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If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.

The above notice is required pursuant to subdivision (b) of California Government Code Section 12956.1. The original notice is printed in 20-point, boldface, red type.

7 Petites

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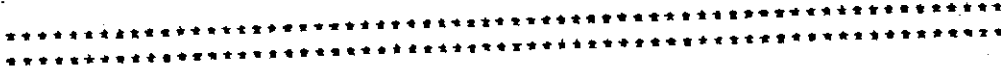
Lee A. Branch

WHEN RECORDED RETURN TO:

Robert O. Smylie, Esquire
Law Offices of Smylie & Selman
2049 Century Park East, Suite 2050
Los Angeles, California 90067

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DECLARATION OF ESTABLISHMENT

OF

CONDITIONS, COVENANTS AND RESTRICTIONS

FOR

RANCHO CIELO

A Residential Planned Development

*SINGLES FAMILY
HOMES -
DETACHED UNITS*

THIS INSTRUMENT FILED FOR RECORD BY
FIRST AMERICAN TITLE INSURANCE COMPANY AS AN
ACCOMMODATION ONLY. IT HAS NOT BEEN EXAMINED AS
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LA *9-11-88* *QUINCY*

DECLARATION OF ESTABLISHMENT OF
CONDITIONS, COVENANTS AND RESTRICTIONS
FOR
RANCHO CIELO

THIS DECLARATION OF ESTABLISHMENT OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR RANCHO CIELO (hereinafter "Declaration") is made by Rancho Cielo Associates, a California general partnership (hereinafter the "Declarant"), being the Owner of that certain real property subject to this Declaration, and hereinafter more particularly described.

W I T N E S S E T H:

WHEREAS, Declarant is the Owner of the following real property located in the unincorporated portion of the County of Orange, State of California (hereinafter the "Properties"), more particularly described as:

Lots 1 through 38 and Common Area Lots A, B and C of Tract No. 12214, in the County of Orange, State of California, as per Map recorded in Book 611, Pages 28 through 32, in the Office of the County Recorder of said County; and

The development of the Properties is the first phase of an 8 phase planned development. The first phase is planned to be constructed on Lots 1 through 38 and Common Area Lots A, B and C of Tract 12214. Phase I will consist of 38 residences and the following Common Area facilities: lighting fixtures within the road right-of-way, private streets, gates, open space areas, landscaping easements and sidewalks shown on Exhibit "A", attached hereto and made a part hereof, a sewer lift station and related improvements. Phase II will consist of 31 residences and the following Common Area facilities: private streets, open space areas, landscaping easements and sidewalks shown on Exhibit "A", lighting fixtures within the road right-of-way, and related improvements. Phase III will consist of 29 residences and the following Common Area facilities: private streets, open space areas, pool, spa, tennis court, basketball court, volleyball court, play area, and related improvements. Phase IV will consist of 38 residences and the following Common Area facilities: private streets, open space areas, landscaping easements and sidewalks shown on Exhibit "A", lighting fixtures within the road right-of-way, and related improvements. Phase V

will consist of 34 residences and the following Common Area facilities: private streets, open space areas, landscaping easements and sidewalks shown on Exhibit "A", lighting fixtures within the road right-of-way, and related improvements. Phase VI will consist of 30 residences and the following Common Area facilities: private streets, open space areas, landscaping easements and sidewalks shown on Exhibit "A", lighting fixtures within the road right-of-way, and related improvements. Phase VII will consist of 34 residences and the following Common Area facilities: private streets, open space areas, landscaping easements and sidewalks shown on Exhibit "A", lighting fixtures within the road right-of-way, and related improvements. Phase VIII will consist of 11 residences and the following Common Area facilities: private streets, open space areas, landscaping easements and sidewalks shown on Exhibit "A", lighting fixtures within the road right-of-way, and related improvements. There is no guarantee that all phases will be completed, or that the number of Lots or the Common Area facilities and amenities will be developed as described above.

WHEREAS, it is the desire and intention of Declarant to sell and convey residential Lots within the Properties to various individuals subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens and charges between it and the purchasers or users of said Properties, as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above, is, and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. The provisions of this Declaration shall be enforceable by any of the Owners of an interest in the real property above described, against any other Owner or Owners thereof, and shall also be enforceable by the Board of Directors of the Homeowners' Association, which shall be created for the purpose of governing this Project.

ARTICLE I DEFINITIONS

Section 1.1 Whenever used in this Declaration, the following terms shall have the following meanings:

1.1.1 Annexation shall mean the addition of real property and all improvements thereto into the scheme created by this Declaration. Upon such annexation, the annexed property shall be governed by, and subject to each and every provision of this

Declaration and any amendments thereto. The procedures for annexation of property are set forth in Article XV.

1.1.2 Articles shall mean and refer to the Articles of Incorporation of the Association as the same may be amended from time to time.

1.1.3 Association shall mean and refer to ~~RANCHO CIELO HOMEOWNERS'~~ ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

1.1.4 Board or Board of Directors shall mean and refer to the governing body of said Association.

1.1.5 Bylaws shall mean the duly adopted Bylaws of the Association as the same may be amended from time to time.

1.1.6 Common Area shall mean all real property (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Lots A, B and C of Tract No. 12214 as per Map recorded in Book 611, Pages 28 through 32, of Maps in the Office of the County Recorder of Orange County, California.

1.1.7 Declarant shall mean and refer to Rancho Cielo Associates, a California general partnership, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped Lot from Declarant for the purpose of development.

1.1.8 Declaration shall mean and refer to this enabling Declaration of Establishment of Conditions, Covenants and Restrictions, as the same may be amended, changed or modified, from time to time.

1.1.9 FHA shall mean and refer to the Federal Housing Administration.

1.1.10 Institutional Lender shall mean a Mortgagee which is a bank, savings and loan association, established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

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

1.1.12 Member shall mean an Owner with a membership in the Association.

1.1.13 Mortgage shall mean and refer to a deed of trust as well as a Mortgage.

1.1.14 Mortgagee shall mean a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust.

1.1.15 Mortgagor shall mean a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage, and shall include the trustor of a deed of trust.

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

1.1.17 Phase shall mean one of the 8 phases of development of this residential planned development. Declarant intends to construct certain residential dwelling units and Common Area improvements according to a general plan of development submitted to the California Department of Real Estate and the Veterans Administration.

1.1.17.1 Phase I shall refer to the Lots and Common Area within Tract 12214 hereinbefore described.

1.1.17.2 Phase II shall refer to Lots 1 through 31 and Common Area Lots A, B, C, D and E of Tract 12213 hereinbefore described.

1.1.17.3 Phase III shall refer to Lots 1 through 29 and Common Area Lots 30, A, B, C and D of Tract 12150 hereinbefore described.

1.1.7.4 Phase IV shall refer to Lots 1 through 38 and Common Area Lots A, B and C of Tract 12215.

1.1.7.5 Phase V shall refer to Lots 1 through 34 and Common Area Lots A, B, C and D of Tract 12217.

1.1.7.6 Phase VI shall refer to Lots 1 through 30 and Common Area Lots A, B, C, D and E of Tract 12216.

1.1.17.7 Phase VII shall refer to Lots 1 through 34 and Common Area Lots A and B of Tract 11645.

1.1.17.8 Phase VIII shall refer to Lots 1 through 11 and Common Area Lot A of Tract 12218.

1.1.18 Project shall have the same meaning as Properties, hereinafter defined.

1.1.19 Properties shall mean and refer to that certain real property located in Orange County, California, hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association through the annexation procedures set forth in Article XV.

1.1.20 VA shall mean and refer to the Veterans Administration.

Section 1.2 The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments thereto (unless the context shall prohibit), recorded pursuant to the provisions of this Declaration.

ARTICLE II
PROPERTY RIGHTS IN COMMON AREA

Section 2.1 Title to the Common Area. Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except easements, covenants, conditions and reservations then of record, including those set forth in this Declaration. Said conveyance shall be made to the Association prior to the conveyance of the first residential Lot in the Properties to an Owner.

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

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published Rules and Regulations after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws, which satisfies the minimum requirements of Section 7341 of the California Corporations Code.

- (c) The right of the Association to dedicate or transfer all or substantially all of its assets, including all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding any contrary provision in the Articles or Bylaws, so long as there is any Lot for which the Association is obligated to provide management, maintenance, preservation, or control, no such dedication or transfer shall be effective unless approved by the vote or written assent of sixty-six and two-thirds percent (66-2/3%) of both classes of Members of the Association, or following the conversion of Class B to Class A members, by the vote or written assent of sixty-six and two-thirds (66-2/3%) of the members of the Association, other than Declarant, and an instrument executed by both the President and Secretary of the Association affecting such dedication or transfer, has been recorded.
- (d) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof, and with the assent of two-thirds (2/3) of each class of Members, to hypothecate any or all real or personal property owned by the Association. After conversion of the Class B membership to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of members of the Association and (ii) for so long only as the Declarant holds or directly controls twenty-five percent (25%) or more of the voting power of Members of the Association, two-thirds (2/3) or more of the voting power of the Members of the Association other than Declarant.
- (e) Subject to a concomitant obligation to restore, Declarant and its agents shall have:
- (1) A non-exclusive easement over the Common Area for the purpose of making repairs to the Common Area or to the residences provided access thereto is otherwise not reasonably available;
 - (2) The right to the non-exclusive use of the Common Area for the purpose of maintaining model homes, sales offices and signs reasonably necessary to market the Lots, for a period of not more than three (3) years after conveyance of the Common Area to the Association, or the sale of all residential Lots within the Properties, whichever is first to

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

Section 2.3 Delegation of Use. Any Owner, may delegate, in accordance with the Bylaws of the Association, his rights of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot.

