms are used in this Declaration.

d. Notice of Assessment, Due Date(s), Delinquency Date(s), and Method of Payment. Subject to complying with the foregoing requirements, the Association may levy Special Assessments at any time. After the date of such levy, the Board shall send a written notice of assessment, with a date thereon, either to each Owner (if the Assessments are being levied against all Owners), or to that Non-Complying Owner or those Responsible Owners [where such Assessment(s) has been levied to obtain reimbursement of Compliance and Enforcement Costs or Lien Prevention or Removal Costs from such an Owner(s)]. Each such notice shall provide therein: (i) the total amount of said Owner's respective portion of such aggregate Special Assessments (if being levied against more than one Owner), or the total amount of the full Special Assessment (if being levied only against one Owner); (ii) whether such Special Assessment may be paid in installments, and, if so, the required amount of each such installment, and the months in which such installments are to be paid; (iii) that such Special Assessment (or first installment thereof, if applicable) shall be due and payable within 10 days of the date of such notice of assessment; and (iv) if such Special Assessment may be paid in installments, that each additional installment shall be due and

payable in the month due within 10 days of that date of the month specified on such notice of assessment. Any Special Assessment (or installment thereof, if applicable) not paid within 10 days after such due date shall be deemed delinquent and shall bear interest from said due date at the Board Interest Rate until paid. A Special Assessment shall be payable in one (1) lump sum, unless the Board elects to receive periodic installments payable not more frequently than once each month.

6.04 Capital Improvement Assessments.

a. Purpose. Subject to obtaining the vote of the Members required below, the Association is hereby given the right, power, and duty to levy Capital Improvement Assessments against all Owners (including Declarant as to Declarant Vacation Ownerships) of Vacation Ownerships for the purpose of paying, in whole or in part, Special Expenses representing the cost of construction of any new capital improvement to the Project, to the extent that the same is not funded by Regular Annual Assessments or by Special Assessments.

b. How Capital Improvement Assessments Imposed. Capital Improvement Assessments against Owners shall require the vote or written assent of that number of Members required by subparagraph 6.03 b of this Declaration (relating to imposition of Special Assessments).

c. Method of Levy. The total amount of the Capital Improvement Assessments required shall be levied upon, allocated between, and paid by all Owners of Vacation Ownerships, including Declarant as to Declarant Ownerships, in the same manner as the levy of Regular Annual Assessments in accordance with Subparagraph 6.02 c. above. Notwithstanding anything in the foregoing to the contrary, where the Members determine that the predominant benefit of making any such capital improvements would be only for a group (or groups) of Owners having the right to occupy Units of a particular Unit Type(s) (called here the "Predominantly Benefitted Owners"), the Members may levy Capital Improvement Assessments therefor against only those Predominately Benefitted Owners (including Declarant as to Declarant Vacation Ownerships) in order to pay the Special Expenses representing the cost of such capital improvements.

d. Notice of Assessment, Due Date(s), Delinquency Date(s), and Method of Payment. Subject to complying with the foregoing requirements, the Association may levy Capital Improvement Assessments at any time. After the date of such levy, the Board shall send a written notice of assessment, with a date thereon, to each Owner. Each such notice shall provide therein: (i) the total amount of said Owner's respective portion of such aggregate Capital Improvement Assessments; (ii) whether such Assessment may be paid in installments, and, if so, the required

amount of each such installment, and the months in which such installments are to be paid; (iii) that such Assessment (or first installment thereof, if applicable) shall be due and payable within 10 days of the date of such notice of assessment; and (iv) if such Assessment may be paid in installments, that each additional installment shall be due and payable in the month due within 10 days of that date of the month specified on such written notice. Any Capital Improvement Assessment (or installment thereof, if applicable) not paid within 10 days after such due date shall be deemed delinquent and shall bear interest from said due date at the Board Interest Rate until paid. A Capital Improvement Assessment shall be payable in one (1) lump sum, unless the Board elects to receive periodic installments payable not more frequently than once each month.

6.05 Personal Charges.

a. Purpose. Personal Charges are expenses to the Association (but which are outside the Budget and, therefore, are not recovered by the Regular Annual Assessments) which are incurred as a direct result of occupancy of a Unit by an Owner and/or his or her Permitted User. Such Personal Charges include any expense resulting from the act or omission to act of any Owner or Permitted User, including, without limitation, (i) the cost of any long distance telephone charges or telephone message unit charges, (ii) the cost of any additional maid service, and other special services or supplies attributable to such Owner's or his, her, or their Permitted User's use or occupancy of a Unit; (iii) the cost to repair any damage to a Unit, and/or to the Common Area, and/or to repair or replace any Common Furnishings located within a Unit on account of loss or damage thereto occurring during such Owner's or his, her, or their Permitted User's use or occupancy thereof, and (iv) the cost to satisfy any expense paid or incurred by any other Owner(s) or by the Association as a result of any intentional or negligent act or omission to act on the part of such Owner or his, her or their Permitted User arising during such use or occupancy of a Unit or resulting from the breach by such Owner or Permitted User of any provisions of this Declaration, the Bylaws, or the Rules and Regulations during such use or occupancy. For purposes of this Subparagraph 6.05 a., the act or negligence of a Permitted User shall be deemed to be the act of the Owner authorizing occupancy of the Unit in question.

b. Payment and Delinquency.

1. If the Association is able to determine the amount of Personal Charges at Check-out Time, such Personal Charges shall be due and payable at Check-out Time.

2. Personal Charges which are not ascertainable as provided in Subparagraph 6.05 b. 1. above, shall be billed by a

written statement and shall be due and payable within 10 days of the date of such statement (the statement is to be so dated).

3. Any Personal Charges not paid within 10 days after said due date thereof shall be deemed delinquent and shall bear interest from said due date at the Board Interest Rate until paid. Personal Charges are payable in one lump sum. Each Personal Charge, together with interest thereon and all costs of collection including reasonable attorney's fees, shall be the personal obligation of the Owner who incurs such Personal Charge.

ARTICLE 7

ENFORCEMENT OF RESTRICTIONS

7.01 General Provisions.

a. General Power and Right to Bring Actions. In the event of failure by an Owner or his, her, or its Permitted User(s) to comply with any of the provisions of this Declaration, the By-laws, and/or the Rules and Regulations, including, without limitation (i) failure of an Owner or his, her, or its Permitted User to vacate an Assigned Unit upon expiration of his, her, or its Fixed Use Weeks, (ii) an Owner or his, her, or its Permitted User causing damage to or loss to any portion of the Project, (iii) an Owner causing or permitting his, her, or its Vacation Ownership to be subject to a lien (other than the lien of nondelinquent real property taxes or other assessments), claim, or charge which could result in the sale of the Vacation Ownerships of other Owners, (iv) an Owner, by such Owner's act or omission to act, causing a lien, claim or charge (other than the Lien against said Owner's own Vacation Ownership referred to in Subparagraph 7.02 c. below) to be imposed against any portion of the Project, (v) an Owner or his, her, or its Permitted User causing a disturbance that interferes with the use and enjoyment of the Project by any other Owner(s), and/or (vi) the failure of an Owner to pay any Assessment or other charge levied by the Association hereunder, then the Association in such event and/or any Owner(s), including Declarant, shall have the right, power, and authority to enforce the noncomplying Owner's and/or Permitted User's compliance with, or to seek damages for breach of, this Declaration, the Bylaws, and/or the Rules and Regulations in any manner provided for by law or equity, including, without limitation, as may be applicable, the right to enforce the Declaration, the Bylaws, and/or the Rules and Regulations by bringing suit to enjoin the violation or specifically enforce the violated provisions, and the right to bring legal action for damages.

b. Rights and Remedies Cumulative. All rights and remedies of the Association and the Owners given under this Declaration and by law may be used cumulatively, and need not be

used exclusively of each other; and the Association or Owner(s) shall have the right to pursue any one, or all, of such rights and remedies so long as any such right or remedy is not prohibited elsewhere by this Declaration or by law for use against the violation in question.

c. Association May Delegate. The Association may delegate to the Managing Agent the power and authority to carry out all disciplinary actions imposed by the Association or Board under this Article 7.

d. Limited Forfeiture Rights. Notwithstanding anything else which may be construed to the contrary in this Declaration, the Association shall not be empowered to cause the absolute forfeiture of an Owner's Vacation Ownership on account of said Owner's failure to comply with the provisions of this Declaration or the Rules and Regulations except pursuant to: (i) the judgment of a court or the decision of an arbitrator, or (ii) a judicial or nonjudicial foreclosure of said Owner's Vacation Ownership, because of failure to pay Assessments duly levied by the Association.

7.02 Certain Specific Enforcement Powers and Rights. In addition to the general powers and rights to bring actions provided for in Paragraph 7.01 above, the Association shall have the following specific powers and rights with respect to the following specific types of violations of this Declaration, and/or the Rules and Regulations:

a. Suspension of Rights and Privileges for Failure to Pay Assessments or Other Charges. If any Owner shall be delinquent in the payment of any Assessment (as defined in Article 6 hereof) or other charge duly levied by the Association, the Association may (but shall not be required to) suspend the rights and privileges of such Owner (i) to use and occupy (both as to himself and/or his Permitted User) any Unit, its Common Furnishings and/or any portion of the Common Area; (ii) to vote upon any Association matter; and (iii) to exercise any related rights and privileges appurtenant to being an Owner, including, without limitation, any exchange rights such Owner may otherwise have. The Association shall give written notice to such Owner of any such suspension of such rights and privileges immediately after such decision to suspend has been made. The Association shall further direct that such suspended rights and privileges be immediately reinstated upon the defaulting Owner's paying to the Association, in cash or by cashier's or certified check, all such Assessments or other charges past due as of the date of such reinstatement; provided, however, that where an Owner whose rights and privileges have been so suspended due to the failure by such Owner to pay Assessments or other charges to the Association when due, does, in fact, pay the Association all such past due Assessments or other charges, but does not do so until within (1) 48 hours prior to the applicable Check-in Time for such

Owner's contemplated occupancy, or (2) 20 days prior to the applicable Check-in Time for such Owner's contemplated occupancy, where such Owner having the rights and privileges reinstated had such rights and privileges suspended for a period of two (2) years or more, the reinstatement of such Owner's right and privileges shall not be deemed effective until the next Use Year.

b. Imposition of Monetary Penalty, Suspension of Rights and Privileges, and/or Taking of Other Disciplinary Action for Violation of Provisions.

1. General. If any Owner shall violate any provision of this Declaration, including, without limitation, those contained in Subparagraph 7.01 a. above, and/or any provision of the Rules and Regulations, the Association may (but shall not be required to): (i) impose a monetary penalty upon such Owner; (ii) suspend the rights and privileges of such Owner to use and occupy (both as to such Owner and/or his, her, or its Permitted User) any Unit, its Common Furnishings, and any portion of the Common Area; to vote upon any Association matter; and to exercise any related rights and privileges appurtenant to being an Owner; and/or (iii) take such other disciplinary action as the Association may deem appropriate, short of the forfeiture or sale under power of sale of the Owner's Vacation Ownership (except through the foreclosure of the continuing Lien provided for in Subparagraph 7.02 c. below for failure of an Owner to pay Assessments levied by the Association); provided, however, that before any or all of the foregoing three (3) types of disciplinary action shall be taken, the Association must follow the required procedures provided for in Subparagraph 7.02 b. 2. below.

