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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
IVEY RIDGE
A Residential Planned Development

20090.002-1882.FCM 020397

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EXHIBITS

Exhibit "A" Depiction of a portion of the Phase 1 Common Area -
Streets

Exhibit "B" Depiction of a portion of the Phase 1 Common Area -
Slopes

Exhibit "C" Legal Description of the Annexation Property

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
IVEY RIDGE

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS is made this 5th day of February, 1997 by GATEWAY IVEY RANCH ASSOCIATES, INC., a California corporation ("Declarant").

W I T N E S S E T H:

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

Lots 48 through 53, inclusive, Lots 101 through 106, inclusive, of Ivey Ranch Lot 9, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 13363, filed in the Office of the County Recorder of San Diego County, September 27, 1996

(hereinafter referred to as the "Lots").

B. Declarant is also the owner of that certain real property located in the City of Oceanside, County of San Diego, State of California, more particularly described as follows:

Lots DD and BB of Ivey Ranch Lot 9, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 13363, filed September 27, 1996, in the Office of the County Recorder of San Diego County, California, those certain nonexclusive easements for vehicular and pedestrian ingress, egress, access, maintenance and repair and for utility purposes in, on, over, across, under and through those portions of the private streets generally depicted on Exhibit "A" attached hereto.

(hereinafter referred to as the "Common Area"). The Lots and the Common Area are hereinafter sometimes collectively referred to as the "Property."

C. Declarant is also the owner of that certain real property located in the City of Oceanside, County of San Diego, State of California, more particularly described in Exhibit "C"

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attached hereto (hereinafter referred to as "Annexation Property"), which may, from time to time, be annexed to and become part of the Project (as hereinafter defined), in accordance with the Article herein entitled "Annexation of Additional Property."

D. Declarant desires to develop the Property and the Annexation Property as a common interest development, more particularly described in Section 1351(k) of the California Civil Code as a "planned development" (hereinafter referred to as the "Project"), consisting of single-family detached homes, landscaped areas and other improvements, as more fully described below. The development of the Project shall be consistent with the overall plan of development submitted to and approved by the Department of Veterans Affairs and/or the Federal Housing Administration (hereinafter referred to as the "VA/FHA").

E. Declarant deems it desirable to impose a general plan for the development, maintenance, improvement, protection, use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions and restrictions upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

F. Declarant deems it desirable for the efficient enforcement, protection and preservation of the value, desirability and attractiveness of the Project to create a corporation which shall be delegated and assigned the powers of administering and enforcing said covenants, conditions and restrictions.

G. IVEY RIDGE HOMEOWNERS ASSOCIATION, a California nonprofit, mutual benefit corporation, has been or will be incorporated under the laws of the State of California for the purpose of exercising the aforesaid powers.

H. As required by the City, Declarant previously recorded a Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Ivey Ridge on September 27, 1996, as Document No. 1996-0492412 ("Original Declaration").

I. Declarant has incorporated a number of modifications to provisions in the Original Declaration and now wishes to amend and restate the Original Declaration.

J. Declarant intends to convey the Property, and all property annexed thereto, subject to the covenants, conditions and restrictions set forth hereinbelow.

NOW, THEREFORE, Declarant agrees and declares that it has established, and does hereby establish, a plan for the development, maintenance, protection, improvement, use, occupancy and enjoyment of the Project, and has fixed, and does hereby fix, the covenants, conditions, restrictions, easements, reservations, equitable

servitudes, liens and charges (hereinafter collectively referred to as the "Protective Covenants") upon the Project. Each and all of the Protective Covenants shall run with the land and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, all subsequent owners of all or any portion of the Project, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, and may be enforced by any Owner or the Association.

ARTICLE I

DEFINITIONS

Section 1. "Annexation Property" shall mean and refer to that certain real property described in Exhibit "C" attached hereto, including all Improvements (as defined below) constructed thereon, all or any portion of which may be annexed into the Project as set forth in the Article herein entitled "Annexation of Additional Property."

Section 2. "Architectural Control Committee" shall mean and refer to the architectural committee created pursuant to the Article herein entitled "Architectural Control - Approval."

Section 3. "Articles" shall mean and refer to the Articles of Incorporation of Ivey Ridge Homeowners Association, as filed in the Office of the Secretary of State of the State of California, as such Articles may be amended, from time to time.

Section 4. "Assessments" shall be used as a generic term which shall mean and refer to the following:

(a) "Regular Assessment" shall mean and refer to an annual charge against each Owner and his or her respective Lot representing a portion of the Common Expenses of the Association;

(b) "Compliance Assessment" shall mean and refer to the charge against an Owner representing the costs incurred by the Association in the repair of any damage to the Common Area for which such Owner was responsible, the costs incurred by the Association in bringing such Owner and his or her Lot into compliance with this Declaration, or any amount due the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration;

(c) "Special Assessment" shall mean and refer to the charge against an Owner and his or her respective Lot representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Area, of constructing or installing any capital improvements to the

Common Area, or of taking any extraordinary action for the benefit of the Common Area or the membership of the Association pursuant to the provisions of this Declaration; and

(d) "Special Benefit Assessment" shall mean and refer to a charge levied by the Association against an Owner and his or her respective Lot to cover the expenses incurred by the Association in the operation, maintenance, repair and/or funding of reserves for a portion of the Project designated by Declarant or the Association as a "Special Benefit Area," which expenses are allocable only to the Owners and their Lots within such an Area.

Section 5. "Association" shall mean and refer to Ivey Ridge Homeowners Association, a California nonprofit, mutual benefit corporation, in which all Owners shall have a membership interest as more particularly described hereinbelow, provided that membership shall be limited to Owners.

Section 6. "Board" shall mean and refer to the Board of Directors of the Association, elected in accordance with the By-Laws of the Association and this Declaration.

Section 7. "By-Laws" shall mean and refer to the By-Laws of the Association which have been, or will be, adopted by the Board, as such By-Laws may be amended, from time to time.

Section 8. "City" shall mean and refer to the City of Oceanside, California, and its various departments, divisions, employees and representatives.

Section 9. "Common Area" is used herein as a generic term to mean and refer to: (a) all real and personal property, and to all Improvements thereon, which are owned by the Association; and (b) all real property, and Improvements thereon, over which the Association has an easement, (including, but not limited to, nonexclusive easements for access, ingress, egress, landscaping and maintenance on, over, under, across and through certain front yard areas on Lots and vehicular and pedestrian ingress, egress and access easements), lease and/or which the Association is otherwise responsible pursuant to this Declaration to manage, control and/or maintain for the common use, benefit and enjoyment of all Owners in the Project. The Common Area shall also include, without limitation, any private streets, street lights, private storm drains, private utilities, if any, slopes, front yard maintenance areas, greenbelts, perimeter walls and such other Improvements as may be designated, from time to time, and set forth in one (1) or more Notices of Annexation recorded in the Office of the County Recorder, pursuant to the Article herein entitled "Annexation of Additional Property." The Common Area in Phase 1 of the Project consists of that certain real property more particularly described in Paragraph B of the recitals, the front yard maintenance areas,

and depicted on Exhibits "A" and "B" attached hereto and incorporated herein by reference.

Section 10. "Common Expenses" shall mean and refer to the actual and estimated costs to be paid by the Association for the following: (a) owning, maintaining, managing, operating, painting, repairing and replacing the Common Area; (b) managing and administering the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and any Association employees; (c) providing utilities and other services to the Common Area; (d) providing insurance as provided for herein; (e) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (f) paying taxes for the Association; and (g) paying for all other goods and services designated by, or in accordance with, other expenses incurred by the Association for the benefit of all Owners, and reasonably required for the Association to perform its powers and duties as set forth in this Declaration. Additionally, the Common Expenses shall include adequate reserves, as the Board shall determine to be appropriate, for the repair and replacement of those elements of the Common Area which must be repaired or replaced on a periodic basis, rather than a regular annual basis.

Section 11. "County" shall mean and refer to the County of San Diego, California, and its various departments, divisions, employees, and representatives.

Section 12. "Declarant" shall mean and refer to Gateway Ivey Ranch Associates, Inc., a California corporation, and to any person or entity acquiring all of Declarant's interest in the Project (including all of Declarant's rights and obligations as created and established herein) pursuant to a written assignment from Declarant which is recorded in the Office of the County Recorder. Any such assignment may include only certain specific rights of the Declarant and may be subject to such conditions as Declarant may impose, in its sole discretion.

Section 13. "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and to all amendments to this Declaration as may be recorded, from time to time, in the Office of the County Recorder, in accordance with Section 1351(h) and Section 1353 of the California Civil Code.

Section 14. "DRE" shall mean and refer to the Department of Real Estate of the State of California, which administers the sale of subdivided lands pursuant to Sections 11000, et seq., of the California Business and Professions Code, or any similar California statute hereinafter enacted.

Section 15. "FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) created by Title III of the Emergency Home Finance Act of 1970, as amended, from time to time, including any successors thereto.

Section 16. "FNMA" shall mean and refer to the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, as amended, from time to time, including any successors thereto.

Section 17. "GNMA" shall mean and refer to the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successors thereto.

Section 18. "Improvements" shall mean and refer to all structures and appurtenances thereto of every kind, including, but not limited to, Residences, private streets, street lights, entry gates, buildings, awnings, shades, screens, screen doors, skylights, side yard and rear yard fencing, mail kiosks, swimming pools, spas, garages, pavement, sidewalks, driveways, Project perimeter walls, retaining walls, flag poles, monument signs, patios, grading of a Lot or disturbing the existing grade in any manner, irrigation equipment and all related facilities, exterior air conditioning units, solar panels and related facilities, greenbelts, drainage swales, streetscapes, antennas and related facilities, exterior lighting and any landscaping which, if left in its natural state, would grow to a height in excess of twenty feet (20').

Section 19. "Lot" shall mean and refer to a plot of land as shown upon the recorded subdivision map of the Project, and to all Improvements, including the Residence, constructed thereon. Only those plots of land which are designed and intended for the construction of a Residence and ownership by an individual Owner shall be deemed "Lots." "Lot" shall not mean or refer to any plot of land owned in fee by the Association as Common Area.

Section 20. "Member" shall mean and refer to every person or entity who holds membership in the Association, as more particularly set forth in the Article herein entitled "The Association," and shall be synonymous with the term "Owner."

Section 21. "Mortgage" shall mean and include any mortgage or deed of trust, or other conveyance of a Lot to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance, including an installment land sales contract (as defined in Sections 2985 through 2985.6 of the California Civil Code, as same may be amended, from time to time). The term "Deed of Trust," when used herein, shall be synonymous with the term "Mortgage."

Section 22. "Mortgagee" shall mean and refer to a person or entity to whom a Mortgage is made, and shall include the beneficiary of a Deed of Trust or the vendor under an installment land sales contract, as the case may be, and the assignor of a Mortgage, beneficiary or vendor.

Section 23. "Mortgagor" shall mean and refer to a person or entity who mortgages his or her or its property to another, i.e., the maker of a Mortgage, and shall include the trustor of a Deed of Trust and the vendee under an installment land sales contract.

Section 24. "Notice and Hearing" shall mean and refer to written notice and a hearing before the Board or the Architectural Control Committee of the Association, or other tribunal created by the Board in the manner provided in the By-Laws, at which the affected Owner shall have an opportunity to be heard in the manner provided herein and in the By-Laws.

Section 25. "Notice of Annexation" shall mean and refer to that certain instrument utilized to annex all or any portion of the Annexation Property, in accordance with the provisions of this Declaration, thereby subjecting said subsequent Phase to the provisions of this Declaration and to the jurisdiction of the Association.

Section 26. "Owner" shall mean and refer to the record Owner, or Owners if more than one (1), or the purchaser under a conditional sales contract of fee title to, or an undivided interest in, any Lot in the Project. The term "Owner" shall include the Declarant, the vendee under an installment land sales contract (as described in Sections 2985 through 2985.6 of the California Civil Code, as same may be amended, from time to time) and the holder of a leasehold estate having a term of ten (10) or more years, including renewal periods. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation.

Section 27. "Phase" shall mean and refer to: (a) the Lots and the Common Area; and (b) one (1) or more lots within the Annexation Property which are simultaneously annexed to the Project by the recordation of a Notice of Annexation in the Office of the County Recorder and for which a Final Subdivision Public Report has been issued by the DRE.

Section 28. "Project" shall mean and refer to the Property and to all Improvements, including the Residences, constructed thereon and the Common Area and all Annexation Property which is made subject to this Declaration in accordance with the applicable provisions of this Declaration.

Section 29. "Property" shall mean and refer to all of that certain real property described in Paragraphs A and B of the recitals hereinabove.

Section 30. "Residence" shall mean and refer to the individual dwelling and the related Improvements which are constructed upon a separate Lot and which are designed and intended for use and occupancy as a residential residence.

Section 31. "Rules and Regulations" shall mean and refer to the Rules and Regulations adopted by the Board pursuant to the By-Laws and this Declaration, as they may be amended, from time to time.

Section 32. "VA/FHA" shall mean and refer to the United States Veterans Administration and/or Federal Housing Administration, including the department or agency of the United States government as shall succeed to the VA and/or FHA.

Section 33. Application of Definitions. The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments hereto, including, but not limited to, any Notices of Annexation filed or recorded pursuant to the provisions of this Declaration, unless the context shall prohibit such application.

ARTICLE II

GENERAL PLAN OF DEVELOPMENT

Section 1. Introduction. The Declarant has designed Ivey Ridge as a multi-phase planned residential community, which, if completed as proposed, will consist of approximately One Hundred Twenty-Seven (127) Residences, together with various Common Area improvements and related amenities. The Project will be developed in accordance with the general plan of development submitted to and approved by the City and the DRE. The Association will maintain the Common Area and will be the management body for the Project, as provided herein.

Section 2. Rights and Obligations of Owners. Each Owner of a Lot in the Project shall automatically become a Member of the Association and shall be obligated for the payment of Assessments to the Association. Subject to the provisions of this Declaration which reserve rights in favor of the Declarant, each Owner, his or her family members, tenants and invitees will be entitled to the use and enjoyment of the Common Area of the Project.

Section 3. Description of Common Area. The Common Area within the Project is planned to consist generally of streets,

perimeter walls, slope landscaping, front yard landscaping, sidewalks and parkway landscaping. Except over the Common Area consisting of front yard easement areas, each Owner of a Lot in the Project shall have a nonexclusive easement appurtenant to his or her Lot for use and enjoyment of all Common Area within the Project, in accordance with the terms and provisions of this Declaration. The Association shall be responsible for the ownership, if applicable, maintenance and operation of all Common Area within the Project.

Section 4. Membership in the Association. As more particularly set forth in this Declaration, each Owner of a Lot in the Project shall automatically become a member of the Association, and shall be obligated for the payment of assessments to the Association. In addition, each Owner, his or her family, members, lessees, tenants, guests and invitees, will be entitled to the use and enjoyment of the Common Area within the Project, in accordance with this Declaration, the By-Laws and Rules and Regulations adopted by the Board.

Section 5. Annexation of Subsequent Phases. At such time as subsequent Phases are developed, if ever, Declarant shall annex such Phases to the Project in accordance with the provisions of the Article herein entitled "Annexation of Additional Property."

Section 6. Declarant's Use of Streets and Utilities. Until such time as all Lots in the Ivey Ranch Lot 9 are sold (and escrows closed) or five (5) years from the recordation of this Declaration, whichever occurs first, Declarant hereby reserves unto itself, together with the right to grant and transfer all or a portion of same, the right to use the private street system and any private utilities within the Project for, including, but not limited to, construction, access, and connection of utilities by Declarant.

Section 7. Declarant's Control of Development. In order that the Project be completed and established as a planned residential community, Declarant shall have the sole discretion and control over all aspects of construction of Residences and Improvements owned by itself, and over the selling and marketing of Lots in the Project. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, Declarant's right to complete the planning, development, grading, construction, advertising, marketing, leasing and sale of the Lots, and all other property within the Project (including any property which may be annexed thereto pursuant to the provisions of this Declaration). Further, Declarant, its agents and employees, shall have the sole discretion and control to:

- (a) Install, construct, modify, alter or remove any Improvements in the Project;

(b) Redesign or otherwise alter the style (e.g. architectural), size (e.g., adding additional square footage or reducing the square footage of the Residences), color or appearance of any Improvements in any portion of the Project owned by Declarant;

(c) The exclusive right to maintain one (1) or more sales office(s), model complex(es), interior design and decorator center(s) and parking area(s) for employees, agents and prospective buyers;

(d) The exclusive right to place reasonable signs, flags, banners, billboards or other forms of advertising on any portion of the Project owned or controlled by Declarant and/or Common Area (specifically including the Project entry area), as Declarant deems necessary, irrespective of size, color, shape or materials of such items;

(e) The right to determine, so long as Declarant owns an interest in Ivey Ranch Lot 9, the hours of operation, if any, of the Project entry gates;

(f) A nonexclusive right to utilize the Common Area and any unassigned open parking spaces in connection with its program for the sale or leasing of Lots in the Project;

(g) Construct such additional Improvements on any portion of the Project owned by Declarant;

(h) The right to utilize the Common Area in the Project, and exclude Owners and their guests, for marketing, sales and promotional activities.

(i) Subdivide, re-subdivide, grade or regrade any portion of the Property and/or Annexation Property owned by Declarant; and/or

(j) Otherwise control all aspects of designing and constructing the Improvements in the Project, and of regulating the marketing of Lots in the Project.

In furtherance thereof, Declarant hereby reserves unto itself, and its successors and assigns, a nonexclusive easement for ingress and egress on, over and across the Project as necessary to construct Improvements, and further reserves for itself the right, (a) until all Lots in the Project are sold (and escrows have closed), or (b) five (5) years from the recordation of this Declaration, whichever occurs first, to maintain an information office, to carry on normal sales activity, including the operation of model complexes and sales offices, and to display reasonable signs on any portion of the Project, and a nonexclusive right to utilize the Common Area in connection with the sale or leasing of Lots in the Project. Each

Owner hereby grants, upon acceptance of his/her deed to his/her Lot, an irrevocable special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Declaration.

Section 8. Non-Liability of Declarant. The purpose of this Article is merely to describe the proposed general plan of development for the Project. Without limiting the generality of the foregoing, nothing in this Section or elsewhere in this Declaration shall limit the right of Declarant to complete construction of the Project, to alter same or to construct such additional Improvements as Declarant shall deem advisable prior to the completion and sale of all Lots in the Project. Declarant may assign any or all of its rights under this Declaration to any successor to all or any part of Declarant's interest in the Project by an express written assignment recorded in the Office of the County Recorder.

