

**Heritage Park  
Yale Maintenance**

**Covenants, Conditions  
& Restrictions**

**If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates State and Federal Fair Housing Laws and is void. Any person holding an interest in this property may request that the County Recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.**

**Tritz Professional Management Services, Inc.**

WHEN RECORDED MAIL

10813

BA

1155

The Irvine Company  
350 Newport Center Drive  
Newport Beach, California 92663

\$ 67.00

RECORDING REQUESTED BY  
FIRST AMERICAN TITLE INS. CO.

RECORDED IN OFFICIAL RECORDS  
OF ORANGE COUNTY, CALIFORNIA

ATTENTION: Administrative Services  
Residential Development Division

-1 25 PM AUG 5 1977

L. WYLIE CARLYLE, County Recorder

Above Space for Recorder's Use Only

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

HERITAGE PARK TOWNHOMES

ORANGE COUNTY, CALIFORNIA

Portion of Tract 9720

Table of Contents

RECITALS	R-1
ARTICLE 1 - Definitions	R-1
Section 1 - Architectural Committee.	1-1
Section 2 - Articles and Bylaws.	1-1
Section 3 - Assessments.	1-1
Section 4 - Association.	1-1
Section 5 - Association Rules.	1-1
Section 6 - Board.	1-1
Section 7 - City.	1-1
Section 8 - Common Area.	1-1
Section 9 - Common Expenses.	1-1
Section 10 - Community Facilities	1-2
Section 11 - Condominium.	1-2
Section 12 - Condominium Building	1-2
Section 13 - Condominium Plan	1-3
Section 14 - Covered Property	1-3
Section 15 - Development.	1-3
Section 16 - Exhibit.	1-3
Section 17 - Federal Agencies	1-3
Section 18 - Institutional Mortgagee.	1-3
Section 19 - Master Association	1-4
Section 20 - Master Declaration	1-4
Section 21 - Member	1-4
Section 22 - Membership Agreement	1-4
Section 23 - Mortgage	1-4
Section 24 - Mortgagee.	1-4
Section 25 - Owner.	1-4
Section 26 - Project.	1-4
Section 27 - Residence.	1-4
Section 28 - Supplementary Declaration.	1-5
Section 29 - Trustee.	1-5
Section 30 - Unit	1-5

(i)

ARTICLE II - Membership . . . . . 2-1

Section 1 - Membership . . . . .	2-1
Section 2 - Transfer . . . . .	2-1
Section 3 - Voting Rights . . . . .	2-1
Section 4 - Classes of Voting Membership . . . . .	2-1
Section 5 - Special Class A Voting Rights . . . . .	2-1
Section 6 - Membership Agreement . . . . .	2-2
Section 7 - Approval of Members . . . . .	2-2
Section 8 - Approval by Both Class A and Class B Members . . . . .	2-2

ARTICLE III - Covenant for Maintenance Assessments . . . . . 3-1

Section 1 - Creation of the Lien & Personal Obligation of Assessments . . . . .	3-1
Section 2 - Purpose of Assessments . . . . .	3-1
Section 3 - Regular Assessments . . . . .	3-1
Section 4 - Capital Improvement Assessments . . . . .	3-1
Section 5 - Uniform Assessment . . . . .	3-2
Section 6 - Certificate of Payment . . . . .	3-2
Section 7 - Exempt Property . . . . .	3-2
Section 8 - Special Assessments . . . . .	3-2
Section 9 - Cable Television Service Assessment . . . . .	3-2
Section 10 - Date of Commencement of Regular Assessments . . . . .	3-2
Section 11 - No Offsets . . . . .	3-3
Section 12 - Homestead Waiver . . . . .	3-3
Section 13 - Reserves . . . . .	3-3

ARTICLE IV - Nonpayment of Assessments . . . . . 4-1

Section 1 - Delinquency . . . . .	4-1
Section 2 - Notice of Lien . . . . .	4-1
Section 3 - Foreclosure Sale . . . . .	4-1
Section 4 - Curing of Default . . . . .	4-1

ARTICLE V - Architectural Control . . . . . 5-1

Section 1 - Control in Master Association . . . . .	5-1
Section 2 - Additional Powers of the Board . . . . .	5-1

ARTICLE VI - Duties and Powers of the Association . . . . . 6-1

Section 1 - General Duties and Powers . . . . .	6-1
Section 2 - General Duties of the Association . . . . .	6-1
Section 3 - General Powers of the Association . . . . .	6-1
Section 4 - General Limitations and Restrictions on the Powers of the Board . . . . .	6-2
Section 5 - Association Rules . . . . .	6-2
Section 6 - Delegation of Powers . . . . .	6-3
Section 7 - Pledge of Assessment Rights . . . . .	6-3
Section 8 - Emergency Powers . . . . .	6-3

ARTICLE VII - Repair and Maintenance . . . . . 7-1

Section 1 - Repair and Maintenance by Association . . . . .	7-1
Section 2 - Repair and Maintenance by Owner . . . . .	7-1
Section 3 - Right of Association to Maintain and Install . . . . .	7-2
Section 4 - Maintenance of Public Utilities . . . . .	7-2
Section 5 - Assumption of Maintenance Obligations . . . . .	7-2

ARTICLE VIII - Insurance . . . . . 8-1

Section 1 - Types . . . . .	8-1
Section 2 - Waiver by Members . . . . .	8-1

Section 3 - Other Insurance. . . . .	8-1
Section 4 - Premiums, Proceeds and Settlement. . . . .	8-2
Section 5 - Annual Insurance Review. . . . .	8-2
Section 6 - Abandonment of Replacement Cost Insurance. . . . .	8-2
Section 7 - Federal Requirements. . . . .	8-2
Section 8 - Trustee. . . . .	8-2
Section 9 - Individual Casualty Insurance Prohibited. . . . .	8-2
Section 10 - Rights of Owners to Insure. . . . .	8-3
Section 11 - Required Waiver. . . . .	8-3

#### ARTICLE IX - Destruction of Improvements. . . . . 9-1

Section 1 - Automatic Reconstruction. . . . .	9-1
Section 2 - Reconstruction Pursuant to Meeting. . . . .	9-2
Section 3 - Decision to Reconstruct; Procedure After Meeting. . . . .	9-2
Section 4 - Decision Not to Reconstruct; Procedure After Meeting. . . . .	9-3
Section 5 - Certificate of Intention to Reconstruct. . . . .	9-3
Section 6 - Partition. . . . .	9-4
Section 7 - Compliance with Condominium Plan. . . . .	9-4
Section 8 - Negotiations with Insurer. . . . .	9-4
Section 9 - Repair of Units. . . . .	9-4
Section 10 - Amendment of Condominium Plan. . . . .	9-4
Section 11 - Reconstruction of Common Area and Community Facilities. . . . .	9-4
Section 12 - Availability of Labor and Material. . . . .	9-5
Section 13 - Contracting for Reconstruction. . . . .	9-5
Section 14 - Seventy-Five Percent (75%) Vote Required. . . . .	9-5
Section 15 - Costs of Collecting Insurance Proceeds. . . . .	9-5

#### ARTICLE X - Eminent Domain. . . . . 10-1

Section 1 - Definition of Taking. . . . .	10-1
Section 2 - Representation by Board in Condemnation Proceeding. . . . .	10-1
Section 3 - Procedure on a Taking. . . . .	10-1
Section 4 - Inverse Condemnation. . . . .	10-1
Section 5 - Revival of Right to Partition. . . . .	10-1
Section 6 - Awards for Members' Personal Property and Relocation Allowances. . . . .	10-1
Section 7 - Notice to Members. . . . .	10-2
Section 8 - Change of Condominium Interest. . . . .	10-2

#### ARTICLE XI - Use Restrictions. . . . . 11-1

Section 1 - Commercial Use. . . . .	11-1
Section 2 - Signs. . . . .	11-1
Section 3 - Nuisance. . . . .	11-1
Section 4 - Temporary Structures. . . . .	11-1
Section 5 - Vehicles. . . . .	11-1
Section 6 - Animals. . . . .	11-1
Section 7 - Oil and Mineral Rights. . . . .	11-1
Section 8 - Unsightly Items. . . . .	11-2
Section 9 - Antennae. . . . .	11-2
Section 10 - Drainage. . . . .	11-2
Section 11 - Garages. . . . .	11-2
Section 12 - Window Covers. . . . .	11-2
Section 13 - California Vehicle Code. . . . .	11-2
Section 14 - Single-Family Residential. . . . .	11-2

#### ARTICLE XII - Rights of Enjoyment. . . . . 12-1

Section 1 - Members' Right of Enjoyment. . . . .	12-1
Section 2 - Delegation of Use. . . . .	12-2
Section 3 - Waiver of Use. . . . .	12-2

ARTICLE XIII - Easements. . . . .	13-1
Section 1 - Amendment to Eliminate Easements . . . . .	13-1
Section 2 - Nature of Easements. . . . .	13-1
Section 3 - Rights and Duties: Utilities and Cable Television. . . . .	13-1
Section 4 - Utilities. . . . .	13-1
Section 5 - Cable Television . . . . .	13-1
Section 6 - Oil and Mineral Rights . . . . .	13-1
Section 7 - Water Rights . . . . .	13-1
Section 8 - Construction and Sales . . . . .	13-2
Section 9 - Support, Settlement and Encroachment . . . . .	13-2
Section 10 - Ingress, Egress and Recreational Rights. . . . .	13-2
Section 11 - Association Rights . . . . .	13-3
ARTICLE XIV - Integrated Nature of the Covered Property . . . . .	14-1
Section 1 - Development of the Covered Property. . . . .	14-1
Section 2 - Supplementary Declarations . . . . .	14-1
Section 3 - Annexation Without Approval and Pursuant to General Plan. . . . .	14-1
Section 4 - Annexation Pursuant to Approval. . . . .	14-1
Section 5 - Mergers or Consolidations. . . . .	14-2
Section 6 - Limitation Upon Annexation . . . . .	14-2
ARTICLE XV - Rights of Lenders. . . . .	15-1
Section 1 - Filing Notice; Notices and Approvals . . . . .	15-1
Section 2 - Priority of Mortgage Lien. . . . .	15-1
Section 3 - Curing Defaults. . . . .	15-1
Section 4 - Resale . . . . .	15-1
Section 5 - Relationship with Assessment Liens . . . . .	15-1
Section 6 - Seventy-Five Percent (75%) Vote of Institutional Mortgagees . . . . .	15-2
Section 7 - Other Rights of Institutional Mortgagees . . . . .	15-2
Section 8 - Mortgagees Furnishing Information. . . . .	15-3
Section 9 - Right of First Refusal . . . . .	15-3
Section 10 - Conflicts. . . . .	15-3
Section 11 - Voting Rights of Institutional Mortgagees. . . . .	15-3
Section 12 - Notice of Destruction or Taking. . . . .	15-3
Section 13 - Payment of Taxes or Premiums by Institutional Mortgagees . . . . .	15-3
ARTICLE XVI - Effects of Federal Programs . . . . .	16-1
Section 1 - FHA/VA Approval. . . . .	16-1
Section 2 - Automatic Amendments . . . . .	16-1
Section 3 - Regulatory Agreement . . . . .	16-1
ARTICLE XVII - Limitation Upon the Right to Partition and Severance	17-1
Section 1 - No Partition . . . . .	17-1
Section 2 - No Severance . . . . .	17-1
Section 3 - Proceeds of Partition Sale . . . . .	17-1
ARTICLE XVIII - Protection of the Project From Liens. . . . .	18-1
Section 1 - Association to Defend Certain Actions. . . . .	18-1
Section 2 - Payment of Lien. . . . .	18-1
Section 3 - Owners to be Specially Assessed. . . . .	18-1
Section 4 - Reimbursement by Certain Owners. . . . .	18-1

ARTICLE XIX - General Provisions. . . . .	19-1
Section 1 - Enforcement. . . . .	19-1
Section 2 - No Waiver. . . . .	19-1
Section 3 - Cumulative Remedies. . . . .	19-1
Section 4 - Severability. . . . .	19-1
Section 5 - Covenants to Run With the Land; Term. . . . .	19-1
Section 6 - Construction. . . . .	19-1
Section 7 - Singular Includes Plural. . . . .	19-1
Section 8 - Nuisance. . . . .	19-1
Section 9 - Attorneys' Fees. . . . .	19-1
Section 10 - Notices. . . . .	19-1
Section 11 - Obligations of Declarant. . . . .	19-2
Section 12 - Effect of Declaration. . . . .	19-2
Section 13 - Personal Covenant. . . . .	19-2
Section 14 - Nonliability of Officials. . . . .	19-2
Section 15 - Enforcement of Bonded Obligations. . . . .	19-3
Section 16 - Leases. . . . .	19-3
Section 17 - Construction By Declarant. . . . .	19-3
Section 18 - Amendments. . . . .	19-4

- EXHIBITS:
- A - Initial Covered Property
  - B - Initial Community Facilities
  - C - Annexation Area
  - D - Membership Agreement
  - E - Master Association Property
  - G - Association Maintenance Areas
    - Planter Area
    - Parkways

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

HERITAGE PARK TOWNHOMES

ORANGE COUNTY, CALIFORNIA

THIS DECLARATION is made this 4th day of August 1977, by THE IRVINE COMPANY, a Michigan Corporation, successor in interest to THE IRVINE COMPANY, a West Virginia Corporation. THE IRVINE COMPANY, its successors and assigns shall hereafter be referred to as "Declarant".