2. Required Procedures. Except as provided in Subparagraph 7.02 b. 3. below pertaining to failure of an Owner to pay Assessments levied by the Association, none of the three (3) types of disciplinary action authorized by Subparagraph 7.02 b. 1. above may be taken until after a meeting of the Board, at which a quorum of the Board is present, is duly called and held for such purpose in accordance with the provisions contained in the Bylaws for the noticing, calling, and holding of a meeting of the Board. Written notice of such meeting shall be given to the alleged breaching Owner at least 15 days prior to the holding of such meeting. Such notice shall contain at least the following information: (i) the date, time, and place of the scheduled meeting; (ii) the alleged violation of the Owner; (iii) the type of disciplinary action sought to be imposed against such Owner; (iv) that said Owner has the right to be present at such Board meeting and present either a written and/or an oral defense (which type of defense shall be determined by the Board and specified in the notice) to the charge(s) made against him and argument as to why the disciplinary action sought by the Board should not be imposed against him; and (v) that said Owner may hire at his own

expense and be represented at such meeting by an attorney of his own choice. The scheduled Board meeting will then be held, and the decision as to whether such disciplinary action should be taken shall be made by a majority of the members of the Board present at such meeting. If the Board determines that the Owner has so violated the provisions of this Declaration or the Rules and Regulations, the Board shall give written notice to such breaching Owner of the type or types of disciplinary action imposed upon such Owner (and if a monetary penalty, the amount thereof); and such disciplinary action shall become effective one (1) day after the date of such notice. The Board shall direct that the suspended rights of any such Owner, whose rights had been suspended because of the breach, shall be immediately reinstated upon the breaching Owner's cure of said breach.

3. Limited Exception When Violation Is for Failure to Pay Assessment or Other Charges. The disciplinary procedure set forth in Subparagraph 7.02 b. 2. above shall not be required when the only action sought to be imposed against an Owner is suspension of his or her rights and privileges as an Owner of a Vacation Ownership (as set forth in Subparagraph 7.02 a. above) or the levying of uniform late fee, or penalties as a result of said Owner's failure to pay when due any Assessment, or other charge duly levied by the Association; and the provisions of said Subparagraph 7.02 a. above shall apply in such instances.

c. Continuing Lien to Secure Payment of Assessments.

1. Lien Creation. Irrespective and independent of any other rights and remedies given to the Association under Subparagraphs 7.02 a. and 7.02 b. above, there is: (i) hereby created in favor of the Association a continuing lien (called the "Lien"), with power of sale, on each and every Vacation Ownership to secure its Owner's or Owners' prompt payment to the Association of each and every Assessment levied against an Owner pursuant to this Declaration, together with interest thereon from the due date of such Assessment until paid at the Board Interest Rate, and all costs of collection which may have been incurred by the Association in connection therewith, including reasonable attorneys' fees; and (ii) hereby granted to the Association the right and power to enforce each said Lien, pursuant to the provisions set forth herein for such enforcement. The Lien herein referred to, while it is a continuing Lien, shall last only for so long as an Owner owns a Vacation Ownership, and shall not be enforceable and shall not be foreclosed, until recordation of the Notice of Default and Lien referred to in Subparagraph 7.02 c. 2. (b) below.

2. Procedure for Enforcement of Lien.

(a) Optional Demand Notice. At any time within 30 days after the due date of any Assessment duly levied by

the Association but not paid by an Owner, the Association or its authorized representative may make and serve by mail upon the defaulting Owner (but shall not be required to so make and serve) a written demand (called the "Demand Notice"). Said Demand Notice, if made, shall be dated and shall contain all of the categories of information set forth in Subparagraph 7.02 c. 2. (b) below. Each default by an Owner shall constitute a separate basis for such a demand, but any number of defaults may, at the Association's election, be included within a single Demand Notice.

(b) Recording of Notice of Default and Lien.

If the Association is not paid (i) within 10 days after mailing any Demand Notice provided for in Subparagraph 7.02 c. 2. (a) above, or (ii) within 30 days after the due date of the Assessment in question (if no such Demand Notice has been made), the Association may at any time thereafter elect to file and record in its favor a Notice of Default and Lien (with a copy thereof to be delivered to the defaulting Owner and to the Mortgagee of such defaulting Owner, if such Mortgagee has requested a copy of same and furnished its name and address to the Association) against the Vacation Ownership of the defaulting Owner in the Official Records of San Diego County, California. Such Notice of Default and Lien (or Demand Notice, as the case may be) shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

(1) The date of the Notice of Default and Lien (or Demand Notice, as the case may be);

(2) The name of the defaulting Owner;

(3) The amount of the Assessment which is in default;

(4) The amount of interest which has accrued on such unpaid Assessment;

(5) An itemization and amount of each collection cost including any attorney's fees;

(6) The total of (3), (4) and (5) above (called the "Total Monetary Delinquency") which would be required to cure such default as of the date of such Notice of Default and Lien (or Demand Notice, as the case may be), it being realized that interest shall continue to accrue upon the unpaid Assessment and that additional costs of enforcement and foreclosure may be incurred, until the date the unpaid Assessment is actually paid;

(7) That such Notice of Default (or Demand Notice, as the case may be) and Lien is made by the Association pursuant to this Declaration; and

(8) That, in the case of a Notice of Default and Lien, the Lien may be foreclosed, resulting in the forfeiture of said defaulting Owner's Vacation Ownership.

(c) Lien Foreclosure. After recordation of a Notice of Default and Lien, and mailing a copy thereof to the defaulting Owner, the Lien referred to therein may thereafter be foreclosed (i) by appropriate foreclosure action in court, or (ii) in the manner provided by California law for the nonjudicial foreclosure of a deed of trust by exercise of a power of sale contained therein, and to that end, the Association is hereby given such power of sale and conferred with authority to utilize such power of sale in enforcement of all such Association Liens, or (iii) in the manner provided by California law for the enforcement of a judgment. The Association, through its duly authorized agents, shall have the power to bid in at any such foreclosure sale, trustee's sale, or judgment sale and to purchase, acquire, lease, hold, mortgage, and/or convey any Vacation Ownership acquired at such sale, subject to the applicable provisions of this Declaration. The total amount of (i) the Total Monetary Delinquency, plus (ii) all interest which has accrued since the date of the Notice of Default and Lien, plus (iii) all additional costs of enforcement and foreclosure including, without limitation, trustee's fees, court costs, and title search fees (collectively called "Subsequent Foreclosure Costs"), shall be secured by such Lien, and shall be paid to the Association by the defaulting Owner should he or she desire to cure such default before foreclosure of the Lien.

(d) Proceeds from Lien Foreclosure. Should there be a completed foreclosure of under the Lien with a sale of the Vacation Ownership(s) of the defaulting Owner to a third party with the result that the Association receives proceeds from such sale, the Association shall use or pay out these proceeds in the following order: (i) it shall reimburse itself for its payment of all Subsequent Foreclosure Costs incurred subsequent to the date of the Notice of Default and Lien; (ii) it shall pay itself the amount of the Total Monetary Delinquency stated in the Notice of Default and Lien; (iii) it shall pay itself all interest which has accrued on the unpaid Assessment or accruing since the date of the Notice of Default and Lien to date of foreclosure; (iv) it shall pay, to the extent proceeds are available, the junior lien holder(s), if any (in order of their priority), whose lien(s) was eliminated by foreclosure of the Lien in question; and (v) it shall pay any balance of said proceeds to the defaulting Owner.

(e) Title of Foreclosure Purchaser. The purchaser at any such foreclosure sale shall obtain title to the foreclosed-upon Vacation Ownership free from: (i) the amount of the Total Monetary Delinquency, subsequently accrued interest, and all Subsequent Foreclosure Costs, and (ii) the effect of any prior

suspension, and the present termination, of the defaulting Owner's use rights in the Project and his related rights and privileges appurtenant to having been such an Owner (including, without limitation, voting rights); and otherwise such purchaser shall be deemed to be, and shall be, a new Owner of such Vacation Ownership, having full use rights in the Project and all privileges appurtenant to being an Owner, whose title thereto shall be subject to all the provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations; and in no event shall any such sale relieve such purchaser from liability for any Assessments, other payments, or performance thereafter becoming due under this Declaration, or from the new continuing Lien created upon such conveyance in favor of the Association. If, upon foreclosure of the Lien, the Association has still not recovered all moneys which were due it by the defaulting Owner, any moneys remaining so unpaid shall, to the extent permitted by law, remain the obligation of, and shall be payable by, the foreclosed-upon defaulting Owner; and if such sum should prove uncollectible, the Board may levy a Special Assessment against all Owners to collect such sum.

(f) Release of Lien. Upon the defaulting Owner's paying to the Association the amount of the Total Monetary, Delinquency, subsequently accrued interest on the unpaid Assessment and all Subsequent Foreclosure Costs, the Board shall cause to be recorded a Rescission of the Notice of Default and Lien in question in the Official Records of San Diego County.

3. Lien Priority and First Mortgages. Any continuing Lien referred to in Subparagraph 7.02 c. hereof shall be deemed prior and senior to all encumbrances voluntarily made by the Owner of a Vacation Ownership securing such Lien or involuntarily imposed upon such Vacation Ownership by operation of law except for taxes, bonds, governmental assessments, and any other governmental levies, which, by law, are deemed prior to such Lien, and whether or not a Notice of Default and Lien relating to such Lien has been recorded prior or subsequent to any such encumbrances; provided, however, that such Lien shall also be deemed subordinate and junior to the lien of any first Mortgage created upon the Vacation Ownership in question in good faith and for value and recorded in the office of the Recorder of San Diego County, California prior to the recordation of a Notice of Default and Lien thereunder (called a "First Mortgage"). The sale or transfer of any Vacation Ownership shall not defeat or affect the Lien provided for herein, except that a sale or transfer of any such Vacation Ownership which is encumbered by a First Mortgage, which sale or transfer is made pursuant to a foreclosure or any proceeding in lieu of foreclosure of such First Mortgage, shall extinguish the Lien provided for herein as to payments which became due prior to such sale or transfer. No such sale or transfer, however, shall relieve the purchaser of such Vacation Ownership from liability for any Assess-

ments thereafter becoming due or from the new continuing Lien created upon such purchaser's Vacation Ownership.

ARTICLE 8

DESIGNATION OF UNITS TO USE PROGRAM

8.01 Designated Units. As defined in Paragraph 1.35 hereof, Designated Units are those particular Units which Declarant, pursuant to the terms of this Article 8, has from time to time designated and made subject to the Use Program hereunder. Vacation Ownerships are created and exist only in Designated Units, upon such Units' having been designated to the Use Program. Declarant may offer for sale and/or sell Vacation Ownerships only in Designated Units and then only when given authority to do so by the California Department of Real Estate.

8.02 Nondesignated Units. As defined in Paragraph 1.52 hereof, Nondesignated Units are those particular Units, if any, which Declarant has not, pursuant to the terms of this Article 8, designated and made subject to the Use Program hereunder.

8.03 Initially Designated Units. Concurrently with the recordation of this Declaration, Declarant hereby designates and makes subject to the Use Program hereunder the following 12 Units: 124A, 224A, 324A, 119A, 122B, 222B, 322B, 123C, 223C, 323C, 121C and 120D (called the "Initially Designated Units"), as delineated and referred to on the Project Diagram attached hereto as Exhibit "C".

8.04 Subsequent Designation of Nondesignated Units. Declarant, without requiring any consent from the other Owners of Vacation Ownerships, or from the Association, shall from time to time (such time to be at Declarant's election) designate and make subject to the Use Program hereunder any number of the 66 remaining (at the time of the recordation of this Declaration) Nondesignated Units until all of said Nondesignated Units have been so designated, in accordance with the procedure set forth in Paragraph 8.05.