ARTICLE III

RESERVATION OF EASEMENTS AND OTHER PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Owners' Easements. Except as otherwise provided herein, every Owner shall have a nonexclusive right and easement of access and use in and to the Common Area. Said right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the limitations set forth in Section 2 below.

Section 2. Limitations on Owners' Easement Rights. The rights and easements of access, use and enjoyment set forth in Section 1 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

(a) The right of the Association to reasonably limit the number of guests of Owners;

(b) The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Common Area;

(c) The right of the Association, in accordance with its Articles, By-Laws and this Declaration, to borrow money with the assent of sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, and/or to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, for the purpose of improving or repairing the Common Area and related facilities;

(d) The right of the Association to suspend the voting rights and rights and easements of use and enjoyment of

the Common Area of any Member, and the persons deriving such rights and easements from any Member for any period during which any Assessment against such Member's Lot remains unpaid and delinquent (except such rights as are reasonably required to access said Member's Residence); and after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

(e) Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Association to dedicate or transfer easements over all or any part of the Common Area to any public agency, authority, entity or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by Owners representing sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, and recorded in the Office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the residential use of the Project shall not require the prior approval of the Members of the Association;

(f) The right of Declarant (and its sales agents, representatives, customers and prospective purchasers) to the nonexclusive use of the Common Area without charge for sales, display access and exhibit purposes related to selling, marketing, showing and otherwise disposing of Lots in the Project, which rights Declarant hereby reserves; provided, however, such use shall cease upon the date that Declarant no longer owns any Lot in the Project, nor any Annexation Property. In addition, such use shall not unreasonably interfere with the rights of enjoyment of other Owners as provided herein;

(g) The right of the Association to perform and exercise its duties and powers as set forth herein;

(h) The right of the Association, acting by and through its Architectural Control Committee, to enact uniform and reasonable architectural standards;

(i) The right of Declarant to designate additional Common Area, pursuant to terms of the Article herein entitled "Annexation of Additional Property";

(j) The right of the Association to perform and exercise its duties and powers as set forth herein;

(k) The right of the Declarant, so long as Declarant has an ownership in the Project or any portion of the Annexation Property, to control the access gates for the Project, if any;

(l) Other rights of the Association, the Architectural Control Committee, the Board, the Owners and Declarant with respect to the Common Area as may be provided for in this Declaration;

(m) The right of Declarant to grant and transfer easements on, over and across the Project for the development, installation, construction and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities, as shown on any recorded subdivision map covering the Project, and as may be reasonably necessary for the proper maintenance, development and conveyance of Lots and/or Common Area; and

(n) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Area imposed by Declarant or by the City, or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the rights of the City or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Common Area designed for vehicular movement to perform municipal functions or emergency or essential public services.

Section 3. Easements for Common Fences. Declarant hereby establishes, reserves, and grants to each Owner in the Project, easements appurtenant to the real property in the Project for the placement of all common fences, where such fences were originally installed by Declarant, regardless of whether such fences are located precisely upon the boundary separating two (2) residential Lots or a residential Lot and Common Area. Those Owners who have a common fence which adjoins their Lots and effectively creates the boundary line between such Lots (including the Association and its Common Area) shall equally have the right to use such fence and each shall have the exclusive right to the use of the interior surface of the fence facing his or her Residence or Common Area. Neither Owner shall drive nails, screws, bolts or other objects more than half way through any common fence, interfere with the adjacent Owner's use and enjoyment of the common

fence, or impair, in any way, the structural integrity of the common fence. In the event that any portion of such fence, except the interior surface of one (1) side, is damaged or injured from any cause, other than the act or negligence of either party, it shall be repaired or rebuilt at their joint expense.

Section 4. Delegation of Common Area Use Rights. Any Owner who resides within the Project may delegate, in accordance with the By-Laws, his or her rights of use and enjoyment to the Common Area to the members of his or her immediate family and any other persons residing within his or her Residence. In the event an Owner has rented or leased his or her Residence, his or her rights of use and enjoyment to the Common Area shall be automatically delegated to his or her tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights of use and enjoyment to the Common Area for the duration of such tenancy, except those rights of ingress and egress which are reasonably necessary to carry out the appropriate duties of a landlord. In the event of a conditional sales contract, the seller under the contract shall be deemed to delegate his or her rights of use and enjoyment to the Common Area to the purchaser under the contract.

Section 5. Easements for Public Services. In addition to the foregoing easements over the Common Area, there is hereby created, established and granted easements for public services, including, but not limited to, the right of police, fire, ambulance and other public services to enter upon any part of the Common Area for purposes of serving the health and welfare of all Owners in the Project.

Section 6. Easements for Unintentional Encroachments. Declarant hereby creates, establishes, and grants to the Owner of each Lot a nonexclusive easement appurtenant thereto on, over and across those portions of any adjacent Lot (whether a residential Lot or a Common Area Lot), not to exceed one foot (1'), for the encroachment by any foundations and footings, and not to exceed three feet (3') for eaves or other overhangs, wing walls and/or chimneys existing as of the date that escrow is initially closed for the sale of said Lot from Declarant to an Owner. Additionally, there is hereby created, established and granted nonexclusive easements appurtenant to any Lot on, over and across those portions of any such adjacent Lot (whether a residential Lot or a Common Area Lot), not to exceed one foot (1'), for the encroachment by any Improvement resulting from any subsequent settling or shifting of any Improvements. All of the aforesaid encroachments shall be measured at the point of encroachment along a line which is perpendicular to the common property line between the affected Lots.

Section 7. Easements for Utilities. The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, water, electricity, gas, television cable (or CATV

service) and telephone lines, and other facilities, shall be governed by the following:

(a) Each respective utility company shall maintain all utility facilities and connections on the Project owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon such Owner's Lot and it shall be the obligation of the Association to maintain those facilities and connections located upon and which provide service to the Common Area;

(b) Wherever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project and it becomes necessary to gain access to said connections, cables and/or lines through a Lot owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such other Lot or to have the utility companies enter upon such other Lot to repair, replace and generally maintain said connections, cables and/or lines. In the event that any damage shall be proximately caused by such entry, said Owner or utility company shall repair the same at its respective expense;

(c) Whenever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project, and said connections, cables and/or lines serve more than one (1) Lot, the Owner of each Lot served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service his or her Lot;

(d) In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the cost thereof, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to the Board who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners;

(e) Easements over the Project for the installation and maintenance of electric and telephone lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, all as shown on the recorded map of the Project and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant, together with the right to grant and transfer the same; and

(f) Each Lot granted to an Owner is subject to all easements for utility installation and maintenance, storm drains and other purposes, as more particularly shown on the recorded subdivision map(s) for the Project ascertainable by inspection of the Property, or of record. Any installation or construction of landscaping or structures within said easement areas may be done only in accordance with the terms, conditions and provisions of said easements.

Section 8. Easements for Maintenance of the Common Area. Declarant hereby creates, establishes and grants a nonexclusive easement in favor of the Association for ingress, egress and access on, over and across those portions of the Lots in the Project as reasonably required by the Association to perform its maintenance obligations for the Project and Common Area, as more particularly set forth in the Article herein entitled "Powers and Duties of the Association." In the event it becomes necessary for the Association to enter upon any Lot for purposes of: (a) maintaining the Common Area; or (b) bringing an Owner and/or his or her Lot into compliance with this Declaration in accordance with the provisions set forth herein, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon such Owner's Lot for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same at its expense. Notwithstanding the foregoing, no notice of entry is required for maintenance purposes of the Common Area (e.g., landscaped slopes on individual Lots or the front yard maintenance areas) in the Project or in the event of an emergency.

Section 9. Easements for Clustered Mailboxes. In order to comply with the various requirements of the City and the United States Postal Service, kiosk mailboxes may be installed on certain Lots within the Project. Easements are hereby created, granted and established on and over the affected Lots, if any, in favor of all Owners and the United States Postal Service for delivery and deposit of mail.

Section 10. Easements for Vehicular Traffic. In addition to the general right of, and easements for, access, use and enjoyment granted herein, there shall be, and Declarant hereby reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, until such time as all Lots in the Ivey Ranch Lot 9 are sold (and escrows closed) or five (5) years from the recordation of this Declaration, whichever occurs first, a nonexclusive appurtenant easement for vehicular ingress, egress and access over the private streets and drives within the Project to, among other things, (i) access any portion of the Annexation Property not annexed to the Project; and

(ii) provide ingress, egress and access to and from any portion of the Annexation Property not annexed into the Project.

Section 11. Easements Over Sidewalks. Declarant hereby covenants for itself, its successors and assigns, that each and every Owner, his or her tenants and invitees shall have appurtenant nonexclusive reciprocal easements on, over, and across all sidewalks located on portions of Lots, if any, immediately adjacent to private streets within the Project for pedestrian access, use and enjoyment.

Section 12. Easements for Drainage. Declarant hereby creates, grants and reserves over each Lot in the Project easements for drainage according to the patterns for drainage created by the grading plans for the Project approved by the City, as well as according to the actual, natural and existing patterns for drainage (including, but not limited to, easements to accommodate any "cross-lot drainage," whereby water runoff from one [1] or more contiguous Lots [or Common Area] drains across another Owner's Lot). Each Owner covenants and agrees that he shall not obstruct or otherwise interfere with said drainage patterns of waters from adjacent Lots in the Project over his/her Lot, or, in the alternative, that in the event it is necessary and essential to alter said drainage pattern for the protection and use of his/her Lot, he/she will make adequate provisions for proper drainage and obtain all appropriate approvals from the respective governmental authorities and/or Architectural Control Committee.

Section 13. Easement for Area Drains. Declarant hereby creates, establishes, grants and reserves nonexclusive reciprocal easements over the Lots and Common Area for drainage purposes to accommodate the drainage system, including, but not limited to area drains and pipes, originally installed by Declarant pursuant to the precise grading and construction plans. The Lot Owner served by said drainage system shall be responsible to maintain and preserve said system in an operating condition to ensure proper drainage in, on, over, under, across and through the yard area of his Lot in accordance with the established drainage patterns created by the precise grading plans for the Project, and shall bear the cost of the maintenance, repair or replacement associated with the drainage system which affects his Lot. No Owner shall alter or remove the drainage system or modify the grade of the yard area in his Lot without the express written consent of the Architectural Control Committee. In the event any portion of the drainage system is damaged, destroyed or not properly maintained, any Lot Owner affected by such drainage system may cause said repair, restoration or maintenance work to be completed and shall be entitled to recover the appropriate expenses from the Lot Owner responsible for such repair, restoration or maintenance. Notwithstanding the foregoing, if any portion of the drainage system is damaged or destroyed as a proximate result of any act or omission of any Owner, or any member of his family, guests, tenants, lessees

and/or invitees (without regard to fault), such Owner shall immediately repair and/or rebuild such drainage system, and shall bear all of the costs thereof, including any cost and/or expense related to personal injury or property damage to any person, Lot, or Residence in the Project.

Section 14. Easements for Construction and Sales. Declarant hereby expressly reserves for itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, for the benefit of its agents, employees and contractors, and for the benefit of its successors and assigns, a period of five (5) years from the recordation of this Declaration or until all Lots in Ivey Ranch the Project are sold (and escrows closed), whichever occurs first, nonexclusive easements for access, ingress and egress on and over the Project as necessary to construct the Improvements, and further reserves the exclusive right to carry on normal sales activity, including the operation of a models complex and sales office, and the display of promotional signs and exhibits in connection with the sale or lease of Lots in the Project.

Section 15. Reservation of Construction Rights by Declarant. In order that the Project be completed and established as a planned residential community, nothing in this Declaration shall limit the right of Declarant to: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise modify the Improvements owned by Declarant; (c) construct such additional Improvements on any portion of the Project owned by Declarant; or (d) otherwise control all aspects of constructing the Project or selling or leasing of Lots in the Project. Furthermore, nothing in this Declaration shall limit the right of Declarant to establish additional licenses, easements and rights-of-way in favor of Declarant, utility companies or others as may, from time to time, be reasonably necessary for the development of the Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the City and the DRE. The foregoing rights of Declarant may be assigned to any successor to all or part of Declarant's interest in the Project by an express assignment recorded with the County Recorder.

Section 16. Title to the Common Area.

(a) Transfer of Title to Common Area. Declarant hereby covenants, for itself and its successors and assigns, that it will convey to the Association fee simple title to, or a nonexclusive easement in, as appropriate, the Common Area, free and, if the Common Area title being conveyed is fee simple, clear of all liens and encumbrances, subject to the Protective Covenants set forth in this Declaration or which are of record at the time of the conveyance. Declarant will similarly convey to the Association, from time to time, in fee

simple or by easement, any Common Area located in the Annexation Property which is designated in this Declaration or in any Notice of Annexation for conveyance to the Association.

(b) Completion of Common Area. In the event that Improvements proposed to be constructed on any portion of the Common Area so annexed to the Project have not been completed, as evidenced by a "Notice of Completion" recorded in the Office of the County Recorder, then the completion of such Improvements shall be assured in accordance with Section 11018.5 of the California Business and Professions Code, or any similar statute hereafter enacted.

(c) Commencement of Association Responsibilities. The Association's responsibility to maintain the Common Area conveyed to the Association shall commence with the recording of the grant deed conveying the Common Area to the Association and the commencement of Regular Assessments for same. The Association shall not interfere with the performance of any warranty or other contractual maintenance obligations which the contractor or subcontractors of Declarant may be bound to perform. Notwithstanding the foregoing, maintenance performed by such contractors and subcontractors of Declarant shall not serve to postpone the Association's maintenance obligations, commencement of Regular Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Assessments.

(d) Character of Improvements to Common Area. The nature, design, quality and quantity of all Improvements to the Common Area shall be determined by Declarant, in its sole discretion. The Association shall be obligated to accept title to the Common Area, as appropriate, and undertake all maintenance responsibilities for the Common Area when title is conveyed and/or maintenance responsibilities are tendered by Declarant, pursuant to Subparagraphs (a) and (c) above.

(e) Disputes. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of maintenance responsibilities therefor, resolution of the dispute shall be submitted to arbitration and conducted in accordance with the then existing rules for commercial arbitration of the American Arbitration Association. In the event of a demand for arbitration, Declarant shall remit any fee required to initiate the arbitration. However, the costs of arbitration, including attorneys' fees of the prevailing party, shall be borne in such proportions as the arbitration panel shall determine.

(f) Formation of Landscape Maintenance District. Notwithstanding any provision contained herein to the con-

trary, the Board shall have the power and authority to convey the Common Area, or any portion thereof, to the City upon request of the City to include the Common Area, or any such portion, in a landscape maintenance district and/or delegate its maintenance obligations to the City or to such landscape maintenance district. Each Owner of a Lot shall pay all assessments, special taxes and other charges levied against such Lot in connection with any such landscape maintenance district. Each Owner of a Lot in the Project, by acceptance of a deed from Declarant for such Lot, agrees to refrain from taking any action which would in any way interfere with the formation of or annexation into a landscape maintenance district, or other special district or community facilities district, the operation of either district, or decisions made or actions taken by the City with respect to such districts, including, without limitation, the timing of commencement, amount, spreading or use of the assessments, special taxes or other charges collected by such districts.

Section 17. Reservation of Common Area Easements. Declarant hereby reserves unto itself, and its successors and assigns, together with the right to grant or transfer all or a portion of same, the right to grant nonexclusive easements over the Common Area in favor of Owners of any Annexation Property which is annexed to the Project pursuant to this Declaration, and, upon the recordation of a Notice of Annexation affecting the Annexation Property, the Owners described in this Declaration shall automatically obtain nonexclusive easements over all Common Area which is a part of said Annexation Property.

ARTICLE IV

THE ASSOCIATION

Section 1. Membership. Every person or entity who or which is an Owner as defined hereinabove shall be a Member of the Association. The foregoing, however, is not intended to include persons or entities who hold an interest in a Lot in the Project merely as security for the performance of an obligation. All memberships in the Association shall be appurtenant to the Lot owned by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred, as provided in Section 7 hereinbelow. Ownership of such Lot shall be the sole qualification for membership in the Association. The memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to said Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected in the books of the Association.

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

(a) Class A. Class A Members shall be all Owners, with the exception of the Declarant until such time as the Class B Membership terminates, 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 determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned in the Project upon which Declarant is then paying the appropriate monthly Assessments provided for hereinbelow. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

(1) The second anniversary of the close of escrow for the sale of the first Lot in the most recent Phase of the Project; or

(2) The fourth anniversary of the first close of an escrow in Phase 1.

Any action by the Association which must have the approval of the membership of the Association before being undertaken, shall require the vote or written assent of both a majority of the Class B membership as well as a majority of the Class A membership, so long as there are two (2) outstanding classes of membership, unless a specific provision of this Declaration or the By-Laws or Articles of the Association requires the approval of a greater percentage of the voting membership. Notwithstanding the foregoing, any action by the Association pursuant to the Article contained herein entitled "Enforcement of Bonded Obligations" shall only require a majority of the voting power of the Owners, other than Declarant.

Section 3. Special Voting Procedures For Election to the Board. The Declarant shall be entitled to solely elect a majority of the members of the Board until the first to occur of the following events:

(a) The election of the Board immediately following the close of escrow by Declarant of at least ninety-five (95) Lots in the Project; or

(b) December 31, 2001.

In the event Declarant shall not have sold and closed escrows for at least ninety-five (95) Lots by December 31, 2001, Declarant's right to elect a majority of the members of the Board shall be automatically extended until the aforesaid number of Lots have been sold, but in no event later than December 31, 2002.

Section 4. Vesting of Voting Rights. The voting rights attributable to any given Lot in the Project as provided for herein shall not vest until the Assessments provided for hereinbelow have been levied by the Association against said Lot.

Section 5. Adjustment of Voting Rights. The voting rights in the Association shall be adjusted on the first day of the month immediately following the first close of an escrow for the sale of a Lot in a subsequent Phase of the Project.

Section 6. Suspension of Voting Rights. The Board shall have the authority to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

Section 7. Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Lot, and the membership shall be automatically transferred upon the sale of such Lot. In the event of such sale, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Lot, or to the Mortgagee (or third party purchaser) of such Lot upon a foreclosure sale, deed in lieu or other remedy set forth in the mortgage. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the actual administrative cost of transferring the memberships to the new Owners on the records of the Association.

Section 8. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) the conveyance by the Owner of his or her Lot; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the

Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall be cast in accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

Section 9. Record Dates. For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights with respect to any lawful action, the Board may fix in advance record dates as provided in the By-Laws.