R E C I T A L S

A. Declarant is the fee owner of the real property described in Exhibit A to this Declaration, which shall be the initial Covered Property under this Declaration, and the real property which may from time to time be annexed pursuant to this Declaration and become a part of the Covered Property. This Declaration is being imposed by Declarant upon the Covered Property.

B. Declarant has deemed it desirable to establish covenants, conditions and restrictions upon the Covered Property and each and every portion thereof, which will constitute a general scheme for the management of the Covered Property, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of life within the Covered Property.

C. It is desirable for the efficient management of the Covered Property and the preservation of the value, desirability and attractiveness of the Covered Property to create a corporation to which should be delegated and assigned the powers of managing the Covered Property, maintaining and administering the Community Facilities and the Common Area and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to and to perform such other acts as shall generally benefit the Covered Property.

D. Yale Maintenance Association, a nonprofit corporation, has been incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid.

All persons who purchase Residences within the real property designated as a Project in this Declaration shall be Owners as defined herein, and shall thereby automatically become Members of said Association and shall be subject to its powers and jurisdiction. In addition, the purchasers of Residences located on the other Projects annexed to the plan hereof pursuant to this Declaration, while not Owners within the first Project, shall also automatically become Members of said Association by virtue of certain Supplementary Declarations which Declarant intends to record covering certain lands of Declarant, more particularly described in this Declaration. Declarant intends that the Covered Property shall consist of the real property designated as a Project in this Declaration together with other Projects on other parcels of land on which Declarant intends to

construct Residences. Owners within each Project shall share ownership of that Project and said Association shall own certain Community Facilities not contained within any parcel owned in common by the Members. Except as otherwise expressly provided in this Declaration, the rights, duties and obligations of all Members of said Association must be determined with regard to the entire membership of said Association and not just with regard to those Members who are Owners in any particular Project. The foregoing shall not require Declarant to annex any real property to the plan of this Declaration.

E. Declarant will hereafter hold and convey title to all of the Covered Property subject to certain protective covenants, conditions and restrictions hereafter set forth.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Covered Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of said interests in the Covered Property, and the owners of said interests, their successors and assigns. These covenants, conditions, restrictions and easements shall run with said interests and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.



ARTICLE I  
DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

Section 1. "Architectural Committee" shall mean and refer to the committee or committees provided for in the Article hereof entitled "Architectural Control."

Section 2. "Articles" and "Bylaws" shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended.

Section 3. "Assessments:" The following meanings shall be given to the Assessments hereinafter defined:

"Regular Assessment" shall mean the amount which is to be paid by each Member to the Association for Common Expenses.

"Special Assessment" shall mean a charge against a particular Owner and his Residence, directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and his Residence into compliance with the provisions of this Declaration, the Articles, Bylaws or Association Rules, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules, together with attorneys' fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

"Reconstruction Assessment" shall mean a charge against each Member and his Residence representing a portion of the cost to the Association for reconstruction of any portion or portions of the Community Facilities or Common Area pursuant to the provisions of this Declaration.

"Capital Improvement Assessment" shall mean a charge against each Member and his Residence, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Community Facilities or Common Area which the Association may from time to time authorize pursuant to the provisions of this Declaration.

"Cable Television Service Assessment" shall mean a charge against a particular Owner and his Residence for cable television services obtained by the Association for the benefit of such Owner as provided in this Declaration.

Section 4. "Association" shall mean and refer to Yale Maintenance Association, a nonprofit corporation, incorporated under the laws of the State of California, its successors and assigns.

Section 5. "Association Rules" shall mean rules adopted by the Association pursuant to the Article hereof entitled "Duties and Powers of the Association".

Section 6. "Board" shall mean the Board of Directors of the Association.

Section 7. "City" shall mean and refer to the City of Irvine, California, a municipal corporation of the State of California.

Section 8. "Common Area" shall mean all portions of the Projects except the Units and, without limiting the generality of the foregoing, specifically including all structural projections within a Unit which are required for the support of a Condominium Building, gas, water, waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the structures wherever located (except the outlets thereof when located within the Units), the land upon which the structures are located, the air space above these structures, all bearing walls, columns, floors, the roof, the slab foundation, common stairways, window glass and the like. Common Area shall specifically exclude all garage door opening systems and all air conditioning units notwithstanding that the foregoing are located in the Common Area.

Section 9. "Common expenses" shall mean and refer to the actual and estimated costs of:

- (a) maintenance, management, operation, repair and replacement of the Common Area, Community Facilities, and all other areas on the Covered Property which are maintained by the Association;
- (b) unpaid Assessments;
- (c) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Covered Property as provided in this Declaration or pursuant to agreements with the City;
- (d) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
- (e) the costs of utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Covered Property;
- (f) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Community Facilities and the Common Area;
- (g) the costs of any other insurance obtained by the Association;
- (h) reasonable reserves as deemed appropriate by the Board;
- (i) the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;
- (j) taxes paid by the Association;
- (k) amounts paid by the Association for discharge of any lien or encumbrance levied against the Community Facilities or Common Area or portions thereof;
- (l) costs incurred by committees established by the Board; and
- (m) other expenses incurred by the Association for any reason whatsoever in connection with the Community Facilities and the Common Area, or the costs of any other item or items designated by this Declaration, the Articles, Bylaws or Association Rules, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

Section 10. "Community Facilities" shall mean all real property, and the improvements thereon, owned or leased from time to time by the Association for the common use and enjoyment of the Members, including without limitation any of the following: private storm drains, private streets, private utilities, private parks, open spaces, trails and slopes. Upon the date of the first conveyance of a Residence to an Owner, the Community Facilities shall be that certain property described on Exhibit B. Any real property denominated as "Community Facilities" in a Supplementary Declaration shall be conveyed to the Association prior to or concurrently with the first conveyance of a Residence located within the real property which is annexed to the coverage hereof by such Supplementary Declaration. Declarant shall convey the Community Facilities to the Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), title exceptions of record and the covenants, conditions, reservations and restrictions contained in this Declaration and the instrument which conveys the Community Facilities to the Association.

Section 11. "Condominium" shall mean a fractional undivided interest in common with the other Owners within a Project in the Common Area of such Project,

together with a separate interest in a Unit and all right, title and interest appurtenant thereto. Such fractional undivided interest in common of each Owner shall be as described in the instrument conveying a Condominium to such Owner and shall not be changed except as provided in the Section entitled "Amendment of Condominium Plan" of the Article hereof entitled "Destruction of Improvements" and the Section entitled "Change of Condominium Interest" of the Article hereof entitled "Eminent Domain."

Section 12. "Condominium Building" shall mean a separate building containing one or more Units or elements of Units.

Section 13. "Condominium Elements" shall mean the following elements of a Unit:

(a) "Garage" shall mean that portion of a Unit designed for use as a garage, and shall be identified on the Condominium Plan by a Unit number and the letter "G" and shall consist of the interior undecorated surfaces of the perimeter walls, floors, ceilings, windows (if any) and doors of each Garage element and the space encompassed thereby, including the outlets of all utility installations therein.

(b) "Patio" shall mean that portion of a Unit designed for use as a patio, and shall be identified on the Condominium Plan by a Unit number and the letter "P" and shall consist of the contiguous surfaces of any Common Area walls or fences, the surfaces of the walls of contiguous Condominium Buildings, with the upper and lower horizontal boundary of the Patio element being planes as shown on the Condominium Plan, and the space encompassed by all of the foregoing. In the event that the contiguous Common Area land or improvements do not completely enclose the Patio element, the remaining boundaries of the airspace contained within said Patio element shall be as delineated on the Condominium Plan.

(c) "Residential Element" shall mean that portion of a Unit designed for use as a residence, and shall be identified on the Condominium Plan by a Unit number only and shall consist of the interior undecorated surfaces of the perimeter walls, floors, ceilings, windows and doors of each Residential Element and the space encompassed thereby, including the outlets of all utility installations therein and also including the interior surfaces of the firebox of each fireplace extending from the floor to the top of each fireplace, if any, and the space encompassed thereby, which adjoins any Residential Element.

Section 14. "Condominium Plan" shall mean each of those certain condominium plans recorded by Declarant in the Office of the County Recorder of Orange County, California for the Projects and any amendments thereto. In interpreting deeds, leases, declarations and plans, the existing physical boundaries of a Unit constructed in substantial accordance with the Condominium Plan shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, lease, declaration or plan, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries as shown on the plan or in the deed, lease, or declaration and those of the building as constructed.

Section 15. "Covered Property" shall mean and refer to all the real property described on Exhibit A hereto and, subsequent to the annexation thereof pursuant to the Article of this Declaration entitled "Integrated Nature of the Covered Property", any real property which shall become subject to this Declaration.

Section 16. "Development" shall mean and refer to the real property described on Exhibits A and C.

Section 17 "Development Lessee" shall mean and refer to any individual, partnership, joint venture, corporation or other entity to which Declarant leases any portion of the Development for the purpose of developing on such leased land a residential, commercial or recreational project, and such lease or a memorandum thereof is recorded.

Section 18. "Exhibit" shall mean and refer to those documents so designated herein and attached hereto and each of such Exhibits is by this reference incorporated in this Declaration. As additional property is annexed pursuant to

the Article entitled "Integrated Nature of the Covered Property" of this Declaration, exhibits similar to the exhibits attached to this Declaration may be attached to such Supplementary Declarations pertaining to the annexed property, and each of such exhibits shall thereby be incorporated in this Declaration.

Section 19. "Federal Agencies" shall mean and refer to collectively one or more of the following agencies and the following letter designation for such agencies shall mean and refer to respectively the agency specified within the parentheses following such letter designation: FHA (Federal Housing Administration), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), GNMA (Government National Mortgage Association), VA (Veterans Administration).

Section 20. "Final Subdivision Public Report" shall refer to that report issued by the Department of Real Estate of the State of California pursuant to Section 11018.2 of the California Business and Professions Code or any similar statute hereafter enacted.

Section 21. "Institutional Mortgagee" shall mean and refer to a First Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution regulated by federal or state law.

Section 22. "Master Association" shall mean and refer to Heritage Park Community Association, a California nonprofit corporation. In the event of any conflict between the Articles of Incorporation or the Bylaws of the Master Association and the provisions of the Articles and Bylaws, the provisions of the Articles of Incorporation and Bylaws of the Master Association shall be deemed to supersede such other provisions to the extent of such conflict.

Section 23. "Master Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions covering all or a portion of the real property described in Exhibit E and recorded on 8-5-77, in Book 12324, Pages 1100, of Official Records of Orange County, California, and any amendments thereto. In the event of any conflict between the Master Declaration and the provisions of this Declaration, the Articles or Bylaws, the provisions of the Master Declaration shall be deemed to supersede such other provisions to the extent of any such conflict.

Section 24. "Member" shall mean and refer to every person or entity who qualifies for membership pursuant to the Article of this Declaration entitled "Membership", including Declarant so long as Declarant qualifies for membership pursuant to said Article.

Section 25. "Membership Agreement" shall mean and refer to an agreement in the form attached as Exhibit D or any other form specified by the Board.

Section 26. "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Residence. A "First Mortgage" shall refer to a Mortgage which has priority over any other Mortgage encumbering a specific Residence.

Section 27. "Mortgagee" shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall mean the holder of a Mortgage that has priority over any other Mortgage encumbering a Residence.

Section 28. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a Residence, including Declarant, or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation. If a Residence is leased by Declarant for a term in excess of twenty (20) years and the lease or memorandum thereof is recorded, the lessee or transferee of the leasehold interest and not the Declarant shall be deemed to be the Owner. If fee title to a Residence is owned other than by

Declarant, the Owner of the fee title and not the lessee of such Residence shall be deemed the Owner regardless of the term of the lease.

Section 29. "Project" shall mean each portion of the Covered Property for which Declarant records a separate Condominium Plan in the office of the County Recorder of Orange County, California, and which Declarant designates as a Project in this Declaration or in a Supplementary Declaration. The real property and all improvements constructed thereon known as Lot 4.29 of Tract 9920, as per map filed in Book 405, Pages 39-43 inclusive, of Miscellaneous Maps in the office of the County Recorder of Orange County, California is hereby designated as a Project.

Section 30. "Residence" shall mean and refer to a Condominium.

Section 31. "Supplementary Declaration" shall mean those certain declarations of covenants, conditions and restrictions or similar instruments, annexing additional property extending the plan of this Declaration to such additional property as provided in the Article of this Declaration entitled "Integrated Nature of the Covered Property."

Section 32. "Trustee" shall mean and refer to the insurance trustee as more fully described in the Article hereof entitled "Insurance."

Section 33. "Unit" shall mean the elements of a Condominium not owned in common with the Owners of other Condominiums in a Project and shall consist of a Residential Element together with one or more other Condominium Elements set forth in this Article. Each Unit shall be identified on the Condominium Plan with a separate number.