8.05 Procedure for Designating Nondesignated Units. Designation to the Use Program of each Nondesignated Unit in which Declarant wishes to offer for sale and sell a Vacation Ownership shall be made and shall be deemed to have taken effect, upon occurrence of all of the following:

a. Declarant's preparation, and recordation in the Official Records of San Diego County, California, of a document entitled Certificate of Designation of Heretofore Nondesignated Units (called the "Certificate"), which Certificate shall contain the following information:

1. The Unit number of each Nondesignated Unit thereby being designated;

2. A statement designating said Nondesignated Unit or Units and making it or them subject to the Use Program in the Project; and

3. A statement signed by the Managing Agent to the effect that, based upon the Managing Agent's inspection, each item of Common Furnishings scheduled by Declarant to be placed in the Nondesignated Unit or Units upon its or their designation is, in fact, in place in such Unit or Units and is in new or like-new condition.

b. Declarant's submission of the following to the California Department of Real Estate: (i) a copy of said Certificate, certified by Declarant's title insurance company to be a true copy of the Certificate which was actually recorded, (ii) a bill of sale from the Declarant to the Association indicating that the Association is the legal owner of the Common Furnishings placed in the newly designated Unit or Units; (iii) an application requesting the issuance by the California Department of Real Estate of the appropriate amendment of its Time Share Project Public Report for the Project authorizing Declarant to offer for sale and to sell Vacation Ownerships in the Unit or Units designated in the Certificate; and (iv) any other documents required by the California Department of Real Estate in connection with the Declarant's application in (iii) above.

c. The issuance by the California Department of Real Estate of its appropriate amendment of the Final Time Share Public Report for the Project authorizing Declarant to offer for sale and to sell Vacation Ownerships in the Unit or Units listed in the Certificate.

8.06 Reservation Safeguards for Owners of Annual and Biennial Floating Week/Floating Unit Vacation Ownerships. In order to ensure and safeguard that each Owner of either an Annual or a Biennial Floating Week/Floating Unit Vacation Ownership is given the opportunity to reserve for use and occupancy (on a "first-reserved, first-served" basis) a Unit of such Owner's Assigned Unit Type for any Use Week of such Owner's choice occurring during such Owner's assigned Season (Prime Summer Season or High Season, whichever be the case) for a particular Use Year, Declarant agrees, for itself, and for its successors and assigns, if any, that for each Designated Unit of a Unit Type in which Declarant has sold or intends to sell an Annual or Biennial Floating Week/Floating Unit Vacation Ownership, Declarant will not offer for sale and/or sell any Annual or Biennial Floating Week/Fixed Unit Vacation Ownerships in the Season in which any such Floating Week/Floating Unit Vacation Ownerships have been sold or will be sold.

Here is how the foregoing rule will be applied: If, for example, at any point in time four (4) "A" Unit Type Units had been designated to the Use Program, and Declarant thereafter sold one (1) Annual Fixed Week/Floating Unit Vacation Ownership for Fixed Week No. 27 in each Use Year, Declarant will not be able to offer for sale and sell any Annual or Biennial Floating Week/Floating Unit Vacation Ownerships for Prime Summer Season in one (1) of these four (4) Designated "A" Unit Type Units, but could sell Annual and/or Biennial Fixed Week/Floating Unit Vacation Ownerships in three (3) of these four (4) Designated "A" Unit Type Units, so long as no additional Annual Fixed Week/Floating Unit Vacation Ownerships for Fixed Week No. 27 had been, or will be, sold.

Thus, adding to the above example, where Declarant had sold one additional Annual Fixed Week/Floating Unit Vacation Ownership for Fixed Week No. 27 in an "A" Unit Type Unit, Declarant will not be able to offer for sale and sell any Annual or Biennial Floating Week/Floating Unit Vacation Ownerships for Prime Summer Season in two (2) of these four (4) Designated "A" Unit Type Units, but could sell Annual and/or Biennial Fixed Week/Floating Unit Vacation Ownerships in two (2) of these four (4) Designated "A" Unit Type Units during Prime Summer Season.

ARTICLE 9

ASSOCIATION INSURANCE

9.01 Required Policies. The Association shall obtain, maintain, and pay the cost of the following insurance policies:

a. Fire and Extended Coverage on Property and Common Furnishings. A policy or policies insuring the Property and the Common Furnishings thereon against loss or damage by fire and other hazards covered by fire insurance policies written with extended coverage in an amount of not less than the full replacement value thereof, which policy or policies shall name the Association as a coinsured, for itself and as agent for each Owner. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under this policy or policies and is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or other use and to execute releases in favor of any insurer with respect to the policy.

b. Liability Insurance. A policy of comprehensive public liability insurance having a single, combined liability limit of at least \$3,000,000, insuring against all liability and claims for death, personal injury, and property damage relating to, and/or arising out of, any and all use, ownership, operation, and/or maintenance of any portion of the Project including the Common Furnishings. Said liability insurance shall be in the form

of a policy issued to the Association, and said policy shall name all Owners, as a class, and if necessary for coverage, all agents of the Association, including the Managing Agent, as additional insureds. Said liability insurance policy shall contain by the insurer(s) waivers of its right to subrogation under the policy against any Owner or member of such Owner's household, and shall further contain a provision that no act or omission by Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or operate as a condition to recovery by any other person under such policy.

c. Fidelity Bond. A bond or bonds as will cover against losses to the Association due to dishonest acts on the part of directors, officers, employees, agents, or volunteers who have control of, or access to, the funds of the Association, including the Managing Agent (collectively referred to here as the "Principals"). Such fidelity bond or bonds shall name the Association as obligee and shall be written with loss coverage not less than the maximum amount of funds of the Association over which said Principals under the bond or bonds may reasonably be expected to have control or access at any time, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression. An agent's rider must also be attached which includes the Managing Agent within the bond definition of "employee," although such Managing Agent may be an independent contractor.

d. Association Officer and Director Insurance. A policy of insurance on behalf of each Association officer, Association director, and member of any Association committee (collectively called "Association Agents") protecting each said Association Agent to an amount which the Association deems is satisfactory, against any liability asserted against or incurred by him or her in the capacity of carrying out such Agent's duties, regardless of whether the Association would have the power to indemnify such Association Agent against such liability under applicable law.

e. Workmen's Compensation Insurance. A policy of workmen's compensation insurance, to the extent same shall be required by law, for all employees of the Association.

f. Any Other Insurance. Any other policy or policies of other insurance deemed necessary or desirable by the Association.

9.02 Insurance Procedures.

a. General. All of the policies required to be obtained by the Association pursuant to Paragraph 9.01 above shall cover such risks and be written by such insurers as the Association shall deem proper under the circumstances.

b. Notice of Cancellation. All liability and property insurance carried by the Association shall require the insurer to notify any Mortgagee requesting any notice of cancellation of such a policy or policies at least 30 days in advance of the effective date of any reduction or cancellation of such policy or policies.

c. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is adequate.

d. Payment of Premiums. Premiums on insurance maintained by the Association shall be a Basic Expense funded by Regular Annual Assessments levied by the Association.

ARTICLE 10

DAMAGE TO OR DESTRUCTION OF PROJECT

10.01 When Duty to Repair and Restore Project Is Mandatory. Upon damage to or destruction of the Project, or any portion thereof, it shall be the duty of the Association to repair and restore the same to its former condition as soon after such damage or destruction as is reasonably possible, where the amount available from insurance proceeds for such repair and restoration is at least 80 percent of the estimated cost of such repair and restoration. The cost, in excess of such available insurance proceeds, of such repair and restoration shall be a Special Expense of the Association payable through the Association's levy of a Special Assessment against each Owner in accordance with Paragraph 6.03 hereof.

10.02 When Duty to Repair and Restore Project Is to Be Determined by Owners. In the event of damage to or destruction of the Project, where the amount available from insurance proceeds for repair and restoration of the Project is less than 80 percent of the estimated cost of such repair and restoration, the Owners and the mortgagees of each Vacation Ownership shall have the right and power to determine whether or not to repair and restore the Project. Such issue shall be decided, if at all, within 60 days after the Association determines that the insurance proceeds are less than 80 percent of the estimated cost of restoration (called the "60-Day Period"), by the vote or written assent of (a) all of (i) Declarant, (ii) a majority of the total votes held by Members excluding votes held by Declarant, and (iii) 75 percent of the mortgagees holding beneficial interests in Vacation Ownerships, said percentage to be determined by assigning to each mortgagee one vote per each Vacation Ownership in which that mortgagee holds a beneficial interest (where Class "C" Membership has not yet been converted to Class "A" or Class "B" Membership); or (b) all of (i) a majority of the total votes in the Association, (ii) a majority

of the total votes excluding Declarant votes and (iii) 75 percent of the mortgagees holding beneficial interests in Vacation Ownerships, said percentage to be determined by assigning to each mortgagee one vote per each Vacation Ownership in which that mortgagee holds a beneficial interest (where Class "C" Membership has been converted to Class "A" or Class "B" Membership). Failure of the Owners and said mortgagees to make such determination of whether or not to repair and restore the Project within the 60-Day Period shall be deemed to be a determination by the Owners and said mortgagees to repair and restore the Project. A prevailing decision not to restore and repair the Project shall also automatically be deemed (i.e., without a further vote being required) to carry with it a decision by the Owners hereunder to sell the Property and the Common Furnishings thereon.

a. If Owners and Mortgagees Determine to Repair and Restore the Project. If the Owners and said mortgagees determine to repair and restore the Project in accordance with the foregoing, the cost of such repair and restoration in excess of the available insurance proceeds shall be a Special Expense of the Association payable through the Association's levy of a Special Assessment against each Owner in accordance with Paragraph 6.03 hereof. In the event the Owners and said mortgagees fail to determine whether or not to repair and restore the Project within the 60-Day Period pursuant to Paragraph 10.02 above, such repair and restoration shall be undertaken and completed by the Association, and the Owners hereunder shall pay their share thereof in accordance with the preceding sentence.

b. If Owners and Mortgagees Determine Not to Repair and Restore the Project. If the Owners and said mortgagees determine not to repair and restore the Project, all of the rights, powers, and duties specified in Paragraph 12.02 below (concerning "Procedures Relating to Sale of Property") shall immediately belong to, and be vested in, the Association, acting through the Board.

10.03 Insurance Proceeds. Any Distributable Net Proceeds resulting from the Association's receipt of insurance proceeds, either in excess of the cost of restoration and repair of the Project or in the event the Project is not repaired and restored as provided above, shall be distributed by the Association to each Owner in accordance with Paragraph 2.19.

ARTICLE 11

CONDEMNATION

11.01 Definitions. The term "Taking," as used in this article, shall mean condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain of all or any portion of the Property. A "Total

"Taking" shall be deemed to occur if there is a permanent Taking by condemnation of an interest in all or any portion of the Property to the extent that the operation, use, and occupancy of the Property as a vacation ownership resort is substantially and adversely affected. A "Partial Taking" is any taking other than a Total Taking.

11.02 Determination of Total Taking to Be Made by Owners. In the event of a Taking, the Owners shall have the right and power to determine whether or not the Taking is a Total Taking. Such issue shall be decided, if at all, within 60 days after the effective date of the Taking (called the "60-Day Period") by the vote or written consent of (a) both (i) Declarant, and (ii) a majority of the total votes held by Members excluding votes held by Declarant (where Class "C" Membership has not yet been converted to Class "A" or Class "B" Membership); or (b) Members holding both (i) a majority of the total votes in the Association, and (ii) a majority of the total votes excluding Declarant votes (where Class "C" Membership has been converted to Class "A" or Class "B" Membership). Failure of the Owners to determine whether the Taking is or is not a Total Taking within the 60-Day Period shall be deemed to be a determination by the Owners that the Taking is a Partial Taking. A determination that the Taking is a Total Taking shall also automatically be deemed (i.e., without a further vote being required) to carry with it a determination by the Owners to sell the Property and the Common Furnishings thereon. If the Owners determine that the Taking in question is a Total Taking, all of those rights, powers, and duties specified in Paragraph 12.02 below (concerning "Procedures Relating to Sale of Property") shall immediately belong to, and be vested in, the Association, acting through the Board.

11.03 Board to Represent Owners in Proceedings. Upon any Taking of the Property, the Board shall represent all of the Owners in any action to recover a condemnation award, subject to the right of each Mortgagee of record, upon request, to join in the proceedings. The Board, in its discretion, may at any time decide to settle such legal action, keeping as its standard in making any such decision, the doing of what is best for a majority of the Owners. No Owner shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Article 11. The Board is further empowered, subject to the limitations herein, to act as the sole representative of all Owners with respect to all aspects of any condemnation proceedings not specifically covered in this Article 11. The Board, immediately upon receiving knowledge of any Taking, or any threat thereof, shall promptly notify all Owners, and those Mortgagees who have filed with the Association a written request for such notice.