ARTICLE V

POWERS AND DUTIES OF THE ASSOCIATION

Section 1. Management Body. The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project, as provided herein, and the affairs of the Association shall be managed by a Board of Directors, as more particularly set forth in the By-Laws. The initial Directors shall be appointed by the Declarant. Thereafter, the Board shall be elected as provided in said By-Laws.

Section 2. Powers. The Board, for and on behalf of the Association, shall have the right and power to do all things necessary to conduct, manage and control the affairs and business of the Association. Subject to the provisions of the Articles, the By-Laws and this Declaration, the Board shall have all general powers authorized under the California Corporations Code for non-profit, mutual benefit corporations, and shall have the following specific powers:

(a) Enforce the provisions of this Declaration (including but not limited to the ability to record a notice of noncompliance or violation), and all contracts or any agreements to which the Association is a party;

(b) Acquire title, manage, maintain, repair and replace all Common Area and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, gardening and other necessary services for the Common Area, all as more specifically set forth in the Article herein entitled "Repair and Maintenance";

(c) Maintain fire, casualty, liability and worker's compensation coverage, fidelity bond coverage and other insurance coverage pursuant to the terms of that Article herein entitled "Insurance";

(d) Obtain, for the benefit of the Common Area, all commonly metered water, gas and electric services, and may provide for refuse collection and cable (or CATV) television service;

(e) Execute lot line adjustments (and corresponding deeds), enter into a maintenance and/or other agreement with Declarant or a third party, grant fee title to or easements over the Common Area to Declarant or a third party, and/or receive fee title to or an easement over real property owned by Declarant or a third party as reasonably necessary due to those conditions in the field where it is not readily apparent where Lot lines are located and the respective party's maintenance responsibilities commence and end, and such adjustments, deeds and/or agreements will promote a clearly defined and uniform maintenance plan by the respective parties;

(f) Grant easements or licenses, where necessary, for utilities and sewer facilities over, on and across the Common Area to serve the Project;

(g) Pay all taxes and special assessments which would be a lien upon the entire Project or the Common Area, and to discharge any lien or encumbrance levied against the entire Project or the Common Area;

(h) Levy and collect Assessments on the Owners of all Lots in the Project in which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association";

(i) Pay for reconstruction of any portion of the Common Area damaged or destroyed;

(j) Employ and retain a professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board and engage such other personnel (including attorneys and accountants) as necessary with respect to administration of the Association. The Association may employ an on-site manager responsible for supervision of maintenance of Project facilities and Improvements and authorized to assist individual Owners in the management of non-Owner occupied Residences. The cost thereof may be levied against the non-Owner occupied Lots as a Special

Benefit Assessment. The Association may also establish a "management plan" to provide for employment of the management and creation of a twenty-four (24) hour on-site maintenance program for rented Lots for any period of time when non-Owner occupied Lots equals 26 Lots in the Project. If for any reason an Owner or such Owner's tenant fails to adequately maintain a Lot, the Association shall be authorized, but not obligated, to perform such required maintenance and to thereafter levy a Special Assessment or Special Benefit Assessment to collect same from the applicable Owner. The Association may not terminate the management plan unless such termination is approved in writing by the Oceanside Community Development Commission or staff or the number of non-Owner Lots is less than 26;

(k) Enter into any Lot when necessary in connection with maintenance or construction for which the Association is responsible;

(l) Contract with Declarant, its successors or assigns, for the purpose of entry into a maintenance and/or subsidy agreement, made by and between Declarant and the Association, for the purpose of temporarily reducing and/or abating the financial obligations of Owners in the Project;

(m) Purchase such other labor, services, materials, supplies and the like, as needed for the proper maintenance of the Common Area and/or proper operation of the Association;

(n) Adopt reasonable Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of any portion of the Project;

(o) Grant exclusive easements to Owners over portions of the Common Area;

(p) Subject to compliance with Section 1354 of the California Civil Code, as same may be amended from time to time, to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (i) enforcement of the Declaration, Rules and Regulations and By-Laws; (ii) damage to the Common Area; and (iii) damage to the Lots which arises out of, or is integrally related to, damage to the Common Area that the Association is obligated to maintain or repair;

(q) Grant easements or licenses to any public agency, governmental entity, utility, or others, where necessary, for utilities (e.g., water, sewer, and storm drain) and facilities on, over and across the Common Area to serve the

Project for purposes consistent with the use and residential aspect of the Project; and

(r) Perform any and all other acts and things that a nonprofit, mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration.

Section 3. Duties. Notwithstanding the Association's obligations, as more specifically set forth in the Article herein entitled "Repair and Maintenance," the Board shall perform and execute the following duties for and on behalf of the Association:

(a) Own, maintain and operate the Common Area, for the common use and benefit of all Owners in the Project;

(b) Provide, water, sewer, gas, electricity, garbage and trash collection, and other necessary utility services for the Common Area;

(c) Provide insurance for the Association and its Members in accordance with the provisions of the Article hereinbelow entitled "Insurance," and distribute any required notices regarding same;

(d) Accept, as part of the Project, all property included in or annexed to the Project, in accordance with the terms and provisions of this Declaration, and to accept all Owners as Members of the Association. In addition, the Association shall accept all Common Area, conveyed, leased or otherwise transferred to it, if any, by Declarant, its successors or assigns, or appropriate governmental agency;

(e) Maintain and repair all portions of the Common Area in a neat, clean, safe, attractive, sanitary and orderly condition at all times and paint, maintain, repair and replace all of the Common Area Improvements so as to keep same in a neat, clean, safe, attractive, sanitary and orderly condition at all times. Without limiting the generality of the foregoing, the Association shall be responsible for maintaining the private streets and related systems in a condition comparable to the condition initially approved by the City. In the event any maintenance or repairs to the Common Area are required due to the willful or negligent acts or omissions of an Owner or Owners, the Association shall levy the cost of such maintenance and repair as a Compliance Assessment against the responsible Owner(s);

(f) In addition to all other provisions set forth herein respecting the maintenance of the Common Area, maintain

all private streets, until such time, if ever, that the City accepts the public dedications thereof, any private sewers, storm drains, sidewalk, and Common Area lighting facilities, in a condition comparable to the condition initially approved by the City;

(g) Pay all real and personal property taxes and Assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners; provided, however, that it shall be the obligation of each Owner to pay his or her respective share of the tax assessment levied on the Project prior to separate assessments by the Tax Assessor pursuant to the applicable provisions of the California Revenue and Taxation Code;

(h) Contract for any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;

(i) Cause financial statements for the Association to be regularly prepared and copies distributed to each Member of the Association, regardless of the number of Members or the amount of assets of the Association:

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

i) An itemized estimate of the Association's revenue and expenses, determined on an accrual basis;

ii) A summary, printed in bold type, of the current status of the Association's reserves, based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5 ("Study"), as may be amended, from time to time, setting forth the following:

a) The current estimated replacement costs, estimated remaining life and the estimated useful life of the Common Area, together with an explanation of the methods of funding being utilized by the Association to defray the costs of future repairs, replacements or additions to the Common Area;

b) As of the end of the fiscal year for which the Study was prepared, the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major Improvements to the Common Area;

c) As of the end of the fiscal year for which the Study was prepared, the accumulated cash reserves actually set aside to repair, replace, restore or maintain such major Improvements to the Common Area; and

d) The percentage that the current amount of accumulated cash reserves which have been set aside is of the current estimated amount of cash reserves which will be necessary.

iii) A general statement setting forth the procedures utilized by the Association to calculate and establish reserves to defray the costs of future repairs, replacements or additions to the Common Area Improvements; and

iv) A statement as to whether the Board has determined or anticipates that the levy of one (1) of more Special Assessments will be required to repair, replace or restore any major Improvements to the Common Area, or to provide adequate reserves therefor.

Notwithstanding the foregoing, in lieu of distributing the pro forma budget required hereinabove, the Board may elect to distribute a summary of the pro forma budget to all Members with a written notice, in at least 10-point bold type on the front page, that the pro forma budget is available at the business office of the Association, or at another suitable location within the Project, and that copies will be provided upon request and at the expense of the Association. If any Member requests that a copy of the pro forma budget required herein be mailed to said Member, the Association shall provide the copy to the Member by first-class mail at the expense of the Association, and mailed within five (5) days of the receipt of said request;

(2) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing for the first sale of a Lot, and an operating statement for the period from the date of the first closing to the said accounting date,

shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of Assessments received, and receivable, identified by the number of the Lot and the name of the person or entity assessed;

(3) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

i) A balance sheet as of the last day of the Association's fiscal year;

ii) An operating (income) statement for the fiscal year;

iii) A statement of changes in financial position for the fiscal year; and

iv) Information required to be reported pursuant to Sections 8322 and 1365 of the California Corporations and Civil Codes, respectively.

This annual report shall ordinarily be prepared by a licensee of the California Board of Accountancy, in accordance with generally accepted accounting principles, for any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00). However, if for any reason the report is not prepared by a licensee of the California Board of Accountancy, said report shall be accompanied by a certificate from an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association;

(4) A statement of the Association's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Association," which shall be distributed within sixty (60) days prior to the beginning of the fiscal year; and

(5) A summary of the Association's general liability insurance policy, earthquake and flood insurance policy, if one has been issued, and liability coverage policy for the Board, which includes statements, a summary, and information required under California Civil Code Section 1365(e), as same may be amended from time to time. Currently, such items of disclosure include the following:

i) general liability, earthquake and flood insurance policies: (1) the name of the insurer; (2) the type of insurance; (3) the policy limits of the insurance; and (4) the insurance deductibles.

To the extent the information noted above is described within the respective insurance policies, the Association may distribute such information to the Members and be in compliance with the disclosure requirements of the referenced Civil Code Section. Notification regarding cancellation or policy renewals must comply with Civil Code Section 1365(e)(2), as same may be amended from time to time.

(j) The Board shall review on a quarterly basis, the following:

i) A current reconciliation of the Association's operating accounts;

ii) A current reconciliation of amounts collected as reserves;

iii) The current year's actual amounts collected as reserves and expenses compared to the current year's budget;

iv) An income and expense statement for the Association's operating and reserve accounts; and

v) The most current account statements prepared by the financial institutions where the Association maintains its operating and reserve accounts.

Withdrawal of funds from the Association's reserve account shall require the signature of either: (i) two (2) members of the Board; or (ii) one (1) member of the Board and an officer of the Association who is not also a member of its Board. As used in this Section, "reserve account" means moneys that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components of the Common Area which the Association is obligated to repair or replace on a periodic basis, rather than on a regular annual basis. The Board shall not use any funds collected and budgeted as "reserve" moneys for any costs and/or expenses that are not related to repair and/or replacement costs for those elements of the Common Area that must be repaired and/or replaced on a periodic

basis. Notwithstanding the foregoing, temporary transfer of funds may occur in compliance with Civil Code Section 1365.5, as same may be amended from time to time. In the event reserve funds are temporarily transferred to pay for litigation, the Board shall comply with the disclosure and notification requirements of Civil Code Section 1365.5(d), as same may be amended from time to time.

(k) At least once every three (3) years, cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half (1/2) of the gross Association budget for any fiscal year of the Association. The Board shall consider and implement the necessary adjustments to the Board's analysis of the reserve account requirements as a result of such review. The reserve study shall consider and include, at a minimum, the requirements set forth in Section 1365.5(e) of the California Civil Code, as the same shall be amended, from time to time;

(l) Assume and pay out of the Assessments provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume as provided for in Section 4 hereinbelow;

(m) Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Common Area, as more particularly described below. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member and shall be on file in the principal office of the Association. In the event of any conflict between such Rules and Regulations and this Declaration, this Declaration shall prevail;

(n) Enforce all applicable provisions of this Declaration, the Articles, By-Laws and such Rules and Regulations of the Association and Architectural Control Committee, and of all other documents pertaining to the ownership, use, management and control of the Project;

(o) Give notices in writing to FHLMC, FNMA and GNMA, and other lenders and investors participating in the financing of the sale of Lots in the Project, as required herein;

(p) Within ten (10) days of the mailing or delivery of a written request from an Owner, provide said Owner with a copy of this Declaration and the By-Laws and Articles for the

Association, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges therein as provided by this Declaration or other management documents of the Board as of the date of such request. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the actual cost to prepare and reproduce the requested documents. In addition, the Board shall make available, during normal working business hours, upon request under reasonable circumstance, to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee and the holder(s), insurer(s) and guarantor(s) of a first Mortgage of any Lot, current copies of this Declaration, the Articles, the By-Laws, the Rules and Regulations governing the Lot, and all of the books, the membership register, including mailing addresses and telephone numbers, records and financing statements of the Association;

(g) Elect the officers of the Association and fill any vacancies on the Board, except if such vacancy is created by the removal of a Director.

Section 4. Discretionary Powers. The Board, at its option, may assume, perform and execute the following powers and duties for and on behalf of the Association:

(a) Retain the services of a manager for the Project and provide such other personnel as the Association deems necessary and proper to assist in the operation of the Association and/or management of the Common Area regardless of whether such other personnel are employed directly by the Association or otherwise;

(b) Remove or replace any Improvement that extends into the Common Area under authority of an easement when access to a utility line underneath such Improvement is requested by any utility company; provided, however, that the cost shall be assessed against the Owner of the Lot involved as a Compliance Assessment if said Owner caused the Improvement to be so placed in the Common Area without legal right to do so;

(c) Incur any liability or pay any costs or expenses for a single Lot or Owner thereof; provided, however, that in the event the Association does incur any such liability or pay any such costs or expenses, the amount thereof shall be specially assessed to the Owner of such Lot as a Compliance Assessment; provided further, however, that nothing herein shall permit the Association to assess the Owners for any new Improvements to the Common Area, except as otherwise provided in this Declaration; and

(d) Subject to the limitations set forth in this Article, contract for any other material, furniture, labor, services, maintenance, repairs, structural alterations or insurance, or pay any taxes or Assessments which, in the opinion of the Board, shall be necessary or proper for the operation of the Common Area, for the benefit of the Owners or for the enforcement of this Declaration.

Section 5. Notification by Association of Defects.

The Board agrees that in the event of any alleged defect in any improved Common Area for which the Association alleges that Declarant may be responsible, the Board will provide Declarant with written notice of such defect in accordance with Civil Code Section 1375, as same may be amended. The Board shall grant Declarant a reasonable opportunity to repair, replace or otherwise cure such defect. The Association agrees that Declarant, or its authorized agents, and not the Association, shall determine the material and methods to be used in effecting such repair, replacement or cure. In accordance with the condition described in the preceding sentence, the Association agrees to provide Declarant, or its authorized agents, a reasonable opportunity to repair or replace any defective material or workmanship upon the Association's discovery of the same in any manner not inconsistent with applicable provisions of the California Civil Code.

Section 6. Repair of Willful Damage to Common Area.

Notwithstanding the Association's duty to maintain the Common Area, in the event that the maintenance, repair or replacement of any element of such Areas becomes necessary due to the willful or negligent acts or omissions of any Owner, his or her family, guests or invitees, after prior Notice and Hearing, the Board shall assess the cost of such maintenance, repair and/or replacement as a Compliance Assessment against the Lot owned by such Owner.

Section 7. Delegations of Duties.

In the event that the Association shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated.

Section 8. Right of Entry for Emergency.

The Board, any person authorized by the Board, Declarant (so long as it owns an interest in the Project), or any Owner may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association and/or Owner shall repair the same at its expense.

Section 9. Right of Entry for Repairs.

Except as otherwise provided herein, the Board, or any person authorized by

the Board, shall have the right to enter, upon reasonable notice, any Lot to effect necessary repairs which the Owner has failed to perform or which are necessary in connection with the repairs to the Common Area or an adjoining Lot. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

Section 10. Limitations on Board Action. The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association and a majority of the votes residing in Members, other than the Declarant or an Owner who would be a defendant in any litigation proceedings:

(a) Entering into a contract with a third person, wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year, with the following exceptions:

(1) A management contract, the terms of which have been approved by the Department of Veterans Affairs and the Federal Housing Administration;

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short-rate cancellation by the insured;

(4) Agreements for cable television services and equipment or satellite dish equipment and services of not to exceed five (5) years duration, provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect interest of ten percent (10%) or more; and

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess

of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(c) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(d) Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association;

(e) Filling a vacancy on the Board created by the removal of a Director; or

(f) Except as otherwise allowed under Section 1375 of the California Civil Code, as same may be amended from time to time, incurring litigation expenses, including without limitation attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained herein, (ii) enforce the architectural control provisions contained herein; or (iii) collect any unpaid assessments levied pursuant to this Declaration.

Section 11. Licenses, Easements and Rights-of-Way. The Board, for and on behalf of the Association, is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other public utility purposes over those portions of the Common Area upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Area or for the preservation of the health, safety, convenience and welfare of the Owners. Such licenses, easements and rights-of-way may be granted at any time prior to twenty-one (21) years after the death of the individuals who have signed this Declaration and their issue who are in being as of the date hereof, and the right to grant such licenses, easements and rights-of-way is hereby expressly reserved. In addition, the Board, for and on behalf of the Association, may grant exclusive easements to Owners for use and enjoyment over portions of the Common Area, as the Board determines is reasonable.

Section 12. New Improvements. Except as otherwise provided in this Declaration, and subject to the Article herein entitled "Architectural Control - Approval," the Association may construct new Improvements or additions to the Common Area or demolish existing Improvements, provided that in the case of any Improvement, addition or demolition involving a total expenditure

in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the written consent or vote of the Owners in the Project as to the maximum total cost therefor shall first be obtained in accordance with the appropriate provisions herein, and provided that no Lot shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof. The Board shall levy a Special Assessment on all Owners in the Project for the cost of such work.

Section 13. Association Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assessments. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Control Committee, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded.

Section 14. Nonliability and Indemnification.