## ARTICLE II MEMBERSHIP

Section 1 - Membership. Every Owner shall be a Member. The terms and provisions set forth in this Declaration, which are binding upon all Owners are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws and Association Rules to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Residence. Ownership of a Residence shall be the sole qualification for membership; provided, however, a Member's voting rights may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Not more than one membership shall exist based upon ownership of a single Residence.

Section 2 - Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the transferee of the interest of an Owner required for membership. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner.

Section 3 - Voting Rights. An Owner's right to vote shall vest immediately upon the date Regular Assessments commence upon such Owner's Residence as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

Section 4 - Classes of Voting Membership. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Residence in which they hold the interest required for membership. When more than one person owns a portion of the interest in a Residence required for membership, each such person shall be a Member and the vote for such Residence shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residence. The Association shall not be required to recognize the vote or written assent of any such co-Owner except the vote or written assent of the co-Owner designated in a writing executed by all of such co-Owners and delivered to the Association.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Residence in which it holds the interest required for membership; provided that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A Membership equals One Hundred Forty-One (141);

(b) The second anniversary of the original issuance of the most recently issued Final Subdivision Public Report.

(c) June 1, 1981.

Section 5 - Special Class A Voting Rights. Notwithstanding the provisions of this Article, if the Class A Members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration and the Bylaws to elect at least twenty percent (20%) of the total number of directors on the Board, at any meeting of Members at which directors are to be elected, then such Class A Members shall, by majority vote, among themselves, elect the number of directors required to equal twenty percent (20%) of the total number of directors on the Board. In the event twenty percent (20%) of the total number of directors is equal to any fractional number, the number of directors to be elected pursuant to

the special Class A voting right shall be rounded to the next higher whole number. In no event shall the Class A Members be entitled to elect more than twenty percent (20%) of the total number of directors, adjusted for any fractional number as hereinabove provided, pursuant to the provisions of this special Class A voting right. The remaining vacancies on the Board shall be elected by the Class B Member.

Section 6 - Membership Agreement. Each Class A Owner, other than Declarant, must execute a Membership Agreement and deliver the same to the Association prior to or concurrently with the recording of a deed conveying fee title to a Residence to such Owner or the recording of an installment land sales contract conveying equitable title, or the recording of a lease or memorandum thereof from Declarant conveying leasehold title to a Residence to such Owner or the recording of an assignment or other instrument evidencing the subsequent transfer of such leasehold estate. Each Owner must notify the immediate transferee of his Residence of such transferee's obligation to so execute and deliver a Membership Agreement. The provisions of this Section shall not restrict or restrain in any way an Owner's ability to transfer his Residence to a person who refuses to execute a Membership Agreement, nor shall the failure to execute a Membership Agreement prevent any person from being a Member or Owner, or exempt such person from any of the obligations thereof; including, without limitation, the payment of Assessments, under the terms of this Declaration, the Articles, Bylaws or Association Rules. An Owner who has not executed and delivered a Membership Agreement shall automatically for a period of three (3) months or such longer period specified in the Bylaws, but in no event to exceed one (1) year, forfeit his right to vote as a Member and, subject to the following provisions of this Section, such rights shall not be restored until the expiration of such period, notwithstanding such Owner's execution and delivery of a Membership Agreement prior to such expiration. If such Owner has not executed and delivered a Membership Agreement on or before the expiration of such period, subject to the following provisions of this Section, his voting privileges shall not be restored until such execution and delivery. However, the Board may provide that Members shall be entitled to the full privileges of membership in the Association notwithstanding the failure to execute a Membership Agreement, or may further provide that upon the execution of a Membership Agreement a Member's voting and other privileges shall immediately attach, notwithstanding the automatic forfeitures described above. In the event Members are entitled to a membership card, the Board may require any Member who has not executed a Membership Agreement to return the same to the Board. Nothing contained in this Section shall interfere with an Owner's right to use private streets, if any, to gain ingress and egress to his Residence.

Section 7 - Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration or the Bylaws, any provision of this Declaration or the Bylaws which requires the vote or written assent of a specified majority of the voting power of the Association or any class or classes of membership shall be deemed satisfied by the following:

- (a) The vote of the specified percentage at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members. Such percentage must include the specified number of all Members entitled to vote at such meeting and not such a percentage of those Members present;
- (b) A writing or writings signed by the specified percentage;
- (c) A combination of votes or written assent, provided that Members shall not change their vote or written assent after it is cast or delivered, and provided further that only those written assents executed within sixty (60) days before or thirty (30) days after a meeting may be combined with votes cast at such meeting to constitute the specified percentage; and
- (d) In determining which Class A Members are entitled to vote or give their written assent pursuant to any provision of this Declaration, the Association shall not be required to recognize those Members who have not executed a

Membership Agreement and delivered the same to the Association as of a record date fixed by the Board pursuant to the Bylaws with respect to the particular vote in question.

(e) In any matter requiring the consent of the Members, but not specifically provided for in this Declaration or the Articles, Bylaws or any contract executed by the Association, a simple majority of the voting power of Members entitled to vote on such matters shall suffice.

Section 8 - Approval by Both Class A and Class B Members. Except for the Section entitled "Enforcement of Bonded Obligations" of the Article entitled "General Conditions" of this Declaration, and as long as there is a Class B membership, any provision of the Articles, Bylaws, this Declaration, or the Association Rules which expressly requires the approval of a specified percentage of the voting power of the Association before being undertaken, shall require the approval of said specified percentage of each of the Class A and Class B membership.



ARTICLE III  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1 - Creation of the Lien and Personal Obligation of Assessments. Each Owner, including the Declarant to the extent Declarant is an Owner as defined herein, of any Residence by acceptance of a deed or other conveyance, creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments, Reconstruction Assessments, and Cable Television Service Assessments, if applicable, such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon the Residence against which each such Assessment is made. Each such Assessment, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Residence at the time when the Assessment becomes due. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors.

Section 2 - Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the Members, the management of the Covered Property, enhancing the quality of life in the Covered Property, and the value of the Covered Property including, without limitation, the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Community Facilities and Common Area, or in furtherance of any other duty or power of the Association.

Section 3 - Regular Assessments. Not later than sixty (60) days prior to the beginning of each fiscal year, the Board shall distribute to each Member a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board shall at that time determine the amount of the Regular Assessment to be paid by each Member. Each Member shall thereafter pay to the Association his Regular Assessment in installments as established by the Board. Each such installment shall be due and payable on a date established by the Board in the written notice sent to Members. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due. After the Association's first fiscal year of operation, it shall not impose a Regular Assessment which is increased more than twenty percent (20%) over the amount of the Regular Assessment in the immediately preceding fiscal year, without the approval of a majority of the voting power of the Association.

Section 4 - Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Area or Community Facilities to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements", including the necessary fixtures and personal property related thereto. The Association shall not impose a Capital Improvement Assessment, the total amount of which exceeds five percent (5%) of the estimated Common Expenses, as set forth in the Section of this Article entitled "Regular Assessments", without the approval of a majority of the voting power of the Association. Any reserves collected by the Association for the future maintenance and repair of the Community Facilities and Common Area, or any portion thereof,

BK 12461171

shall not be included in determining said annual capital improvement limitation. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

Section 5 - Uniform Assessment. Regular and Capital Improvement Assessments shall be fixed at an equal amount for each Residence and may be collected at intervals selected by the Board.

Section 6 - Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Residence have been paid, and the amount of delinquency, if any. A reasonable charge not to exceed Fifteen Dollars (\$15.00) may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 7 - Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein.

Section 8 - Special Assessments. Special Assessments shall be levied by the Board against a Residence to reimburse the Association for:

- (a) costs incurred in bringing an Owner and his Residence into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules;
- (b) any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules; and
- (c) attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

In the event the Association undertakes to provide materials or services which benefit individual Residences and which can be accepted or not by individual Owners, such as tree trimming, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

Section 9 - Cable Television Service Assessment. In the event the Board elects to contract for cable television service, Cable Television Service Assessments shall be levied by the Board against the Owners who have subscribed with the Association for such service. In such circumstances, the Cable Television Service Assessment shall commence as to such Owner on the first day of the month following the month in which he so subscribes and shall continue against such Owner and any subsequent transferee of his Residence until the first day of the month following the month in which any such Owner or transferee notifies the Board in writing that he no longer wishes to subscribe to such service, or the month in which the Board elects to cancel the Association's contract for cable television service.

Section 10 - Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to all Residences on the first day of the month following the conveyance of the first Residence by Declarant to an individual Owner; provided, however, the Regular Assessment, as to Residences in annexed areas, if any, shall commence with respect to all Residences within each such annexed area on the first day of the month following the conveyance of the first Residence therein by Declarant to an individual Owner. It is provided, further, that in the event the amount budgeted to meet Common Expenses for the then current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate. It is provided,

further, that in the event the amount budgeted to meet Common Expenses proves to be excessive in light of the actual Common Expenses during a year in which an area is annexed the Board in its discretion may either reduce the amount of the Regular Assessment or may abate the collection of Regular Assessments as it deems appropriate. Until such time as the Class B Membership has ceased and been converted into Class A Membership, in no event shall a reduction in the amount or the abatement in the collection of Regular Assessments pursuant to this Section result in a quantity or quality of services diminished from those upon which the Common Expense budget for the year in question is based.

Section 11 - No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Area or Community Facilities; or (iii) any construction or maintenance performed pursuant to the Section entitled "Assumption of Maintenance Obligations" of the Article entitled "Repair and Maintenance" of this Declaration shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

Section 12 - Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of California now in effect, or in effect from time to time hereafter.

Section 13 - Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Community Facilities and Common Area, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE IV  
NONPAYMENT OF ASSESSMENTS

Section 1 - Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said date (the "delinquency date"). If any such Assessment is not paid within thirty (30) days after delivery of notice of such delinquency from the Association, a late charge of Ten Dollars (\$10.00) shall be levied and the Assessment shall bear interest from the delinquency date at the rate of ten percent (10%) per annum. The Association may, at its option, and without waiving the right to judicially foreclose its lien against the Residence, pursue any available remedies, including, without limitation, bringing an action at law against the Member personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in the Section entitled "Notice of Lien" of this Article to foreclose the lien against the Residence. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the costs of such action, and attorneys' fees incurred in connection with such action; and in the event a judgment is obtained, such judgment shall include said late charge, interest and a reasonable attorney's fee, together with the costs of action. Each Member vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such Member or other Members for the collection of such delinquent Assessments.

Section 2 - Notice of Lien. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Residence, and a copy thereof is recorded by the Association in the office of the County Recorder in which County the properties are located; said notice of claim of lien must recite a good and sufficient legal description of any such Residence, the record Owner or reputed Owner thereof, the amount claimed [which shall include interest on the unpaid Assessment at the rate of ten percent (10%) per annum, a late charge of Ten Dollars (\$10.00), plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien], and the name and address of the claimant.

Section 3 - Foreclosure Sale. Said Assessment lien may be enforced by sale by the Association, its attorney or any other person authorized by the Board to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of Sections 2924, 2924b, 2924c, 2924f, 2924g and 2924h of the Civil Code of the State of California as said statutes may from time to time be amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Residence, using Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same.

Section 4 - Curing of Default. Upon the timely payment or other satisfaction of: (a) all delinquent Assessments specified in the notice of claim of lien, (b) all other Assessments which have become due and payable with respect to the Residence as to which such notice of claim of lien was recorded, and (c) interest, late charges, attorneys' fees and other costs of collection pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by Board 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 fee, to be determined by the Association, but not to exceed Twenty-five Dollars (\$25.00) to cover the costs of preparing and filing or recording such release.

ARTICLE V  
ARCHITECTURAL CONTROL

OK 12324PG1174

Section 1 - Control in Master Association. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Covered Property, nor shall any exterior addition to, change or alteration in or painting of any exterior surface or structure upon the Covered Property be made until there has been compliance with the provisions of the Article of the Master Declaration entitled "Architectural Control". As used herein the term "Architectural Committee" shall mean the Architectural Committee established in said Article of the Master Declaration.

Section 2 - Additional Powers of the Board. The Board may promulgate procedures for establishing such additional standards, rules and regulations as it deems to be appropriate and as are not in conflict with the said Article of the Master Declaration.

ARTICLE VI  
DUTIES AND POWERS OF THE ASSOCIATION

Section 1 - General Duties and Powers. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

Section 2 - General Duties of the Association. The Association through the Board shall have the duty and obligation to:

- (a) enforce the provisions of this Declaration, the Articles, Bylaws, and Association Rules, by appropriate means and carry out the obligations of the Association hereunder.
- (b) maintain and otherwise manage the following:
  - (i) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;
  - (ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and
  - (iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration, including, without limitation, the Article of this Declaration entitled "Repair and Maintenance".
- (c) pay any real and personal property taxes and other charges assessed to or payable by the Association;
- (d) obtain, for the benefit of the Common Area and Community Facilities, water, gas and electric, refuse collections and other services.
- (e) act as a managing agent for all of the Projects.