11.04 Repair on Partial Taking. Upon there being a determination of a Partial Taking, or failure of the Owners to make

such determination within the 60-Day Period as provided for in Paragraph 11.02 above, the Association shall immediately undertake, and complete within a reasonable period of time, any and all repair and restoration of the Project which may be required as a result of such Partial Taking. The cost of such repair and restoration shall be a Special Expense of the Association payable through the Association's levy of a Special Assessment against each Owner in accordance with Paragraph 6.03 hereof.

11.05 Condemnation Award. Any Distributable Net Proceeds resulting from the Association's receipt of condemnation award proceeds shall be distributed by the Association to each Owner in accordance with Paragraph 2.19. Notwithstanding anything in the foregoing to the contrary, upon any Partial Taking, the Board shall determine if any particular Owners have suffered more than other Owners as a result of Taking. If such a determination is made, each Owner who has suffered more shall be entitled to a portion of the condemnation award which is greater than the less-suffering Owners to the extent that it reasonably compensates such Owner for such Owner's suffering. In addition, or in lieu of the foregoing, the Association shall take other appropriate, equitable action designed to insure that no particular Owner suffers more than any other Owner as a result of a Partial Taking. Such appropriate, equitable action might include, but by no means be limited to, shortening the Use Weeks of all Owners so that all Owners could continue to enjoy the Property.

ARTICLE 12

SALE OF PROPERTY

12.01 When Owners Have Been Deemed to Have Determined to Sell the Property.

a. On Destruction or Condemnation of Project. The Owners shall be deemed automatically to have determined to Sell the Property and the Common Furnishings upon the occurrence of either of the following events: (i) the Owners' having made the determination, pursuant to Paragraph 10.02 above, not to repair and restore the Project upon its being damaged or destroyed; or (ii) the Owners' having made the determination, pursuant to Paragraph 11.02 above, that there had been a Total Taking of the Property by condemnation.

b. By Vote After December 31, 2065. At any time after December 31, 2065, the Owners hereunder shall have the right and power to offer to sell and sell the Property and the Common Furnishings thereon upon the vote or written consent to so do of (a) both (i) the Declarant and (ii) a majority of the total votes in the Association held by Members excluding votes held by Declarant (where Class "C" Membership has not yet been converted to Class

"A" or Class "B" Membership); or (b) Members holding both (i) a majority of the total votes in the Association and (ii) a majority of the total votes excluding Declarant votes (where Class "C" Membership has been converted to Class "A" or Class "B" Membership). If the Owners determine by the foregoing vote to sell the Property and the Common Furnishings thereon, all of the rights, powers, and duties specified in Paragraph 12.02 below (concerning "Procedures Relating to Sale of Property") shall immediately belong to, and be vested in, the Association, acting through the Board.

12.02 Procedures Relating to Sale of Property.

a. General Power and Authority Granted to Association.

Upon the Owners having determined to sell of the Property in accordance with either: (i) Paragraph 10.02 above (upon damage to or destruction of the Project), or (ii) Paragraph 11.02 above (upon there being a Total Taking of the Project by condemnation), or (iii) Subparagraph 12.01 b. above (by vote after December 31, 2060), each Owner, by accepting the conveyance of such Owner's Vacation Ownership, shall be deemed to have conferred upon the Association, acting through the Board, any and all of each such Owner's right, power, and authority, to sell and convey the Property and the Common Furnishings thereon.

b. Grant of Power of Attorney. To carry out the intent and purposes of Subparagraph 12.02 a. above, each Owner, by accepting the conveyance of his, her, its, or their Vacation Ownership, whether or not it shall be so expressed in such Owner's instrument of conveyance, hereby constitutes and appoints the Association, acting through the Board, as trustee, as said Owner's attorney-in-fact in said Owner's name, place, and stead, and for said Owner's use and benefit, to execute, acknowledge, and deliver on behalf of such Owner any instrument or document which is required in order to effect the sale and conveyance of the Property and the Common Furnishings thereon, including, but not limited to (i) any trust agreement pursuant to which the Association, as trustee, may acquire title to the Property and Common Furnishings for the purpose of disposing of the same, and pursuant to which trust agreement all Owners shall be the beneficiaries; and (ii) such document(s) of conveyance as may be reasonably required to convey title to the Vacation Ownership(s) of each such Owner to the Association, as trustee. Each Owner does further give and grant unto the Association, as trustee, acting through the Board, as said Owner's attorney-in-fact, full power and authority to do and perform any act necessary and proper to be done in the exercise of the foregoing powers, including, without limitation, the power and authority to petition for sale in lieu of partition, if necessary to effect such conveyance, as fully as each such Owner might or could do. Each foregoing power of attorney (i) shall be irrevocable and be deemed coupled with an interest; (ii) shall be binding upon each Owner holding a Vacation Ownership; and (iii) shall be

exercisable only after recordation in the Official Records of San Diego County, California, of a certificate signed and acknowledged by two (2) officers of the Board, stating therein that each such power of attorney is properly exercisable under this Declaration, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

c. Property to Be Offered for Sale. Immediately upon the Association's having determined to sell the Property and the Common Furnishings thereon, pursuant to: (i) either Paragraph 10.02 above (upon damage to or destruction of the Project), or (ii) Paragraph 11.02 above (upon there being a Total Taking of the Project by condemnation), or (iii) Subparagraph 12.01 b. above (by vote after December 31, 2065), the Association, acting through its Board of Directors, shall offer the Property and the Common Furnishings thereon for sale in accordance with Paragraph 12.02 d. below.

d. Property to Be Appraised. Immediately upon the Association's having determined to sell the Property and the Common Furnishings upon any of those events set forth in Subparagraph c. above, the Association, acting through its Board, shall hire a real estate appraiser who is a Member Appraisal Institute (MAI) of the American Institute of Real Estate Appraisers to make an appraisal of the value of the Property and Common Furnishings thereon. Immediately after receiving such appraisal, the Association, acting through its Board, shall establish the selling price for the Property and the Common Furnishings (which may be sold separately) and shall offer the Property (or separate portions thereof if the law so allows) and the Common Furnishings (or separate portions thereof) for sale to the public, using a real estate broker or brokers, if it chooses. The Association, acting through its Board, shall thereafter use its best efforts to sell the Property and the Common Furnishings.

e. Sale Price Factors. The Owners realize that the sale price of the Property may be affected by the governmental laws and policies then in effect at the time the Property is offered for sale, such as, without limitation, ordinances of the City of Carlsbad related to land use and zoning and various restrictions of the California Coastal Commission.

f. Petition for Sale. In the event that no consummation of a sale and conveyance of the Property and the Common Furnishings shall have been effected by the Association within 18 months after the Association has made the determination to sell such Property and Common Furnishings as set forth above, any Owner shall have the right to petition a court of competent jurisdiction to order the sale of the Property and Common Furnishings thereon.

g. Distribution of Net Proceeds from Sale. Upon consummation of any sale of the Property and the Common Furnishings, any Distributable Net Proceeds therefrom shall be distributed by the Association to each Owner in accordance with Paragraph 2.19.

h. Arbitration of Disputes. In the event of a dispute among Owners and/or between some of the Owners and the Association relating to their respective rights under, or otherwise concerning the subject matter of Article 10 (Damage to or Destruction of the Project), Article 11 (Condemnation), this Article 12 (Sale of Property), or Paragraph 2.14 hereof (No Partition Rights), or Paragraph 2.19 (Payment of Distributable Net Proceeds to Owners), any of the foregoing parties may cause the same to be referred to binding arbitration in San Diego County, California, to be administered by, and to be in accordance with the then prevailing commercial rules of, the American Arbitration Association. In the event of such arbitration, notice thereof shall be given to all necessary parties as promptly as possible after referral to arbitration is made, giving all such parties an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon the issue or issues in question. The arbitrator may include in his, her, or their decision an award for costs and/or attorneys' fees in favor of the prevailing party or parties against any one or more of the other parties to the arbitration.

ARTICLE 13

SPECIAL PROVISION FOR ENFORCEMENT OF DECLARANT'S OBLIGATIONS

13.01 General. The procedures set forth in this Article 13 are hereby established for the enforcement of the following obligations of the Declarant to the Association and to the Members thereof:

a. Completion of construction of the improvements in the Project included in the offering for which the Declarant has given any bond or other type of security to the Association for the commitment of the Declarant to complete construction of said improvements.

b. Payment to the Association of Regular Annual Assessments, Special Assessments, and Capital Improvement Assessments owed by the Declarant, as to Declarant Vacation Ownerships.

c. Any subsidy agreement between Declarant and Association by which Declarant has agreed to subsidize any portion of the costs of administering, managing, and operating the Project and Use Program.

13.02 Periodic Statements Required from Declarant. The Declarant shall, within 30 days after the end of each quarter of each Fiscal Year of the Association, furnish to each director on the Board at his or her residence address a statement containing the following information, as may be applicable:

a. A status report covering each improvement within the Project in the offering which was scheduled for completion during the quarter in question according to the Planned Construction Statement for the Project and each still-uncompleted improvement that was scheduled for completion during an earlier quarter.

b. Where there is no subsidy agreement between Declarant and Association which is in effect (because of its termination for any reason) as of the time Declarant is to make the periodic statement required under this Paragraph 13.02, the Declarant shall report the following:

1. The number of Declarant Vacation Ownerships as of the first and last day of the reporting quarter in question.

2. The total Regular Annual Assessments and Special Assessments which the Declarant become obligated to pay during such reporting quarter as an Owner of Declarant Vacation Ownerships.

3. The total Regular Annual Assessments and Special Assessments paid by the Declarant during such reporting quarter.

4. The amount of any delinquency of the Declarant in the payment of Regular Annual Assessments and Special Assessments that has not been cured as of the date of Declarant's report.

c. An itemized report of funds, goods and/or services furnished, or caused to be furnished, to the Association under a subsidization program of Declarant, including monetary contributions to the reserves of the Association for replacement of, or for major repairs to, any portion of the Project and/or the Common Furnishings thereon, and an itemized monetary valuation of any goods and services furnished.

13.03 Required Board Discussion and Vote. If the statement of the Declarant referred to in Paragraph 13.02 above is not received by the Board within 45 days after the end of a quarter, or if the statement as received evidences a failure by the Declarant to fulfill an obligation to the Association to complete improvements or to subsidize any portion of the costs of operating the Project and the Use Program, the Board shall meet specially, together or by conference telephone call, to discuss and to vote on the question

of initiating action against the Declarant and/or the Declarant's surety to enforce the Declarant's unfulfilled obligations.

13.04 Board Action to Enforce Declarant's Obligations. At any time after the Board discusses and votes on the question of initiating action against the Declarant and/or the Declarant's surety to enforce any unfilled obligations of Declarant, as provided for in Paragraph 13.03 above, the Board may initiate such action.

13.05 Sole Director Action to Enforce Declarant's Obligations. If (i) within 75 days after the end of a particular Fiscal Year quarter, the Board fails to discuss and vote (in accordance with Paragraph 13.03 above) on the question of requiring the Declarant's failure to fulfill one or more of its obligations hereunder to the Association, or (ii) if at any time after the Board has discussed the Declarant's failure to fulfill any such obligation, but either has voted not to initiate enforcement action, or has failed to take such vote, then in such event, the director on the Board of the Association elected solely by the votes of the Members other than Declarant (pursuant to the Bylaws) may thereafter initiate such an action in the name of the Association and at the Association's expense to enforce Declarant's unfulfilled obligation(s). If said Director determines that it is in the best interest of the Members of the Association to initiate such an action under the foregoing special authority, he, or she shall do so in the name of the Association within 90 days after the end of the quarter in question, and the Board shall thereafter take such steps as are necessary and appropriate in furtherance of the purpose of such action.