(a) General Limitation. Except as specifically provided in this Declaration, or as required by law, no right, power or responsibility conferred on the Board or the Architectural Control Committee by this Declaration, the Articles or the By-Laws, shall be construed as a duty or obligation charged upon the Board, the Architectural Control Committee, any member of the Board or the Architectural Control Committee, or any other officer, employee or agent of the Association. No such person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such person's acts or omissions within what such person reasonably

believed to be the scope of his/her Association duties ("Official Acts"), except to the extent that such injuries or damage result from such person's willful or malicious misconduct. No such person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such person's Official Acts, except to the extent that such injuries or damage result from such person's negligence or willful or malicious misconduct;

(b) Personal Liability Limitation. No person who suffers injury, including, but not limited to, bodily injury (including, without limitation, emotional distress or wrongful death) or property damage or loss as a result of the tortious act or omission of a volunteer Board member or volunteer Association officer shall recover damages from such Board member or officer if all the following conditions are satisfied:

(1) At the time the act or omission occurred, the Board member or officer resided in the Project as either a tenant or an Owner of two (2) or fewer Lots;

(2) The act or omission was performed within the scope of the Board member's or officer's Association duties;

(3) The act or omission was performed in good faith;

(4) The act or omission was not willful, wanton or grossly negligent; and

(5) The Association maintained and had in effect at the time the act or omission occurred, and at the time a claim was made, one (1) or more policies of insurance which included coverage for general liability for the Association and individual liability of officers and Directors of the Association for negligent acts or omissions in such capacity, and both types of coverage were in the amount of at least One Million Dollars (\$1,000,000.00).

(c) Indemnification. The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for his/her official acts, provided that:

(1) The Board determines that such person acted in good faith and in the manner such person reasonably believed to be in the best interests of the Association; and

(2) In the case of an action or threatened action by or in the right of the Association, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Association, provided that the person to be indemnified shall not be entitled to vote. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs or devisees of any person entitled to such indemnification.

Section 15. Declarant's Right to Cure Alleged Defects.

Declarant intends the Common Area, the Lots and the Improvements be built in compliance with all applicable building codes and ordinances, and that they be of a quality that is consistent with good construction practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect in construction exists and Declarant's responsibility therefor. Declarant intends to resolve all disputes and claims regarding "Alleged Defects" (as defined below) in any portion of the Common Area, any Lot and any Improvements amicably and without the necessity of time consuming and costly litigation. Accordingly, the Association and all Owners shall comply, to the extent not inconsistent with Civil Code Section 1375, as same may be amended from time to time, with the following claim resolution procedure:

(a) Declarant's Right to Cure. If the Association or any Owner or Owners (collectively "Claimant") claims, contends or alleges that any portion of the Common Area, any Lot and/or any Improvements are defective, or that Declarant or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading or construction thereof (collectively, an "Alleged Defect"), Declarant may inspect, repair and/or replace such Alleged Defect as set forth herein.

(b) Notice to Declarant. If a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at such address at which Declarant maintains its principal place of business,

of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after Declarant receives a Notice of Alleged Defect or Declarant's independent discovery of any Alleged Defect, Declarant may, upon reasonable notice to Claimant and during normal business hours, enter onto or into, as applicable, the Common Area, any Lot and/or any Improvements to inspect and, if Declarant deems necessary, repair and/or replace such Alleged Defect. In conducting such inspection, repairs and/or replacement, Declarant may take any actions it deems reasonable and necessary under the circumstances.

(d) Legal Actions. No Claimant may initiate any legal action, cause of action, proceeding or arbitration against Declarant alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, or (2) for the diminution in value resulting from such Alleged Defect, unless and until Claimant has (i) delivered to Declarant a Notice of Alleged Defect and (ii) complied with applicable provisions of Civil Code Sections 1368.4 and 1375, as same may be amended from time to time.

(e) No Additional Obligations. Nothing set forth in this Section imposes any obligation on Declarant to inspect, repair or replace any items or Alleged Defect for which Declarant is not otherwise obligated under applicable State and federal law or any limited warranty provided by Declarant in connection with the sale of the Residences constructed thereon.

ARTICLE VI

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments; (b) Special Assessments for capital improvements and such other purposes set forth herein; (c) Compliance Assessments, including, but not limited to, costs incurred by the Association in the repair of damage to the Common Area for which such Owner was responsible and costs incurred by the Association in bringing such Owner and his or her Lot into compliance with this Declaration; (d) Special Benefit Assessments; and (e) such other assessments as the Association may periodically establish. The Regular, Special and Special Benefit Assessments, together with in-

terest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Regular Assessment, Special Assessment and Special Benefit Assessment, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall also be the personal obligation of the Owner of such property at the time when the Assessment fell due. Each Compliance Assessment levied against an Owner, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Regular Assessments: Levy and Collection. The Regular Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all Owners in the Project, and to maintain and improve the Common Area. The Association, by and through the Board, shall levy and collect Assessments from the Owner of each Lot in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of its powers and duties set forth in this Declaration, the By-Laws and the Articles. Regular Assessments may be collected on a monthly installment basis.

Section 3. Regular Assessments - Basis. Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots. Each Owner's proportionate share of the Common Expenses of the Association for any fiscal year shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the total number of Lots in the Project which are subject to assessment. Until the first day of the fiscal year immediately following the close of escrow for the sale of the first Lot in the Project to an Owner, the maximum Regular Assessment shall be as set forth in the budget reviewed and approved by the DRE. Notwithstanding the commencement for payment of Regular Assessments, or any other provisions of this Declaration, Declarant and any other Owner of a Lot which does not include a structural Improvement for human occupancy shall be exempt from the payment of that portion of any Assessment (e.g., Regular Assessment) which is for the purpose of defraying operating expenses and reserves directly attributable to the existence and/or use of such structural Improvements. This exemption shall include, but shall not necessarily be limited to, that portion of any Assessment attributable to roof replacement, exterior maintenance, exterior walkway and carport lighting, refuse disposal, cable television and domestic water supplied to Residences. This exemption shall be in effect only until the earliest to occur of: (a) the recordation of a notice of completion for the structural Improvements; (b) the occupation or use of the Residence; or (c) the completion of all elements of the Lot which the Association is

obligated to maintain, if any. Declarant and any Owner shall also be exempted from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Area facilities that are not complete at the time Assessments commence. This latter exemption shall only be in effect as to a particular Common Area facility until the earlier of: (a) the recordation of a notice of completion for such Common Area facility; or (b) the placement into use of the particular Common Area facility. Subject to the limitations of California Civil Code Section 1366, as same may be amended, from time to time, from and after the first day of the fiscal year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Assessment may be increased subject to the following limitations:

(a) Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Regular Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall: (1) comply with the provisions set forth in Section 1365(a) of the California Civil Code with respect to the distribution of the pro forma operating budget of the Association for the forthcoming fiscal year; or (2) obtain the approval of Members, constituting a quorum, casting a majority of affirmative votes at a meeting or an election of the Association conducted in accordance with California Corporations Code Sections 7510, et seq., and Sections 7613, et seq. For purposes of this entire Section 3, a quorum means more than fifty percent (50%) of the Members of the Association;

(b) Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the approval of Members, constituting a quorum, casting a majority of affirmative votes at a meeting or election of the Association, conducted in accordance with Sections 7510, et seq., and Section 7613 of the Corporations Code; and

(c) The Assessment increases limitation set forth in Subsection (b) above does not apply to increases in Assessments related to emergency situations, which shall be deemed to include the following:

(1) Extraordinary expenses required by an order by a court of competent jurisdiction;

(2) Extraordinary expenses for the maintenance or repair of Common Area that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

(3) Extraordinary expenses necessary to repair or maintain the Common Area that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, in the event that the Board increases the Regular Assessment above twenty percent (20%) pursuant to this Subparagraph (3), the Board shall distribute written notice concerning such increase to all Owners and a copy of a resolution adopted by the Board setting forth: (i) the necessity of the extraordinary expenses; and (ii) the justification why said expenses were not reasonably foreseeable at the time the most recent budget was prepared. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Lot by the Association as a Regular Assessment, plus any amount paid by the Declarant as a subsidy or pursuant to any subsidy or maintenance agreements, to the extent such subsidy payments offset an amount which would otherwise be paid by Owners as Regular Assessments.

The Board may fix the Regular Assessment at an amount not in excess of the maximum Regular Assessment. So long as Declarant is offering Lots for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express prior written consent of the Declarant and the DRE. Notwithstanding the foregoing, following the annexation of a subsequent Phase of the Project, pursuant to the provisions set forth in this Declaration, the maximum Regular Assessment may be automatically increased (or decreased) for all Lots in the Project on the first day of the month following the first close of an escrow for the sale of a Lot in said Phase without any approval of the Members of the Association to the amount recommended by the DRE and, if applicable, the VA/FHA, in connection with their respective review and processing of the Association budget for such Phase. The Association may, upon ratification by a majority of the Board, enter into an agreement with Declarant, its successors or assigns, to reduce or abate Assessments, upon such terms and conditions as may be agreed to by the parties.

Section 4. Special Assessments for Capital Improvements. In addition to the Regular Assessments authorized above, the Board may not, subject to the limitations of California Civil Code Section 1366, without the vote or written approval of Members constituting a quorum (which shall mean more than fifty percent [50%] of Owners of the Association) casting a majority of affirmative votes at a meeting or election of the Association, conducted in accordance with Sections 7510, et seq., and 7613 of the Corporations Code, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses

of the Association for that fiscal year. The five percent (5%) limitation shall not apply to increases in Special Assessments related to an emergency situation which shall be deemed to include the following:

(a) Extraordinary expenses required by an order by a court of competent jurisdiction;

(b) Extraordinary expenses for the maintenance or repair of Common Area that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

(c) Extraordinary expenses necessary to repair or maintain the Common Area that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, in the event the Board levies any Special Assessment that exceeds the five percent (5%) limitation pursuant to this Section, the Board shall distribute written notice concerning said Special Assessment to all Owners and a copy of a resolution adopted by the Board setting forth: (1) the necessity of said Special Assessment; and (2) the justification why said Special Assessment was not reasonably foreseeable at the time the most recent budget was prepared.

Every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments.

Section 5. Compliance Assessments. A Compliance Assessment may not be characterized nor treated as an assessment which may become a lien against the Owner's Lot enforceable by a sale in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code; provided, however, the foregoing shall not apply to any Compliance Assessment imposed against an Owner consisting of a reasonable late payment penalty for delinquent Assessments and/or 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 or imposed for costs incurred by the Association in the repair of damage to Common Area and facilities for which the Member or the Member's guests or tenants were responsible.

Section 6. Special Benefit Assessments. Special Benefit Assessments shall mean and refer to a charge levied by the Association against an Owner and his or her respective Lot to cover the expenses incurred by the Association in the operation, maintenance, repair, and/or funding of reserves as to a portion of the Project designated herein or in a Notice of Annexation as a "Special Benefit Area" or which is identified or referred to as an area or facility or service benefitting the Association which expenses are allocable only to Owners within such an Area or who

receive such services. These expenses chargeable to Owners in a Special Benefit Area may include, without limitation, the following:

(a) Maintenance, management, operation, repair and replacement of particular Improvements within the Special Benefit Area;

(b) Utilities or services (e.g., on-site management for non-Owner occupied Lots) for the benefit of Owners within the Special Benefit Area;

(c) Reasonable reserves, as deemed appropriate by the Board, for repair and replacement of any Improvements maintained by the Association within a Special Benefit Area; and

(d) Unpaid Special Benefit Assessments.

The Association shall distribute to Owners within any Special Benefit Area a pro forma operating statement and budget for the upcoming fiscal year which shall estimate the expenses attributable to the Special Benefit Area, and shall set forth the amount and payment schedule of the Special Benefit Assessments. Increases in Special Benefit Area Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Special Benefit Area Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall obtain the approval of Members affected by such Assessment, constituting a quorum, casting a majority of affirmative votes. For purposes of this Section, a quorum means more than fifty percent (50%) of the Members of the Association affected by the Special Benefit Area Assessment. The Assessment increase limitation set forth hereinabove does not apply to increases in Special Benefit Area Assessments related to emergency situations that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared which determined the amount of the Special Benefit Area Assessments.

Section 7. Date of Commencement of Regular Assessments: Due Dates. Subject to the terms of any maintenance and/or subsidy agreement entered into by the Association and Declarant, the Regular Assessments provided for herein shall commence as to all Lots within the Project on the first day of the month following the first conveyance of any Lot to a bona fide purchaser. Except as otherwise provided in this Article, the first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year as set forth in the By-Laws. The Board shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject thereto at least thirty (30) days in advance of each

Assessment period. The due dates shall be established by the Board. Notwithstanding any other provisions of this Declaration, until the earlier to occur of: (a) the recordation of a Notice of Completion of an Improvement to the Common Area; or (b) the placement into use of the Common Area, each Owner (including Declarant) may be declared by the Board to be exempt from paying that portion of the Regular Assessment which is directly attributable to expenses and reserves to be incurred by the Association in the maintenance, operation and repair of such Common Area.

Section 8. Notice of Increase in Assessments. The Board shall provide to the Owners, by first class mail to the address on file with the Association, notice of any increase in Regular, Special, and/or Special Benefit Assessments not less than thirty (30) nor more than sixty (60) days prior to such increase becoming due.

Section 9. Certification of Payment. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

Section 10. Reserves. The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Area or any such other purpose determined by the Board. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Association. The expenditure of such funds shall be limited to the repair and replacement of those elements of the Common Area which must be repaired or replaced according to a reserve study as permitted by Section 1365.5 of the California Civil Code, as same may be amended from time to time.

Section 11. Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Common Area or abandonment of his or her Lot, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Association.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

- (a) All property dedicated to and accepted by any public authority;

(b) All property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California. However, no land or Improvements devoted to dwelling use shall be exempt from said Assessment; and

(c) All Common Area owned in fee by the Association.

Section 13. Capitalization of the Association. Each purchaser of a Lot in the Project shall contribute to the working capital of the Association an amount equal to one/one hundred twenty-seventh (1/127) of the product of two (2) monthly installments of the Regular Assessment identified in the Phase 1 budget (as reflected in the Phase 1 Final Subdivision Public Report issued by the DRE), multiplied by twelve (12) (i.e., the number of Lots in Phase 1) ("Capitalization Fee"). Said amount shall be deposited by each purchaser into his or her respective escrow for the purchase of his or her Lot from Declarant, and shall be disbursed by said escrow holder to the Association at the close of escrow for the sale of the Lot. Prior to the expiration of six (6) months after the first close of an escrow for the sale of a Lot in the Project, Declarant shall deposit with a neutral escrow holder an amount equal to the Capitalization Fee for any and all Lots in Phase 1 which are not yet sold or otherwise in escrow for the sale thereof. Said neutral escrow holder shall promptly remit these funds to the Association. Thereafter, upon the close of each escrow for the sale of a Lot for which the capitalization fee was prepaid by Declarant, said escrow holder shall remit to Declarant, and not to the Association, the capitalization fee collected from the buyer-Owner of said Lot at the close of each escrow. This capital contribution shall in no way be deemed to be a prepayment of any portion of the Regular Assessment obligation of said Owners.

ARTICLE VII

EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Section 1. Effect of Nonpayment of Assessments: Remedies of the Association. Any installment of a Regular, Special, Special Benefit, or Compliance Assessment not paid within fifteen (15) days after it is due and payable, shall be deemed delinquent and the Owner shall be required to pay: (a) reasonable costs of collection, including reasonable attorneys' fees; (b) a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law; and (c) interest on all sums imposed under this Section at an annual percentage rate not to exceed twelve percent (12%), commencing thirty (30) days after the Assessment was due. The Board, for and on behalf of the Association, may commence

legal action against the Owner personally obligated to pay the same, or, in the case of a Regular, Special or Special Benefit Assessment, may foreclose the lien against his or her Lot. Such lien may also be foreclosed by a power of sale or other nonjudicial procedure provided for by the laws of the State of California. In furtherance thereof, each Owner hereby vests in the Association, its successors or assigns, the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such Delinquent Assessments.

Section 2. Notice of Delinquent Assessments. No action shall be brought to foreclose a lien for delinquent Assessments, or to proceed under the power of sale herein, unless at least thirty (30) days has expired following the date a "Notice of Delinquent Assessments" is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Recorder. Said Notice of Delinquent Assessments must recite the name and street address of the record Owner, a good and sufficient legal description of any such Lot, the amount claimed (which may, at the Association's option, include reasonable late charges as may, from time to time, be established by the Board in accordance with California law, interest on the unpaid Assessment, plus reasonable attorneys' fees and expenses of collection incurred in connection with the debt secured by said lien), and the name and address of the principal office of the Association, and, in the event of a nonjudicial foreclosure, as provided in Section 3 below, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice shall be signed and acknowledged by the President, or Vice President, and the Secretary, or assistant Secretary, of the Association and mailed in the manner set forth in Section 2924(b), to all record Owners of the Owner's interest in the Project no later than ten (10) calendar days after recordation. The lien shall continue until fully paid or otherwise satisfied.

Section 3. Foreclosure Sale. Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board in accordance with the provisions of Sections 2924, 2924a, 2924b and 2924c of the California Civil Code, as same may be amended, from time to time, applicable to the exercise of powers of sale in Mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Any Owner, by acceptance of a deed for his or her Lot, hereby expressly waives any objection to the enforcement and foreclosure of the lien in this manner.

Section 4. Curing of Default. Upon the timely curing of any default for which a Notice of Delinquent Assessments or lien was filed by the Association, the officers thereof are hereby

authorized to file or record, as the case may be, an appropriate release of such Notice upon payment by the defaulting Owner of a reasonable fee to be determined by the Association to cover the costs of preparing and filing or recording such release.

Section 5. Cumulative Remedies. The Association's remedies for nonpayment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of any other rights and remedies which the Association and its assigns may have hereunder or at law.

Section 6. Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created hereunder, nor any breach of the terms and provisions of this Declaration, nor the enforcement of any term or provision hereof, shall defeat or render invalid the rights of any Mortgagee under any recorded first Mortgage or deed of trust upon a Lot made in good faith and for value; provided, that after such Mortgagee or other person or entity obtains title to such Lot by judicial or nonjudicial foreclosure, such Lot shall remain subject to this Declaration and the payment of Assessments which fall due subsequent to the date of taking title.

ARTICLE VIII USE RESTRICTIONS

The Lots and Common Area shall be occupied and used only as follows:

Section 1. Private Residential Dwelling. Each Lot shall be used as a private residential dwelling and for no other purpose, except such temporary uses as shall be permitted by Declarant while the Project is being developed and Lots are being sold by Declarant; provided, however, that Declarant reserves unto itself, together with the right to grant or transfer all or a portion of same, the right, together with the necessary easements, for a period of five (5) years from recordation of this Declaration or until all Lots in the Project are sold (and escrows closed), whichever shall first occur, to carry on normal sales activity on the Project, including the operation of models and sales offices, provided Declarant shall not unreasonably interfere with any other Owner's use of the Common Area.

Section 2. Common Area Use. Use of the Common Area shall be subject to the provisions of this Declaration, the Rules and Regulations and to any additional limitations imposed by the Association.