Section 2.4 Reciprocal Easements. Upon the annexation of additional land and improvements into the Project, as provided in Article XV, the Owners of Lots in the annexed areas shall have non-exclusive easements for ingress, egress, and recreational use over the Common Areas in Phase I of the Project. Similarly, the Owners of Lots within the original scheme of this Declaration, including previously annexed areas, shall have non-exclusive easements for ingress, egress, and recreational use over the Common Areas of the newly annexed areas.

Section 2.5 Utility Easements. Declarant hereby grants, reserves, and establishes non-exclusive easements over, under, and through each and every Lot and the Common Area Lots within the Project (herein the "Special Easement Area") as necessary for the installation, operation and maintenance of underground utility conduits and lines for the sole purpose of providing such Lots with electrical power.

2.5.1 Each Lot which obtains electrical power through an underground utility conduit located within a Special Easement Area of another Lot or Lots, is hereby granted and shall have the benefit of a non-exclusive easement through and under such Lot or Lots for the installation, operation and maintenance of such conduit, and the utility lines therein, subject to the restrictions hereinafter set forth.

2.5.2 Each Lot containing a Special Easement Area within which there lies an underground utility conduit and utility lines is hereby declared to be, and shall be conveyed subject to, a non-exclusive easement by reservation for the benefit of the Lot or Lots serviced by such conduit, and the utility lines therein, subject to the restrictions hereinafter set forth.

2.5.3 Said easements granted and reserved shall include incidental rights of maintenance, repair and access subject to the following limitations:

- (i) Repair and replacement of the utility lines within any such conduit shall be performed only at either end of the conduit.

(ii) Excavation of any such conduit for any purpose is expressly prohibited except at either end thereof.

2.5.4 The easements hereinabove described shall bind and inure to the benefit of Declarant's heirs, personal representatives, successors and assigns.

2.5.5 Subject easements shall be construed as covenants running with the land, or equitable servitudes as necessary to achieve Declarant's intent. Declarant hereby acknowledges that it is its express intent to subject each Lot within the Project which contains an underground utility conduit, as described hereinabove, to such restrictions, covenants, easements, and servitudes as are necessary to provide for the continued operation and existence of such utility conduit and utility lines.

Section 2.6 Right of Declarant to Modify Plan of Development. Declarant hereby reserves the right to modify, amend, change, or eliminate altogether, the 8 Phase plan of development hereinbefore described. Such right shall include, without limitation, the right to delete any and all subsequent Phases of development, and to divide the subsequent Phases into additional Phases. There is no guarantee by, or obligation of, Declarant to complete all 8 Phases of development or to annex same into the Properties. Any change or modification of the general plan of development shall, however, require the prior approval of the Department of Real Estate.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN HOMEOWNERS' ASSOCIATION

Section 3.1 Formation. Declarant has, at its sole expense, formed an incorporated homeowners' association known as the Rancho Cielo Homeowners' Association, a California nonprofit mutual benefit corporation (hereinafter the "Association"). The Association shall be primarily responsible for the management and maintenance of the Common Areas and for the maintenance of the landscaping and other items as set forth in Article X hereof.

Section 3.2 Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3.3 Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The

vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

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

- (a) Two (2) years from the date of the original issuance of the most recent Final Subdivision Public Report for a Phase of the overall development; or
- (b) Four (4) years from the date of the original issuance of the Final Public Report for the first Phase of the overall development.

Any provision in the Articles, Bylaws, or this Declaration calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of the Declarant under any completion bond, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that there are two outstanding classes of membership. Any requirement elsewhere in the Articles of Incorporation, Bylaws, and Declaration, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, that the vote of Declarant shall be excluded in any such determination, shall be applicable only if there has been a conversion of Class B Members to Class A Members, and the same shall be read as requiring the vote of the prescribed percentage of the Class A members and the vote of the prescribed percentage of the Class A Members other than Declarant.

ARTICLE IV
POWERS OF THE ASSOCIATION

Section 4.1 Powers of the Association. The Association, in its sole and absolute discretion, and as more fully set forth in its Bylaws, shall have the power to perform the following acts:

4.1.1 The Association shall have the sole and exclusive right and duty to manage, operate, control, repair, replace, or restore, all the improvements, trees, shrubbery, plants and grass, private streets, drives and walks within the Common Areas of the Project. In addition, the Association shall be responsible for maintaining in excellent condition the landscaped areas and sidewalks in the Phases annexed to the Properties as shown on Exhibit "A".

4.1.2 The Association shall have the right and power to levy and collect assessments.

4.1.3 The Association shall pay the taxes and assessments, if any, which may be levied by any governmental authority on the Common Area of the Project or any part thereof.

4.1.4 The Association shall maintain a bank account or accounts for funds coming under the control of the Association.

4.1.5 The Association shall adopt Rules and Regulations not inconsistent with the provisions of this Declaration, including, but not limited to, Rules and Regulations relating to the use of the Common Area of the Project.

4.1.6 The Association shall have the right and power to enforce the provisions of this Declaration, and the Bylaws, Articles of Incorporation and Rules and Regulations of the Association; nothing, however, contained in this Paragraph shall be construed to prohibit enforcement of same by any Owner.

4.1.7 The Association has the right and power to contract for and maintain fire, casualty, liability, worker's compensation, medical, hospital, and other insurance insuring Owners, members of the Board, and other persons.

4.1.8 The Association has the right and power to contract, provide and pay for (i) maintenance, utility, gardening and other services benefitting the Project; (ii) payment of persons necessary to accomplish the obligations of the Association; and (iii) legal and accounting services.

4.1.9 Notwithstanding any of the foregoing, the Association, acting through its Board, may not enter into any contract binding for a term longer than one (1) year from the effective date thereof without the vote or written consent of a majority of the voting power of the Members of the Association other than the Declarant, except as specifically authorized herein.

4.1.10 The Association has the right and power to contract for the purchase of tools, equipment, materials, supplies and other personal property and services for the maintenance and repair of the facilities and improvements of the Project.

4.1.11 The Association has the right and power to contract for and pay for reconstruction of any portion or portions of the Project damaged or destroyed.

4.1.12 The Association has the right and power to delegate its powers to others where such delegation is proper.

4.1.13 The Association has the right and power to prosecute or defend, under the name of the Association, any action affecting or relating to the Project or the personal property thereon, or any action in which all of the Owners have an interest in the subject matter of the action.

4.1.14 Subject to the vote or written consent therefor from sixty-six and two-thirds percent (66-2/3%) of the voting power of the membership, excluding the vote of the Declarant, the Association may borrow money, and may mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

4.1.15 The Association may do any and all things that a nonprofit mutual benefit corporation organized under the laws of the State of California may lawfully do, and generally may do and perform any and all other acts which may be either necessary for, or incidental to, the exercise of any of the foregoing powers, and any other such powers as are granted to a corporation by the provisions of the laws of the State of California.

4.1.16 The Association may acquire by gift, purchase or otherwise own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage, or otherwise encumber, dedicate for public use, or otherwise dispose of real and/or personal property in connection with the business of the Association; provided, however, that the Association shall not acquire or sell any real or personal property having an individual or aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year by purchase or lease without first obtaining the vote or written consent therefor from a majority of the voting power of the membership, excluding the vote of the Declarant, except as is provided pursuant to the annexation of subsequent phases to this Project.

4.1.17 The Association shall have the right and power to suspend a Member's voting rights and the right to use the recreational facilities for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the Rules and Regulations of the Association, provided that any suspension of such voting rights or right to use the recreational facilities, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws of the Association.

4.1.17.1 The Association may not cause a forfeiture of an Owner's right to use and enjoy his Lot for failure of such Owner to comply with the provisions of this Declaration, or the Bylaws of the Association or the Rules and Regulations of the Association, except (1) by judgment of a court or decision

arising out of arbitration, or (2) on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association, as set forth in Article V hereof.

4.1.18 The Association may take any and all lawful action which may be advisable, proper, authorized or permitted by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Project, or any portion thereof, and to do and perform any and all acts which may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

4.1.19 The Association may impose monetary penalties upon Owners as a disciplinary measure (1) for failure of an Owner to comply with the Bylaws, the Declaration or the Rules and Regulations of the Association, or (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to the Common Areas and facilities thereon for which the Owner is allegedly responsible, or (3) to bring an Owner or its Lot into compliance with the Declaration, Bylaws, or Rules and Regulations of the Association.