13.06 Arbitration with Respect to Question of Declarant's Fulfillment of Obligation(s). Any disagreement or controversy between the Declarant and the Association with respect to the question of the fulfillment of the Declarant's obligations to complete and pay for improvements in the Project included in its offering the Vacation Ownerships therein for sale to the public, or to pay the costs of operating and maintaining any part of the Project under a subsidization agreement shall, at the request of either party, be submitted to binding arbitration in San Diego County, California, to be administered by, and to be in accordance with the then prevailing commercial rules of, the American Arbitration Association. In the event of such arbitration, notice thereof shall be given to all necessary parties as promptly as possible after referral to arbitration is made, giving all such parties an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive. The arbitrator may include in his or her decision an award for costs and/or attorneys' fees in favor of the prevailing party or parties against any one or more of the other parties to the arbitration.

ARTICLE 14ANNEXATION

14.01 Right to Annex. Declarant's General Partner, Continental Commercial Corporation and its respective successors and/or assigns, shall have and shall continue to have, the absolute right, but not the obligation, to impose this Declaration from time to time upon all or any portion of any real property (adjacent to the Property herein which is the subject of this Declaration, as described on Exhibit "A") described on Exhibit "D" attached hereto and made a part hereof (called here "Annexable Property #1" or "Annexable Property #2, or collectively, the "Annexable Property"), and, when such imposition of this Declaration is accomplished, such property (called the "Annexed Property") shall be bound by the covenants, conditions and restrictions of this Declaration, as if such Annexed Property had originally been a part of the Exhibit "A" Property herein (such process of imposing this Declaration being called here "Annexation"). Any such Annexed Property shall be developed into a "timeshare project" as that term is defined in California Business and Profession Code Section 11003.5.

14.02 How Annexation Accomplished. Such annexation shall be accomplished, if at all, by the filing for record in the Official Records of San Diego County, California, a Declaration of Annexation (in a form similar to that set forth in Exhibit "E" attached hereto and made a part hereof), with respect to that portion of the Annexable Property being so annexed.

14.03 Amendment. Notwithstanding Paragraph 15.01 below, this Article 14 may not be amended, revoked or rescinded without the prior written consent of the Declarant or Continental Commercial Corporation first being obtained.

14.04 Possible Impacts and Effects of Annexation. In the event that Continental Commercial Corporation, and/or any of its successors or assigns should decide to impose this Declaration upon any portion of the Annexable Property, and construction of improvements is begun upon such Property, the Owners acknowledge and accept the fact that this will likely cause some disruption upon the Project, due to the nature of the construction process itself, including such things as dust from grading, and noise from use of equipment and tools, and also due to rerouting of roads and the making of connections between parking and garage areas. Further, any such annexation may result in some encroachments by buildings and/or other improvements being made upon the Exhibit "A" Property, as more particularly described in Subparagraph 2.08 c. above. Further, as a possible consequence of constructing additional units upon some or all of the Annexable Property, some of the views from the existing Units on, and/or from the Common Area of, the Exhibit "A" Property herein will likely be impaired.

In addition, upon any such annexation, Continental Commercial Corporation, for itself, and for its successors and/or assigns, has reserved the rights to allow encroachments onto the Property for buildings and other improvements which may be constructed upon the Annexed Property, as more particularly described in Subparagraph 2.08 e. Furthermore, in connection with any such annexation, Continental Commercial Corporation, for itself, and its successors and assigns, has reserved the rights to give certain rights to purchasers of vacation ownerships in the Annexed Property to use the Exhibit "A" Property, so long as reciprocal rights are given to the Owners to use the Annexed Property, as more particularly described in Subparagraph 2.08 d. It is anticipated that any such annexation will also result in "greenbelt" areas being developed on the Annexed Property which will benefit the Owners of the Exhibit "A" Property, and in the assurance that the development of the Annexed Property will be of a nature homogeneous with the resort nature of the Exhibit "A" Property.

Notwithstanding anything to the contrary set forth above, no such construction upon any such Annexed Property shall impair the Owners' full use and enjoyment of the Exhibit "A" Property, including their respective rights to enjoy use and occupancy of the Units, the recreational amenities upon this Property, and to their parking of vehicles upon this Property, except for such periods of temporary disruption as may be reasonable under the circumstances.

14.05 Time Limit(s) for Annexation(s). Notwithstanding Continental Commercial Corporation's right to annex the Annexable Property set forth in this Article 14, any such annexation shall be accomplished, if at all, within the following time limits:

a. Annexation of First Property to Be Annexed. Either Annexable Property # 1 or Annexable Property # 2 must be annexed, if at all, by Continental Commercial Corporation or its successor or assign within five (5) years after the issuance by the California Department of Real Estate ("DRE") of its first Final Time Share Project Public Report authorizing the offering for sale and sale of Vacation Ownerships in the 12 Initially Designated Units in the Project referred to in Section 8.03 above. Nothing in this paragraph shall preclude Continental Commercial Corporation or its successor or assign from annexing both Annexable Property # 1 and Annexable Property # 2 within said five (5)-year period, if it so desires.

b. Annexation of Second Property to Be Annexed. Following annexation of either Annexable Property # 1 or Annexable Property # 2 within the five (5)-year period required by Paragraph a. above, the second such Property whether Annexable Property # 1 or Annexable Property # 2, must be annexed, if at all, by Continental Commercial Corporation or by its successor or assign within three (3) years after the issuance by the DRE of its first

Final Time Share Project Public Report authorizing the offering for sale and sale of vacation ownership in the Property which had been previously annexed pursuant to Paragraph a. above.

If annexation of the Annexable Property is not accomplished within the time frames set forth in Paragraphs a and b above, any subsequent annexation shall require the vote or written consent authorizing such annexation of not less than 66 2/3 percent of the total votes residing in Members other than the Declarant.

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.01 Amendment of Declaration

a. Where Class "C" Membership Has Not Yet Been Continued to Class "A" and/or Class "A" Membership. Where Class "C" Membership has not been converted to Class "A" and/or Class "B" Membership, any amendment to this Declaration shall require the vote or written assent of both (i) the Declarant, and (ii) a majority of the total votes in the Association held by Members excluding votes held by Declarant.

b. Where Class "C" Membership Has Been Converted to Class "A" and/or Class "B" Membership. Where Class "C" Membership has been converted to Class "A" and/or Class "B" Membership, and the Declarant has become a Class "A" or Class "B" Member (pursuant to Subparagraph 4.04 c. above), Any amendment to this Declaration shall require the vote or written assent of Members holding both (i) a majority of the total votes in the Association, and (ii) a majority of the total votes in the Association held by Members excluding votes held by Declarant.

c. Other Conditions and Terms. Notwithstanding the vote requirements in Subparagraphs 15.01 a. and 15.01 b. above, if any specific provision in this Declaration requires a voting percentage for action to be taken thereunder which is greater than the requirements specified in these Subparagraphs 15.01 a. and 15.01 b., amendment of such provision shall require the same voting percentage of Members as the voting on the action itself. Each amendment shall be binding upon every Owner. Any amendment authorized hereby shall be evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, which amendment shall be effective upon the recordation thereof in the Official Records of San Diego County, California.

d. Protection of Beneficiaries of First Deeds of Trust. Notwithstanding any other provisions in this Declaration, no material amendment may be made to this Declaration without the prior written consent of those beneficiaries (called here

"Beneficiaries") of first (recording priority) deeds of trust (called here "First Deeds of Trust") encumbering at least 33 and 1/3 percent of the Vacation Ownerships in the Project encumbered by First Deeds of Trust.

For the purposes of this subsection 15.01 d., a "material amendment" shall mean any amendment to the provisions of this Declaration which establishes, provides for, governs and/or regulates any of the following:

1. The rights of Beneficiaries of First Deeds of Trust set forth in this subsection 15.01 d.;
2. Assessments, Assessment Liens, the priority of Assessment Liens, and/or the enforcement of Assessment Liens;
3. Reserves for maintenance, repair, and replacement of the Common Area;
4. Responsibility for maintenance and repairs to the Project;
5. Any convertibility of Units into the Common Area or convertibility of the Common Area into Units;
6. Withdrawal of any Property from the Project;
7. Reduction of any insurance or fidelity bond coverage;
8. Imposition of any restrictions on an Owner's right to sell or transfer his or her Vacation Ownership(s);
9. The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;
10. Any action to terminate the nature of the Project as a timeshare project;
11. Any sale of the Property;
12. The voting rights of the Members;
13. The Owners' respective ownership interests in the Property including their respective percentage interest therein;
14. The rights of an Owner to use the Project as provided in the Owner's deed and this Declaration;
15. Any change in the procedures required to amend this Declaration; and/or

16. Any change in provisions of this Declaration which expressly benefits Mortgagees.

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

Any Beneficiary of a First Deed of Trust who receives a written request to give its approval to a proposed amendment to this Declaration, but fails to deliver or post to the requesting party a written disapproval to such proposed Amendment within 30 days after such receipt, shall be deemed to have consented to such amendment, provided that such request was delivered by certified or registered mail, with a "return receipt" requested.

e. Protection of Declarant. Notwithstanding any other provision in this Declaration, until the closing of the first escrow for the sale of a Vacation Ownership, Declarant shall have the absolute and unilateral right to terminate or amend this Declaration by recordation of an appropriate termination or amendment document, so long as such act is in compliance with the requirements of the California Department of Real Estate and California Business and Professions Code Section 11012.

15.02 Term and Earlier Termination of Declaration.

a. Term of Declaration. Unless terminated sooner in accordance with Subparagraph 15.02 b. below, the covenants, conditions, and restrictions herein shall run with the land and shall be binding upon, and shall inure to the benefit of all Owners and all persons claiming under them until December 31, 2065, upon which date they shall be deemed terminated, unless earlier extended by the same vote or written assent of that number of Members required by Paragraph 15.01 above (Amendment of Declaration) to amend this Declaration.

b. Earlier Termination of Declaration and The Common Furnishings. This Declaration shall be deemed terminated prior to December 31, 2065 upon the occurrence of all of the following events: (i) any sale of the Property and the Common Furnishings; and (ii) the recordation in the Official Records of San Diego County, California, of a Declaration of Termination of Covenants, Conditions, and Restrictions, stating therein that this Declaration is terminated, and signed by any two (2) officers of the Association.

c. Survival of Certain Provisions and Association. Notwithstanding any termination of this Declaration, the provisions of this Declaration which are related to (i) the winding-up of the Association's affairs and/or the maintenance and disposition of the Property and/or the Common Furnishings, and (ii) the Association

and the Board, and their rights, powers, and duties, shall survive the termination of this Declaration for so long as necessary.

15.03 Notices. Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given either (i) when delivered personally to the party being noticed at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), or (ii) 48 hours after deposit of same in any United States Post Office box in the state to which the notice is addressed, or (iii) 72 hours after deposit of same in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth below. Any notice to an Owner required under this Declaration shall be addressed to such Owner at the last address for such Owner appearing in the records of the Association. Notices to the Association shall be addressed to: 6400 Ponto Road, Carlsbad, California 92008; notices to the Managing Agent shall be addressed to: P.O. Box 4068, Carlsbad, California 92008; and notices to the Declarant shall be addressed to: 5050 Avenida Encinas Suite 200, Carlsbad, California 92008.

15.04 Notification of Sale of Owner's Vacation Ownership. Prior to any sale or transfer of an Owner's Vacation Ownership under circumstances whereby the transferee will become the Owner thereof, the transferor or transferee shall notify the Association or the Managing Agent in writing and in whatever form then required by the Association of such pending sale or transfer. Such notice shall set forth the name and address of the transferee and transferor, the date on which such sale or transfer is to be consummated, and the purchase price to be paid by the transferee for such Ownership. Unless and until such notice is given and any amounts owed to the Association by the transferor are fully paid, any transfer made in violation of the above shall be void and shall not be recognized by the Association for any purpose.