Section 3. Conduct Affecting Insurance. Nothing shall be done or kept in any Lot or in the Common Area which will in-

crease the rate of insurance on the Common Area without the approval of the Association. No Owner shall permit anything to be done or kept in his or her Lot or in the Common Area which will result in the cancellation of insurance on the Common Area or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance to the Common Area shall be increased, the Owner shall become personally liable for the additional insurance premiums.

Section 4. Liability for Damage. Each Owner shall be liable to the Association, pursuant to the laws of the State of California, for any and all costs and expenses which may be incurred by the Association to repair any damage to the Common Area which be sustained by reason of the negligence or willful misconduct of said Owner or of his or her family, tenants, lessees or contract purchasers, or their respective guests or invitees, whether minor or adult. After approval by a majority of the Board, any such costs and expenses shall be levied by the Board as a Compliance Assessment against such Owner's Lot.

Section 5. Signs. Subject to the provisions of California Civil Code, Sections 712 and 713, as same may be amended from time to time, no sign of any kind shall be displayed to the public view on or from any Lot or the Common Area without the approval of the Association, except such signs as may be used by Declarant for a period of five (5) years from recordation of this Declaration or the last sale of a Lot by Declarant in Map No. 13363, whichever occurs first, in connection with the development of the Project and sale of Lots, and except one (1) "for sale," "for lease" or "for exchange" sign of reasonable size (but not exceeding six [6] square feet) on any Lot. The foregoing restrictions shall not apply to any sign of customary and reasonable dimensions displayed on the Owner's Lot (or another Owner's Lot with consent) which states that the Residence is for sale, lease or exchange, or advertising directions to the Residence by the Owner or his or her agent, and which is reasonably located in plain view of the public, so long as it is consistent with any standards promulgated by the Architectural Control Committee. All signs permitted under this Section shall conform with the City's sign ordinance, if any, and with all applicable governmental regulations.

Section 6. Maintenance of Animals. No animals of any kind shall be raised, bred or kept in any Lot or in the Common Area, except that common household pets, including dogs, cats or birds, may be kept in each Lot; provided, however, that no animal shall be kept, bred or maintained for any commercial purpose or in unreasonable numbers. As used herein, "unreasonable numbers" shall ordinarily mean more than two (2) animals per Lot. Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by said animal in the Project. When walking or exercising an animal in the Project, the Owner thereof shall, at all times, have readily available means to clean up any

excrement or other unclean or unsanitary condition created by said animal. The Association, upon the approval of a majority of the Board, shall have the right to prohibit maintenance of any animal within the Project which constitutes a private nuisance to any other person. Every person bringing an animal upon or keeping an animal in the Project shall be liable pursuant to the laws of the State of California to each and all persons for any injury or damage to persons or property caused by such animal. All animals maintained in a Lot must be kept either within an enclosure, yard or patio, or on a leash being held by a person capable of controlling the animal.

Section 7. Quiet Enjoyment. No Owner shall permit or suffer anything to be done in the Project or kept upon such Owner's Lot which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises (e.g., inappropriate use of horns) or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. Notwithstanding the foregoing, until all Lots in Ivey Ranch Lot 9 are sold (and escrows closed) or five (5) years from the recordation of this Declaration, whichever occurs first, the Declarant's efforts in selling the Lots may interfere with the Owners' quiet enjoyment of the Lots, however, each Owner acknowledges this and waives any claims against the Declarant for nuisance due to any activity related to constructing, selling or marketing the Lots. Each Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to said premises, and shall remove all rubbish, trash and garbage from his/her Lot. All clotheslines, refuse containers, woodpiles, storage boxes, tools and equipment shall be prohibited from any Lot unless obscured from view by a fence or appropriate screen approved by the Architectural Control Committee provided for hereinbelow.

Section 8. Structural Changes. There shall be no structural alteration, construction or removal of any Residence, fence or other structure whatsoever in the Project without the prior written approval of the Board or its designated Architectural Control Committee, as required herein, except such works of construction by Declarant during the development of the Project.

Section 9. Improvements. There shall be no construction, alteration or removal of any Improvement in the Project (other than those repairs or rebuilding permitted under the Article entitled "Damage or Destruction to the Common Area") without the approval of the Architectural Control Committee, as set forth hereinbelow. No Improvement shall be constructed upon any portion of any Common Area, other than such Improvements as shall be constructed: (a) by the Declarant (or a person or entity to whom Declarant assigns its rights as developer), or (b) by the Association as provided herein.

Section 10. Windows. No window in any Residence shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, tint or any other material reasonably deemed inappropriate for such use by the Architectural Control Committee; provided, however, an Owner may use plain white sheets to cover windows for a period not to exceed three (3) months after the close of escrow pending the installation of drapes, curtains, shutters or other appropriate interior window coverings. Subject to review and approval by the Architectural Control Committee, an extension of three (3) months may be provided. In the event an Owner has installed appropriate window coverings for all windows facing the street, the Architectural Control Committee shall automatically grant such Owner a three (3) month extension to obtain necessary window coverings for the back windows of his/her Residence.

Section 11. Commercial Activity. No business, commercial, manufacturing, mercantile, storage, vending or industrial operations of any kind shall be conducted in or upon any Lot or the Common Area, except such temporary uses as shall be permitted by Declarant while the Project is being constructed and Lots are being sold by the Declarant. Notwithstanding the foregoing, this Section shall not preclude an Owner from maintaining a home-office and conducting business activities therefrom on the following conditions: (a) there is no external evidence of such activity; (b) such activities are conducted in conformance with all applicable government ordinances; (c) the patrons or clientele of such activities do not visit the Lots or park automobiles or other vehicles within the Project; (d) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Residences; (e) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (f) such activities are consistent with the residential character of the Project and conform with the provisions of this Declaration. In no event, however, shall any Owner or the Association use a Residence as an office for the rental, resale or leasing of Lots without the prior written consent of Declarant.

Section 12. Parking. All vehicles in the Project shall be parked in accordance with the following:

(a) Restrictions Regarding Private Streets. All streets within the Project are private and are subject to all applicable laws, ordinances and regulations of all governmental agencies having jurisdiction over the Project. Except as may otherwise be permitted by the Association, no Owner shall park any vehicle on any portion of the Project, except wholly within his/her respective garage or on his/her driveway, provided such automobile does not extend onto the sidewalk or beyond the curb.

(b) Recreational Vehicles. No Owner shall park, store or keep any large commercial or recreational type vehicle (including, but not limited to, campers, motorhomes, trailers, aircraft, mobile homes or other similar vehicles) on his or her Lot, streets within the Project or any portion of the Common Area, except wholly within his or her respective garage.

(c) Repairs. No Owner shall conduct major repairs to any motor vehicle of any kind whatsoever in his or her garage or upon the Common Area, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility.

(d) Storage of Goods in Garages. Each Owner shall keep his or her garage readily available for parking his or her respective vehicle therein and shall not store any goods or materials therein, nor use any portion of the garage for a workshop or other use if such storage or use would prevent said Owner from parking the number of vehicles therein for which said garage was originally designed and constructed by Declarant.

(e) Garage Doors. All garage doors shall remain closed at all times, except as reasonably required for entry to and exist from the garage. Each Owner shall ensure that his garage door opener is in proper working order at all times.

Section 13. Regulation of Parking. Subject to the rights of the Association, through its officers, committees and agents, the Board is hereby empowered to establish "parking" and "no parking" areas within the Common Area, in accordance with Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement, including, but not limited to, the levying of fines and the citing and towing of vehicles. As required by the City, the streets in the Project having a curb-to-curb width dimension of less than thirty-two feet (32') shall be painted red, and shall be painted and posted to read "NO PARKING FIRE LANE." The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above limitations whether the same shall belong to any Owner or a member of his/her family or to any tenant, lessee, guest or invitee of any Owner. Charges for such towing and storing shall be assessed against the Owner of the Lot which is responsible for the violation of such restrictions, and such assessment may be enforced as a Compliance Assessment.

Section 14. Compliance With Management Documents. All Owners shall be Members of the Association and shall comply with the terms and conditions as set forth herein and in the Articles

and the By-Laws, and all Rules and Regulations of the Association and Architectural Control Committee. No Owner shall transfer any membership or interest in the Association, except upon the transfer of the Lot to which it is appurtenant.

Section 15. Declarant's Improvements. Nothing in this Article or elsewhere in this Declaration shall limit the right of Declarant to complete construction of any Improvements to the Common Area and/or to any Lot owned by Declarant, or to alter the foregoing or to construct such additional Improvements as Declarant deems advisable prior to completion and sale of the entire Project. The rights of Declarant under this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed transferring such interest to such successor.

Section 16. Solar Heating. No solar heating panels or other solar energy collection equipment shall be installed on any portion of any Lot or Common Area, or any Improvement thereon, unless such equipment is installed in such location and in such manner as to be obscured from the view of other persons in the Project to the greatest degree practicable without significantly decreasing its efficiency. No person shall install any such panels or equipment without the prior written consent of the Architectural Control Committee, which shall have the right to reasonably restrict and determine the size, shape, color, style, materials or location of any such panels or equipment within the Project, subject to the provisions of California Civil Code Section 714, as same may be amended, from time to time. At a minimum, any solar panels are to be integrated with the roof design with the panels and frame colored to match the roof or bronze anodized.

Section 17. Antennas. No radio station or shortwave operators of any kind shall operate from any Residence. No Owner shall install, or cause to be installed, or maintain any television, radio, "Citizens Band" (C.B.) antenna, satellite dish or other similar electronic receiving or broadcasting device (including those devices having a diameter or diagonal measurement of one meter or less) in the Project in such a manner as to be visible from the Common Area, unless (1) approved by the Architectural Control Committee (which approval for a video or television antenna, including a satellite dish, shall not be unreasonably withheld or delayed but may include restrictions which do not significantly increase the cost of the installation, maintenance or use of the device or significantly decrease its efficiency or performance or preclude reception of an acceptable quality signal) and (2) in compliance with all applicable ordinances of the City, California Statutes (e.g., Civil Code Section 1376), and Federal Regulations, as each may be amended or revised. No projections of any type may be placed or permitted to remain above the roof of any building within the Project, except one (1) or more chimneys and

vent stacks originally installed, if at all, by Declarant. No basketball backboard or other fixed sports apparatus may be constructed or maintained in the Project without the Architectural Control Committee's prior approval. No fence or wall may be erected, altered or maintained on any Lot except with the Architectural Control Committee's prior approval. No patio cover, wiring or air conditioning fixture, water softeners or other devices may be installed on the exterior of the residential structure on a Lot or be allowed to protrude through the walls or roof of the residential structure on a Lot (with the exception of those items installed during the original construction of the residential structure on a Lot) unless the Architectural Control Committee's prior written approval is obtained.

Section 18. Leasing. No Owner shall be permitted to rent or lease his or her Lot for transient or hotel purposes or for a period of less than thirty (30) days. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, By-Laws and Articles, and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement. Other than the foregoing, there are no restrictions on the right of an Owner to rent or lease his or her Lot.

Section 19. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or the Common Area, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon or in any Lot or the Common Area. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted upon any Lot.

Section 20. Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any portion of the Project, except in covered sanitary containers approved by the City located in appropriate areas screened and concealed from view by a fence, wall or other screen approved by the Architectural Control Committee, or in such portions of the Project, if any, improved with trash receptacles provided for the use of all Owners, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. All such refuse which is put out for pickup, shall be in conformance with all appropriate standards established by the City or governing agency. In the event trash is collected from each individual Lot, any approved trash containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twelve [12] hours before and after scheduled trash collection hours).

Section 21. Drainage. There shall be no interference with the established drainage pattern over any Lot within the Project as to affect any other Lot or the Common Area, unless adequate alternative provision is made for proper drainage and is approved in writing by the Architectural Control Committee. For purposes hereof, "established" drainage is defined as the drainage which exists at the time such Lot is conveyed to a purchaser from Declarant, or later grading changes or architectural plans that are shown on plans approved by the Architectural Control Committee. Each Owner further agrees not to obstruct, retard or otherwise interfere with, in any manner whatsoever, any drainage swales, or to perform any grading or construction on his or her Lot which may result in creating an excessive amount of surface water runoff (i.e., an amount of water beyond the flow originally intended and provided for by the approved grading plan) to flow into said drainage swales. Except as otherwise maintained by the Association, each Owner of a Lot shall, at his or her sole cost and expense, maintain that portion of any drainage swale or other drainage devices located on his or her respective Lot.

Section 22. Prohibition Against Further Subdivision. No Owner shall make any conveyance, execute any document or map, or enter into any contract which shall purport to further subdivide any Lot in any manner whatsoever, including, without limitation, subdividing such Lot into additional lots, condominiums, stock cooperatives or timeshare uses, whether by map, deed or contract. Any such conveyance, document, map or contract shall be void and of no force or effect whatsoever.

Section 23. Patios and Balconies. Patios and balconies, and all furniture, plants and other improvements situated therein, shall be kept at all times in a neat, clean, safe and attractive condition. Clothes, towels, blankets, laundry, or clotheslines shall not be placed on or hung from any patio or balcony, or any portion of the Common Area, where doing so would be visible from any other Lot, the Common Area or the public. Patios and balconies shall not be used for storage of any items deemed inappropriate by the Architectural Control Committee.

Section 24. Exemption of Declarant. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, the rights of Declarant to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Lots, and all other property within the Project (including any property which may be annexed thereto pursuant to the provisions of this Declaration), including, without limitation, the following specific rights, which may be exercised by Declarant, or by its agents and employees, in conjunction with such development and marketing, for a period of five (5) years from the date of recordation of this Declaration, or until all Lots in Ivey Ranch Lot 9 are sold (and escrows closed), whichever shall first occur;

(a) The right to maintain and operate one (1) or more advertising, sales or leasing office(s) located upon any Lot(s) owned by Declarant or upon any Common Area without payment of rent or approval of the Association;

(b) The right to post and display from any Lot(s) owned by Declarant or from any Common Area any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate, irrespective of size, color, shape or materials of such items;

(c) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Lot owned by Declarant or from any Common Area, as Declarant may, in its sole discretion, deem appropriate; provided that in the event Declarant removes any Association owned Improvement from any Common Area without the express prior written consent of the Board, Declarant shall replace such Improvement with an Improvement of substantially similar value, appearance and utility within a reasonable period following completion of any work necessitating the removal of the Improvement;

(d) The right to conduct any commercial activity upon any Lot owned by Declarant or upon any Common Area which reasonably relates to the development, marketing, leasing or sales of the Lots in the Project; and

(e) The right to park vehicles upon any Lot owned by Declarant or upon any Common Area.

All or any portion of the rights of Declarant herein and elsewhere in this Declaration may be assigned by Declarant to any successor-in-interest in the Project, including the Annexation Property, by an express written assignment recorded in the Office of the County Recorder.

Section 25. No Easements\Rights for View Purposes; Disclaimer. The Article herein entitled "Architectural Control - Approval," sets forth procedures for the approval of Improvements which may be constructed upon Lots in the Project which are consistent with the architectural standards adopted, from time to time, pursuant to said Article. The architectural standards may have some effect on views and the passage of light and air to individual Lots. However, by promulgation and enforcement of the architectural standards, or otherwise, neither Declarant, the Board nor the Architectural Control Committee, or the members, employees or consultants of any of the foregoing, have made any representations whatsoever concerning the view, if any, that a particular Lot or other Improvement thereon will enjoy. There are no rights or express or implied easements whatsoever appurtenant to any Lot for view purposes, or for the passage of light and air. Each Owner, by accepting a deed to a Lot, hereby expressly acknowledges and agrees

that further construction within the Project may impair the view from such Owner's Lot, and each Owner hereby expressly consents to any such impairment.

Section 26. No Warranty of Enforceability. While Declarant has no reason to believe that any of the Protective Covenants contained in this Article or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such Protective Covenants. Any Owner acquiring a Lot in the Project in reliance on one or more of such Protective Covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE IX

ARCHITECTURAL CONTROL - APPROVAL

Section 1. Exemptions From Architectural Control. Except as otherwise provided herein, all Improvements to Lots shall be subject to architectural approval by the Association in accordance with the provisions of this Declaration. Notwithstanding the foregoing, Declarant shall be exempt from compliance with any of the provisions of this Article as they may relate to the original construction and development of the Project by Declarant in accordance with the plans approved by the City; provided, however, if Declarant shall desire to construct any Improvements to the exterior of a Residence after such Residence has been completed and approved by the City, Declarant shall obtain approval for such Improvements from the City; and, provided further, if Declarant shall retain a Residence for personal use, any Improvements to the exterior of such Residence shall be subject to architectural approval pursuant to this Article.

Section 2. Architectural Control. Except for the purposes of proper maintenance and repair, and except as otherwise permitted hereunder, no person shall install any Improvement, including, without limitation, solar heating panels, lighting, shades, screens, awnings, patio covers, decorations, fences, screen doors, aerials, antennas, radio or television broadcasting or receiving devices, air conditioning units, or change or otherwise alter the exterior of any Residence or appurtenant Improvement. For the purposes of this Section, the term "exterior" shall mean any outside wall, outside surface, roof, outside door, patio, balcony, deck, garage or other outside structure of said Residence which is visible to others in the Project and/or to the public.

Section 3. Architectural Control Committee. The Architectural Control Committee is hereby authorized with the rights and powers set forth in this Article. Unless otherwise

deemed appropriate, said Committee shall consist of not less than three (3) members, nor more than five (5) members, and each initial member shall serve until the first election of the Board. In the event of the failure or inability of any member of the Architectural Control Committee to act, the remaining members shall designate a successor who shall serve for the remainder of the term of the member he replaces. The Declarant shall appoint all of the original members of the Architectural Control Committee, and replacements thereto. Further, Declarant reserves the power to appoint a majority of the members of the Architectural Control Committee until the fifth (5th) anniversary of the issuance of the Final Subdivision Public Report for the first phase of the Project. After one (1) year from the date of the issuance of the Final Subdivision Public Report for the first phase of the Project, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of the Lots in the Project have been sold, or until the fifth anniversary date of the issuance of the Final Subdivision Public Report for the first phase of the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. No member of the Architectural Control Committee shall be liable to any person for his or her decisions or failure to act in making decisions as a member of the Architectural Control Committee. Declarant may, in its discretion and at any time, assign to the Association by written assignment its powers of removal and appointment with respect to the Architectural Control Committee, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

Section 4. Meetings of the Architectural Control Committee. The Architectural Control Committee shall meet, from time to time, as necessary to perform its duties hereunder. The Architectural Control Committee may, by a majority vote of the members thereof, delegate any of its rights and responsibilities hereunder to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Control Committee on all matters so delegated.