Section 4.2 Fidelity Bond. The Association shall maintain a fidelity bond or insurance in an amount equal to one hundred fifty percent (150%) of the Association's annual assessments plus reserves, which names the Association as obligee and insures against loss by reason of acts of members of the Board of Directors, officers and employees of the Association and any management agent and its employees, whether or not such persons are compensated for their services.

ARTICLE V ASSESSMENTS

Section 5.1 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of a Lot by acceptance of a grant deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) annual assessments or charges, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made, the lien to be effective upon recordation of a Notice of Delinquent Assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees,

shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to an Owner's successors in title, unless expressly assumed by them.

Section 5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties, for the improvement and maintenance of the Common Area and the homes situated upon the Lots, and such other purposes as set forth in this Declaration and the Bylaws.

Section 5.3 Maximum Annual Assessment. Until January first of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Thousand Four Hundred Eighty-Nine and 32/100 Dollars (\$1,489.32) per Lot. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis, and such reserve shall be funded by annual assessments.

- (a) From and after January first of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January first of each year by the Board without a vote of the membership, provided that any such increase shall not be more than twenty percent (20%) of the previous year's assessment. Such annual assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.
- (b) From and after January first of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount provided in subparagraph (a) by the vote or written assent of at least a majority of Owners in the Association constituting a quorum, as defined below. For purposes of this Article V, quorum means more than fifty percent (50%) of the Owners of the Association.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or otherwise, provided that

any such assessment for capital improvements to the Common Area which total more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall have the vote or written assent of a majority of the Owners constituting a quorum. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing the Member and his Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Rules and Regulations, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code, as set forth in the Bylaws. The above provisions requiring the requisite vote of the membership with respect to special assessments do not apply in the case where a monetary penalty is imposed against an Owner as a disciplinary measure by the Association for the following reasons: (1) for failure of an Owner to comply with the Declaration, Bylaws or Rules and Regulations, or (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to Common Areas and facilities for which the Owner is allegedly responsible, or (3) to bring an Owner or its Lot into compliance with provisions of this Declaration, Articles of Incorporation, Bylaws, Rules and Regulations and any amendments thereto.

Section 5.5 Notice and Quorum for Any Action Authorized Under Sections 5.3 and 5.4. Any action authorized under Sections 5.3 and 5.4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of each class of Members entitled to vote on such action. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is less than the requisite fifty-one percent (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting.

Section 5.6 Uniform Rate of Assessment. Both annual and special assessments, except as may be otherwise provided in Paragraphs 5.4 and 12.3, shall be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

Section 5.7 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first annual

assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to the Owner of each Lot within the Project. All Lots within the real property annexed into the Project under the procedure hereinafter set forth in Article XV shall be obligated to pay annual assessments to the Association as hereinbefore provided. The annual assessments shall automatically commence as to all Lots within the annexed areas on the first day of the first month following the conveyance of the first Lot within such annexed area to an Owner. The due dates for assessments shall be established by the Board of Directors.

Section 5.8 Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Lot from the time the assessment is due. With respect to each assessment not received by the Association within fifteen (15) days after its due date, the Board may, at its election, require the Owner to pay a late charge in a sum to be determined by the Board, but not to exceed ten percent (10%) or Ten Dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent assessment, but it shall not eliminate or supersede any charges imposed on prior delinquent assessments. If any such assessment is not paid within thirty (30) days after the date said assessment is due, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay same, and in addition thereto, or in lieu thereof, may foreclose the lien provided herein below against the Lot.

5.8.1 Any assessment not received by the Association within fifteen (15) days after the due date shall be delinquent. The amount of any such delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties, as provided for in this Declaration, shall be and become a lien on the Lot against which the assessment is levied when the Association causes to be recorded a Notice of Delinquent Assessment (herein the "Notice") in the office of the County Recorder of the County in which the Lot is located. The Notice shall describe the amount of such delinquent assessment or installment and such other charges thereon as may be authorized by this Declaration, a description of the Lot against which the same has been assessed, the name of the Owner, and, if the lien is to be enforced by the power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. Such Notice shall be signed by the president or vice-president, and

the secretary or assistant secretary of the Association or any employee or agent of the Association authorized to do so by the Board. Unless the Board considers the immediate recording of the Notice to be in the best interests of the Association, the Notice shall not be recorded until fifteen (15) calendar days after the Association has delivered a written notice of default and demand for payment. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

5.8.2 The Board may enforce any assessment lien provided for in Section 5.8, hereinabove, by filing an action for judicial foreclosure or, if the Notice contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code Section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h that apply to nonjudicial foreclosures of Mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of Civil Code Section 2434a. The Association may bid on the Lot at the sale, and may hold, lease, mortgage, and convey the acquired Lot. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien, and on receipt of a written request by the Owner, a Notice of Rescission of the Declaration of Default and Demand for Sale. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

5.8.3 A monetary penalty imposed by the Association as a disciplinary measure for (a) failure of an Owner to comply with this Declaration, and the Articles, Bylaws or Rules and Regulations of the Association, or (b) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to the Common Area and facilities for which the Owner is allegedly responsible, or (c) to bring an Owner or its Lot into compliance with this Declaration, and the Articles, Bylaws or Rules and Regulations of the Association shall not be treated as an assessment which may become a lien against the Owner's Lot enforceable as provided in Section 1356 of the California Civil Code. This Paragraph shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

5.8.4 In addition to the lien power described hereinabove, each Owner vests in the Association or its assigns, the right and power to bring all actions at law against such Owner or other Owners for the collection of delinquent assessments. In lieu of bringing an action at law to collect delinquent assessments, the Association may submit the matter to arbitration pursuant to the Rules of the American Arbitration Association. The decision of the arbitrator on such delinquent assessment shall be binding on both the Association and the delinquent Owner and may be enforced in any court of competent jurisdiction. The fee to initiate such arbitration shall be paid by the Association and shall be recoverable as part of the arbitration award, in addition to the late charges and interest on the delinquent assessment as provided above.

Section 5.9 Policies for Assessment Collection. The Board of Directors shall annually distribute within sixty (60) days prior to the beginning of the fiscal year a statement of the Association's policies and practices for enforcing its remedies against Members for defaults in the payment of annual and special assessments, including the recording and foreclosing of liens against Members' Lots.

Section 5.10 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage or any conveyance in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of Record or other purchaser of a Lot obtains title to the same as a result of foreclosure or conveyance in lieu thereof, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots including such acquirer, his successors and assigns.

Section 5.11 Estoppel Certificate. The Association shall furnish or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.12 Personal Liability of Owner. No Member may exempt himself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Lot owned by him from the liens and charges hereof by waiver of the use and enjoyment of the Common Area and facilities thereon, or by abandonment of his Lot.

Section 5.13 Exempt Property. All Properties dedicated to and accepted by a local public authority, and all Properties owned by a charitable nonprofit organization exempt from taxation by the laws of the State of California, shall be exempt from the assessments created herein. However, no real property or improvements devoted to dwelling use shall be exempt from said assessments.

Section 5.14 Assessment Limitation Not Applicable. The limitation on percentage increases of annual assessments shall not limit assessment increases by the Board for the following emergency situations:

- (a) An extraordinary expense required by an order of court.
- (b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered.
- (c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro-forma operating budget pursuant to Article VI hereof. However, prior to the imposition or collection of an assessment under this subparagraph (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolutions shall be distributed to the members with the notice of assessment.

Section 5.15 Exemption from Assessments to Common Areas. Notwithstanding any other provisions of this Declaration, Declarant or any other Owner shall not be obligated to pay any portion of any assessments, which is for the purpose of defraying expenses and establishing reserves directly attributable to the existence and use of a Common Area improvement that is not complete at the time assessments commence. Any such exemption for the payment of assessments shall be in effect only until a Notice of Completion of the Common Area improvement has been recorded or the Common Area improvement has been placed into use, whichever shall first occur.

ARTICLE VI
ACCOUNTINGS

Section 6.1 Books and Records. The Association shall maintain books of account of all its receipts and expenditures. Each Owner shall be entitled at reasonable times to inspect the books of the Association, and to have such books examined at such Owner's expense by an attorney or an accountant representing such Owner, and may make excerpts or copies of such books or portions thereof, and each such Owner, at his own expense, shall have the right to have such books independently audited by an accountant.

Section 6.2 Budget. A pro forma operating statement (budget) for each fiscal year shall be prepared and distributed to each Owner not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year. The budget shall contain the following information:

- (i) the estimated revenue and expenses of the Association for the upcoming fiscal year on an accrual basis;
- (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities and for contingencies;
- (iii) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Common Areas and facilities for which the Association is responsible;
- (iv) a general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas and facilities for which the Association is responsible.

Section 6.3 Initial Financial Report. A balance sheet, as of the accounting date which is the last day of the month closest in time to six (6) months from the date of the closing of the first sale of a Lot in the Project, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed within sixty (60) days after the accounting date. The operating statement shall include a schedule of assessments received and receivable, identified by the number of the Lot and the name of the record Owner so assessed.