15.05 Indemnification of Directors, Officers, Employees, and Other Agents. Procedures pertaining to the indemnification of directors, officers, employees, and other agents of the Association are established and set forth in Article VIII of the Bylaws.

15.06 Severability and the Rule Against Perpetuities. If any provision of this Declaration, or any section, sentence, clause, phrase, or word, or the application thereof, in any circumstances, shall be held invalid, the validity of the remainder of this Declaration and/or of the application of such provision, sentence, clause, phrase, or word under any other circumstances shall not be affected thereby, and the provisions hereof are deemed independent and severable. If any provision of this Declaration would violate the Rule Against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provisions shall be deemed to remain in effect only for the

maximum permissible period permitted by law or until 21 years after the death of the last survivor of the now living descendants of President Bill Clinton and former President George C. Bush.

15.07 Interpretation. The captions of the articles, paragraphs, and subparagraphs hereof are for convenience only and shall not be considered in resolving questions of interpretation or construction or meaning of this Declaration. Whenever the context of this Declaration requires same, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

15.08 No Waiver. The failure of the Association, the Declarant, the Board, any Owner, or any of their agents to enforce any provision of this Declaration shall not constitute a waiver thereof nor of the right to enforce such provision thereafter.

15.09 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration, and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, and regulations applicable thereto.

15.10 Personal Covenant. To the extent that the acceptance of a conveyance of a Vacation Ownership creates a personal covenant between the Owner, the Declarant, the Association, and other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner (including Declarant) of such Vacation Ownership except with respect to the payment of money owing to the Association by such Owner.

15.11 Arbitration of Disputes. In the event of any type of dispute between or among Declarant, any Owner or Owners, and/or the Association arising out of the provisions of this Declaration, and/or the Bylaws, and/or the Articles, and/or the Rules and Regulations, any of the foregoing parties may cause the same to be referred to binding arbitration in San Diego County, California, to be administered by, and to be in accordance with the then prevailing commercial rules of, the American Arbitration Association. In the event of such arbitration, notice thereof shall be given to all necessary parties as promptly as possible after referral to arbitration is made, giving all such parties an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon the issue or issues in question. The arbitrator may include in his, her, or their decision an award for costs and/or attorneys' fees in favor of the prevailing party or parties against any one or more of the other parties to the arbitration.

15.12 Attorneys' Fees. In the event action (including any arbitration) is instituted to enforce or interpret any of the provisions contained in, or to resolve any dispute relating to, this Declaration, the Articles, the Bylaws, and/or the Rules and Regulations, the party prevailing in such action shall be entitled to recover from the losing party thereto his, her, or its reasonable attorneys' fees and costs of such suit.

15.13 Successors. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Property and any interest therein, and shall inure to the benefit of, be binding upon, and be enforceable by, the Association, and/or any Owner, and/or Declarant, and each of their respective legal representatives, heirs, successors, and assigns.

IN WITNESS WHEREOF, the Declarant has hereunto caused this Declaration to be executed on the day and year above first written.

CARLSBAD SEAPOINTE RESORT L.P.,
a California limited partnership

By: CONTINENTAL COMMERCIAL CORPORATION,
a California corporation, its General Partner

By: _____

David S. Brown,
Co-President

By: _____

Timothy J. Stripe,
Co-President

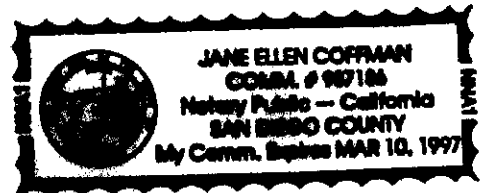
"Declarant"

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

On July 14, 1995 before me, JANE ELLEN COFFMAN Notary Public, personally appeared DAVID S. BROWN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the co-president of CONTINENTAL COMMERCIAL CORPORATION, the general partner of CARLSBAD SEAPOINTE RESORT L.P., a California limited partnership, whose name is subscribed to the within instrument, and who acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. (Seal)

Signature Jane Ellen Coffman



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

On July 14, 1995 before me, Cynthia A. Jacques Notary Public, personally appeared TIMOTHY J. STRIPE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the co-president of CONTINENTAL COMMERCIAL CORPORATION, the general partner of CARLSBAD SEAPOINTE RESORT L.P., a California limited partnership, whose name is subscribed to the within instrument, and who acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal. (Seal)

Signature Cynthia A. Jacques

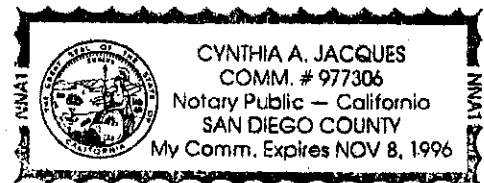


EXHIBIT "A"LEGAL DESCRIPTION OF THE PROPERTY

A PORTION OF SECTION 20, TOWNSHIP 12 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 24 OF LA COSTA DOWNS UNIT NO. 1 OF MAP NO. 2013; THENCE NORTH 18° 44' 30" WEST 40.00 FEET TO THE NORTHERLY LINE OF SAID MAP NO. 2013; THENCE, ALONG SAID NORTHERLY LINE, NORTH 71° 15' 30" EAST 120.00 FEET; THENCE, LEAVING SAID NORTHERLY LINE ALONG THE EASTERLY LINE OF THE STATE HIGHWAY AS DESCRIBED IN PARCEL 2, BOOK 4332 PAGE 306, RECORDED DECEMBER 31, 1951, NORTH 17° 18' 02" WEST 132.22 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 14° 35' 51" WEST 425.67 FEET; THENCE NORTH 63° 49' 40" WEST 141.43 FEET; THENCE NORTH 24° 26' 19" WEST 142.00 FEET; THENCE, LEAVING THE EAST LINE OF SAID STATE HIGHWAY, SOUTH 76° 16' 14" EAST 285.34 FEET TO A POINT ON THE WEST LINE OF THE PARCEL OF LAND CONVEYED TO ATCHISON TOPEKA AND SANTA FE RAILWAY COMPANY AS DESCRIBED IN BOOK 2182 PAGE 305, RECORDED JULY 23, 1946; THENCE, ALONG SAID WEST LINE, SOUTH 22° 02' 17" EAST 578.00 FEET; THENCE, LEAVING SAID WEST LINE, NORTH 89° 58' 20" EAST 201.11 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit "A"

(Page 1 of 2)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY (continued)

Approximate Format for Replacement Legal
Description upon Recordation of Subdivision Map

LOT 1 OF MAP _____ IN THE CITY OF CARLSBAD, COUNTY OF
SAN DIEGO, STATE OF CALIFORNIA, RECORDED IN THE OFFICE OF THE
COUNTY RECORDER OF SAN DIEGO COUNTY NO. _____, 1995
AS FILED NO. 1995-_____.

Exhibit "A"
(Page 2 of 2)

102 99

EXHIBIT B

CALENDARS OF USE WEEKS

1996

Week Number	Saturday to Saturday	Sunday to Sunday
1	Jan. 6-Jan. 13	Jan. 7-Jan 14
2	Jan. 13-Jan. 20	Jan. 14-Jan 21
3	Jan. 20-Jan. 27	Jan. 21-Jan 28
4	Jan. 27-Feb. 3	Jan. 28-Feb. 4
5	Feb. 2-Feb. 9	Feb. 4-Feb.11
6	Feb. 10-Feb. 17	Feb. 11-Feb. 18
7	Feb. 17-Feb. 24	Feb. 18-Feb. 25
8	Feb. 24-Mar. 2	Feb. 25-Mar. 3
9	Mar. 2-Mar. 9	Mar. 3-Mar. 10
10	Mar. 9-Mar. 16	Mar. 10-Mar. 17
11	Mar. 16-Mar. 23	Mar. 17-Mar. 24
12	Mar. 23-Mar. 30	Mar. 24-Mar. 31
13	Mar. 30-Apr. 6	Mar. 31-Apr. 7
14	Apr. 6-Apr. 13	Apr. 7-Apr. 14
15	Apr. 13-Apr. 20	Apr. 14-Apr. 21
16	Apr. 20-Apr. 27	Apr. 21-Apr. 28
17	Apr. 27-May 4	Apr. 28-May 5
18	May 4-May 11	May 5-May 12
19	May 11-May 18	May 12-May 19
20	May 18-May 25	May 19-May 26
21	May 25-Jun. 29	May 26-Jun. 9
22	Jun. 1-Jun. 8	Jun. 2-Jun. 9
23	Jun. 8-Jun. 15	Jun. 9-Jun. 16
24	Jun. 15-Jun. 22	Jun. 16-Jun. 23
25	Jun. 22-Jun. 29	Jun. 23-Jun. 30
26	Jun. 29-Jul. 6	Jun. 30-Jul. 7
27	Jul. 6-Jul. 13	Jul. 7-Jul. 14
28	Jul. 13-Jul. 20	Jul. 14-Jul. 21
29	Jul. 20-Jul. 27	Jul. 21-Jul. 28
30	Jul. 27-Aug. 3	Jul. 28-Aug. 4
31	Aug. 3-Aug. 10	Aug. 4-Aug. 11
32	Aug. 10-Aug. 17	Aug. 11-Aug. 18
33	Aug. 17-Aug. 24	Aug. 18-Aug. 25
34	Aug. 24-Aug. 31	Aug. 25-Sep. 1
35	Aug. 31-Sep. 7	Sep. 1-Sep. 8
36	Sep. 7-Sep. 14	Sep. 8-Sep. 15
37	Sep. 14-Sep. 21	Sep. 15-Sep. 22
38	Sep. 21-Sep. 28	Sep. 22-Sep. 29
39	Sep. 28-Oct. 5	Sep. 29-Oct. 6
40	Oct. 5-Oct. 12	Oct. 6-Oct. 13
41	Oct. 12-Oct. 19	Oct. 13-Oct. 20
42	Oct. 19-Oct. 26	Oct. 20-Oct. 27
43	Oct. 26-Nov. 2	Oct. 29-Nov. 3
44	Nov. 2-Nov. 9	Nov. 3-Nov. 10
45	Nov. 9-Nov. 16	Nov. 10-Nov. 17
46	Nov. 16-Nov. 23	Nov. 17-Nov. 24
47	Nov. 23-Nov. 30	Nov. 24-Dec. 1
48	Nov. 30-Dec. 7	Dec. 1-Dec. 8
49	Dec. 7-Dec. 14	Dec. 8-Dec. 15
50	Dec. 14-Dec. 21	Dec. 15-Dec. 22
51	Dec. 21-Dec. 28	Dec. 22-Dec. 29
52	Dec. 28-Jan. 4	Dec. 29-Jan.5
53	—	—