Section 3 - General Powers of the Association. The Association through the Board shall have the power but not the obligation to:

- (a) employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of residential developments similar to the Covered Property, to perform all or any part of the duties and responsibilities of the Association, provided that any contract not approved by FHA or VA with a person or firm appointed as a manager or managing agent shall be terminable for cause on not more than thirty (30) days' written notice by the Association and shall have a term of not more than one (1) year with successive one (1) year renewal periods upon mutual agreement of the parties;
- (b) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Covered Property, the administration of the affairs of the Association or for the benefit of the Members;
- (c) borrow money as may be needed in connection with the discharge by the Association of its powers and duties;
- (d) establish in cooperation with the City a special tax assessment district for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association.

(e) unless otherwise provided by the Master Association, provide trash pickup and disposal service for the benefit of the Owners and their Residences;

(f) unless otherwise provided by the Master Association, contract for cable television service for the benefit of the Owners who have subscribed for such service; and

(g) negotiate and enter into contracts with Institutional Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Covered Property.

Section 4 - General Limitations and Restrictions on the Powers of the Board.  
In addition to the limitations and restrictions enumerated in the Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Board shall be prohibited from taking any of the following action without the approval of a majority of the voting power of the Association:

(a) enter contracts for materials or services which have a term in excess of one (1) year, with the following exceptions:

(i) a management contract, the terms of which have been approved by the FHA or VA;

(ii) 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; and

(iii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the applicable policy permits short rate cancellation by the insured.

(b) incur aggregate expenditures for capital improvements to the Covered Property in any fiscal year in excess of five percent (5%) of the estimated Common Expenses for the fiscal year as set forth in the Sections entitled "Regular Assessments" and "Capital Improvement Assessments" of the Article hereof entitled "Covenant for Assessments".

(c) sell any real or personal property of the Association with an aggregate fair market value in excess of five percent (5%) of said estimated Common Expenses during any fiscal year.

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

Section 5 - Association Rules. The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules") which may include the establishment of a system of fines and penalties enforceable as Special Assessments, all as provided in the Bylaws. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area and Community Facilities; provided, however, that the Association Rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules 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 Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, said Association Rules 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 Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict.

Section 6 - Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles and Bylaws; provided, however, no such delegation to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

Section 7 - Pledge of Assessment Rights. The Association shall have the power to pledge the right to exercise its Assessment powers in connection with obtaining funds to repay a debt of the Association; provided, however, any such pledge shall require the prior affirmative vote or written assent of not less than seventy-five percent (75%) of the Class A Members and seventy-five (75%) of the Class B Members. Said power shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to or which will become payable to the Association; which assignment may be then presently effective but shall allow said Assessments to continue to be paid to and used by the Association as set forth in this Declaration, unless and until the Association shall default on the repayment of the debt which is secured by said assignment. The Association may levy Special Assessments against the Members to obtain such funds. Upon the failure of any Member to pay said Special Assessment when due, the Association may exercise all its rights, including, without limitation, the right to foreclose its lien, pursuant to the Article hereof entitled "Nonpayment of Assessments". Without limiting the generality of the foregoing, any pledge of Assessment rights in excess of an amount equal to twenty-five percent (25%) of the total Regular Assessments collected by the Association in the then preceding fiscal year, shall require the prior written approval of seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each first mortgage held.

Section 8 - Emergency Powers. The Association or any person authorized by the Association may enter any Residence 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 Owners as practicable, and any damage caused thereby shall be repaired by the Association unless covered by insurance carried by the Owner.



ARTICLE VII  
REPAIR AND MAINTENANCE

Section 1 - Repair and Maintenance by Association. Except to the extent that an Owner may be obligated to maintain and repair as hereinafter provided, and without limiting the generality of the statement of duties and powers contained in this Declaration, the Articles, Bylaws or Association Rules, the Association shall have the duty to accomplish the following upon the Covered Property or other land in such manner and at such times as the Board shall prescribe:

- (a) maintain, repair, restore, replace and make necessary improvements to the Common Area or Community Facilities, including, without limitation the exterior surfaces of all Condominium Buildings, to include the painting thereof, including, without limitation, the interior surface boundaries of Condominium Elements which are exterior walls of Condominium Buildings.
- (b) maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of two-thirds (2/3) of the voting power of the Members.
- (c) maintain in a safe and attractive condition the landscaping and the sidewalk between the boundary line of the Covered Property and the farthest edge of the nearest sidewalk of the contiguous private park owned by the Master Association described on Exhibit B of the Master Declaration.
- (d) maintain and repair landscaping within the planter area within Sacramento and on any parkways within public rights-of-way as described on Exhibit G.
- (e) the costs of any such maintenance and repair pursuant to this Section shall be paid out of the general funds of the Association, except as otherwise herein specified as payable by the particular Owners.

Section 2 - 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, repair, replace and restore all of the Residential element and the Garage elements, and the Patio elements. Without limiting the generality of the foregoing, Owners shall maintain all plants or other growing things emplaced or located within such nonresidential elements of Units, and such plants or other growing things shall be permitted to encroach into or onto the Common Area, subject to the Article hereof entitled "Architectural Control".
- (b) repair and replace all window glass for his own Condominium, and Owners shall be responsible for the interior and exterior cleaning of such window glass.
- (c) repair, maintain or replace Garage doors, including, without limitation, hinges, springs and other parts of the door mechanism;
- (d) maintain, repair, replace and restore all portions of the Unit, including, without limitation, the interior walls, ceilings, floors and doors in a clean, sanitary and attractive condition.
- (e) In the event the Board shall determine that the walls, ceiling, floors, doors or any other portion of the Common Area forming the boundaries of a Unit have been damaged from within the Unit, notwithstanding that such damage may be to the Common Area, the Owner of the Unit shall be responsible for repairing such damage in a timely manner and in accordance with such rules as the Board or Architectural Committee shall from time to time adopt.

Section 3 - Right of Association to Maintain and Install. In the event that an Owner fails to accomplish any maintenance, or repair required by this Section, the Association or its delegates may, but shall not be obligated to, cause such maintenance and installation to be accomplished as hereinafter set forth.

(a) Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of deficiency to the Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its powers under this subsection to a duly appointed committee of the Association.

(b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

(c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to such Owner. If the Board or any such committee renders a decision against the Owner, it shall further set a date by which the deficiency is to be corrected by the Owner. A decision of such committee may be appealed to the Board, but a decision of the Board shall be final.

(d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee may cause such maintenance or installation to be accomplished.

(e) In the event the Board or such committee elects to cause such maintenance or installation to be accomplished, the following shall apply:

(i) The Owner shall have no more than ten (10) days following the receipt thereby of written notice of such election from the Board or such committee to select a day or days upon which such maintenance or installation work shall be accomplished;

(ii) The date which said Owner selects shall be not less than fifteen (15) days nor more than forty-five (45) days following the last day of said ten (10) day period;

(iii) If said Owner does not select such day or days within said ten (10) day period, the Board or such committee may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and

(iv) Unless the Owner and the Board otherwise agree, such maintenance or installation shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(f) If the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment to the affected Owner and Residence.

Section 4 - Right of Entry. The Association shall have the right to enter upon any Residence in connection with any maintenance, repair or construction in the exercise of the powers and duties of the Association.

Section 5 - Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements in the Common Area or Community Facilities 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 6 - Assumption of Maintenance Obligations. Declarant, its Development Lessee, subcontractors and the agents and employees of the same shall have the right to come on the Common Area and Community Facilities to complete the construction of any land scaping or other improvement to be installed on the Common Area and Community Facilities as provided in this Declaration. In the event that

any Development Lessees or Declarant's subcontractors or the subcontractors of a Development Lessee, are contractually obligated to maintain the landscaping and/or other improvements on the Common Area and Community Facilities such maintenance shall not be assumed by the Association until the termination of such contractual obligation. If any excess of Assessments collected over actual Common Expenses incurred by the Association is caused by reason of construction or maintenance pursuant to this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

ARTICLE VIII  
INSURANCE

232461181

Section 1 - Types. The Association shall obtain and maintain in effect the following types of insurance:

(a) A comprehensive public liability insurance insuring the Association, the Declarant and the agents and employees of each and the Owners and the respective family members, guests and invitees of the Owners against any liability incident to the ownership or use of the Common Area and Community Facilities, and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) for death of or injury to any one person in any one occurrence, One Million Dollars (\$1,000,000) for death or injury to more than one person in any one occurrence, and One Hundred Thousand Dollars (\$100,000) for property damage in any one occurrence.

(b) A master or blanket policy of fire insurance for the full insurable replacement value, without deduction for depreciation, of all of the improvements within the Covered Property. Such policy and any endorsements thereon shall be in the form and content for such term and in such company as may be satisfactory to any Institutional Mortgagee; and, if more than one Institutional Mortgagee exists, such policy and endorsements shall meet the maximum standards of such Institutional Mortgagees. Such policy shall contain extended coverage and replacement cost endorsements, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause and a determinable cash adjustment clause, or a similar clause to permit cash settlement covering full value of the improvements on the Covered Property in the event of destruction of improvements and a decision not to rebuild pursuant to the Article herein entitled "Destruction of Improvements." Such policy shall be in such amounts as shall be determined from time to time by the Board, shall name as insured the Association, the Owners and Declarant, so long as Declarant is the Owner of any of the Condominiums, and all Mortgagees as their respective interests may appear, and shall contain a loss-payable endorsement in favor of the Trustee.

(c) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression.

(Section 2) - Waiver by Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association, the Owners and the Mortgagees as their interests may appear. As to each of said policies which will not be voided or impaired thereby, the Owners hereby waive and release all claims against the Association, the Board, other Owners, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 3 - Other Insurance. The Board may and, if required by any Institutional Mortgagee, shall purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction and a decision not to rebuild, as well as a blanket policy of flood insurance. The Board shall also purchase and maintain workmen's compensation insurance, to the extent that the same shall be required by law, for all employees of the Association. The Board shall also purchase and maintain in effect such insurance on personal property owned by the Association, and such other insurance, as it deems necessary or as is required by any Institutional Mortgagee including, without limitation, earthquake insurance, plate-glass insurance and officers' and directors' liability insurance.

Section 4 - Premiums, Proceeds and Settlement. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Casualty insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in the Article hereof entitled "Destruction of Improvements". The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the Association 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 the Members.

Section 5 - Annual Insurance Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Covered Property in light of increased construction costs, inflation, practice in the area in which the Covered Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 6 - Abandonment of Replacement Cost Insurance. Unless at least seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.

Section 7 - Federal Requirements. Notwithstanding the foregoing provisions of this Article, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by any of the Federal Agencies, so long as either is a Mortgagee, Owner, or insures or guarantees a Mortgage within the Covered Property, except to the extent such coverage is not available or has been waived in writing by the foregoing entities.

Section 8 - Trustee. Except as provided below, all insurance proceeds payable under the Section entitled "Fire and Extended Coverage Insurance" of this Article shall be paid to a Trustee. The Trustee shall hold, distribute and expend such proceeds for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear, pursuant to the provisions of the Article herein entitled "Destruction of Improvements." The Trustee shall be appointed by the Board and shall be a commercial bank, or branch thereof, or a trust company in Orange County, which has agreed in writing to accept such trust. When proceeds from a single claim do not exceed Ten Thousand Dollars (\$10,000), such proceeds shall be paid to the Association to be used as provided in the Article hereof entitled "Destruction of Improvements".

Section 9 - Individual Casualty Insurance Prohibited. Except as expressly provided in the Section of this Article entitled "Rights of Owners to Insure", no Owner will separately insure his Condominium or any part thereof against loss by fire or other casualty covered by any insurance carrier under the Section entitled "Fire and Extended Coverage Insurance" of this Article. Should any Owner violate this provision, and should any loss intended to be covered by insurance carried by the Association occur, and the proceeds payable thereunder be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by it to the extent of such reduction to the Trustee for application by the Board to the same purposes as the reduced proceeds are to be applied.

In the event that such Owner has failed to pay such amount within thirty (30) days of a written demand therefor by the Association or the Trustee, the Board may levy a Special Assessment against such Owner and his Condominium for such amount. In the event such Special Assessment is not paid within thirty (30) days of its due date, the Board may effect the remedies of Section 1356 of the

California Civil Code and the Article hereof entitled "Nonpayment of Assessments."

Section 10 - Rights of Owners to Insure. (Notwithstanding the other provisions of this Article, an Owner shall be permitted to insure his personal property against loss by fire or other casualty and may carry public liability insurance covering his individual liability for damage to persons or property occurring inside his individual Unit. In addition, any improvements made by an Owner to his Unit may be separately insured by such Owner, provided such insurance shall be limited to the type and nature of coverage commonly known as "tenant's improvements" coverage.) All such policies as may be carried by the Owners shall contain waivers of subrogation of claims against the Association, the Board, other Owners, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only; provided, however, such other policies shall not adversely affect or diminish any liability under any insurance obtained by the Association, and duplicate copies or certificates of such other policies shall be deposited with the Board.

Section 11 - Required Waiver. All policies of physical damage insurance shall provide for waiver of the following rights to the extent such waivers are obtainable from the respective insurers:

- (a) Subrogation of claims against the Owners or tenants of the Owners;
- (b) Any defense based on co-insurance;
- (c) Any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner or arising from any act, neglect or omission of any named insured or the respective agents, contractors and employees of any insured;
- (e) Any right of the insurer to repair, rebuild or replace and, in the event the building is not repaired, rebuilt or replaced following loss, any right to pay under the insurance the lesser of the replacement value of the improvements insured or the fair market value thereof;
- (f) Notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Unit; and
- (g) Any right to require any assignment of any Mortgage to the insurer.