Section 6.4 Annual Report. An annual report consisting of the following shall be distributed to each Owner within one hundred twenty (120) days after the close of the fiscal year:

6.4.1 A balance sheet as of the end of the fiscal year.

6.4.2 An operating (income) statement for the fiscal year.

6.4.3 A statement of changes in financial position for the fiscal year.

6.4.4 Any information required to be reported under Section 8322 of the Corporations Code.

6.4.5 A review of the annual report for the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy, (hereinafter "Independent Accountant"), for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000).

6.4.6 A statement of policies and procedures employed by the Board of Directors to enforce the collection of delinquent assessments.

Section 6.5 Independent Preparation. Ordinarily the annual report referred to in Section 6.4 above shall be prepared by an Independent Accountant for each fiscal year.

Section 6.6 Copy of Financial Statement To Prospective Buyers. Within ten (10) days of receipt of any written request therefor, the Board of Directors shall furnish any Owner or prospective Owner with a copy of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, as amended to date, together with a copy of the Association's most recent annual financial report as described in Section 6.4 hereof, and a true statement of any delinquent assessments, penalties, late charges, attorneys' fees or other charges under this Declaration on such Owner's Lot as of the date the statement is issued. The Board of Directors may charge a reasonable fee for providing such documents and reports not to exceed the reasonable cost to prepare and reproduce same.

Section 6.7 Association Officer Statement. If the report referred to in Section 6.5, above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the report was prepared without audit from the books and records of the Association.

Section 6.8 Association's Policies and Practices Statement. A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its Members shall be annually delivered to the Members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

Section 6.9 Reconciliation of Accounts. The Board of Directors shall do the following not less frequently than quarterly:

- (i) Cause a current reconciliation of the Association's operating accounts to be made and review the same.
- (ii) Cause a current reconciliation of the Association's reserve accounts to be made and review the same.
- (iii) Review the current year's actual reserve revenues and expenses compared to the current year's budget.
- (iv) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.
- (v) Review an income and expense statement for the Association's operating and reserve accounts.

Section 6.10 Reserve Account. Withdrawal of funds from the Association's reserve account shall require the signatures of either: (1) two members of the Board of Directors, or (2) one member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors.

Section 6.11 Transfer of Title. The Board of Directors shall not impose or collect any assessment, penalty or fee in connection with the transfer of title or any other interest except the Board of Directors' actual costs to change its records and the fee for providing documents pursuant to Section 6.6.

ARTICLE VII ARCHITECTURAL CONTROL COMMITTEE

Section 7.1 Submissions and Approvals Required. No building, fence, wall or other structure, landscaping or improvement (collectively "Improvement") shall be commenced, erected, placed or altered upon any Lot until the location and complete plans and specifications showing the nature, kind, shape, height and

materials, including the color scheme, have been submitted by personal delivery or certified mail, return receipt requested, to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee appointed by the Board of Directors and composed of three (3) or more, but not to exceed five (5), representatives. In the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other requests within thirty (30) days after receipt of the submission thereof to it, then such approval will not be required; provided that any structure or Improvement so erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Properties. Grade, level or drainage characteristics of the Lot or any portion thereof, shall not be altered without the prior written consent of the Board or its designated committee. This approval requirement shall not apply to the original construction of Declarant.

Section 7.2 Views. In granting or denying the architectural approvals required hereunder, the architectural committee shall consider the effect of any Improvement on the views of adjacent Lots. No vegetation or other obstruction shall be approved in any location or of such height as to unreasonably obstruct the view from any other Lot in the vicinity thereof; nor will any vegetation be allowed to grow to such a height or density as to unreasonably obstruct such views. In the event of a dispute between Owners as to the obstruction of a view from a Lot, such dispute shall be submitted to the architectural committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the architectural committee, be removed or otherwise altered to the satisfaction of the architectural committee, by the Owner upon whose Lot said obstruction is located; if said Owner fails to take such action as required, the Association, architectural committee, or their authorized agents or employees, may enter upon such Lot, rectify the condition, and charge such Owner the cost thereof. Declarant makes no assurance whatsoever concerning the impact on views of any construction of Improvements by anyone after completion of Declarant's original construction, whether such construction is approved by the architectural committee or constructed on property contiguous to the Properties.

Section 7.3 Fences and Walls. Each Owner shall construct and maintain fences and walls along the side and rear perimeters of his Lot in conformance with the requirements shown on the "Fence Specifications for Phase I" which are to be maintained in the Association office and which are incorporated herein by this reference. Fence Specifications for subsequent Phases will also be maintained in the Association office. In addition, copies of pertinent portions of such Fence Specifications are to be given

to each Lot Owner in connection with the sale of each Lot. Such fences and walls shall be built so as to straddle the boundary lines of a Lot, and only one fence or wall shall be constructed on the boundary lines of adjoining Lots. Each Owner shall obtain all necessary permits for such construction and shall comply with all local laws and ordinances in connection with such construction. The cost of construction and maintenance of the fences and walls shall be borne by the Owner thereof, except that the cost of construction and maintenance for fences and walls which straddle boundary lines of adjoining Lots shall be borne equally by such adjoining Lots as required by California Civil Code Section 841. In the event any Owner fails to maintain the fences and walls as required hereunder, then the Association or the Architectural Control Committee may, after due notice to the Owner involved and opportunity to be heard, shall have the right of access to such Owner's Lot to conduct such maintenance as may be necessary and said Owner shall be liable for all costs incurred by the party conducting such activities.

ARTICLE VIII
USE RESTRICTIONS AND OBLIGATIONS OF OWNERS

Section 8.1 Leasing of Lots. Any Owner may lease his Lot subject to the following:

8.1.1 No Owner shall be permitted to lease his Lot for transient or hotel purposes.

8.1.2 No Owner may lease less than the entire Lot.

8.1.3 Any lease agreement is required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Bylaws and any Rules and Regulations adopted by the Association and that any failure by the lessee to comply with the terms of such documents shall constitute a default under the lease.

8.1.4 All leases are required to be in writing and copies shall be submitted to the Association.

Section 8.2 Use Restrictions. In addition to all other covenants contained herein, the use and enjoyment of the Properties and each Lot therein shall be subject to the following:

8.2.1 No Lot shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors or assigns, may use any Lot or Lots in the Project owned by Declarant for a model home site or sites and display and sales office until the last Lot is sold by Declarant or seven (7) years following the date of the sale of

the first Lot in the Project, whichever shall first occur. No tent, shack, trailer, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

8.2.2 No part of the Project shall ever be used or caused to be used directly, or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes.

8.2.3 No sign or billboard of any kind shall be displayed by any Owner on any portion of the Project or Lot, except one sign of reasonable size, advertising that the particular Lot is for sale or rent, or except by Declarant in connection with initial sales of the Lots, during the sales period set forth in Paragraph 8.2.1, hereinabove.

8.2.4 No noxious or offensive activity shall be carried on in any Lot or any part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot or which shall in any way increase the rate of insurance.

8.2.5 No trailer, camper, boat, recreational vehicle, or similar equipment shall be permitted to remain upon the Project unless placed or maintained entirely within a Lot. No trailer, camper, boat or other recreational vehicle, or inoperative automobile shall be permitted upon the Project unless placed and maintained entirely within a Lot, obscured from the view of the adjoining Lots and streets. The foregoing restriction shall not be deemed to prevent washing and polishing of such motor vehicle, boat, trailer, camper or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.

8.2.6 An Owner may keep and maintain in his Lot domesticated pets such as dogs, cats or other usual and ordinary household pets, not to exceed two (2) in number and provided that such pets shall not be allowed in the Common Area or recreational areas except as may be permitted by the Rules and Regulations which may be promulgated from time to time by the Board. Except as hereinabove provided, no animals, livestock, birds or poultry shall be brought within the Project or kept in any Lot thereof. Owners keeping pets shall be accountable to the other Owners for the acts of such pets, and should any Owner be unable to control barking or other noise or acts of his pets which disturb his neighbors, he shall be required to remove such pet from the Project. No dog will be allowed on the Common Area or recreational areas without being supervised.

8.2.7 No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted within the Project, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted within the Project.

8.2.8 All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, wood-piles, storage areas, machinery and equipment shall be prohibited within the Project unless obscured from the view of adjoining Lots and streets.

8.2.9 No roof mounted or other externally mounted radio and/or television antenna systems, shall be permitted within the Project. Each Owner may maintain individual radio or television antennae systems if located entirely within such Owner's dwelling and if such system is not visible from other Lots or the Common Area, and provided that such system does not interfere with radio and television reception of other Owners within the Project.

8.2.10 Easements for installation and maintenance of utilities, sewer pipelines and facilities and drainage facilities over each of the Lots, and all pipelines and other facilities located and to be located in said easements, are reserved where such facilities are installed and as may be shown on the recorded Maps of the Project. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of the flow of drainage channels, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or a utility is responsible. In addition, all sewer pipelines and other sewer facilities located or to be located within public roads, streets and highways abutting each of the Lots are reserved.