1997

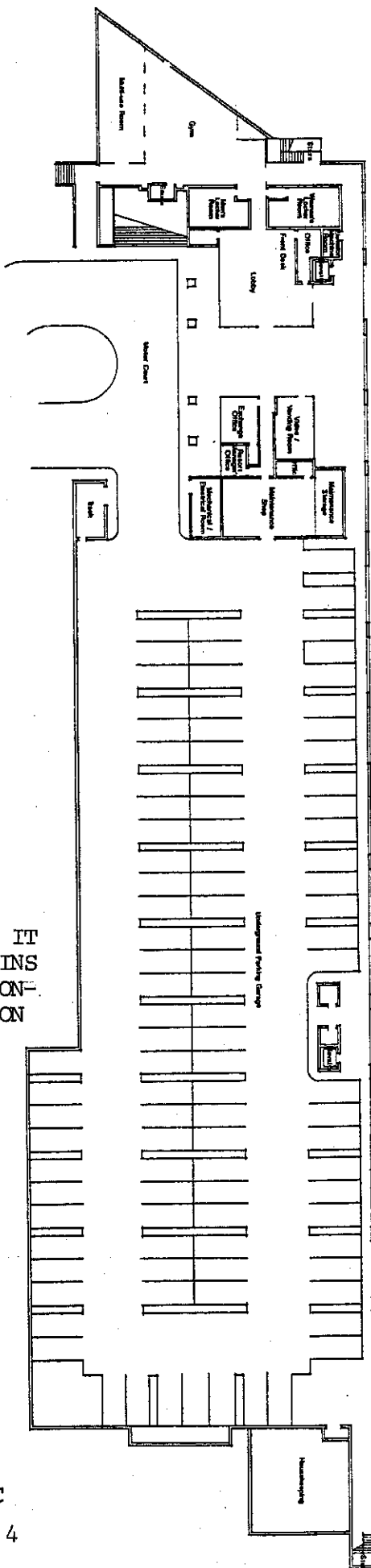
Week Number	Saturday to Saturday	Sunday to Sunday
1	Jan. 4-Jan. 11	Jan. 5-Jan 12
2	Jan. 11-Jan. 18	Jan. 12-Jan 19
3	Jan. 18-Jan. 25	Jan. 19-Jan 26
4	Jan. 25-Feb. 1	Jan. 26-Feb. 2
5	Feb. 1-Feb. 8	Feb. 2-Feb.9
6	Feb. 8-Feb. 15	Feb. 9-Feb. 16
7	Feb. 15-Feb. 22	Feb. 16-Feb. 23
8	Feb. 22-Mar. 1	Feb. 23-Mar. 2
9	Mar. 1-Mar. 9	Mar. 2-Mar. 9
10	Mar. 8-Mar. 16	Mar. 9-Mar. 16
11	Mar. 15-Mar. 23	Mar. 16-Mar. 23
12	Mar. 22-Mar. 30	Mar. 23-Mar. 30
13	Mar. 29-Apr. 5	Mar. 30-Apr. 6
14	Apr. 5-Apr. 12	Apr. 6-Apr. 13
15	Apr. 12-Apr. 19	Apr. 13-Apr. 20
16	Apr. 19-Apr. 26	Apr. 20-Apr. 27
17	Apr. 26-May 3	Apr. 27-May 4
18	May 3-May 10	May 4-May 11
19	May 10-May 17	May 11-May 18
20	May 17-May 24	May 18-May 25
21	May 24-May 31	May 25-Jun. 1
22	May 31-Jun. 7	Jun. 1-Jun. 8
23	Jun. 7-Jun. 14	Jun. 8-Jun. 15
24	Jun. 14-Jun. 21	Jun. 15-Jun. 22
25	Jun. 21-Jun. 28	Jun. 22-Jun. 29
26	Jun. 28-Jul. 5	Jun. 29-Jul. 6
27	Jul. 5-Jul. 12	Jul. 6-Jul. 13
28	Jul. 12-Jul. 19	Jul. 13-Jul. 20
29	Jul. 19-Jul. 26	Jul. 20-Jul. 27
30	Jul. 26-Aug. 2	Jul. 27-Aug. 3
31	Aug. 2-Aug. 9	Aug. 3-Aug. 10
32	Aug. 9-Aug. 16	Aug. 10-Aug. 17
33	Aug. 16-Aug. 23	Aug. 17-Aug. 24
34	Aug. 23-Aug. 30	Aug. 24-Aug. 31
35	Aug. 30-Sep. 6	Aug. 31-Sep. 7
36	Sep. 6-Sep. 13	Sep. 7-Sep. 14
37	Sep. 13-Sep. 20	Sep. 14-Sep. 21
38	Sep. 20-Sep. 27	Sep. 21-Sep. 28
39	Sep. 27-Oct. 4	Sep. 28-Oct. 5
40	Oct. 4-Oct. 11	Oct. 5-Oct. 12
41	Oct. 11-Oct. 18	Oct. 12-Oct. 19
42	Oct. 18-Oct. 25	Oct. 19-Oct. 26
43	Oct. 22-Nov. 1	Oct. 26-Nov. 2
44	Nov. 1-Nov. 8	Nov. 2-Nov. 9
45	Nov. 8-Nov. 15	Nov. 9-Nov. 16
46	Nov. 15-Nov. 22	Nov. 16-Nov. 23
47	Nov. 22-Nov. 29	Nov. 23-Nov. 30
48	Nov. 29-Dec. 6	Nov. 30-Dec. 7
49	Dec. 6-Dec. 13	Dec. 7-Dec. 14
50	Dec. 13-Dec. 20	Dec. 14-Dec. 21
51	Dec. 20-Dec. 27	Dec. 21-Dec. 28
52	Dec. 27-Jan. 3	Dec. 28-Jan.4
53	—	—

1998

Week Number	Saturday to Saturday	Sunday to Sunday
1	Jan. 3-Jan. 10	Jan. 4-Jan 11
2	Jan. 10-Jan. 17	Jan. 11-Jan 18
3	Jan. 17-Jan. 24	Jan. 18-Jan 25
4	Jan. 24-Jan. 31	Jan. 25-Feb. 1
5	Jan. 31-Feb. 7	Feb. 1-Feb.8
6	Feb. 7-Feb. 14	Feb. 8-Feb. 15
7	Feb. 14-Feb. 21	Feb. 15-Feb. 22
8	Feb. 21-Feb. 28	Feb. 22-Mar. 1
9	Feb. 28-Mar. 7	Mar. 1-Mar. 8
10	Mar. 7-Mar. 14	Mar. 8-Mar. 15
11	Mar. 14-Mar. 21	Mar. 15-Mar. 22
12	Mar. 21-Mar. 28	Mar. 22-Mar. 29
13	Mar. 28-Apr. 4	Mar. 29-Apr. 5
14	Apr. 4-Apr. 11	Apr. 5-Apr. 12
15	Apr. 11-Apr. 18	Apr. 12-Apr. 19
16	Apr. 18-Apr. 25	Apr. 19-Apr. 26
17	Apr. 25-May 2	Apr. 26-May 3
18	May 2-May 9	May 3-May 10
19	May 9-May 16	May 10-May 17
20	May 16-May 23	May 17-May 24
21	May 23-May 30	May 24-May 31
22	May 30-Jun. 6	May 31-Jun. 7
23	Jun. 6-Jun. 13	Jun. 7-Jun. 14
24	Jun. 13-Jun. 20	Jun. 14-Jun. 21
25	Jun. 20-Jun. 27	Jun. 21-Jun. 28
26	Jun. 27-Jul. 4	Jun. 28-Jul. 5
27	Jul. 4-Jul. 11	Jul. 5-Jul. 12
28	Jul. 11-Jul. 18	Jul. 12-Jul. 19
29	Jul. 18-Jul. 25	Jul. 19-Jul. 26
30	Jul. 25-Aug. 1	Jul. 26-Aug. 2
31	Aug. 1-Aug. 8	Aug. 2-Aug. 9
32	Aug. 8-Aug. 15	Aug. 9-Aug. 16
33	Aug. 15-Aug. 22	Aug. 16-Aug. 23
34	Aug. 22-Aug. 29	Aug. 23-Aug. 30
35	Aug. 29-Sep. 5	Aug. 30-Sep. 6
36	Sep. 5-Sep. 12	Sep. 6-Sep. 13
37	Sep. 12-Sep. 19	Sep. 13-Sep. 20
38	Sep. 19-Sep. 26	Sep. 20-Sep. 27
39	Sep. 26-Oct. 3	Sep. 27-Oct. 4
40	Oct. 3-Oct. 10	Oct. 4-Oct. 11
41	Oct. 10-Oct. 17	Oct. 11-Oct. 18
42	Oct. 17-Oct. 24	Oct. 18-Oct. 25
43	Oct. 24-Oct. 31	Oct. 27-Nov. 1
44	Oct. 31-Nov. 7	Nov. 1-Nov. 8
45	Nov. 7-Nov. 14	Nov. 8-Nov. 15
46	Nov. 14-Nov. 21	Nov. 15-Nov. 22
47	Nov. 21-Nov. 28	Nov. 22-Nov. 29
48	Nov. 28-Dec. 5	Nov. 29-Dec. 6
49	Dec. 5-Dec. 12	Dec. 6-Dec. 13
50	Dec. 12-Dec. 19	Dec. 13-Dec. 20
51	Dec. 19-Dec. 26	Dec. 20-Dec. 27
52	Dec. 26-Jan. 2	Dec. 27-Jan.3
53	—	—

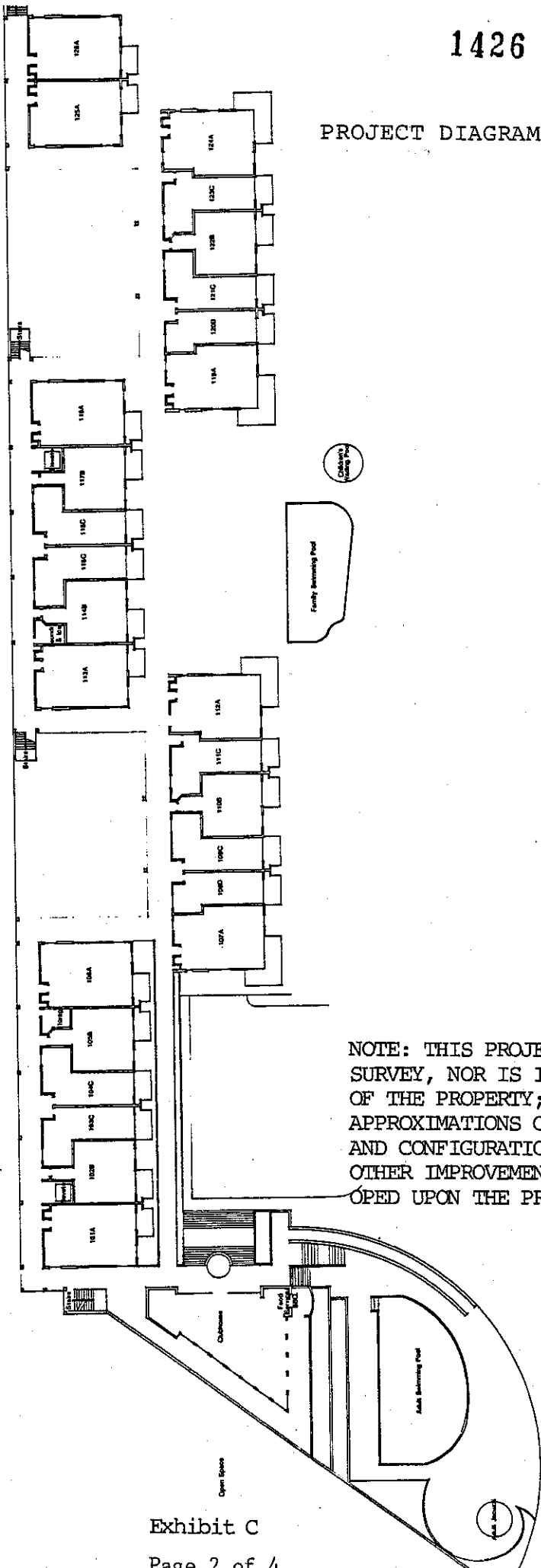
PROJECT DIAGRAM

Ground Level



NOTE: THIS PROJECT DIAGRAM IS NOT A SURVEY, NOR IS IT BASED UPON A SURVEY, OF THE PROPERTY; AND IT CONTAINS ONLY APPROXIMATIONS OF THE LOCATIONS, SIZES, AND CONFIGURATIONS OF THE UNITS AND OTHER IMPROVEMENTS UPON OR TO BE DEVELOPED UPON THE PROPERTY.