ARTICLE IX  
DESTRUCTION OF IMPROVEMENTS

2324P51184

Section 1 - Automatic Reconstruction. In the event of partial or total destruction of any Condominium Building, the Board shall promptly take the following action:

- (a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain a performance bond, if the Board deems the same to be necessary or appropriate, and obtaining one or more independent appraisals if the Board deems such appraisal or appraisals to be necessary or desirable.
- (b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer of said Condominium Building.
- (c) The Board shall meet and determine whether the insurance proceeds, if any, will cover eighty-five percent (85%) or more of the estimated cost of reconstruction as determined pursuant to subsection (a) of this Section, or whether the portion of the estimated cost not covered by insurance is less than One Hundred Fifty Dollars (\$150.00) per year per Condominium. Such percentage covered by insurance or such cost shall hereinafter be referred to as the "Acceptable Range of Reconstruction Cost." If the Board finds that a bid obtained under this Section is within the Acceptable Range of Reconstruction Cost, the Board shall cause a notice to be sent to all Owners of Condominiums in the Project within which the partially or totally destroyed Condominium Building is located (hereinafter in this Article the "affected Owners") and to the Mortgagees of Mortgages encumbering Condominiums in said Condominium Building setting forth such findings and informing said Owners and said Mortgagees that the Board intends to commence reconstruction pursuant to this Declaration. In the event that at least twenty percent (20%) of the affected Owners, based on one (1) vote for each Condominium, object in writing to such reconstruction by the date indicated therefor on such notice, which in no event shall be sooner than ten (10) days or later than thirty (30) days after the date on which the Board sends such notice to the Members, the Board shall call a meeting of the affected Owners pursuant to the Section entitled "Reconstruction Pursuant to Meeting" of this Article. In the event that the foregoing requirements are satisfied and the requisite number of affected Owners do not object in writing by such date, the Trustee shall pay such insurance proceeds as are available to the Board and the Board shall cause reconstruction to take place as promptly as practicable and shall levy a uniform Reconstruction Assessment against each affected Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds. If the Board in good faith determines that none of the bids submitted under this Section reasonably reflects the anticipated reconstruction costs, the Board shall proceed according to the Section entitled "Reconstruction Pursuant to Meeting" of this Article.
- (d) The foregoing determinations shall be made by the Board as soon as possible. However, if such determinations cannot be made within sixty (60) days of the date of destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a meeting of the affected Owners pursuant to the Section entitled "Reconstruction Pursuant to Meeting" of this Article.
- (e) If the Board determines that any Unit has become uninhabitable by reason of its total or partial destruction, Regular Assessments shall abate against the Owner thereof until the Board determines that the reconstruction of the Unit has restored its habitability. However, if the Board determines that such abatement will adversely and substantially affect the management, maintenance and operation of the Covered Property, it may elect to disallow such abatement.
- (f) In the event that Condominium Buildings are totally or partially destroyed in more than one (1) Project, the Board shall separately follow the procedures set forth in this Article as to each Project so affected.

Section 2 - Reconstruction Pursuant to Meeting. If the Board determines that the requirements of the Acceptable Range of Reconstruction Cost have not been met, or if the requisite number of affected Owners object in writing to a decision by the Board to reconstruct pursuant to the Section entitled "Automatic Reconstruction" of this Article, the Board shall call a meeting of the affected Owners by mailing notice of such determination and of the meeting to such Owner at his address as shown on the records of the Association. Such meeting shall be held not less than fourteen (14) days and not more than twenty-one (21) days after (i) the meeting at which the Board makes its determination that the cost of reconstruction was not within the Acceptable Range of Reconstruction Cost, or (ii) the date indicated on the notice of the Board sent to Members pursuant to subsection (c) of the Section entitled "Automatic Reconstruction" above, as the case may be. The affected Owners may, by a vote at such meeting or by the written consent of not less than sixty-six and two-thirds percent (66-2/3%) of the affected Owners based on one (1) vote for each Condominium determine to proceed with the reconstruction. If the affected Owners so determine to reconstruct the partially or totally destroyed Condominium Building, the Board shall levy a uniform Reconstruction Assessment against each affected Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds.

Section 3 - Decision to Reconstruct; Procedure After Meeting. In the event that the Association undertakes reconstruction pursuant to the Section entitled "Reconstruction Pursuant to Meeting" of this Article, the following shall apply:

(a) Immediately after such meeting, the Board shall notify by first-class mail, registered or certified, all Institutional Mortgagees of Condominiums in totally or partially destroyed Condominium Buildings of the Association's decision to undertake reconstruction. The Board shall also send a true copy of all such notices to the Trustee.

(b) In the event that any such Institutional Mortgagee desires to apply insurance proceeds allocable to the Condominium encumbered by its Mortgage to the reduction or elimination of the indebtedness secured by such Mortgage, such Institutional Mortgagee shall notify the Trustee and the Association in writing of such election within thirty (30) days of the date the notice of the Board sent pursuant to subsection (a) above is deposited in the United States mail. Upon receipt of timely notice from any such Institutional Mortgagee, the Trustee shall promptly pay to such Institutional Mortgagee the insurance proceeds allocable to the Condominium encumbered by the Mortgage of such Institutional Mortgagee for the purpose of the reduction or elimination of the obligation secured by such Mortgage; provided, however, in no event shall the Trustee pay to such Institutional Mortgagee an amount greater than (i) the outstanding indebtedness secured by said Mortgage, or (ii) the insurance proceeds allocated to such Condominium, whichever of (i) or (ii) is the lesser. Simultaneously with such payment, the Trustee shall notify the Board of the amount of such payment. The Trustee shall not make any payments to Institutional Mortgagees pursuant to this subsection (b), unless such Institutional Mortgagee notifies the Trustee of its election prior to the expiration of the thirty (30) day period following the deposit in the United States mail of the Board's notice to such Institutional Mortgagee pursuant to this subsection (b).

(c) As to each Condominium for which insurance proceeds have been paid to the Trustee and for which an Institutional Mortgagee has not timely notified the Trustee of its election to apply such proceeds to the reduction or elimination of the obligation owing to such Institutional Mortgagee, the Trustee promptly upon the expiration of the appropriate time period shall pay all insurance proceeds allocable to such Condominium to the Board to be applied to reconstruction undertaken by the Association pursuant to the Section entitled "Reconstruction Pursuant to Meeting" of this Article. In the event that the Trustee has paid a portion of the insurance proceeds allocable to a Condominium to an Institutional Mortgagee after timely request therefor, simultaneously with such payment the Trustee shall pay all remaining proceeds, if any, allocable to such



Condominium to the Board to be applied to reconstruction undertaken by the Association pursuant to the Section entitled "Reconstruction Pursuant to Meeting" of this Article.

(d) For the purposes of this Article, the amount of insurance proceeds "allocated" or "allocable" to a Condominium shall be determined pursuant to this subsection (d). In the event that the insurance carrier allocates casualty insurance proceeds among Condominiums for which such proceeds are payable, such allocation shall be final and binding on the Owners, the Mortgagees, the Association and the Trustee. The Board shall make every possible effort to cause such insurance carrier to make such allocation. In the event that such allocation is not made, the Trustee shall allocate such proceeds among such Condominiums in totally or partially destroyed Condominium Buildings based upon the relative value of the Condominiums as established by the assessed valuation of each Condominium as last determined prior to the destruction by the tax assessor of the governmental entity having jurisdiction over the Covered Property and to the extent to which the Units involved have been affected by the destruction. Such allocation made by the Trustee shall be final and binding on the Owners, the Mortgagees and the Association.

(e) In the event that the Trustee pays insurance proceeds to any Institutional Mortgagee pursuant to this Section, the Owner of the Condominium which was encumbered by the Mortgage of such Institutional Mortgagee shall pay to the Association an amount equal to the insurance proceeds paid by the Trustee to such Institutional Mortgagee. In the event that such Owner has failed to pay such amount within thirty (30) days of a written demand therefor by the Association, the Board may levy a Special Assessment against such Owner and his Condominium for such amount. In the event such Special Assessment is not paid within thirty (30) days of its due date, the Board may effect the remedies of Section 1356 of the California Civil Code and the Article hereof entitled "Nonpayment of Assessments." Such Special Assessment and any Regular Assessment levied subsequent thereto shall not be a personal liability of the Owner against whom such Assessments are levied and shall only be charged against his Condominium.

Section 4 - Decision Not to Reconstruct; Procedure After Meeting. In the event that the affected Owners decide not to reconstruct at the meeting called pursuant to the Section entitled "Reconstruction Pursuant to Meeting" of this Article, the Trustee shall apply the insurance proceeds as follows:

(a) The Trustee shall first apply insurance proceeds to the reduction or elimination, as the case may be, of all outstanding Mortgages encumbering Condominiums for which insurance proceeds have been paid by reason of the casualty; provided, however, as to any Condominium, the Trustee shall not pay insurance proceeds to Mortgagees in an amount greater than (i) the outstanding indebtedness secured by Mortgages encumbering said Condominium, or (ii) the insurance proceeds allocable to said Condominium, whichever of (i) or (ii) is the lesser.

(b) All proceeds allocated to Condominiums and remaining after payments to Mortgagees pursuant to subsection (a) shall be distributed by the Trustee to such Owners in the partially or totally destroyed Condominium Building after the deduction of an amount determined pursuant to subsection (c) below.

(c) The Board shall levy a uniform Reconstruction Assessment against all affected Owners equal to the costs of clearing of the debris of totally or partially destroyed Condominium Buildings and cleaning of the area. The Trustee shall pay to the Board said Reconstruction Assessments of the Owners of partially or totally destroyed Condominiums out of the insurance proceeds allocated to such Owners prior to the distribution of such proceeds thereto pursuant to subsection (b) above. In the event that insurance proceeds allocated to any Owner, after deduction of proceeds paid to Mortgagees, is not sufficient to pay the entire Reconstruction Assessment levied against such Owner, such Owner shall not be relieved of his obligation to pay any such excess.

Section 5 - Certificate of Intention to Reconstruct. In the event that the Association undertakes reconstruction pursuant to this Article, the Board shall execute, acknowledge and record in the Office of the County Recorder of Orange County, California, a certificate declaring the intention of the Association to rebuild not later than one hundred eighty (180) days from the date of destruction. If no such certificate of reconstruction is so filed within said one hundred eighty (180) day period, it shall be conclusively presumed that the Association has determined not to undertake reconstruction pursuant to this Article.

Section 6 - Partition. In the event that a certificate described in the Section entitled "Certificate of Intention to Reconstruct" of this Article is not recorded within the one hundred eighty (180) day period provided therein, the right of any Owner to partition through legal action as described in the Article hereof entitled "Limitations Upon the Right to Partition and Severance" shall forthwith revive.

Section 7 - Compliance with Condominium Plan. Any reconstruction undertaken pursuant to this Article shall substantially conform to the Condominium Plan, as amended pursuant to the Section entitled "Amendment of Condominium Plan" of this Article, or otherwise, if appropriate.

Section 8 - Negotiations with Insurer. The Board shall have full authority to negotiate in good faith with representatives of the insurer of the totally or partially destroyed Condominium Building or any other portion of the Common Area, and to make settlement with the insurer for less than full insurance coverage on the damage to the Condominium Building or any other portion of the Common Area. Any settlement made by the Board in good faith shall be binding upon all Owners.

Section 9 - Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practical and in a lawful and workmanlike manner.

Section 10 - Amendment of Condominium Plan. In the event that reconstruction is to take place pursuant to this Article, the Board shall have the power to record an amendment to the Condominium Plan so that the Condominium Plan conforms to the Condominium Buildings as designed to be reconstructed; provided, however, the Board shall not file an amendment to the Condominium Plan without the prior authorization of the Mortgagee of a Mortgage encumbering any Condominium, the plan of which shall be altered by such amendment. In the event that the Board, together with said Mortgagees, if appropriate, decide to record such amendment to the Condominium Plan, all Owners within the affected Project and the record holders of all security interests in said Project shall execute and acknowledge said amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. Said Owners and holders of security interests shall also execute such other documents or take such other actions as required to make such amendment effective.

Section 11 - Reconstruction of Common Area and Community Facilities. If Common Area or Community Facilities other than a Condominium Building is totally or partially destroyed, the Board shall cause reconstruction to commence by the earlier of (i) thirty (30) days of the Association's receipt of the insurance proceeds payable by reason of such destruction, or (ii) ninety (90) days after each destruction, and to thereafter be diligently and continuously prosecuted to completion within a reasonable period of time. The Trustee shall pay to the Board all insurance proceeds payable by reason of such destruction and the Board shall apply such proceeds to the costs of reconstruction. In the event that the insurance proceeds are not sufficient to pay the costs of reconstruction of the Common Area or Community Facilities, the Board shall levy a uniform Reconstruction Assessment against all Owners in the Project which suffered such damage to

its Common Area in a total amount equal to such difference and in the case of Community Facilities, a similar Reconstruction Assessment shall be levied against all Members. If the insurance proceeds exceed the cost of reconstruction, the Board shall in the case of Common Area, distribute the excess in equal shares to each Owner in such Project or to their Mortgagees as their interests may appear, and in the case of Community Facilities, to all Owners.