Section 5. Architectural Standards. The Board may, from time to time, adopt architectural standards to be administered through the Architectural Control Committee. The architectural

standards may include, without limitation, those guidelines, procedures, limitations and restrictions upon Owners set forth below:

(a) The placement, reconstruction, addition, change or alteration to a Lot or the exterior of a Residence, including the nature, kind, shape, materials, exterior color and location of any Improvement, and the height of any Improvement, including landscaping and patio covers and accessory structures;

(b) A description of the type of such construction, additions, changes or alterations which, if completed in conformity with the architectural standards, do not require approval of the Architectural Control Committee;

(c) Conformity of completed Improvements to plans and specifications approved by the Architectural Control Committee;

(d) Time limitations for the completion of the Improvements for which approval is required pursuant to the architectural standards;

(e) Procedures for submission of plans and specifications submitted for Architectural Control Committee review, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and a description or samples of exterior colors and materials;

(f) Restrictions controlling the species and placement of any trees, plants, shrubbery, ground cover, etc., to be placed, planted, irrigated and maintained in the Project; and

(g) A reasonable schedule of fees for submission of plans and specifications or bonds to ensure proper completion of the anticipated work and compliance with the approved plans.

The architectural standards may be periodically updated or revised by the Board, as the Board, in its reasonable discretion, may deem appropriate. The Architectural Control Committee shall maintain a copy of the then current architectural standards on file at all times, and shall provide each Owner with a copy of the architectural standards upon written request. The Board shall establish a reasonable fee for copies of the architectural standards, and other related materials, to cover costs of reproduction, administration and handling.

Section 6. Architectural Approval - Review of Plans and Specifications. The Architectural Control Committee shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans are in conformance with and are harmonious to the exterior design and existing materials of the buildings in the Project. The Architectural Control Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration, and perform such other duties as, from time to time, shall be assigned to it by the Board, including the inspection of construction and progress to ensure its conformance with the plans approved by the Architectural Control Committee. No construction, alteration, grading, addition, excavation, demolition, modification, decoration, redecoration or reconstruction of an Improvement shall be commenced or maintained by any Owner until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Architectural Control Committee and approved in writing by the Architectural Control Committee. The initial address for submission of such plans and specifications, until changed by the Architectural Control Committee, shall be:

"Ivey Ridge"
c/o Gateway Ivey Ranch Associates, Inc.
4081 Ivey Vista Way
Oceanside, California 92008
Attention: Marketing Department

The Architectural Control Committee shall approve the plans and specifications submitted for its approval only if it deems that: (a) the construction, alterations or additions contemplated thereby and the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole; (b) the appearance of any structure affected thereby will be in harmony with surrounding structures; (c) the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Area, or the enjoyment thereof by the Owners; and (d) the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Control Committee may condition its approval of proposals or plans and specifications for any Improvement: (a) on such changes therein as it deems appropriate, (b) upon the agreement by the person submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement, or (c) upon the agreement of the person submitting the same to reimburse the Association for the cost of such maintenance, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving the submission.

The Architectural Control Committee may also issue rules or guidelines setting forth procedures for submission of plans for

approval, requiring a payment of a fee to the Association to accompany each submission of plans and specifications, or additional factors which it will take into consideration in reviewing submissions.

The Architectural Control Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and description or samples of exterior material and colors.

Section 7. Decisions of the Architectural Control Committee. Until receipt by the Architectural Control Committee of any required plans and specifications, and such other information as may be required in Section 6 above, the Architectural Control Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Control Committee and the reasons therefor should be transmitted by the Architectural Control Committee to the applicant, at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Control Committee of all plans, specifications and materials required. Any application submitted pursuant to the provisions of Section 6 above shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Control Committee shall have been transmitted to the applicant within forty-five (45) days after the receipt by the Architectural Control Committee of all required materials.

Section 8. Submittal to City - Right of Architectural Control Committee to Review. Upon obtaining the written approval of the Architectural Control Committee, the Owner shall thereafter submit plans and specifications to the City. In the event that all necessary approvals of the City for the issuance of a building permit or other permits required to commence the work contemplated in the plans and specifications are not obtained within six (6) months from the date of approval by the Architectural Control Committee, the Architectural Control Committee shall have the right, but not the obligation, to re-review all previously approved plans and specifications. In addition, in the event that the City requires modifications to the plans and specifications previously approved by the Architectural Control Committee, the Owner shall submit to the Architectural Control Committee all modifications to the plans and specifications previously approved by the Architectural Control Committee. In the event the Owner is obligated to resubmit plans and specifications to the Architectural Control Committee to reflect the modifications required by the City, said Committee shall have the right to review and to impose further conditions on any such modifications.

Section 9. Approval of City. Approval of any proposed or existing Improvement, or completion of an Improvement, by the

Architectural Control Committee or the Board shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the minimum standards of the City. Similarly, approval of any proposed or existing Improvement by the City shall not be construed to constitute approval of such Improvement by the Architectural Control Committee or the Board.

Section 10. Conflicts Between City and Architectural Control Committee. In the event of any conflict in the conditions of approval of any proposed Improvements imposed by the City and the Architectural Control Committee, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Architectural Control Committee from imposing conditions of approval of any proposed Improvements which are more restrictive than conditions as may be imposed by the City.

Section 11. No Waiver of Future Approvals. The approval of the Architectural Control Committee to any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent of any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

Section 12. Compensation of Members. The members of the Architectural Control Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred in the performance of such members' duties hereunder.

Section 13. Variances. Where circumstances such as topography, location of buildings, location of landscaping or other matters require, the Architectural Control Committee, by the vote or written assent of a majority of the members thereof, may allow reasonable variances as to any of the Protective Covenants contained in this Declaration or provisions under the rules and regulations promulgated by the Architectural Control Committee, on such terms and conditions as it shall require. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to the particular Lot and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of his or her Lot, including, but not limited to, zoning ordinances, Lot setback lines or requirements imposed by the City or other governmental authority.

Section 14. Inspection of Work. Upon consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Architectural Control Committee may, at any reasonable hour and upon reasonable notice, enter and

inspect any Lot which has been the subject matter of an approval of a submission for an Improvement to his or her Lot. Such entry shall be made with as little inconvenience to the Owner as reasonably possible, and any damage caused thereby shall be repaired by the Association. If the Architectural Control Committee finds that such work was not done in substantial compliance with the approved plans and specifications, it shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If a noncompliance exists, the Board, after Notice and Hearing, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance.

Section 15. Non-Liability of Architectural Control Committee Members. Neither Declarant, the Association, the Board or the Architectural Control Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Architectural Control Committee. The Architectural Control Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such rules and regulations as may be promulgated by the Architectural Control Committee, and the Architectural Control Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

Section 16. Appeal. In the event plans and specifications submitted to the Architectural Control Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Control Committee. The Board shall submit such request to the Architectural Control Committee for review, and the written recommendations of the Architectural Control Committee will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure by the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the party making such submission.

Section 17. Color Limitations. Notwithstanding any other provision of this Declaration to the contrary, the Architectural Control Committee shall establish and strictly enforce standards of acceptable colors for the exterior surfaces of the Residences and appurtenant structures.

Section 18. Landscaping. No Owner shall plant, replant, modify, destroy or change the landscaping in the Common Area (including, but not limited to the front yard maintenance areas) without the prior written approval of the Board. Each Owner shall however, cooperate with the Association to ensure the front yard area is watered in a manner consistent with the landscaping material installed thereon.

Section 19. Post Tension Slabs. Each Owner hereby acknowledges that the concrete slab for certain of the Lots constructed in the Project may be reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Each Owner further acknowledges cutting into a Post Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence and/or personal injury. By accepting a grant deed to a Lot, each Owner hereby specifically covenants and agrees that:

(a) He shall not cut into or otherwise tamper with the Post Tension Slab;

(b) He shall not knowingly permit or allow any other person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Lot;

(c) He shall disclose the existence of the Post Tension Slab to any tenant, lessee, assignee, or grantee of the Lot; and

(d) He shall indemnify and hold Declarant, and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees) arising from any breach of this Section.

Section 20. Grading/Irrigation. No Owner shall permit any act to be performed on his or her Lot which would result in erosion of the Common Area, (including, but not limited to, the front yard easement area within the Lots maintained by the Association), including, but not limited to, changing the grading of his or her Lot or over-irrigating same. If the Owner permits any such act resulting in erosion of or other damage to the Common Area, said Lot Owner will be personally liable to the Association for such damage and a Special Assessment shall be levied against such Lot Owner's Lot to recover all costs and expenses incurred to repair or reconstruct that portion of the Common Area damaged by such Lot Owner. It is the express intent of this Protective Covenant to prevent erosion and maintain orderly discharge of water on, over and across the Common Area.

Section 21. Public Right-of-Way. No Owner shall construct any Improvement in the public right-of-way or utility easement area unless the Owner obtains all necessary permits from the City, the respective utility company or entity, and approval from the Board.

ARTICLE X

REPAIR AND MAINTENANCE

Section 1. Repair and Maintenance by Association. Without limiting the generality of the Article herein entitled "Powers and Duties of the Association," the Association shall have the duty to maintain, in a neat, clean, safe, sanitary, attractive and orderly condition at all times, the Common Area designated in this Declaration, or in any subsequent Notice(s) of Annexation, as generally indicated hereinbelow:

(a) The Common Area (and all Improvements thereon) to be maintained, landscaped, repaired, improved, restored and replaced in a neat, clean, safe, attractive and orderly condition at all times shall include, but not be limited to, the following:

(1) Trimming, fertilizing and cutting all landscaped areas to keep such areas free of weeds, dead vegetation and debris, however, no trees should be removed from the Common Area unless such trees are in a diseased state or a threat to the structural integrity of an Improvement to the Project;

(2) Cleaning any debris from Common Area drainage swales or devices, and conducting regular inspections of all Common Area drainage devices;

(3) Pruning trees as appropriate to avoid impeding pedestrian traffic along walkways and/or sidewalks;

(4) Repairing significant cracks, potholes or other hazards in the private streets, if any;

(5) All private streets and adjacent streetscapes, if any, in a condition comparable to the condition initially approved by the City;

(6) All walkways or other pedestrian paths, and those front yard (i.e., for each Lot of Map 13363) maintenance areas (i.e., from the front yard fence to the sidewalk edge located adjacent to the front yard area) or slope portions of Lots designated as Common Area;

(7) All private water, sewer, drainage and irrigation facilities, easements, and improvements in the Common Area;

(8) All Common Area lighting facilities, if any, required by the City;

(9) Entry area gates within the Project, if any, monumentation and related Improvements in a condition comparable to that condition initially approved by the City;

(10) Unless otherwise maintained, parkways and exterior surfaces (defined to mean the side fronting any public right-of-way or the Common Area) of all Project perimeter block walls as originally constructed by Declarant and approved by the City;

(11) All other areas, facilities, equipment, services, aesthetic components or other Improvements of whatever nature as may, from time to time, be set forth in any Notice of Annexation; and

(12) Performing all necessary tasks required to conform with applicable City, County and/or State regulations.

(b) Maintain all other areas, facilities, furniture, equipment, services or aesthetic components of whatsoever nature as may, from time to time, be requested by the vote or written consent of three-fourths (3/4) of the voting power of the Members; and

(c) Except as otherwise herein specified as being paid by individual Owners, the costs of maintenance, repair, restoration and replacement as provided in this Article shall be Common Expenses and shall be paid out of the general fund of the Association.

Section 2. Maintenance Manual. The Declarant may deliver to the Board a "Maintenance Manual" which sets forth the Declarant's and its consultants' recommended frequency of inspections and maintenance of various components of the Common Area. The Board shall, during its meetings, determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspection and maintenance of the Common Area. The Board shall keep a record of such determinations in the Board's minutes. The Board shall, from time to time, make appropriate revisions to the Maintenance Manual. The Board shall review the Maintenance Manual for appropriate revisions at least on an annual basis after the Board

has prepared the annual pro forma budget and reserve study required by the By-Laws.

In the absence of a Maintenance Manual, the Board shall have the Common Area inspected at least once every three (3) years to (a) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established herein, (b) identify the condition of the Common Area and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement or repair, and (c) recommend preventative actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board may employ such experts and consultants as are necessary to perform such inspection. The Board shall have a report of the results of the inspection prepared. The report shall be furnished to Owners within the time set forth for furnishing Owners with the budget. The report shall include at least the following:

(a) A description of the condition of the Common Area, including a list of items inspected and the status of maintenance, repair and need for replacement of all such items;

(b) A description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the budget;

(c) If any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) A summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;

(e) A report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and

(f) Such other matters as the Board deems appropriate.

Section 3. Repair and Maintenance by Owner. Except as the Association shall be obligated to maintain and repair as may be provided in this Declaration, every Owner shall:

(a) Maintain his or her Lot and the Residence located thereon, including, without limitation, all side yard and rear yard walls and fences (but excepting therefrom any Common Area front yard and slope easement areas and the exterior surfaces and structural integrity of any Project

perimeter walls, which are maintained by the Association), roofs, patios, patio covers, decks, deck covers, balconies, windows, window frames, screens, locks and doors of his or her Residence, landscaping and irrigation improvements (including those in the front yards), irrigation lines, sewer laterals, and all other Improvements located on such Owner's Lot in a neat, clean, safe and attractive condition at all times, and make all repairs as they may be required;

(b) Install, within a reasonable period of time after conveyance of title to a Lot to an Owner, but in no event later than six (6) months after the close of escrow for the sale of a Lot, the landscaping of that portion of Owner's Lot which was not installed by Declarant, if any, in a neat and attractive condition, including all necessary landscaping and gardening, to properly maintain and periodically replace, when necessary, the trees, plants, grass and other vegetation originally placed on such Lot by Declarant, if any. The Board may adopt Rules and Regulations proposed by the Architectural Control Committee to regulate landscaping permitted within the Project. In the event any Owner shall fail to install and maintain landscaping in conformance with the Rules and Regulations, or shall allow his or her landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, after Notice and Hearing, may enter such Owner's property for the purpose of remedying the condition, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost may be levied by the Board as a Compliance Assessment.

Section 4. Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities or public utilities which are located within easements in the Common Area owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

Section 5. Damage and Destruction Affecting a Residence - Duty to Rebuild. In the event any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Residence to repair or reconstruct said Residence in a manner which will restore it to its condition and appearance immediately prior in time to such damage or destruction, or as otherwise approved by the Architectural Control Committee. The Architectural Control Committee shall not approve such variance if the finished Residence would be inharmonious or out of keeping with the overall architectural theme of the Project, or with the exterior design of any adjacent Residences. The affected Owner shall be obligated to proceed, with all due diligence hereunder, and shall be responsible for commencing reconstruction within a

reasonable time after the damage occurs, and completing such reconstruction as soon as reasonably possible thereafter.

Section 6. Owners' Cooperation for Maintenance. The Owners of Residences which are located on adjacent Lots shall cooperate with each other as is reasonably necessary to enable each Owner to properly maintain and repair his or her respective Residence and/or to mitigate any damage to his or her Residence.

ARTICLE XI

DAMAGE OR DESTRUCTION TO THE COMMON AREA

Section 1. Restoration of Damaged Common Area. Except as otherwise provided in Section 2 hereinbelow, damage to or destruction of all or any portion of the Common Area shall be handled in the following manner:

(a) In the event of damage to or destruction of the Common Area, and the insurance proceeds are sufficient to effect total restoration, the Association shall, as promptly as is practical, cause the Common Area to be repaired and reconstructed in a good workmanlike manner to its condition prior to such damage or destruction.

(b) If the insurance proceeds available are at least ninety percent (90%) of the estimated cost of total repair and reconstruction to the Common Area, the Association shall, as promptly as practical, cause such Common Area to be repaired and reconstructed in a good workmanlike manner to its condition prior to the damage or destruction, and the difference between the insurance proceeds and the actual cost shall be levied by the Association as a Special Assessment against each of the Lots on an equal basis.

(c) If the insurance proceeds available are less than ninety percent (90%) of the estimated cost of total repair and reconstruction to the Common Area, the Owners shall, by the written consent or vote of a majority of the Owners, determine whether:

(1) To restore the Common Area as promptly as practical to its condition prior to the damage or destruction, and to raise the necessary funds over and above the insurance proceeds available by levying Assessments against each of the Lots on an equal basis; or

(2) To restore the Common Area in a way which utilizes all available proceeds and an additional amount not in excess of ten percent (10%) of the estimated cost

of total reconstruction and repair to the Common Area, and which is assessable as provided above to all Lots, but which is less expensive than restoring the Common Area to its condition prior to the damage or destruction.

Section 2. Election by Owners Not to Restore Damaged Common Area.

(a) Notwithstanding the provisions set forth in Section 1 hereinabove, in the event sixty-seven percent (67%) of the Owners, other than Declarant, and sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) have given their prior written approval, the Owners may not elect to rebuild or restore the Common Area and to disburse the available insurance proceeds to the general fund of the Association.

(b) In the event the Owners shall have so voted not to rebuild the Common Area, the Common Area shall be cleared and landscaped and the cost thereof shall be paid for out of the available insurance proceeds prior to their distribution to the general fund of the Association.

(c) In the event the Owners shall have so voted not to rebuild the Common Area, unless the City shall agree to the contrary, it shall be the obligation of the Association and each of the Owners to rebuild the private streets, utilities and open spaces, at least to the extent said streets, utilities and open spaces were accepted initially by the City in lieu of payment of fees due pursuant to law.

Section 3. Retention of Excess Insurance Proceeds in General Fund. In the event any excess insurance proceeds remain after restoring the destroyed Common Area pursuant to this Article, the Board shall retain such sums in the general fund of the Association.

ARTICLE XII

CONDEMNATION

Section 1. Distribution of Awards - Common Area. A condemnation award affecting all or any portion of the Common Area shall be remitted to the general fund of the Association.

Section 2. Board of Directors as Attorney-in-Fact. All Owners hereby appoint the Board as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Common Area. The special power of attorney shall not apply to the Secretary of the

Department of Veterans Affairs, an Officer of the United States of America.

ARTICLE XIII

COVENANT AGAINST PARTITION

Section 1. Covenant Against Partition. By acceptance of his or her deed, each Owner shall be deemed to covenant for himself, and for his or her heirs, representatives, successors and assigns, that he will not institute legal proceedings to effect judicial partition of his or her interest in the Project, unless the Project: (a) has been in existence in excess of fifty (50) years, (b) is obsolete and uneconomical, and (c) the Owners of fifty percent (50%) of the total of all Lots in the Project join in such action for partition.