PROJECT DIAGRAM

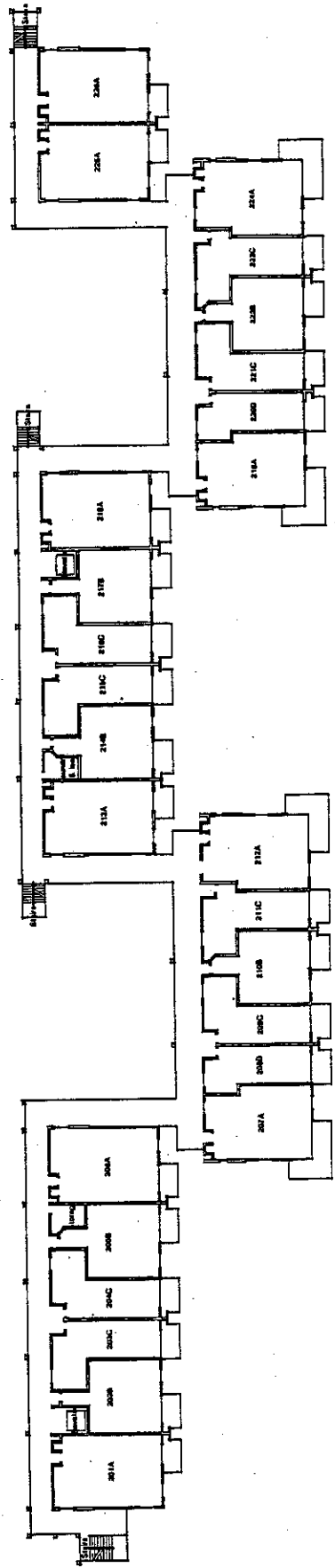


First Floor

NOTE: THIS PROJECT DIAGRAM IS NOT A SURVEY, NOR IS IT BASED UPON A SURVEY, OF THE PROPERTY; AND IT CONTAINS ONLY APPROXIMATIONS OF THE LOCATIONS, SIZES, AND CONFIGURATIONS OF THE UNITS AND OTHER IMPROVEMENTS UPON OR TO BE DEVELOPED UPON THE PROPERTY.

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PROJECT DIAGRAM

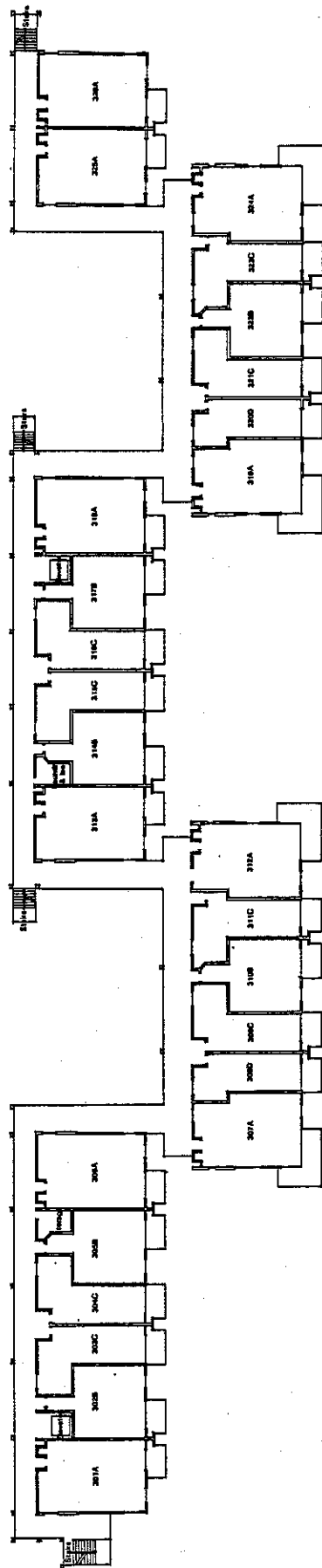


Second Floor

NOTE: THIS PROJECT DIAGRAM IS NOT A SURVEY, NOR IS IT BASED UPON A SURVEY, OF THE PROPERTY; AND IT CONTAINS ONLY APPROXIMATIONS OF THE LOCATIONS, SIZES, AND CONFIGURATIONS OF THE UNITS AND OTHER IMPROVEMENTS UPON OR TO BE DEVELOPED UPON THE PROPERTY.

[Handwritten signature]

PROJECT DIAGRAM



Third Floor

NOTE: THIS PROJECT DIAGRAM IS NOT A SURVEY, NOR IS IT BASED UPON A SURVEY, OF THE PROPERTY AND IT CONTAINS ONLY APPROXIMATIONS OF THE LOCATIONS, SIZES, AND CONFIGURATIONS OF THE UNITS AND OTHER IMPROVEMENTS UPON OR TO BE DEVELOPED UPON THE PROPERTY.

EXHIBIT "D"DESCRIPTION OF ANNEXABLE PROPERTYANNEXABLE PROPERTY #1

A PORTION OF SECTION 20, TOWNSHIP 12 SOUTH, RANGE 4 WEST SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 24 OF LA COSTA DOWNS, UNIT NO. 1 OF MAP NO. 2013; THENCE NORTH 18°44'30" WEST 40.00 FEET TO THE NORTHERLY LINE OF SAID MAP NO. 2013; THENCE CONTINUING NORTH 18°44'30" WEST 21.05 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 74°31'44" WEST 7.35 FEET TO THE BEGINNING OF A TANGENT 20 FOOT RADIUS CURVE, CONCAVE TO THE NORTH; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 86°43'46" A DISTANCE OF 30.27 FEET; THENCE, TANGENT TO SAID CURVE, NORTH 18°44'30" WEST 615.15 FEET; THENCE NORTH 71°15'30" EAST 80.13 FEET; THENCE SOUTH 63°49'40" EAST 118.52 FEET TO A POINT OF CUSP WITH A 50 FOOT RADIUS CURVE CONCAVE TO THE SOUTH, THE RADIAL TO SAID POINT BEARS NORTH 26°10'20" EAST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 158°50'32" A DISTANCE OF 138.62 FEET; THENCE, TANGENT TO SAID CURVE, SOUTH 42°40'12" EAST 50.00 FEET TO THE BEGINNING OF A TANGENT 90 FOOT RADIUS CURVE, CONCAVE TO THE WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF A 28°04'21" A DISTANCE OF 44.10 FEET; THENCE, TANGENT TO SAID CURVE, SOUTH 14°35'51" EAST 296.76 FEET TO THE BEGINNING OF A 230 FOOT RADIUS CURVE, CONCAVE TO THE EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE 7°58'02" A DISTANCE OF 31.98 FEET; THENCE, TANGENT TO SAID CURVE, SOUTH 22°33'53" EAST 65.01 FEET TO THE BEGINNING OF A TANGENT 20 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 97°05'37" A DISTANCE OF 33.89 FEET; THENCE, TANGENT TO SAID CURVE, SOUTH 74°31'44" WEST 46.71 FEET TO THE TRUE POINT OF BEGINNING.

ANNEXABLE PROPERTY #2

THAT PORTION OF LOT 2, SECTION 20, TOWNSHIP 12 SOUTH RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, BOUNDED ON THE WEST BY THE EASTERLY LINE OF LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 4, 1951 IN BOOK 4253, PAGE 578 OF OFFICIAL RECORDS, AS DOCUMENT NO. 121143, BOUNDED ON THE EAST BY THE WESTERLY LINE OF THAT PARCEL OF LAND CONVOYED IN

Exhibit "D"
(Page 1 of 2)

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DEED TO ATCHISON, TOPEKA AND SANTE FE RAILWAY COMPANY, RECORDED JANUARY 29, 1946 AS DOCUMENT NO. 9749, IN BOOK 2031, PAGE 277 OF OFFICIAL RECORDS; BOUNDED ON THE SOUTH BY THE NORTHERLY LINE OF LA COSTA DOWNS, UNIT NO. 1, ACCORDING TO MAP THEREOF NO. 2013, AND BOUNDED ON THE NORTH BY THE NORTH LINE OF THE SOUTH 60 ACRES OF LOTS 1, 2 AND 3 AND THE SOUTHEAST QUARTER OF SOUTHEAST QUARTER OF SECTION 20 AND LOT 4 AND SOUTHWEST QUARTER OF SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 4 WEST, SAN BERNARDINO BASE AND MERIDIAN, EXCEPTING FROM SAID LOTS 1 AND 2, AND PORTIONS THEREOF, NOW OR HERETOFORE LYING BELOW THE MEAN HIGH TIDE LINE OF THE PACIFIC OCEAN.

Exhibit "D"
(Page 2 of 2)

EXHIBIT "E"

(Form of)

DECLARATION OF ANNEXATION

Recording Requested By:)
 Chicago Title Company)
)
 When Recorded Mail To:)
)
 Carlsbad Seapointe Resort)
 5050 Avenida Encinas, Suite 200)
 Carlsbad, California 92008)

(Space Above For Recorder's Use)

WHEREAS, CARLSBAD SEAPOINTE RESORT L.P., a California limited partnership ("Declarant"), caused to be recorded a certain Declaration of Covenants, Conditions and Restrictions for Vacation Ownerships in Carlsbad Seapointe Resort in the Office of the Recorder of San Diego County, San Diego, California on _____, 1995, as Document No. _____, of the Official Records of San Diego County, California (the "Declaration"); providing for the possibility of imposition of the Declaration upon all or any portion of certain real property in addition to the Property already subject to such Declaration ("the Annexable Property");

WHEREAS, Declarant now desires to impose the Declaration upon that portion of the Annexable Property described in Exhibit "A."

NOW, THEREFORE, Declarant hereby declares that the Annexed Property is and shall be subject to the Declaration, and that such Annexed Property will hereafter be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the same covenants, conditions and restrictions set forth in the Declaration. Said covenants, conditions and restrictions, are hereby imposed on the Annexed Property for the mutual benefit of the Annexed Property as well as the Property previously made subject to the Declaration.

In connection with the foregoing, Regular Annual Assessments against all Owners of the Annexed Property, including Declarant as to Declarant Ownerships, shall commence accruing and shall be payable in advance (whether the entire Annual Assessment or an installment thereof, as the Board decides) on the Commencement Date

Exhibit "E"
 (Page 1 of 3)

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as defined below. The "Commencement" Date shall be the first day of the first month following the date of the initial close of an escrow of a sale by Declarant of a Vacation Ownership in the Annexed Property. Notwithstanding anything in the foregoing to the contrary, no Regular Annual Assessment shall be assessed against an Owner whose escrow for the purchase of a Vacation Ownership has just closed, where such Owner will not be entitled to occupy a Unit, by virtue of such Owner's deed, until the Fiscal Year following the year in which such escrow was closed.

IN WITNESS WHEREOF, this Declaration of Annexation has been executed in San Diego County, California, as of the ____ day of _____, 19__.

CARLSBAD SEAPOINTE RESORT L.P.,
a California limited partnership

By: CONTINENTAL COMMERCIAL CORPORATION,
a California corporation, its General Partner

By: _____

By: _____

Exhibit "E"
(Page 2 of 3)

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EXHIBIT "A"

(LEGAL DESCRIPTION OF ANY ANNEXED PROPERTY
TO BE INSERTED HERE)

Exhibit "E"
(Page 3 of 3)

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SUBORDINATION AGREEMENT

First Capital Investment Fund, being the beneficiary under that certain deed of trust dated July 19, 1994, recorded August 26, 1994 as Instrument No. 1994-0513112, with the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said deed of trust are and shall be subordinate and inferior to the Declaration of Covenant, Conditions and Restrictions for Vacation Ownerships in Carlsbad Seapointe Resort, to which this Subordination Agreement is attached.

FIRST CAPITAL INVESTMENT FUND

By: *Lloyd S. Miller*
(Signature)

LLOYD S. MILLER, TRUSTEE
(Print name/title)

STATE OF INDIANA)
COUNTY OF HAMILTON) SS.

On July 17, 1995, be me, ~~XXXXXX~~ ^{ap} Anna Clop Notary Public, personally appeared Lloyd Miller personally known to me (or proved to me of the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature *Anna P Clop* (Seal)

ANNA P CLOP
NOTARY PUBLIC STATE OF INDIANA
HAMILTON COUNTY
MY COMMISSION EXP. FEB. 9, 1998