8.2.11 Except as otherwise provided herein, each Owner of a Lot has the responsibility and duty to maintain the appearance and integrity of all slope areas and drainage devices located within his Lot. Each Owner hereby grants the Association an easement as necessary to perform its maintenance duties within the landscaped areas and sidewalks shown on Exhibit "A".

8.2.12 Each grantee of a Lot within the Project covenants for himself, his heirs, successors and assigns, that he

will permit free access by Owners of adjacent or adjoining Lots and by the Association, its agents and employees, to all slope areas or drainageways located on his Lot, which affect said adjacent or adjoining Lots, which access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for Lots other than the Lot on which the slope or drainageway is located.

8.2.13 Each grantee of a Lot within the Project covenants for himself, his heirs, successors and assigns, that he will not in any way interfere with the established drainage patterns or create erosion or sliding problems over his Lot from adjoining or other Lots within the Project, and that he will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot. For the purposes hereof, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Project was completed by Declarant.

8.2.14 Each grantee of a Lot within the Project shall maintain the slopes within his Lot at the slope and pitch fixed by the finished grading thereof, including watering and planting of the slopes. Within slope areas no structure, planting, or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope areas of each Lot and all improvements thereto shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Declarant shall, for a period of one (1) year following sale and deed of any particular Lot have the right but not the obligation to enter upon the said Lot and alter or maintain the slope areas. An easement of reasonable access for said purpose is reserved to Declarant, and the purchaser, by the acceptance of a deed from Declarant, shall take title subject to such easement for said period of one (1) year.

8.2.15 Conveyance of a substantial number of the Lots is essential to the establishment and welfare of said Project as a residential community. In order that all work necessary to complete the Project and establish a substantially occupied residential community be completed as rapidly as possible, no Owner shall and nothing in this Declaration shall be understood or construed to:

8.2.15.1 Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines such work to be reasonably necessary or advisable in connection with the completion of the Project; or

8.2.15.2 Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part or parts of said property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing the Project as a residential community and disposing of the same by sale, lease, or otherwise.

8.2.15.3 Declarant, in exercising its rights hereunder, shall not unreasonably interfere with the Members' use of the Common Area.

8.2.16 All structures within the Project shall at all times be maintained by their respective Owners in a clean, first-class and properly painted condition.

8.2.17 Owners of Lots adjacent to the hiking trail shall maintain any fencing located on their Lot.

ARTICLE IX SCOPE OF ENFORCEMENT

Section 9.1 Enforcement. The Declarant, the Association and any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association or any Owner to enforce any covenants or restrictions herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of the value of the Project and (ii) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be. Each remedy provided for in this Declaration shall be cumulative and not exclusive. The result of or condition caused by any violation of any of the provisions of this Declaration is and shall be a nuisance, and every remedy in law or equity now or hereafter available against public or private nuisance may be exercised by any person affected thereby. Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of such Lot. In the event the Association or any Owner(s), should commence litigation to enforce any of the provisions of this Declaration, that party, if he should prevail, shall be entitled to have judgment against and recover from any defendant in such litigation, such

attorneys' fees (other than nominal) as the court may adjudge reasonable and proper. Each Owner shall have a right of action against the Association for any failure of the Association to comply with the provisions of the Declaration, Articles of Incorporation, Bylaws, or Rules and Regulations of the Association.

ARTICLE X
DAMAGE TO LOTS AND COMMON AREAS

Section 10.1 Repairs. In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Lot is subject.

Section 10.2 Damage to Common Areas. In the event the need for repair of the Common Area is caused through the willful or negligent acts of a Member or his guests or invitees, the liability of the Member for the cost of such repair shall be determined according to the laws of the State of California.

ARTICLE XI
INSURANCE

Section 11.1 Liability/Property Insurance. A master or blanket public liability and property damage insurance policy covering the Common Area shall be purchased by the Board of Directors as promptly as possible following its election and shall be maintained in force at all times, the premium thereon to be paid out of the monies collected from the assessments. The minimum amounts of coverage shall be One Million Dollars (\$1,000,000.00) for personal injury to any one person, Three Million Dollars (\$3,000,000.00) for any one occurrence and One Million Dollars (\$1,000,000.00) for property damage. The policy shall name the Association and all Owners as insureds, including Declarant, during such time as Declarant shall remain the Owner of one or more Lots. The manager, if any, shall also be a named insured on such policy, during such time as his agency shall continue. The insurance shall also contain a cross-liability endorsement to cover negligent injury by one Owner to another.

Section 11.2 Hazard Insurance. The Board of Directors shall purchase a master or blanket policy of hazard insurance issued by a Qualified Insurer, as defined herein, providing fire and extended hazard coverage equal to one hundred percent (100%) of the current replacement cost of all Common Area improvements to the Project then subject to assessments under Article V of the Declaration (including all service and mechanical equipment in the Project). "Qualified Insurer" means any insurance company

qualified, respectively, to engage in the standard hazard insurance business, flood insurance business, or special hazard insurance business in the State of California, and to issue policies of insurance for Mortgages purchased by the Federal Home Loan Mortgage Corporation (hereinafter "FHLMC," and such reference herein shall include any successor thereto). Replacement cost may exclude land, foundations, excavation, and other items normally excluded from coverage. All hazard insurance required to be maintained by the Board hereunder shall be maintained strictly in accordance with the provisions contained in the FHLMC Seller's and Servicers' Guide. The premiums for said insurance policy shall be paid by the Board out of the monies collected from the assessments. The policy may also contain vandalism and malicious mischief coverage, a special form endorsement, and a clause to permit cash settlement covering the full value of the improvements in the event of partial destruction and a decision not to rebuild. The policy shall name as insureds all Owners and Declarant, so long as Declarant is the Owner of any Lot within the Project, and all Mortgagees of record, as their respective interests may appear. The proportionate interest of each Owner in any insurance proceeds in relation to the other Owners, shall be based upon a ratio of each Lot's "fair market value" to the "fair market value" of the entire Project. The "fair market value" in both instances, shall be determined by an independent appraiser. In the event that the insurer under said hazard insurance policy shall cease to be licensed in the State of California, or shall cease to be approved by the FHLMC (so long as insurers continue to be so approved), the Association shall exercise its best efforts to obtain from another Qualified Insurer, a replacement hazard policy comparable to the prior hazard policy, including all required endorsements.

11.2.1 Personal property of a Lot Owner and additional fixtures added by a Lot Owner should be insured separately by the Lot Owner.

Section 11.3 Individual Coverage. If available, underlying coverage for individual Lots shall be written as part of or in conjunction with, said master policy where necessary to protect individual lenders. If such coverage is not available, each Owner shall purchase, at his own expense, and maintain fire and hazard insurance coverage as may be required by his individual lender. Any such underlying coverage shall contain a replacement cost endorsement, and to the extent available, such other endorsements as may be a part of the master policy. Such insurance shall also contain a loss-payable endorsement to the Mortgagees of individual Lots, as their interests shall appear.

Section 11.4 Board as Trustee. All insurance proceeds payable pursuant to Section 11.2 of this Article and subject to the rights of Mortgagees under Section 11.7 hereof, shall be paid to

the lending institutions holding first Mortgages on Lots within the Project, to the extent of their interests therein, and shall be applied only to the repair and restoration of the damaged premises, or to the reduction of the aggregate principal amounts of the mortgage loans secured by such damaged or destroyed premises. Insurance proceeds shall be paid out in accordance with Article XII. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work, as provided in Article XII hereof.

Section 11.5 Other Insurance. The Board may purchase and maintain in force at all times, demolition insurance in adequate amounts to cover demolition in the event of destruction and a decision not to rebuild. The premium therefor shall be paid out of the monies collected from the assessments. Such policy, if purchased, shall contain a determinable demolition clause or similar clause, to allow for the coverage of the cost of demolition in the event of destruction and a decision not to rebuild. The Board of Directors shall also purchase and maintain Worker's Compensation Insurance to the extent that the same shall be required by law for employees of the Association. The Board of Directors may also purchase and maintain insurance on commonly owned personal property and such other insurance as it deems necessary, the premium thereof to be paid out of the monies collected from the assessments.

Section 11.6 Owners Other Insurance. An Owner may carry such additional personal liability and property damage insurance respecting individual Lots as he may desire.

Section 11.7 Right of Mortgagees. With respect to insurance coverage under Sections 11.2 and 11.3 hereof, any Mortgagee of record shall have the option to apply insurance proceeds payable to it to reduce the obligation secured by the Mortgage.

Section 11.8 Annual Review. The Board shall review the insurance carried by the Association at least annually, for the purpose of determining the amount of the casualty and property insurance referred to in Section 11.1, above. The Board shall obtain current appraisal of the full replacement value of the improvements in the Common Area and of the Lots, except for foundations and footings, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

ARTICLE XII DESTRUCTION OF IMPROVEMENTS

Section 12.1 Proceeds Greater Than Eighty-Five Percent (85%) of Cost to Repair. In the event of total or partial destruction of the improvements in the Common Area and if the available proceeds of the insurance carried pursuant to Article XI are sufficient to

cover not less than eighty-five (85%) percent of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless, within ninety (90) days from the date of such destruction, seventy-five (75%) percent of each class of membership present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred twenty (120) days from the date of said destruction, a certificate declaring the intention of the Association to rebuild.