ARTICLE XIV

INSURANCE

Section 1. Required Insurance Coverage. The Association, acting by and through the Board, shall obtain for the Association and shall maintain and pay the premiums for the following insurance coverage:

(a) Casualty and Fire Insurance. A policy or policies of casualty and fire insurance with extended coverage endorsement in an amount equal to one hundred percent of the full current replacement cost (without deduction for depreciation or co-insurance) of the Common Area, together with all Improvements located thereon. Said policies shall be maintained for the benefit of the Association and Owners. The coverage does not need to include land, foundations, excavations or other items normally excluded from such coverage. Such policy or policies must contain, if required and if obtainable:

(1) An Agreed Amount and Inflation Guard Endorsement;

(2) Construction Code Endorsements (such as Demolition Cost Endorsement);

(3) A Contingent Liability from Operation of Building Laws Endorsement; and

(4) An Increased Cost of Construction Endorsement, if there is a construction code provision which would become operative and require changes to

undamaged portions of any Improvements or the Common Area.

(b) Public Liability Insurance. A policy or policies of full coverage public liability insurance (with cross-liability endorsement, if obtainable) insuring the Association, the Board, the Owners, the Declarant, and the agents and employees of each of the foregoing against any liability to the public or to any Owner, his or her family, invitees and/or tenants, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Common Area. The limits of liability under this Section shall be set by the Board and shall be reviewed at least annually by the Board and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than Two Million Dollars (\$2,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence; and, provided further, that if FHLMC and/or FNMA participate in the financing of Lots in the Project, said limits shall not be less than the minimum limits required under the then current FHLMC and/or FNMA regulations.

(c) Fidelity Bonds. Officers' and Directors' errors and omissions insurance, and fidelity bonds naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Association, including, but not limited to, officers, Directors, trustees and employees of the Association, and officers, employees and agents of any management company employed by the Association who handle or are responsible for the administration of Association funds. Such coverage shall be in an amount deemed reasonably appropriate by the Association, but shall not be less than the estimated maximum funds, in the custody of the Association, or twenty-five percent (25%) of the estimated annual operating expenses of the Project, plus reserves, whichever is greater. In addition, if the Association enters into an agreement for professional management of the Project, the Association shall require such company to submit evidence of its fidelity bond coverage to the same extent as the Association's coverage.

Section 2. Optional Insurance Coverage. The Association, acting at its option and by and through the Board, may purchase such other insurance as it may deem necessary or appropriate, or otherwise financially beneficial for the Owners, including, but not limited to, earthquake insurance, flood insurance, Workers' Compensation Insurance and plate glass insurance.

Section 3. Notice of Cancellation of Insurance. All policies of insurance maintained by the Association pursuant to this Article shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms, or be substantially modified by any party without

at least thirty (30) days' prior written notice to the Board, to each Owner and to such first Mortgagees who have filed written requests with the Association for such notice. A list of the Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

Section 4. Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practices in the area in which the Project is located and all other factors which may indicate that either additional insurance coverage or increased coverage under the existing policies is necessary or desirable to protect the interests of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

Section 5. Waiver by Owners. As to all policies of insurance maintained by the Association which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Association, the Board, the Declarant and the agents and employees of each of the foregoing, and all other Owners, with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

Section 6. Premiums, Proceeds and Settlement. Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Association. All insurance proceeds paid to the Association shall be disbursed as follows: (a) in the event of any damage or destruction to the Common Area, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Common Area"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set forth in the Article herein entitled "Mortgagee Protection." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its Members.

Section 7. Rights and Duties of Owners to Insure. Nothing herein shall preclude any Owner from carrying any casualty and fire insurance for his or her Residence and all personal property within his or her Residence, and/or public liability insurance as he/she may deem desirable to cover his or her individual

liability for damage to person or property occurring inside his or her individual Lot or elsewhere upon the Project. If obtainable, such liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against the Declarant, the Association, the Board, their agents and employees, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 8. Trustee for Policies. The Association is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Association, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

Section 9. Compliance With Requirements of FHLMC, FNMA and VA/FHA. Notwithstanding the provisions of this Article, the Association shall obtain and maintain in effect such policies of insurance meeting all requirements of FHLMC, FNMA and VA/FHA established by those entities for planned development projects for so long as any of such agencies continue to be a Mortgagee, Owner, insurer or guarantor of a Mortgage in the Project, except to the extent such coverage is not available or has been waived, in writing, by such agencies.

ARTICLE XV

MORTGAGEE PROTECTION

Section 1. Mortgagee Protection Provisions. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce FHLMC and FNMA, and other lenders and investors, to participate in the financing of the sale of Lots in the Project, the following provisions contained within this Article are added hereto, and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control. This Declaration, the Articles and the By-Laws for the Association are hereinafter collectively referred to in this Article as the "constituent documents."

(a) The right of an Owner to sell, transfer or otherwise convey his or her Lot shall not be subject to any

right of first refusal or any similar restriction in favor of the Association;

(b) The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Lot. The 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 pursuant to any remedies provided for in the Mortgage shall extinguish the lien of such Assessments as to payments which became due prior thereto. No sale or transfer shall relieve such Lot from liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage will not be liable for unpaid Assessments or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Lots, including the mortgaged Lot);

(c) Except as provided by statute in case of condemnation or substantial loss to the Lots and/or Common Area, unless sixty-seven percent (67%) of the, Owners other than Declarant, and sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(1) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner's Lot;

(2) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Area shall not be deemed a transfer within the meaning of this clause;

(3) Use hazard insurance proceeds for losses to the Common Area for other than repair, replacement or reconstruction;

(4) Effect any decision of the Association to terminate professional management and assume self-management of the Project, where such professional management was previously a requirement by a holder, insurer or guarantor of any first Mortgage;

(5) By act or omission, change, waive or abandon any provisions of this Declaration, or enforcement thereof, pertaining to architectural design of the Residences situated on a Lot or the maintenance and operation of the Common Area within the Project, including, without limitation, fences and landscaping within the Project;

(6) Fail to maintain fire and extended coverage on the insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value thereof; and

(7) Abandon or terminate the Association, except for abandonment, partition or termination as may be provided by law.

(d) 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;

(e) No provision of the constituent documents shall be interpreted to give any Owner or any other party priority over any rights of the first Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area or such Owner's Lot;

(f) The Assessments provided for in the constituent documents shall include 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 shall be payable in regular installments, rather than by Special Assessments;

(g) Each holder, insurer or guarantor of a first Mortgage who has filed with the Association a written request for notice shall be entitled to timely written notice of:

(1) Any condemnation or eminent domain proceeding, and any loss or taking resulting from such proceeding which affects the Project, or any portion thereof;

(2) Any substantial damage or destruction to the Project, or any portion thereof, when such loss exceeds Ten Thousand Dollars (\$10,000.00);

(3) Any default in the performance by an individual Owner of any obligation under the constituent

documents which is not cured within sixty (60) days after the Association learns of such default, which notice shall state the length of time which such Owner has been delinquent;

(4) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(5) Any abandonment or termination of the Project; and

(6) Any proposed action that requires the consent of a specified percentage of eligible Mortgagees.

(h) Any agreement for professional management of the Project, or any contract providing for services of the Declarant, may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Any such agreement must provide for termination by either party with or without cause and without payment of a termination fee on thirty (30) days' or ninety (90) days' or less, respectively, prior written notice;

(i) First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may have become a lien on the Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the right of all first Mortgagees to such reimbursement;

(j) A first Mortgagee of a Lot in the Project will, upon request, be entitled to:

(1) Examine the books and records of the Association during normal business hours;

(2) An audited financial statement from the Association for the previous fiscal year (without expense to the holder, insurer or guarantor requesting said statement), however, if an audited financial statement is not available and until such time as the Project contains fifty (50) Lots, any Mortgage holder may be allowed to have an audited financial statement prepared, at its own expense; and

(3) Receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(k) Each Owner shall notify the Association in writing within ten (10) days after the close of escrow for the purchase of his or her Lot of the name and address of his or her first Mortgagee, and thereafter, each Owner shall promptly notify the Association of any changes of name or address for his or her first Mortgagee;

(l) If any Lot (or portion thereof) or the Common Area (or portion thereof) is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first Mortgage on such Lot will be entitled to timely written notice of any such proceeding or proposed acquisition;

(m) In the event any portion of the Common Area encroaches upon any Lot or any Lot encroaches upon the Common Area as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists; and

(n) First Mortgagees of Residences may, jointly or singularly, pay taxes or other charges which are in default and which may have become a lien on the Common Area, and may pay overdue premiums on hazard insurance policies or secured new hazard insurance coverage on the lapse of a policy for the Common Area, and first Mortgagees paying such payments shall be owed immediate reimbursement therefor from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the right of all first Mortgagees to such reimbursement.

Section 2. Violation of Mortgagee Protection Provisions. No breach of any of the foregoing Protective 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 Protective Covenants shall be violated, the Declarant, its successors and assigns, the Association, or any Owner in the Project may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation and/or to recover damages; provided, however, that any such violation shall not defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value. Said Protective Covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee sale or otherwise.

Section 3. Amendments to Conform With Mortgagee Requirements. It is the intent of Declarant that this Declaration and the Articles and By-Laws of the Association, and the Project in general, meet all requirements necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot in the Project by the FHLMC and the FNMA. In furtherance of said intent, Declarant may amend this Declaration without the consent of the Members at any time after the close of escrow for the first sale of a Lot in the Project by recording a written instrument setting forth the amendment, provided that the amendment is necessary to cause this Declaration to comply with the requirements of the DRE, FHLMC, FNMA and/or GNMA; provided, however, that any such amendment shall be effective only if Declarant mails a copy of the amendment to all of the foregoing entities which are, or have agreed to be, a holder, insurer or guarantor of a first Mortgage, and does not, within thirty (30) days thereafter, receive a notice of disapproval from any such entity. Said amendments shall not be recorded by Declarant until after the expiration of such thirty (30) day period.

ARTICLE XVI

ENFORCEMENT OF BONDED OBLIGATIONS

Section 1. Enforcement of Bonded Obligations. In the event that the improvements of the Common Area have not been completed prior to the issuance of a Final Subdivision Public Report by the DRE, and the Association is obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure a performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

(a) The Board 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 Common Area 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.

(b) In the event that the Board 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 By-Laws 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.

(c) The only Members entitled to 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 the 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 such decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE XVII

ANNEXATION OF ADDITIONAL PROPERTY

Additional property may be annexed to and become subject to this Declaration as set forth in this Article.

Section 1. Development of the Project. The Declarant intends to sequentially develop the Annexation Property on a phased basis; however, Declarant may elect not to develop all or any portions of said Annexation Property, to annex such portions of the Annexation Property in Phases of any size or to develop more than one (1) Phase in any order and at any given time, subject to the provisions of this Article.

Section 2. Annexation Pursuant to General Plan of Development. Declarant may, subject to the provisions of this Article, annex all or any portions of the Annexation Property, thereby making such Annexation Property subject to this Declaration and to the jurisdiction of the Association, without the vote or written assent of the Association or its Members, provided and on condition that:

(a) The development of the Annexation Property shall be in substantial conformance with the overall general plan of development for the Project originally submitted to and approved by the City and the DRE; and

(b) A Notice of Annexation, as described in Section 4 of this Article, shall be recorded covering the designated portions of the Annexation Property.

Section 3. Annexation Pursuant to Approval. Upon obtaining the approval in writing of the Association pursuant to the vote or written assent of sixty-seven percent (67%) of the total voting power of Association Members, the owner of any prop-

erty who desires to annex said property to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record a Notice of Annexation, as described in Section 4 of this Article.

Section 4. Notice of Annexation. The annexation of additional property authorized under this Article shall be made in filing of record a Notice of Annexation, or similar instrument, covering said additional property, and the Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional property. The Notice of Annexation may contain such complementary additions to and modifications of the Protective Covenants set forth in this Declaration which are necessary to reflect the different character, if any, of the annexed property, including, but not limited to, marketing and selling vacant Lots, the architectural guidelines for any construction thereon, maintenance responsibilities between the Association and the Owners in this annexed property and payment of Assessments, and which are fair, reasonable, and appropriate, and 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 Protective Covenants set forth in this Declaration.

Section 5. Effective Date of Annexation. Any Notice of Annexation recorded on a subsequent Phase of the Project shall become effective immediately upon the first close of an escrow for the sale of a Lot in said Phase, as evidenced by the recordation of the first instrument of conveyance for said Lot.

Section 6. Right of De-Annexation. Declarant hereby reserves the right to delete all or any portions of the Annexation Property which may be annexed to the Project pursuant to this Declaration, and to delete said property 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 first closing for the sale of a Lot in the Project to be de-annexed, and a draft of the revocation of Notice of Annexation has been submitted to and approved by the VA/FHA.

Section 7. Amendments to Notice of Annexation. Notwithstanding any other provisions in this Declaration to the contrary, a Notice of Annexation may be amended by the requisite affirmative vote of Members (and first Mortgagees, if applicable), as set forth in the Article herein entitled "General Provisions," in only the annexed property described in said Notice of Annexation, rather than all Members (and first Mortgagees, if applicable) in the Project, on the following conditions:

(a) Such amendment applies only to the annexed property described in said Notice of Annexation; and

(b) Such amendment shall in no way contradict, revoke or otherwise alter any of the Protective Covenants set forth in this Declaration.

ARTICLE XVIII

RIGHT OF CITY TO COMPEL PERFORMANCE

Section 1. Rights of City. The Association shall indemnify and hold the City harmless for any damages resulting from the Association's maintenance of the Common Area. Notwithstanding any other provision regarding maintenance responsibilities, the City is hereby granted the right, but in no event the duty, to enforce the maintenance obligations of the Owners and the Association for the Common Area described in this Declaration, to the extent that the Common Area is not maintained in a manner which complies with all applicable City, State and Federal ordinances, statutes and regulations, and which does not create or perpetuate nuisances, health or safety hazards. If, in the opinion of the City Manager of the City (or his authorized representative), the Association at any time fails to maintain the Common Area in accordance with the terms of this Declaration, the City shall give written notice to the Association, specifying the exact nature of such deficiency. Such written notice of deficiency from the City shall be addressed to the Association and shall require that the Association take appropriate corrective action within thirty (30) days of receipt of such written notice unless there exists a hazardous condition creating an immediate possibility of serious injury to persons or property, in which case the time for correction may be reduced to a minimum of five (5) days. The Association shall have the right within ten (10) days of receipt of such written notice of deficiency, to file an appeal before the City Council of the City for a public hearing concerning the reasonableness of the City's requirements as set forth in the written notice of deficiency. The decision of the City Council on such appeal shall be binding upon all parties but may be appealed by the Association through an appropriate action in any court having jurisdiction. The written notice of deficiency from the City shall state the anticipated costs that the City would assess against the Association for the corrective work to be accomplished, which costs shall be no more than those charged by competitive private industry for similar work. If the Association, within the time set forth in the notice of deficiency (subject to extension for such time as may be required to appeal the notice of deficiency to the City Council) does not undertake and complete the corrective work required in the notice of deficiency, the City may (but will not be obligated to) undertake and complete such corrective measures as are set forth in the notice and assess the costs thereof against the Association. In the event the City undertakes such corrective measures, the Association hereby grants to the City such rights of access, ingress and egress upon and across the Project as may be necessary

to complete such work. The Association recognizes that it has the primary responsibility for enforcement of its maintenance responsibilities that are contained in this Declaration, and unequivocally guarantees to institute and expeditiously prosecute any required legal action to obtain compliance with the provisions contained in this Article. The City, in enforcing the provisions contained in this Article, shall be entitled to all the rights and remedies of an Owner or of the Association. The City shall, to the extent allowable by law, be entitled to all expenses of enforcement, including the enforcement by private legal counsel, and shall have the authority to lien the subject property (including individual Lot Owners, if applicable) if the Association does not pay the City for all expenses of correction and enforcement. All funds obtained by lien or other legal proceeding by the City shall be utilized by the City to repay the City for the costs of correcting the breach after costs of expenses of enforcement shall first have been deducted.

Notwithstanding the foregoing, no such amendment or modification to this Declaration which would affect the terms and provisions of this Declaration as it relates to maintenance responsibilities of the Association or which would terminate or materially impair the rights of the City as set forth in this Declaration, shall be effective without the prior written consent of the City. In addition, notwithstanding any provision of this Declaration that appears to the contrary, if any, the City may, by action at law or in equity, enforce the following provisions as the governing municipality: (1) all provisions of this Declaration relating to the proper maintenance, repair and use of the Common Area; and (2) all provisions of (i) Planning Commission Resolution Nos. 94-P28 and 94-P29; (ii) Tentative Tract Map T-2-94; (iii) Development Plan No. D-5-94; (iv) the City Council Resolution No. applicable to Map 13363; and (v) the Coastal Permit No. applicable to Map 13363.

In the event the Association fails to act to cause an Owner to undertake any repair, maintenance or landscaping required under this Declaration, then the City, after Notice and Hearing, as hereinafter provided, shall have the right to enter upon any Common Area at reasonable times in order to accomplish such repair, maintenance or landscaping, and to assess such charges to the Owner as a Special Benefit Assessment to the affected Owner or Lot. Prior to entering upon any Common Area, the City shall send written notice to the Owner specifying the maintenance, repair or landscaping which is required to be performed, and shall provide an opportunity for the Owner to be heard before the appropriate body of the City. Said notice shall be given at least fifteen (15) days prior to said hearing.

Prior to effectuating any amendment or supplement hereto, annexation of subsequent phases, termination, or changes to the rights and obligations within any article or section of this

Declaration, the City must have approved same, in writing, subject only to the requirement that the City shall not unreasonably withhold such approval.

ARTICLE XIX

GENERAL PROVISIONS

Section 1. Enforcement.

(a) The Association or the Owner of any Lot in the Project, including the Declarant, shall have the right to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the By-Laws, respectively (and the Rules and Regulations duly adopted by the Association), including, without limitation, the right to record a notice of noncompliance, prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation.

(b) The result of every act or omission whereby any of the Protective Covenants contained in this Declaration or the provisions of the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest.

(c) The remedies herein provided for breach of the Protective Covenants contained in this Declaration or the provisions of the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association or any Owner to enforce any of the Protective Covenants contained in this Declaration or the provisions of the By-Laws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the Protective Covenants contained in this Declaration or of the provisions of the By-Laws shall not affect or impair the lien or charge of any bona fide Mortgage or deed of trust made in good faith and for value on any Lot; provided, however, that any subsequent Owner of such property shall be bound by said Protective Covenants, whether

or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise.