Section 12 - Availability of Labor and Material. In determining whether the plans for a reconstructed Condominium Building are in substantial conformance with the Condominium Plan, the Board may take into consideration the availability and expense of the labor and materials in the original construction of the Project. If such labor or material is not available or is prohibitively expensive at the time of reconstruction, the Board may permit the substitution of other labor or material as it deems proper.

Section 13 - Contracting for Reconstruction. In the event repair or reconstruction is undertaken pursuant to this Article, other than the Section entitled "Repair of Units" hereof, the Board or its delegates shall have the sole ability to contract for such work as may be necessary for said repair and reconstruction.

Section 14 - Seventy-Five Percent (75%) Vote Required. All insurance proceeds available from any total or partial destruction shall be applied to the purposes set forth in this Article, except upon the vote or written assent of not less than seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage held thereby.

Section 15 - Costs of Collecting Insurance Proceeds. If it should become necessary in the judgment of the Board to incur costs for appraisals, legal fees, court costs and similar expenses in order to determine or collect insurance proceeds, such costs shall be first deducted before distribution or application of insurance proceeds as provided in this Article.

ARTICLE X  
EMINENT DOMAIN

Section 1 - Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Covered Property.

Section 2 - Representation by Board in Condemnation Proceeding. In the event of a taking, the Board shall, subject to the right of all Mortgagees who have requested the right to join the Board in the proceedings, represent all of the Members in an action to recover all awards. No Member shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Article. The Board is further empowered, subject to the limitations herein, as the sole representative of the Members, in all aspects of condemnation proceedings not specifically covered herein.

Section 3 - Procedure on Taking. In the event of a taking of Condominiums, the Board shall distribute the award forthcoming from the taking authority according to the provisions of this Section after deducting therefrom fees and expenses related to the condemnation proceeding including, without limitation, fees for attorneys and appraisers and court costs. In the event that the taking is by judgment of condemnation and said judgment apportions the award among the Owners and their respective Mortgagees, the Board shall distribute the amount remaining after such deductions among such Owners and Mortgagees on the allocation basis set forth in such judgment. In the event that the taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Board shall distribute the award among the Owners in the Project in which the taking occurs and their respective Mortgagees based upon the relative values of the Condominiums affected by such taking as determined by: (i) the assessed valuation of each Condominium as last determined prior to the taking by the tax assessor of the governmental entity having jurisdiction over the Project, and (ii) the degree to which each Condominium has been affected by the taking. The determination by the Board as to the degree each Condominium has been affected by the taking shall be final and binding on all Owners and Mortgagees. Nothing contained herein shall entitle an Owner to priority over a Mortgagee of his Condominium as to the portion of the condemnation award allocated to his Condominium. In no event shall any portion of such award be distributed by the Board to an Owner and/or the Mortgagees of his Condominium in a total amount greater than the portion allocated hereunder to such Condominium.

Section 4 - Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

Section 5 - Revival of Right to Partition. Upon a taking which renders more than fifty percent (50%) of the Condominiums in any Project incapable of being restored to at least ninety-five percent (95%) of their floor area and substantially their condition prior to the taking, the right of any Owner within such Project to partition through legal action as described in the Article hereof entitled "Limitations Upon the Right to Partition and Severance" shall forthwith revive. The determination as to whether Condominiums partially taken are capable of being so restored shall be made by the Board, whose decision shall be final and binding on all Owners and Mortgagees.

Section 6 - Awards for Members' Personal Property and Relocation Allowances. Where all or part of the Covered Property is taken, each Member shall have the exclusive right to claim all of the award made for his personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. Notwithstanding the foregoing provisions, the Board shall represent each Member in an action to recover all awards with respect to such portion, if any, of Members' personal property as is at the time of any taking, as a matter of law, part of the real estate comprising any Condominium, and shall allocate to such Member so much of any awards as is attributable in the taking proceedings, or failing such attribution, attributable by the Board to such portion of Members' personal property.

Section 7 - Notice to Members. The Board, immediately upon having knowledge of any taking or threat thereof with respect to the Covered Property, or any portion thereof, shall promptly notify all Members.

Section 8 - Change of Condominium Interest. In the event of a taking, and notwithstanding the Section entitled "Amendments" of the Article herein entitled "General Provisions," the Board may amend the Condominium Plan to reflect the change in the Project or Projects affected by a taking. In the event that the Board decides to record such amendment to the Condominium Plan, all Owners within such Project or Projects and the record holders of all security interests in such Project or Projects shall execute and acknowledge said amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. Said Owners and holders of security interests shall also execute such other documents or take such other actions as required to make such amendment effective. The Board shall cause a notice of change in the Condominium Plan to be sent to each Owner and Mortgagee in such Project or Projects within ten (10) days of the filing of such amendments in the County Recorder's Office of Orange County, California.

Section 9 - Award for Community Facilities. Any awards received on account of the taking of Community Facilities shall be paid to the Association. The Board may in its sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Members. The rights of an Owner and the Mortgagee of his Residence as to any pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Residence.

BK 1232461191

ARTICLE XI  
USE RESTRICTIONS

Section 1 - Commercial Use. Subject to the Section entitled "Construction and Sales" of the Article hereof entitled "Easements", no part of a Residence shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or any nonresidential purposes; provided, however, that the Association shall have the right to provide or authorize such services on the Common Area or Community Facilities as it deems appropriate for the enjoyment of the Common Area or Community Facilities or for the benefit of the Members.

Section 2 - Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of the Covered Property except such signs as may be used by Declarant or its sales agents in connection with the development of the Covered Property and sale of the Residences; provided, however, that a Member may display in his Residence, a sign advertising its sale or lease by him so long as such sign shall comply with any customary and reasonable standards promulgated by the Board as to the size, color, shape or other qualification for permitted signs.

Section 3 - Nuisance. No noxious or offensive trade or activity shall be carried on upon any Residence, or any part of the Covered Property nor shall anything be done thereon which may be, or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Residence, or which shall in any way increase the rate of insurance.

Section 4 - Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall hereafter be used on any Residence at any time, either temporarily or permanently.

Section 5 - Vehicles. No trailer, camper, boat or similar equipment shall hereafter be permitted to remain upon the Covered Property, including, without limitation, streets, alleys or driveways, unless placed or maintained within an enclosed area, or unless obscured from view of adjoining Residences, streets, or alleys by a fence or appropriate screen, nor permitted to be parked other than temporarily, on any street, alley, or any other portion of the Covered Property. Temporary parking shall mean parking of vehicles belonging to guests of Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Covered Property, including the assessment of charges to Owners who violate or whose invitees violate, such rules. Any charges so assessed shall be Special Assessments. In addition, the Board may designate areas within the Covered Property for parking of campers and similar equipment without the requirement of fencing or screening.

Section 6 - Animals. No animals, livestock or poultry of any kind, shall be raised, bred or kept upon the Covered Property, except that dogs, cats or other household pets may be kept on the Residences, provided they are not kept, bred or maintained for any commercial purpose, or in numbers deemed unreasonable by the Board. Notwithstanding the foregoing, no animals or fowl may be kept on the Residences which in the good faith judgment of the Board or a committee selected by the Board for this purpose, result in an annoyance or are obnoxious to residents in the vicinity. All animals permitted to be kept by this Section shall be kept on a leash when on any portion of the Covered Property except within a Residence.

Section 7 - Oil and Mineral Rights. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in the Covered Property nor, subsequent to the recording of this Declaration, shall oil wells, tanks, tunnels, or mineral excavations or shafts be installed upon the surface of the Covered Property or within five hundred (500) feet below the surface of such properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Covered Property.

Section 8 - Unsightly Items. All weeds, rubbish, debris, or unsightly material or objects of any kind shall be regularly removed from the Residences and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Residence unless obscured from view of adjoining streets or portions of the Covered Property from a height of six (6) feet or less.

Section 9 - Antennae. No television, radio, or other electronic antenna or device of any type shall hereafter be erected, constructed, placed or permitted to remain on the Covered Property unless and until the same shall have been approved in writing by the Architectural Committee, or unless the same be contained within a building.

Section 10 - Drainage. All drainage of water from any Residence shall drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under any other portion of the Covered Property unless an easement for such purpose is granted.

Section 11 - Garages. No Garage doors shall be permitted to remain open except for a temporary purpose, and the Board may adopt rules for the regulation of the opening of Garage doors, including the assessment of charges to Owners who violate or whose invitees violate such rules. Any charges so assessed shall be Special Assessments.

Section 12 - Window Covers. Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil or similar materials.

Section 13 - California Vehicle Code. The City shall be allowed to impose and enforce all provisions of the applicable California Vehicle Code sections on any private streets contained within the Covered Property.

Section 14 - Single-Family Residential. All Residences shall only be used for the residential purposes of a family.

ARTICLE XII  
RIGHTS OF ENJOYMENT

Section 1 - Members' Right of Enjoyment: Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Area, regardless of the Project in which such Member is an Owner, and in and to the Community Facilities and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Residence, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, without limitation, the following provisions:

- (a) The right of the Association to limit the number of guests of Members and to limit the use of the recreational facilities, if any, on the Common Area by persons not in possession of a Residence, but owning a portion of the interest in a Residence required for membership.
- (b) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Community Facilities and Common Area.
- (c) The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Community Facilities or adding new Community Facilities and in aid thereof, to mortgage said property, provided that the prior affirmative vote or written approval of a majority of each of the Class A and the Class B Members has been obtained to mortgage said property, and provided further that the rights of the lender thereunder shall be subordinated to the rights of the Members. In the event of a default upon any such mortgage of the Community Facilities, the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of the Community Facilities to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored.
- (d) The rights of the Association to suspend the right of a Member to use the recreational facilities, if any, located on the Common Area or Community Facilities or any portion thereof designated by the Board during any time in which any Assessment against his Residence remains unpaid and delinquent or for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association, provided that any suspension of such right to use such recreational facilities, if any, located on the Common Area or Community Facilities, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Member's right to use any portion of the Covered Property necessary for such Member to gain access to his Residence.
- (e) The right of the Association subject to the approval rights of Institutional Mortgagees pursuant to the Article hereof entitled "Rights of Lenders", to dedicate or transfer all or any part of the Community Facilities to any public agency, authority or utility or other entity. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Community Facilities to a special tax assessment district or to the City, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the voting power of the membership has been recorded, agreeing to such dedication or transfer. The certificate of the President and the Secretary of the Association attached to such instrument certifying that the Members signing such instrument represent two-thirds (2/3) of the voting power of the Association shall be deemed conclusive proof thereof.
- (f) The right of the Association to establish in cooperation with the City, a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of this Section, all or any portion of the Community Facilities to said district.



(g) The right of the Association to grant easements on, over and under the Common Area to public utilities or governmental entities or agencies; provided that such easement shall not unreasonably interfere with the right of any Owner to the use and enjoyment of his Residence and the Common Area. No such easement shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the voting power of the Members residing in the Project in which the easement will be granted has been recorded agreeing to the granting of such easement. The certificate of the President and Secretary of the Association attached to such instrument certifying that the Members signing such instrument represent two-thirds (2/3) of the voting power of the Members residing in the Project in which the easement will be granted shall be deemed conclusive proof thereof.

Section 2 - Delegation of Use. Any Member may delegate his right of enjoyment to the Community Facilities and Common Area to the members of his family or his tenants who reside on his Residence, or to his guests, subject to rules and regulations adopted by the Board.

Section 3 - Waiver of Use. No member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Residence owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws and Association Rules, by waiver of the use and enjoyment of the Community Facilities and Common Area, or the abandonment of his Residence.

Section 1 - Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

Section 2 - Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

Section 3 - Certain Rights and Easements Reserved to Declarant.

(a) Utilities. Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as are needed to service the Covered Property are hereby reserved by Declarant, together with the right to grant and transfer the same; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Residences or the Common Area and Community Facilities.

(b) Cable Television. There is hereby reserved to Declarant over the Covered Property, together with the right to grant and transfer the same, the right to emplace on, under or across the Covered Property transmission lines and other facilities for a community antenna television system and thereafter to own and convey such lines and facilities and the right to enter upon the Covered Property to service, maintain, repair, reconstruct and replace said lines or facilities; provided, however, that the exercise of such rights shall not unreasonably interfere with any Owner's reasonable use and enjoyment of his Residence.

(c) Oil and Mineral Rights. There is hereby reserved to Declarant, together with the right to grant and transfer the same, all oil, oil rights, minerals, mineral rights, natural gas rights, and other hydrocarbons by whatsoever name known, geothermal steam, and all products derived from any of the foregoing, that may be within or under the Covered Property together with the perpetual right of drilling, mining, exploring and operating therefor and storing in and removing the same from said land or any other land, including the right to whipstock or directionally drill and mine from lands other than the Covered Property, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Covered Property and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines without, however, the right to drill, mine, store, explore and operate through the surface or the upper 500 feet of the subsurface of the Covered Property.