Section 12.2 Proceeds Less Than Eighty-Five Percent (85%) of Cost to Repair. If the proceeds of such insurance are less than eighty-five (85%) percent of the cost of reconstruction, such reconstruction may, nevertheless, take place, if within ninety (90) days from the date of said destruction, at least sixty-six and two-thirds percent (66-2/3%) of each class of membership elect to rebuild.

Section 12.3 Additional Contributions From Owner. If the Association determines to rebuild, pursuant to either Sections 12.1 or 12.2, each Owner shall be obligated to contribute such funds as shall be necessary to pay his proportionate share of the cost of reconstruction over and above the insurance proceeds, and the proportionate share of each Owner shall be based upon the ratio of the fair market value of his Lot to the fair market value of all the Lots. In the event of failure or refusal by any Owner to pay his proportionate share, after notice to him, should such failure or refusal continue for a period of sixty (60) days, the Board of Directors may levy a special assessment against such Owner, which may be enforced under the lien provisions, hereinbefore contained.

Section 12.4 Association to Contract for Rebuilding. If the Owners determine to rebuild, the Board of Directors shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest bidder. The Board of Directors shall have the authority to enter into a written contract with said contractor for such reconstruction and the insurance proceeds held by the Board shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible date.

Section 12.5 Insufficient Vote to Rebuild. If the vote of the Owners shall be insufficient to authorize rebuilding, either pursuant to Sections 12.1 or 12.2, above, the following shall apply:

12.5.1 Any insurance proceeds available for such rebuilding shall be distributed among the Owners and their individual lenders by the Board, as their respective interests may appear. The proportionate interests of each Owner in said proceeds in relation to other Owners shall be based upon a ratio of each Lot's "fair market value," just prior to destruction. "Fair market value" shall be determined by an independent appraiser.

12.5.2 The Board shall have the duty, within one hundred twenty (120) days of the date of such loss, to execute, acknowledge and record a certificate setting forth the determination of the Association not to rebuild, and shall promptly cause to be prepared and filed, such revised maps and other documents as may be necessary to show the conversion of the Common Area to the status of unimproved land.

Section 12.6 Revival of Right to Partition. Upon recordation of such certificate, referred to in Paragraph 12.5.2, above, the right of any Owner to partition his Lot through legal action, shall forthwith revive.

Section 12.7 Arbitration. In the event of a dispute among the Owners, with respect to the provisions of this Article, any Owner may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the Members of the Board and all Owners as promptly as possible after reference to arbitration is made, giving all Owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon all Owners. The arbitrator may include in his decision an award for costs and/or attorneys' fees against any one or more of the parties to the arbitration.

ARTICLE XIII
MORTGAGEE PROTECTION

Section 13.1 Mortgagee Protections. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce FHLMC and FNMA/GNMA (and other lenders and investors) to participate in the financing of the sale of Lots in the Project, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control):

13.1.1 No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions

shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

13.1.2 Each holder of a first Mortgage encumbering any Lot is entitled upon request to timely written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Bylaws or Rules and Regulations of the Association which is not cured within sixty (60) days. Any Institutional Lender holding a first Mortgage on any Lot within the Project shall be entitled to prior written notice of certain proposed actions of the Association as hereinafter set forth in Paragraphs 13.1.5.1 - 13.1.5.7, inclusive, provided that such Institutional Lender furnishes the Association with a written request for notice which request sets forth the particular Institutional Lender's mailing address and identifies the Lot on which it holds an encumbrance.

13.1.3 Each holder of a first Mortgage encumbering any Lot which obtains title to such Lot pursuant to: (a) remedies provided in such Mortgage, or (b) by accepting a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, shall be exempt from any "right of first refusal," if any, contained in the Declaration or the Bylaws of the Association. Further, any such "right of first refusal" shall not impair the rights of a first Mortgagee or interfere with a subsequent sale or lease of a Lot so acquired by the Mortgagee.

13.1.4 Each holder of a first Mortgage or third party foreclosure purchaser which obtains title to a Lot pursuant to foreclosure of the first Mortgage, shall take the Lot free of any claim for unpaid dues, assessments or charges against the Lot which accrue prior to the time such holder obtains title to such Lot (except for claims for a share of such assessments or charges resulting from a reallocation of such dues, assessments or charges among all Lots, including the mortgaged Lot). The lien assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed upon a Lot subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or trustee sale. Such sale or transfer shall not release such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

13.1.5 Unless at least seventy-five percent (75%) of the Institutional Lenders holding a first Mortgage on a Lot within the Project (based upon one vote for each first Mortgage owned), and at least two-thirds (2/3) of the Owners (other than the Declarant) have given their prior written approval, the Association and its Members shall not be entitled to:

13.1.5.1 By act or omission, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Area, party walks or common fences and driveways, or the upkeep of lawns and plantings in the Project;

13.1.5.2 Change the pro rata interest or obligations of any Lot for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

13.1.5.3 Partition or subdivide any Lot;

13.1.5.4 By act or omission, seek to abandon, subdivide, encumber, sell or transfer the Common Area or partition the Common Area except as provided for herein. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Area and the Project shall not be deemed a transfer within the meaning of this clause;

13.1.5.5 Use hazard insurance proceeds for losses to any Common Area for other than repair, replacement or reconstruction of such Common Area, except as provided by statute in case of substantial damage to the Common Area of the Project;

13.1.5.6 Fail to maintain fire and extended coverage on insurable planned development common property within the Project on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

13.1.5.7 Effectuate any decision of the Association to terminate professional management and assume self management of the Project; and

13.1.5.8 Amend any part of this Article XIII.

13.1.6 First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

13.1.7 The annual assessments shall include an adequate reserve fund for maintenance, repair and replacement of the improvements to the Common Area and those portions thereof that must be replaced on a periodic basis, and shall be payable in annual assessments rather than by special assessments.

13.1.8 All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall

relate only to individual Lots, and not to the Project as a whole.

13.1.9 In the event of substantial damage to or destruction of any Lot or any element of the Common Area or possible condemnation or eminent domain procedure, the Institutional Lender under any first Mortgage on a Lot is entitled to timely written notice of any such damage, destruction or proposed acquisition and no provision in the Bylaws, nor in this Declaration shall be interpreted to entitle any Owner or any other party to priority over any first Mortgagee with respect to the distribution to such Owner of any insurance proceeds or condemnation awards for losses to, or a taking of, Lots and/or Common Areas.

13.1.10 Any agreement for professional management of the Project, or any other contract providing for services by the Declarant shall provide for termination by either party without cause or payment of a termination fee upon thirty (30) days' written notice, and that the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. However, lease agreements for laundry room fixtures and equipment may have terms of up to five (5) years, provided the Declarant is not the lessor thereunder.

13.1.11 The Association shall, upon the request of any Institutional Lender under a first Mortgage on a Lot: (i) give written notice of all meetings of the Association and permit the Institutional Lender to designate a representative to attend all such meetings, and (ii) transmit to such Institutional Lender an annual audited financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project.

13.1.12 No breach of any of the foregoing covenants shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but in the event that any one or more of these covenants shall be violated, the Declarant, its successors and assigns, or the Association, or any Owner may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation, and/or to recover damages; provided, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said Lot or any part thereof. Said covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

13.1.13 First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such

Common Area and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement is reflected in an agreement in favor of all first Mortgagees of Lots duly executed by the Association, and an original or certified copy of such agreement is possessed by Declarant.

ARTICLE XIV AMENDMENTS

Section 14.1 Amendments. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by at least seventy-five percent (75%) of the voting power of each class of Members of the Association, which amendment shall become effective upon the recording thereof by the Office of the County Recorder of Orange County, California. After the conversion of Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by (i) at least seventy-five percent (75%) of the total voting power of the Association, and (ii) at least seventy-five percent (75) of the voting power of the Association other than Declarant. In no event shall the percentage of the voting power necessary to amend a specific provision of this Declaration be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any amendment of this Declaration which would defeat the obligation of the Association to maintain the Common Areas and facilities as described in Article IV hereof, must receive the written approval of the California Department of Real Estate prior to the recordation thereof.

Section 14.2 Effectiveness of Amendment. From and after its effective date, each amendment made pursuant to the preceding paragraph shall be as effective as to all Lots within the Project, the Owners thereof and their successors in interest.

Section 14.3 Petition the Superior Court. Nothing in this Declaration shall restrict the ability of any Owner at any time to petition the Superior Court in the county in which the Project is located to amend this Declaration as provided under California Civil Code Section 1356.