(f) The Board, for and on behalf of the Association, may assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend said Owner's voting rights for the period during which any Assessment against said Owner's Lot remains unpaid; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(g) The Board, for and on behalf of the Association, may, after Notice and Hearing, temporarily suspend an Owner's voting rights for a period not to exceed thirty (30) days for any infraction of the Association's published Rules and Regulations; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(h) In addition to the above general rights of enforcement, the City and any other governmental entity with appropriate jurisdiction shall have the right, through its agents and employees, to enter upon any part of the Project for the purpose of enforcing the California Vehicle Code and its local ordinances, and is hereby granted an easement over the Project for that purpose.

Section 2. Severability. Invalidation of any one of these Protective Covenants by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect.

Section 3. Term. The Protective Covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of the Association and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners agreeing to terminate said Protective Covenants, in whole or in part, has been recorded within one (1) year prior to the termination of the initial fifty (50) year term, or within one (1) year prior to the termination of any successive ten (10) year period.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of the Project. The Article and Section headings have been inserted for

convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Singular Includes Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 6. Amendments.

(a) Amendments by Declarant. Prior to the sale of a Lot to a member of the public, in accordance with a Final Subdivision Public Report issued by the DRE, this Declaration may be amended, restated or terminated by an instrument executed by Declarant.

(b) Amendments by Association. This Declaration may be amended only by an affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Class A voting power and the Class B voting power of the Association. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Owners representing both: (a) sixty-seven percent (67%) of the total voting power of the Association, and (b) sixty-seven percent (67%) of the votes of Members, other than the Declarant; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any Owner or the Association may petition the Superior Court of the County for an order reducing the necessary percentage required under this Section to amend this Declaration. The procedure for effecting this petition is set forth in Section 1356 of the California Civil Code, as the same may be amended, from time to time.

(c) Approval of Mortgagees. In addition to the rights of first Mortgagees, as set forth in the Article herein entitled "Mortgagee Protection," in the event that FNMA participates in the financing of Lots in the Project, the written consent of not less than fifty-one percent (51%) of the first Mortgagees shall be required for any amendment of a "material" nature. An amendment which affects or purports to affect any of the following is considered material:

- (1) The legal status of the Project as a planned development;
- (2) Voting rights;
- (3) Increase in assessments that raise the previously assessed amount by more than twenty-five

percent (25%), assessment liens or the priority of assessment liens, including the levy and collection thereof, enforcement provisions for nonpayment and subordination of liens for nonpayment;

(4) Reduction in reserves for maintenance, repair and replacement of Common Area;

(5) Responsibility for Common Area maintenance and repair;

(6) Reallocation of interests in the Common Area or rights to use the Common Area;

(7) Boundaries of any Lot;

(8) Convertibility of Common Area into Lots or Lots into Common Area;

(9) Expansion or contraction of the Project, or addition, annexation or de-annexation of additional property to or from the Project;

(10) Insurance or fidelity bonds requirements;

(11) Restrictions on leasing of Lots;

(12) Imposition of restrictions on alienation, including, but not limited to, rights of first refusal;

(13) Any decision by the Association to establish self-management, if professional management was previously required by an eligible first Mortgagee or legal documents governing the Project;

(14) Restoration or repair of the Project in a manner other than as specified in this Declaration;

(15) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; and

(16) Mortgagee protection provisions as set forth in that Article hereinabove entitled "Mortgagee Protection," and such other provisions in this Declaration for which the consent of Mortgagees shall be required or which are expressly for the benefit of Mortgagees, insurers or guarantors of Mortgages.

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

Association is considering termination of the legal status of the Project for reasons other than the substantial destruction or condemnation of the Project, then sixty-seven percent (67%) of the first Mortgagees must agree to said termination. Notwithstanding the foregoing, in the event any first Mortgagee receives a written request, delivered by certified or registered mail with return receipt requested, from the Board to approve any amendment to this Declaration, and such first Mortgagee does not deliver a negative response in writing to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved such proposed amendment.

(d) Approval by City. Notwithstanding any other provisions of this Article, no amendment of a material provision affecting the rights of the City and no action by Declarant or the Association terminating this Declaration shall be effective without the prior written consent of the City. The Declarant or the Association shall forward, or cause to be forwarded, to the City a written notice of any such amendment or termination. If no notice of disapproval is received by the Association within thirty (30) days following the receipt of such notice, such amendment or termination shall be deemed to be approved.

(e) Recordation of Amendments. An amendment made in accordance with the provisions set forth hereinabove shall be effective when executed by the President and Secretary of the Association, who shall certify that the amendment has been approved by the membership and, where appropriate, by the first Mortgages, in the percentages set forth hereinabove, and recorded in the Office of the County Recorder. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment.

Section 7. Encroachments. None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by regular, registered or certified mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the

Association for the purpose of service of such notice, or to the Lot of such person if no address has been given to the Association. If such notice is not sent by regular, registered or certified mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Association.

Section 9. Attorneys Fees. If any Owner defaults in making a payment of Assessments or in the performance or observance of any provision of this Declaration, and the Association has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorneys' and expert fees, regardless of whether legal proceedings are instituted. In case a suit is instituted, the prevailing party shall recover the cost of the suit, in addition to the aforesaid costs and fees.

Section 10. Additional Covenants in Favor of the VA/FHA. So long as there shall be a Class B membership, the following actions will require the prior approval of the VA/FHA: annexation or de-annexation of additional property to the Project, any merger or consolidation of the Association, any Special Assessment, or any amendment to this Declaration. A draft of any amendment shall be submitted to the VA/FHA for its approval prior to recordation of the amendment.

Section 11. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the Protective Covenants established by this Declaration governing the Project, together with the covenants and restrictions established upon any other property as one plan.

Section 12. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees, in connection with the Project, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration, and except as may be filed by Declarant, from time to time, with the DRE.

Section 13. Arbitration of Disputes. Notwithstanding any other provision of this Declaration, in the event of an

arbitrable dispute between or among (a) Declarant, or general contractors, or brokers, or their agents or employees, and any Owner(s) or the Association, or (b) any Owner, and another Owner, or (c) the Association, and any Owner (exclusive of disputes relating to the payment of Assessments imposed by this Declaration), the matter may be submitted to binding arbitration following Notice and Hearing. Arbitrable disputes include any controversy or claim, including any claim based on contract, tort, or statute, arising out of or relating to the rights or duties of the parties under the Declaration, but do not include any construction defect claims. Any controversy regarding whether a dispute is an arbitrable dispute shall be determined by the arbitrator. The arbitration shall be conducted by the Judicial Arbitration and Mediation Services, or its successor ("JAMS"). If JAMS is unavailable, arbitration will be conducted by and in accordance with the rules of the American Arbitration Association ("AAA"). In either case, there shall be only one arbitrator who shall be selected by mutual agreement of the parties, failing such selection, the arbitrator shall be selected by JAMS or its substitute.

Section 14. Conflicts in Management Documents For the Project. In the event of any conflict between and/or among the provisions of any of the management documents for the Project, the Declaration shall be deemed to supersede the provisions of any conflicting management documents, including, without limitation, the By-Laws, architectural standards, if any, and the Rules and Regulations, if any.

IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first above written.

"DECLARANT"

GATEWAY IVEY RANCH ASSOCIATES, INC.,
a California corporation

By: _____

Its: _____

CONSENT OF LIENHOLDER AND
SUBORDINATION OF LIEN

The undersigned beneficiary under those certain Deeds of Trust recorded on July 3, 1996, as Instrument Nos. 1996-0336103 and 1996-0336105, in the Official Records of San Diego County, California, agrees that the liens of the Deeds of Trust shall be junior and subordinate and subject to the attached "Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements For Ivey Ridge" ("Declaration"), to any Notice of Annexation recorded pursuant to the Article herein entitled "Annexation of Additional Property" ("Notice of Annexation") and to any easements to be conveyed to the Ivey Ridge Homeowners Association in accordance with the terms of the Declaration and any Notice of Annexation.

DATED: 2/6/97

"LIENHOLDER"

Grossmont Bank
a California banking corporation

BY: Kathy M. Galvin

Its: _____
KATHY M GALVIN
REAL ESTATE
LOAN ADMINISTRATION OFFICER

BY: _____

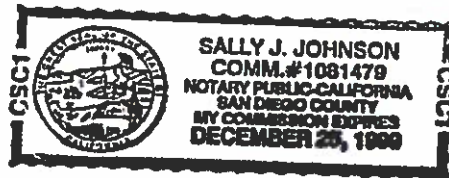
Its: _____

STATE OF CALIFORNIA)
COUNTY OF San Diego) ss.

On 2-6-97, 1997, before me, the undersigned, a Notary Public in and for said State, personally appeared KATHY M. GALVIN and _____, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the persons whose names ~~are~~^{are} subscribed to the within instrument and acknowledged to me that ~~they~~^{she} executed the same in ~~their~~^{her} authorized capacity, and that by ~~their~~^{her} signatures on the instrument the persons or the entities upon behalf of which the persons acted executed the instrument.

WITNESS my hand and official seal.

Sally Johnson
Signature of Notary Public



(SEAL)

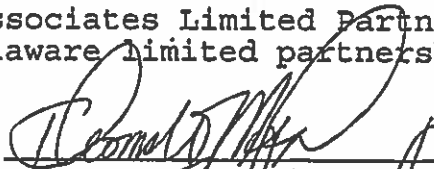
CONSENT OF LIENHOLDER AND
SUBORDINATION OF LIEN

The undersigned beneficiary under that certain Deed of Trust recorded on July 3, 1996, as Instrument No. 1996-0336107, in the Official Records of San Diego County, California, agrees that the lien of the Deed of Trust shall be junior and subordinate and subject to the attached "Amended and Restated Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements For Ivey Ridge" ("Declaration"), to any Notice of Annexation recorded pursuant to the Article herein entitled "Annexation of Additional Property" ("Notice of Annexation") and to any easements to be conveyed to the Ivey Ridge Homeowners Association in accordance with the terms of the Declaration and any Notice of Annexation.

DATED: 2/7/97

"LIENHOLDER"

Richcop Associates Limited Partnership
a Delaware limited partnership

BY: 

Its: Instrument Officer

BY: _____

Its: _____

STATE OF _____)

COUNTY OF Suffolk)

) ss.
)

On February 10, 1997, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas W. Mazza and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument the persons or the entities upon behalf of which the persons acted executed the instrument.

WITNESS my hand and official seal.

Elizabeth McNamara
Signature of Notary Public

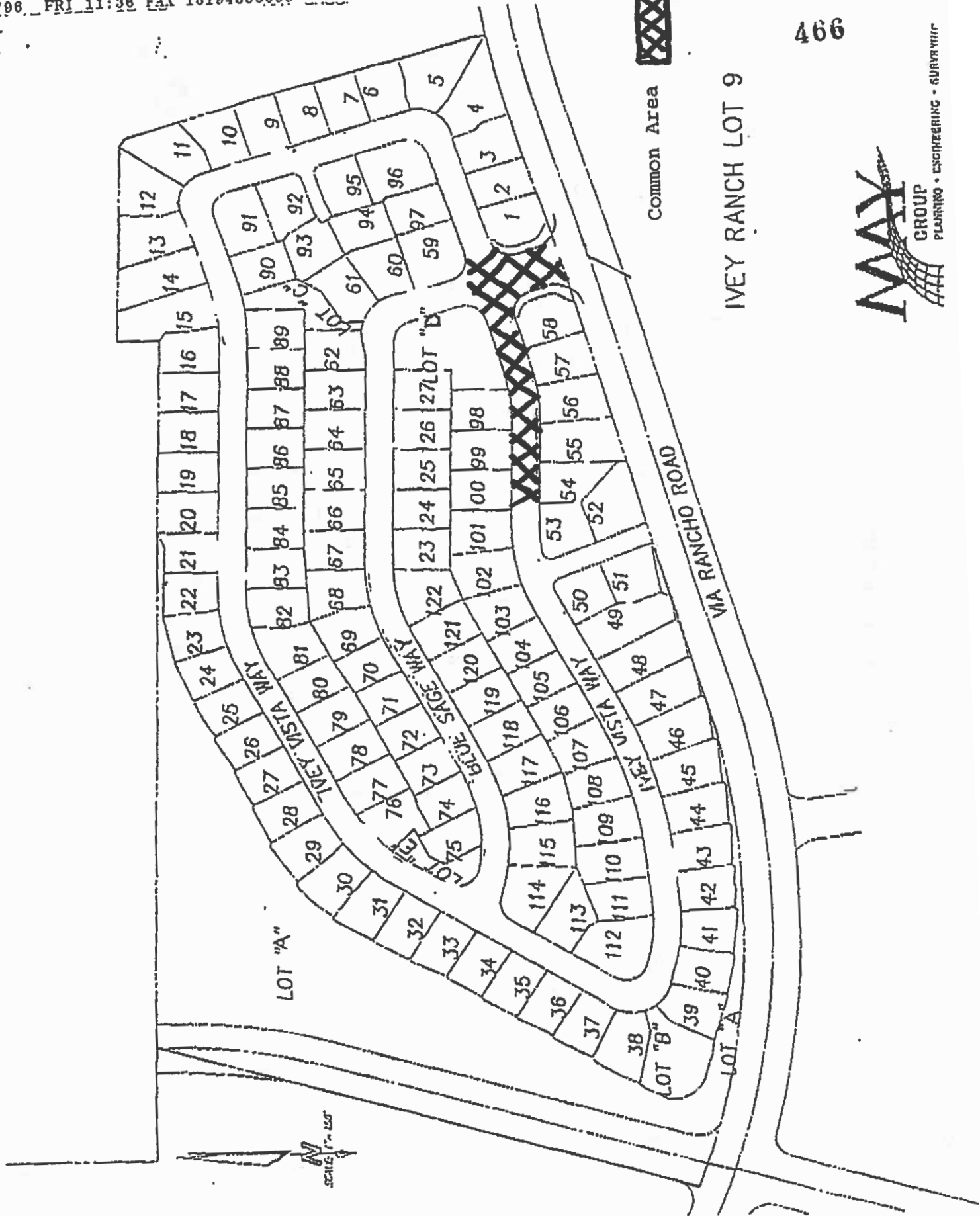
ELIZABETH McNAMARA
NOTARY PUBLIC
My Commission Expires Feb. 2, 2001



(SEAL)

466

EXHIBIT "A"



Common Area

IVEY RANCH LOT 9



467



EXHIBIT "B"

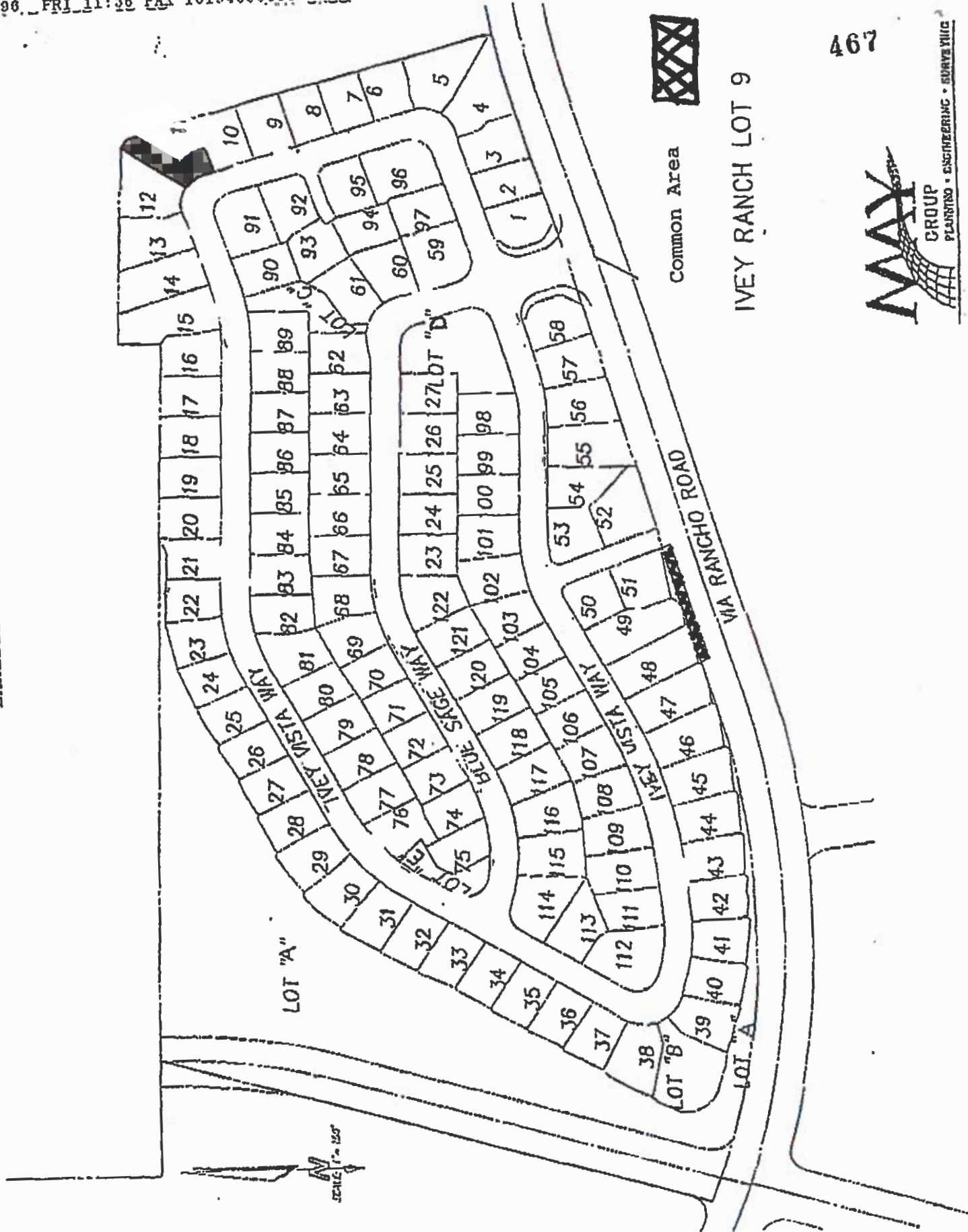


EXHIBIT "C"

ANNEXATION PROPERTY

That certain real property located in the City of Oceanside, County of San Diego, State of California, more particularly described as:

All of Ivey Ranch Lot 9, as per Map No. 13363, filed in the Office of the County Recorder of San Diego County, California, on September 27, 1996, except therefrom Phase 1.