(d) Water Rights. There is hereby reserved to Declarant with full right and power, among others, to transfer or assign to others or to use or utilize on any other property owned or leased by Declarant, any and all water rights or interests in water rights no matter how acquired by Declarant, and owned or used by Declarant in connection with or with respect to the Covered Property, whether such water rights shall be riparian, overlying, appropriative, percolating, prescriptive or contractual, provided, however, that the reservation made herein shall not reserve to or for the benefit of Declarant any right to enter upon the surface of the Covered Property in the exercise of such rights.

(e) Construction and Sales. There is hereby reserved to Declarant, together with the right to grant and transfer the same to Development Lessees, Declarant's sales agents and representatives and prospective purchasers of Residences, over the Covered Property as the same may from time to time exist, easements for construction, display, maintenance, sales and exhibit purposes in connection with the erection and sale or lease of Residences within the Covered Property; provided, however, that such use shall not be for a period beyond the earlier of (i) three (3) years from the conveyance of the first Residence by Declarant or (ii) the sale by Declarant of all Residences within the Covered

Property, and provided further that no such use by Declarant and others shall otherwise restrict the Members in the reasonable use and enjoyment of the Covered Property.

#### Section 4 - Certain Easements for Owners.

(a) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, the Owners of any Residence served by said connections, lines or facilities shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service his Residence, and to enter upon the Residences owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Residence caused by such entry as promptly as possible after completion of work thereon.

(b) Ingress, Egress and Recreational Rights. Declarant hereby reserves to itself, its successors and assigns, and agrees that it will grant to all Owners nonexclusive easement for ingress, egress, pedestrian walkway and general recreational purposes over and upon the Community Facilities and Common Area. Such easements when granted to Owners shall be subject to the rights of the Association as set forth in the Article hereof entitled "Rights of Enjoyment".

#### Section 5 - Certain Easements for Association.

(a) Association Rights. There is hereby reserved to Declarant easements over the Covered Property, together with the right and obligation to grant and transfer the same to the Association, for the purpose of permitting the Association to discharge its obligations as described in this Declaration.

(b) Rights and Duties: Utilities and Cable Television. Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, and said connections, lines or facilities serve the Community Facilities, the Association shall have the right and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service the Community Facilities and to enter upon the Residences owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided the Association or utility company shall promptly repair any damage to a Residence caused by such entry as promptly as possible after completion of work thereon.

Section 6 - Support, Settlement and Encroachment. There is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners, the following reciprocal easements for the purposes set forth below:

(a) An easement appurtenant to each Residence which is contiguous to another Residence or Common Area or Community Facilities which Residence shall be the dominant tenement and the contiguous Residence or Common Area or Community Facilities shall be the servient tenement.

(b) An easement appurtenant to the Common Area or Community Facilities contiguous to a Residence, which Common Area or Community Facilities shall be the dominant tenement and which contiguous Residence shall be the servient tenement.

(c) An easement appurtenant to the Community Facilities which are contiguous to Common Area, which Community Facilities shall be the dominant tenement and which Common Area shall be the servient tenement.

(d) It is provided, however, that in the event Community Facilities are the dominant tenement in an easement described in this Section, Declarant shall have the right to transfer said easement to the Association and not to Owners.

(e) Said easements shall be for the purposes of:

(i) support and accommodation of the natural settlement of structures;

(ii) encroachment by reason of a roof or eave overhang from a Residence and for the maintenance of such roof or eave overhang by the Owner of the dominant tenement;

(iii) encroachment of fireplaces, doorsteps, foundation footings, garage doors, utilities and other appurtenances or fixtures and the maintenance thereof by the Owner of the dominant tenement, which, in the construction of the structures upon the dominant tenement or from any reconstruction or modifications of such structures, project beyond the external surface of the outer walls of such structures.

Section 7 - Montgomery Street Easement. There is hereby reserved to Declarant, together with the right and obligation to grant and transfer the same to the owners of that portion of the property covered by the Master Declaration which is not part of the Covered Property of this Declaration, easements for ingress and egress purposes as well as for purposes of maintaining said property in a manner which does not unreasonably interfere with the use and enjoyment of the Covered Property, over the portion of the Covered Property shown as Montgomery Street on Exhibit "G".

**ARTICLE XIV  
INTEGRATED NATURE OF THE COVERED PROPERTY**

The real property described on Exhibit C (hereinafter in this Article referred to as the "Annexation Property") and/or any other real property may be annexed to and become subject to this Declaration by any of the methods set forth herein-after in this Article, as follows:

Section 1 - Development of the Covered Property. Declarant intends to sequentially develop the Annexation Property on a phased basis; however, Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Moreover, Declarant reserves the right to subject all or any portion of the Annexation Property to the plan of this Declaration or one or more separate declarations of covenants, conditions and restrictions which subjects said property to the jurisdiction and powers of a homeowners association or other entity with powers and obligations similar to the Association and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex the Annexation Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property, and such property shall not become subject to this Declaration unless and until a Supplementary Declaration shall have been so executed and recorded.

Section 2 - Supplementary Declarations. A Supplementary Declaration shall be a writing in recordable form which annexes real property to the plan of this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions as set forth in this Declaration relating to Supplementary Declarations. Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, or any merger or consolidation, revoke, modify or add to the covenants established by this Declaration with respect to the existing property.

Section 3 - Annexation Without Approval and Pursuant to General Plan. All or any part of the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Supplementary Declaration covering the portion of the Annexation Property to be annexed, shall be executed and recorded by Declarant; provided, however, no Supplementary Declaration shall be so executed and recorded pursuant to this Section more than three (3) years (i) subsequent to the recordation of this Declaration or (ii) subsequent to the last recordation of a Supplementary Declaration, whichever of (i) and (ii) shall have later occurred. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Residences in said annexed real property shall automatically be Members.

Section 4 - Annexation Pursuant to Approval. Upon approval in writing of the Association, pursuant to a two-thirds (2/3) majority of the voting power of each class of its Members, or the written assent of such Members, any person who desires to add real property, other than the Annexation Property to the plan of this Declaration and to subject such property to the jurisdiction of the Association, may file of record a Supplementary Declaration. The provisions of this Section shall also apply to the Annexation Property subsequent to the expiration of the power of Declarant to annex such property without the approval of the Members as provided in this Article. The certificate of the President and the

Secretary of the Association attached to any Supplementary Declaration recorded pursuant to this Section certifying that the required two-thirds (2/3) majority of the voting power of each class of Members has approved the recordation of such Supplementary Declaration shall be deemed conclusive proof thereof.

Section 5 - Mergers or Consolidations. Upon a merger or consolidation of the Association with another association which merger or consolidation must be approved by two-thirds (2/3) of each class of Members, the Association's properties, rights and obligations may, by operation of law, be transferred to the 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 the covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants and restrictions established upon any other property as one plan.

Section 6 - Limitation Upon Annexation. Notwithstanding the foregoing Sections of this Article, no annexation of additional real property to this Declaration, unless there has been approval thereof by a majority of the voting power of the Association, shall have the effect of either overburdening the common interests of the then existing Owners, except as set forth in this Declaration or substantially increasing the Assessments of such Owners if such increase has not been disclosed in the California Department of Real Estate's Final Subdivision Public Report applicable to such Owner's Residence.

ARTICLE XV  
RIGHTS OF LENDERS

Section 1 - Filing Notice; Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Residence within the Covered Property. Such notice need not state which Residence or Residences are encumbered by such Mortgage, but shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

Section 2 - Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Residence, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Residence except as otherwise provided in this Article.

Section 3 - Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

Section 4 - Resale. It is intended that any loan to facilitate the resale of any Residence after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

Section 5 - Relationship with Assessment Liens.

(a) The lien provided for in the Article hereof entitled "Nonpayment of Assessments" for the payment of Assessments shall be subordinate to the lien of any Mortgage which was recorded prior to the date any such Assessment becomes due.

(b) If any Residence subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take

title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any Mortgagee who obtains title to a Residence by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Residence free of any lien or claim for unpaid Assessments against such Residence which accrue prior to the time such Mortgagee or purchaser takes title to such Residence, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Residences within the Covered Property.

(d) Nothing in this Section shall be construed to release any Owner from his obligations to pay for any Assessment levied pursuant to this Declaration.

Section 6 - Seventy-Five Percent (75%) Vote of Institutional Mortgagees. Except upon the prior written approval of at least seventy-five percent (75%) of Institutional Mortgagees, based on one (1) vote for each First Mortgage held, neither the Association nor the Members shall be entitled to do any of the following:

(a) Abandon or terminate by any act or omission the condominium legal status of the Covered Property, or any part thereof, except for abandonment or termination provided by law and/or this Declaration in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) Amend a material provision of this Declaration, the Bylaws or the Articles, and without limiting the generality of the foregoing, the provisions of the Article hereof entitled "Insurance", this Article, any other rights granted specifically to Mortgagees pursuant to any other provision of this Declaration, or any provision of this Declaration, the Articles, or Bylaws which is a requirement of FNMA, GNMA, FHLMC, FHA or VA shall be deemed to be material; or

(c) Effectuate any decision to terminate professional management and assume self-management of the Covered Property;

(d) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Area or Community Facilities; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area or Community Facilities shall not require such approval.

(e) Partition or subdivide a Unit or any elements thereof;

(f) Change the Ownership interest of the Condominium as provided in the Section entitled "Condominium" in the Article hereof entitled "Definitions".

(g) Dissolve the Association or abandon or terminate the maintenance of the Community Facilities by the Association.

Section 7 - Other Rights of Institutional Mortgagees. Any Institutional Mortgagee or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours;

(b) Receive the annual audited financial statement of the Association ninety (90) days following the end of the Association's fiscal year;

(c) Receive written notice of all annual and special meetings of the Members or of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been



corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and.

(d) Receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Residence is encumbered by such Institutional Mortgagee's Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees who have delivered a written request therefor to the Association specifying the Residence or Residences to which such request relates.

Section 8 - Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

Section 9 - Right of First Refusal. In the event this Declaration is amended to provide for any right of first refusal to purchase or lease a Residence in the Association, a Mortgagee who comes into possession of a Residence pursuant to a judicial foreclosure, a deed in lieu of foreclosure or a trustee's sale shall be exempt therefrom. In addition conveyances to and from third party foreclosure purchasers and mortgage insurers and guarantors shall also be exempt.

Section 10 - Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 11 - Voting Rights of Institutional Mortgagees. In the event of a default by an Owner in any payment due under the terms of any Institutional Mortgage held by an Institutional Mortgagee or the promissory note secured thereby, the Institutional Mortgagee or his representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Residence at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

Section 12 - Notice of Destruction or Taking. In the event that any Condominium, Common Area or Community Facilities and any improvements thereto or any portion thereof is damaged or is made the subject of any condemnation proceedings in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "damaged" or "taking" shall mean damage or taking to the Common Area or Community Facilities exceeding Ten Thousand Dollars (\$10,000.00) or damage or taking to a Unit exceeding One Thousand Dollars (\$1,000.00). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such Institutional Mortgagee.

Section 13 - Payment of Taxes or Premiums by Institutional Mortgagees. Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area or Community Facilities, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area or Community Facilities and Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Institutional Mortgagee which requests the same to be executed by the Association.

ARTICLE XVI  
EFFECTS OF FEDERAL PROGRAMS

Section 1 - FHA/VA Approval. Although Declarant has not obtained the approval of FHA or VA in connection with the development of the initial Covered Property, such approval may be sought by Declarant with respect to real property which is subsequently annexed to the Covered Property pursuant to the Article of this Declaration entitled "Integrated Nature of the Covered Property". In the event that the approval of FHA or VA is so sought for the purpose of having FHA and/or VA insure or guarantee any Mortgage or providing any form of assistance within the purview of such agencies with respect to the Covered Property, the rules and regulations of FHA and VA as the same exist at the date of recording of this Declaration would require this Declaration to be amended in certain respects and additionally require that FHA and/or VA participate in certain decisions affecting the entire Covered Property and the management of the Association.

Section 2 - Automatic Amendments. Effective as of the date there is recorded by Declarant a Supplementary Declaration declaring that this Declaration is hereby amended as follows, this Declaration shall be so amended without the necessity of any vote or written assent of the Owners or Mortgagees to provide that the following actions will require the prior approval of the FHA or VA, or both, as specified in said Supplementary Declaration:

- (a) Dedication or other transfer of any portion of the Community Facilities pursuant to the Articles hereof entitled "Duties and Powers of the Association" and "Rights of Enjoyment";
- (b) Alteration of the Community Facilities or the Residences, construction of additional improvements, the establishment of additional licenses, reservations and rights-of-way, or alteration of construction plans and designs, all pursuant to the Section entitled "Construction by Declarant" of the Article of this Declaration entitled "General Provisions".
- (c) Mergers or consolidations of the Association pursuant to the Article hereof entitled "Integrated Nature of the Covered Property";
- (d) Any amendment or modification of this Declaration pursuant to the Section entitled "Amendment" of the Article of this Declaration entitled "General Provisions";
- (e) Any amendment or modification of the Articles and Bylaws; and
- (f) Annexation of additional properties to the plan of this Declaration pursuant to the Article hereof entitled "Integrated Nature of the Covered Property";
- (g) The Association shall submit for review and approval to FHA and/or VA sixty (60) days prior to the beginning of each fiscal year of the Association, a budget of the Common Expenses for the ensuing fiscal year on an FHA and/or VA model form of budget indicating the amount of the Regular Assessments, and such submittal shall also include similar budgets for FHA/s and/or VA/s review and approval for Capital Improvements or Reconstruction Assessments if such Assessments are contemplated for the next fiscal year period. The Supplementary Declaration amending the Declaration as aforesaid shall specify whether said budget shall require the approval of FHA, of VA, or both.