ARTICLE XV ANNEXATION

Section 15.1 Annexation of Additional Property by Declarant. All or portions of the additional real property described in Section 1.1.18 hereof may be annexed into the Project by the Declarant without the consent of the Members of the Association within three (3) years following the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a Phase of the overall

development, provided, however, that the Commissioner of the Department of Real Estate makes the following determinations:

- (a) That the proposed annexation will not result in an overburdening of the Common Areas.
- (b) That the proposed annexation will not result in a substantial increase in the assessments of the existing Lots which was not disclosed in the Final Subdivision Public Report under which the existing Owners purchased their respective Lots.
- (c) That the real property and the total number of residential units proposed to be annexed were adequately identified.
- (d) That Declarant executes a written commitment concurrently with the closing of escrow for the first sale of a Lot in the annexed property to pay to the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed property necessitated by, or arising out of the use and occupancy of Lots under a rental program conducted by Declarant which has been in effect for a period of at least one (1) year as of the date of closing of the escrows for the first sale of a Lot in the annexed property.

Section 15.2 Annexation of Additional Property by Association. Upon approval in writing by the Association, pursuant to the vote of at least two-thirds (2/3) of a majority of the voting power of its Members or the written assent of such Members, excluding the voting power or written assent of Declarant, the Owner of any real property who desires to add such property to the scheme of this Declaration and to subject same to the jurisdiction of the Association, may file of record a Notice of Annexation which shall extend the scheme of this Declaration to such property.

Section 15.3 Annexation Procedure. The annexation of additional real property authorized under Sections 15.1 and 15.2 shall be made by filing of record a Notice of Annexation, or similar instrument, covering said additional real property, which Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional real property. The Notice of Annexation may contain such complementary additions to and modifications of the covenants set forth in this Declaration as are necessary to reflect the different character, if any, of the annexed property and which are not inconsistent with the general scheme of this Declaration. Except as set forth in this Section; no Notice of Annexation shall add, delete, revoke,

modify or otherwise alter the covenants set forth in this Declaration.

Section 15.4 Obligations of Annexed Property. The obligation of Owners in the annexed property to pay assessments levied by the Association and the right of such Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Lot by Declarant in that particular Phase of development.

Section 15.5 De-Annexation. Declarant hereby reserves the right to de-annex any Lot or Lots within the Project and to delete said Lot or Lots from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that the de-annexation shall be made prior to the closing date of the sale of the first Lot in the annexed property within the Project.

ARTICLE XVI
GENERAL PROVISIONS

Section 16.1 Extension of Declaration. The provisions of this Declaration shall run with the land and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least sixty-six and two-thirds percent (66-2/3%) of the then Owners of Lots, has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

Section 16.2 Encroachment Easement. In the event any improvement to a Lot encroaches upon the Common Area as a result of the initial construction, or as the result of repair, shifting, settlement or movement of any portion thereof, an easement for the encroachment and for the maintenance of same, shall exist so long as the encroachment exists. Further, each Owner within the Properties is hereby granted an easement over all adjoining Lots for the purpose of accommodating any minor encroachment, due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhand, architectural or other appendants for so long as any such encroachment continues to exist.

Section 16.3 Ownership Interest. An ownership interest in a Lot within the Project may pass from the estate of a deceased person to more than one person; provided, however, that only one living

individual shall be entitled to have membership privileges in the Association derived from such ownership.

Section 16.4 Severability. In the event any limitation, restriction, condition, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 16.5 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community.

Section 16.6 Termination of Declarant's Obligations. In the event Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 16.7 Number, Gender. The singular shall include the plural and the plural the singular unless the context requires to the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 16.8 Non-Liability of Declarant. Each Owner, by acceptance of a deed, shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision thereof having been held to be unenforceable in whole or in part.

Section 16.9 Grantees Subject to this Declaration. Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

Section 16.10 Bonded Obligations. In the event that improvements to the Project have not been completed prior to the issuance of the Final Subdivision Public Report for the Project, and the Association is obligee under a bond or other security (hereinafter "Bond") to secure performance of the commitment of the Declarant to complete such improvements, the following provisions shall apply:

modify or otherwise alter the covenants set forth in this Declaration.

Section 15.4 Obligations of Annexed Property. The obligation of Owners in the annexed property to pay assessments levied by the Association and the right of such Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Lot by Declarant in that particular Phase of development.

Section 15.5 De-Annexation. Declarant hereby reserves the right to de-annex any Lot or Lots within the Project and to delete said Lot or Lots from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that the de-annexation shall be made prior to the closing date of the sale of the first Lot in the annexed property within the Project.

ARTICLE XVI GENERAL PROVISIONS

Section 16.1 Extension of Declaration. The provisions of this Declaration shall run with the land and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least sixty-six and two-thirds percent (66-2/3%) of the then Owners of Lots, has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

Section 16.2 Encroachment Easement. In the event any improvement to a Lot encroaches upon the Common Area as a result of the initial construction, or as the result of repair, shifting, settlement or movement of any portion thereof, an easement for the encroachment and for the maintenance of same, shall exist so long as the encroachment exists. Further, each Owner within the Properties is hereby granted an easement over all adjoining Lots for the purpose of accommodating any minor encroachment, due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhand, architectural or other appendants for so long as any such encroachment continues to exist.

Section 16.3 Ownership Interest. An ownership interest in a Lot within the Project may pass from the estate of a deceased person to more than one person; provided, however, that only one living

16.10.1 The Board of Directors shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

16.10.2 In the event that the Board of Directors determines not to initiate action to enforce the obligations under the Bond or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total voting power of the Association.

16.10.3 The only Members entitled to a vote at such meeting of Members shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

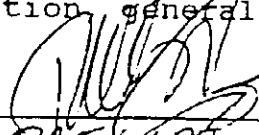
16.10.4 The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any Bond in favor of the Association upon completion of the improvements.

IN WITNESS WHEREOF, the undersigned, deemed the Declarant herein, have hereunto set their hand and seal this 20 day of OCTOBER, 1988.

"DECLARANT"

RANCHO CIELO ASSOCIATES,
a California general partnership

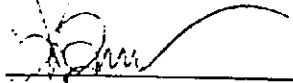
By: Brighton Homes, a California corporation, general partner

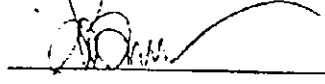
By: 
PRESIDENT

By: Brent A. Hall
VICE PRESIDENT

By: AB Group, a California general partnership, general partner

By: DLB Financial Corporation, a California corporation, Managing general partner

By: 

By: 

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

On this 26th day of OCTOBER, 1988, before me, the undersigned, a Notary Public in and for said County and State, personally appeared TODD CUNNINGHAM, personally known to me (or proved to me on the basis of satisfactory evidence) to be President of Brighton Homes, the corporation that executed the within instrument and known to me to be the person who executed the within instrument on behalf of said corporation, said corporation being known to be a general partner of Rancho Cielo Associates, a California general partnership, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such general partner and that such partnership executed the same.

WITNESS my hand and official seal.



Lori Clark
NOTARY PUBLIC

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On this 26th day of OCTOBER, 1988, before me, the undersigned, a Notary Public in and for said County and State, personally appeared DAVE L. BALL, personally known to me (or proved to me on the basis of satisfactory evidence) to be President of DLB Financial Corporation, the corporation that executed the within instrument and known to me to be the person who executed the within instrument on behalf of said corporation, said corporation being known to be managing general partner of AB Group, a general partner of Rancho Cielo Associates, a California general partnership, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such general partner and that such partnerships executed the same.

WITNESS my hand and official seal.

Lori Clark
NOTARY PUBLIC



SUBORDINATION AGREEMENT

The undersigned, Bank of America National Trust and Savings Association, a National Banking Association, Beneficiary under that certain Deed of Trust recorded July 29, 1988, as Instrument No. 88-369115, Official Records, Orange County, California, does hereby consent to each and all of the provisions contained in the within instrument, the Declaration of Establishment of Conditions, Covenants and Restrictions for Rancho Cielo, and all amendments and annexations thereto and does hereby agree that the lien and charge of said Deed of Trust shall be, and is hereby made, subordinate to, junior to and subject to said within instrument and all amendments thereto and the entire effect thereof.

Date: October 28, 1988

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a National Banking Association

By: Marcia M. Deif
Its: Vice-President

By: Sandra Johnson
Its: Loan Administration Officer

(Attach Appropriate Acknowledgement)

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On this 26th day of October, 1988, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brent H. Hall, personally known to me (or proved to me on the basis of satisfactory evidence) to be Vice President of Brighton Homes, the corporation that executed the within instrument and known to me to be the person who executed the within instrument on behalf of said corporation, said corporation being known to be a general partner of Rancho Cielo Associates, a California general partnership, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such general partner and that such partnership executed the same.

WITNESS my hand and official seal.

Lori Clark

NOTARY PUBLIC



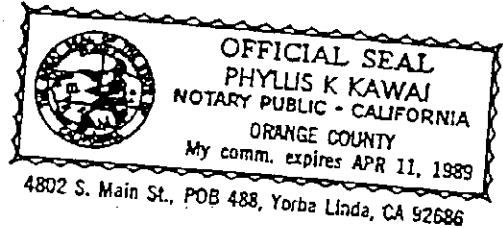
State of California
County of Orange

S.S.

On this 28th day of October 1988, before me the undersigned, a Notary Public in and for said County, personally appeared Donna Harrison and Marcia M. Reid, personally known to me to be a Loan Administrator and Vice President of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, the Association that executed the within Instrument on behalf of the Association therein named, and acknowledged to me that such Association executed the same.

witness my hand and official seal.

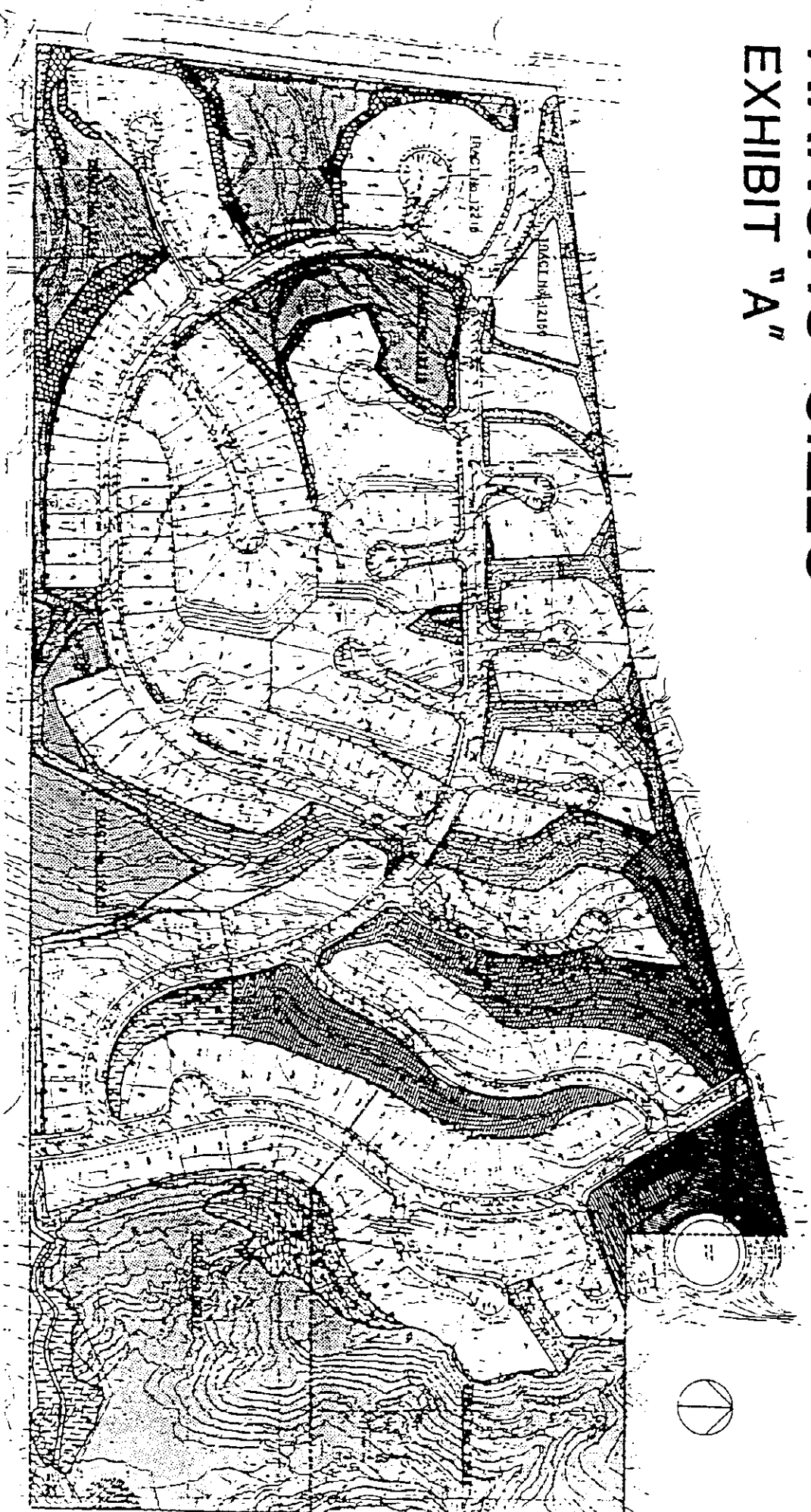
Phyllis K. Kawai
(Seal)



Notary Public in and for the said
County and State.
My Commission expires April 11,
1989.

RANCHO CIELO


EXHIBIT "A"



..... INDICATES SIDEWALKS

■ INDICATES NATURAL OPEN SPACE AREAS

NOTE: ALL OTHER SHADING INDICATES SLOPES BY PHASE TO BE MAINTAINED BY THE ASSOCIATION.

SCALE: 1" = 100'
DATE: JULY 28, 1988
PREPARED BY:

THE SURVEYING COMPANY

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

Robert O. Smylie, Esq.
Law Offices of Smylie & Selman
2049 Century Park East, Suite 2050
Los Angeles, California 90067

FIRST AMENDMENT AND MODIFICATION
TO
DECLARATION OF ESTABLISHMENT OF
CONDITIONS, COVENANTS AND RESTRICTIONS
FOR
RANCHO CIELO

This First Amendment and Modification to Declaration of Establishment of Conditions, Covenants and Restrictions for Rancho Cielo (herein "First Amendment"), is made by the undersigned, being the Owner of that certain real property subject to this Declaration as hereinafter more particularly described.

W I T N E S S E T H:

WHEREAS, Rancho Cielo Associates, a California general partnership (herein "Declarant"), is the Owner of that real property (herein the "Properties") located in the County of Orange, State of California, and as more particularly described as:

Lots 1 through 38 and Common Area Lots A, B and C of Tract No. 12214, in the County of Orange, State of California, as per Map filed in Book 611, Pages 22 through 27, in the Office of the Recorder of said County; and

WHEREAS, Declarant did execute a Declaration of Establishment of Conditions, Covenants and Restrictions for Rancho Cielo (herein the "Declaration"), which Declaration was recorded on November 2, 1988, as Instrument No. 88-564175, of Official Records in the Office of the Orange County Recorder; and

WHEREAS, Declarant desires to modify and amend the Declaration to correct inadvertent errors in the legal descriptions of the Properties, and other items; and

WHEREAS, said Declaration includes provisions which provide for the modification, change, and amendment of said Declaration; and

WHEREAS, this action is taken by Declarant as the Owner of all of the real property referred to hereinabove and all improvements thereon:

NOW, THEREFORE, Declarant hereby declares that the Declaration recorded on November 2, 1988, as Instrument No. 88-564175, of the Official Records of the Office of the Orange County Recorder, shall be and is hereby amended and modified in the following particulars:

1. The legal description of the Properties set forth in the first paragraph of the Recitals on Page 1 of the Declaration shall be deleted and the following legal description shall be substituted in lieu thereof:

"Lots 1 through 38 and Common Area Lots A, B and C of Tract 12214, in the County of Orange, State of California, as per Map recorded in Book 611, Pages 22 through 27, in the Office of the County Recorder of said County; and"

2. The legal description set forth in Article I, Section 1.1.6 of the Declaration shall be deleted and the following legal description shall be substituted in lieu thereof:

"Lots A, B and C of Tract No. 12214 as per Map recorded in Book 611, Pages 22 through 27, in the Office of the County Recorder of Orange County, California."

3. The first sentence of Section 5.3 of the Declaration shall be hereby deleted and the following first sentence of Section 5.3 shall be substituted in lieu thereof:

"Section 5.3 Maximum Annual Assessment. Until January first of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Thousand Nine Hundred Sixty and 00/100 Dollars (\$1,960.00) per Lot."

4. The Section reference in the second line of Section 15.1 of the Declaration shall be changed from "1.1.18" to "1.1.17."

5. Except as hereby expressly modified all other terms and conditions of said Declaration remain unchanged.

IN WITNESS WHEREOF, the undersigned, have hereunto set their hands and seals this 10 day of NOVEMBER, 1988.

RANCHO CIELO ASSOCIATES,
a California general partnership

By: Brighton Homes, a California corporation, Managing General Partner

By: [Signature] PRESIDENT
By: [Signature] VICE PRES

3005 (6/82) - (Corporation as Partner of Partnership)
First American Title Company

STATE OF CALIFORNIA
COUNTY OF ORANGE
On NOVEMBER 10, 1988 before me, the undersigned, a Notary Public in and for said State, personally appeared TODD S. CUMMINGS and BRENT H. HALL personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as PRESIDENT AND VICE President and SECRETARY Secretary, on behalf of BRIGHTON HOMES

the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors, said corporation being known to me to be one of the partners of RANCHO CIELO ASSOCIATES
the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal
Signature [Signature]



(This area for official notarial seal)

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 1988, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be President of Brighton Homes, the corporation that executed the within instrument and known to me to be the person who executed the within instrument on behalf of said corporation, said corporation being known to be a general partner of Rancho Cielo Associates, a California general partnership, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such general partner and that such partnership executed the same.

WITNESS my hand and official seal.

NOTARY PUBLIC