Section 3 - Regulatory Agreement. In the event a Supplementary Declaration making the statement specified in the Section of this Article entitled "Automatic Amendments" is recorded by Declarant, if requested so to do by FHA and/or VA, the Board shall be automatically authorized and shall be obligated to execute a Regulatory Agreement on FHA Form No. 3278 (revised August 1969) or such later version thereof then in use or the analogous VA form, or both as modified to reflect any peculiarities pertaining to the Covered Property as shall be deemed appropriate by FHA and/or VA.

ARTICLE XVII  
LIMITATIONS UPON THE RIGHT TO PARTITION AND SEVERANCE

Section 1 - No Partition. The right of partition is hereby suspended, except that the right to partition shall revive and the Project may be sold as a whole when the conditions for such action set forth in the Articles hereof entitled "Destruction of Improvements" and "Eminent Domain" have been met; provided, however, notwithstanding the foregoing, any Owner may, upon the prior written approval of the Institutional Mortgagee of the First Mortgage encumbering his Condominium, bring an action for partition by sale of the Project in which his Condominium is located, as provided in Section 1354 of the Code of Civil Procedure of the State of California or any similar statute then in effect upon the occurrence of any of the events therein provided. Provided, further, that if any Condominium shall be owned by two (2) or more co-tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants.

Section 2 - No Severance. The elements of a Condominium and other rights appurtenant to the ownership of a Condominium are inseparable, and each Owner agrees that he shall not, while this Declaration or any similar declaration is in effect, make any conveyance of less than an entire Condominium and such appurtenances. Any conveyance made in contravention of this Section shall be void. The provisions of this Section shall terminate on the date that judicial partition shall be decreed.

Section 3 - Proceeds of Partition Sale.

(a) Whenever an action is brought for the partition by sale of a Project, whether upon the occurrence of any of the events provided in Section 1354 of the Code of Civil Procedure of the State of California (or similar statute then in effect) or upon the revival of the right to partition pursuant to the Articles hereof entitled "Destruction of Improvements" or "Eminent Domain", the Owners of Condominiums in such Project shall share in the proceeds of such sale in the same proportion as their interest in the Common Area of such Project. As used in the foregoing sentence, such interest of each Owner shall be determined by comparing (i) the latest assessed valuation of an Owner's Condominium as determined by the tax assessor having authority over such Project, to (ii) the total of such assessed valuation for all Condominiums in such Project.

(b) The distribution of the proceeds of any such partition sale shall be adjusted as necessary to reflect any prior distribution of insurance proceeds or condemnation award as may have been made to Owners and their Mortgagees pursuant to the Articles hereof entitled "Destruction of Improvements" and "Eminent Domain". In the event of any such partition and sale, the liens and provisions of all Mortgages or Assessment liens encumbering Condominiums within the Project or Projects so encumbered shall extend to each applicable Owner's interest in the proceeds of such partition and sale. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment of any Mortgage or Assessment lien encumbering such proceeds as aforesaid.

ARTICLE XVIII  
PROTECTION OF THE PROJECT FROM LIENS

JA 12324PG1205

Section 1 - Association to Defend Certain Actions. In the event that a lawsuit is brought against all or substantially all of the Members within a Project which will or could result in any lien or encumbrance being levied against an entire Project, the Association shall defend such lawsuit and the costs of such defense shall be a Special Assessment against all of the Members within such Project joined as defendants in such lawsuit; provided, however, in the event that an insurance carrier is obligated to provide such defense under a policy of insurance carried by the Association, the Association shall be relieved of the obligation to provide such defense. Nothing contained herein shall in any way limit the rights of any Member or Members to retain counsel of their choice to represent them in such lawsuit at their own expense. In the event that a Member so chooses, he shall not be relieved of liability for the Special Assessment provided for in this Section.

Section 2 - Payment of Lien. In the event that a lien or encumbrance not covered by California Civil Code Section 1357 attaches to all or substantially all of a Project by reason of a judgment or otherwise, the Association shall promptly take the appropriate steps to remove such lien, including but not limited to the payment of money and the posting of a bond. The Association shall have the power to borrow money and to take such other steps as are necessary to free a Project of such liens.

Section 3 - Owners to be Specially Assessed. Simultaneously with any action taken pursuant to the Section entitled "Payment of Lien" of this Article, the Association shall levy a Special Assessment against all of the Members whose Condominiums were subject to the lien or encumbrance which caused the Association to act pursuant to said Section equal to each such Member's pro rata share of such lien or encumbrance. In the event that such Special Assessment is not paid within thirty (30) days of its due date, the Board may effect the remedies of Section 1356 of the California Civil Code and the Article hereof entitled "Nonpayment of Assessments."

Section 4 - Reimbursement by Certain Owners. In the event that it shall be proven in a court of law of competent jurisdiction over the claim or claims causing the Association to take action under this Article that a judgment resulting in a lien on all or a portion of a Project was primarily due to the acts or omissions of a particular Member or Members or the families thereof, such Member or Members shall reimburse the Association for all expenses incurred by it pursuant to the provisions of this Article. Upon such reimbursement, the Association shall distribute the funds received to the Members against whom Special Assessments were levied pursuant to the provisions of this Article.

ARTICLE XIX  
GENERAL PROVISIONS

L 2324P61206

Section 1 - Enforcement. The Association, or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect to architectural control, Assessment liens or any other liens or charges and Association Rules, the Association shall have the exclusive right to the enforcement thereof.

Section 2 - No Waiver. Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

Section 3 - Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the Owners or Mortgagees under this Declaration are cumulative, and not one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

Section 4 - Severability. Invalidity of any one or a portion of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5 - Covenants to Run with the Land; Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners and seventy-five percent (75%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage held, has been recorded at least one (1) year prior to the end of any such period, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 6 - Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Covered Property. 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 7 - Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

Section 8 - Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is 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, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

Section 9 - Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such

action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit.

Section 10 - Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Residence. Any notice so deposited in the mail within Orange County, California, shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

(b) Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee in Orange County, California, or if no such office is located in said County, to any office of such Mortgagee.

(c) Prior to delivery of a Membership Agreement to the Board by an Owner, any and all notices required to be delivered to such Owner pursuant to this Declaration or the Bylaws shall be deemed to be duly made and given to such Owner if duly and timely made pursuant to the terms of this Declaration or the Bylaws to the person or persons who are the transferor to such Owner of the interest required for ownership.

(d) The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee or Mortgagees, or to all Members or all Mortgagees, to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

Section 11 - Obligations of Declarant. So long as Declarant or Development Lessees are utilizing the easement described in the Section entitled "Construction and Sales" of the Article in this Declaration entitled "Easements," Declarant and Development Lessees shall not be subject to the provisions of the Article entitled "Architectural Control" or the provisions of the Article entitled "Use Restrictions."

Section 12 - Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 13 - Personal Covenant. To the extent the acceptance of a conveyance of a Residence creates a personal covenant between the Owner of such Residence and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

Section 14 - Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 15 - Enforcement of Bonded Obligations. In the event that the improvements to the Community Facilities and Common Area have not been completed prior to the issuance of a Final Subdivision Public Report covering the Covered Property by the Department of Real Estate of the State of California, and the Association is obligee under a bond or other arrangement (hereinafter the "Bond") to secure 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 Community Facilities and 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 Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than fifteen (15) days nor more than thirty (30) days after receipt by the Board of a petition for such meeting signed by Members representing ten percent (10%) 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 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.

Section 16 - Leases. Any agreement for the leasing or rental of a Residence (hereinafter in this Section referred to as a "lease") shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Articles, the Bylaws, the Association Rules and any applicable agreements between the Association and any of the Federal Agencies. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the lease. All leases shall be in writing. Any Owner who shall lease his Residence shall be responsible for assuring compliance by such Owner's lessee with this Declaration, the Articles, the Bylaws and the Association Rules; provided, however, the obligation of the foregoing sentence shall not apply to Declarant in the event Declarant leases a Residence for a term of twenty (20) years or more and such lease, or memorandum thereof, is recorded. No Residence shall be leased for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days or any rental whatsoever, if the occupants of the Residence are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service.

Section 17 - Construction By Declarant. Nothing in this Declaration shall limit the right of Declarant or Development Lessees to alter the Community Facilities or the Residence, or to construct such additional improvements as Declarant or such Development Lessees deem advisable prior to completion of improvements upon and sale of the Development. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Covered Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on the Covered Property

DA 024081203  
additional licenses, easements and rights-of-way to it, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Development. Declarant reserves the right to alter its construction plans and designs as it deems appropriate. The rights of Declarant hereunder may be assigned to any successor or successors to all or part of said entity's respective interest in the Development, by an express assignment incorporated in a recorded deed or lease, as the case may be, transferring such interest to such successor. Declarant and Development Lessees shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Members' rights to use and enjoy the Covered Property.

Section 18 - Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees pursuant to the Articles hereof entitled "Insurance" and "Rights of Lenders," or otherwise, this Declaration may be amended as follows:

(a) Until such time as there is a Class A Membership pursuant to this Declaration, amendments or modifications shall be effective when executed by Declarant and when recorded in the Official Records of Orange County, California. Thereafter any amendment shall require the affirmative written assent or vote of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members and, further, this amendment provision shall not be amended to allow amendments by the written assent or vote of less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members; provided, however, the foregoing percentage of the voting power of the Members shall include not less than fifty percent (50%) of the Owners within each separate Project.

(b) In addition to the foregoing, any amendment or modification of the Articles hereof entitled "Covenant for Maintenance Assessments," "Nonpayment of Assessments," "Architectural Control," "Repair and Maintenance," "Destruction of Improvements" and "Eminent Domain" shall additionally require the prior written approval of not less than seventy-five percent (75%) of the Class A Members.

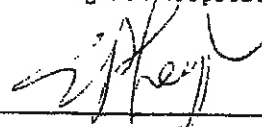
(c) Any amendment or modification to this Declaration affecting the maintenance obligations of the Association or the property exempt from Assessments shall require the prior written approval of the City's Planning Director and City Attorney.

(d) An amendment or modification that requires the vote and written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and when recorded in the Official Records of Orange County, California.

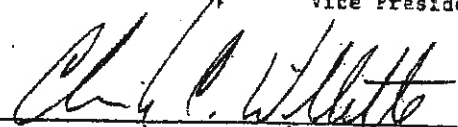
(e) Notwithstanding the foregoing, any provision of this Declaration, or the Articles, Bylaws or Association Rules which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association.

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

THE IRVINE COMPANY,  
A Michigan Corporation, successor  
in interest to THE IRVINE COMPANY,  
a West Virginia Corporation



Vice President



Assistant Secretary



STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF ORANGE )

BK 324PG1210

On AUG 04 1977, before me, the undersigned, a Notary Public in and for said State, personally appeared E. P. LEE, JR., known to me to be the Vice President, and CHICK C. WILLETTE, known to me to be the Assistant Secretary of the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a Resolution of its Board of Directors.

WITNESS my hand and official seal.

*Elizabeth A. Terry*  
Notary Public in and for said State

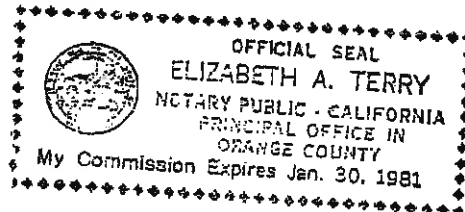


EXHIBIT A

BK 12324PG 1211

INITIAL COVERED PROPERTY

Lots C, D, 4, 7, 9 and 10 of Tract 9720, as per map filed in Book 405, Pages 39 to 43 inclusive, of Miscellaneous Maps, records of Orange County, California.

EXHIBIT B

BK 12324PG 1212

INITIAL COMMUNITY FACILITIES

Lots C and D of Tract 9720, as per map filed in Book 405, Pages 39 to 43 inclusive, of Miscellaneous Maps, records of Orange County, California.

BK 12324PG 1213

EXHIBIT C

ANNEXATION AREA

Lots A, B, 1, 2, 3, 5 and 6 of Tract 9720, as per map filed in Book 405, Pages 39 to 43 inclusive, of Miscellaneous Maps, records of Orange County, California.

## EXHIBIT D

IMPORTANT: THE FAILURE TO EXECUTE THIS MEMBERSHIP AGREEMENT MAY RESULT IN THE SUSPENSION OF SOME OR ALL OF YOUR RIGHTS AND PRIVILEGES AS A MEMBER OF YOUR HOMEOWNER ASSOCIATION.

## MEMBERSHIP AGREEMENT

## YALE MAINTENANCE ASSOCIATION

THIS MEMBERSHIP AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by the undersigned \_\_\_\_\_ (hereinafter collectively and individually "Buyer") in favor of Yale Maintenance Association, a California nonprofit corporation (hereinafter the "Association") as follows:

1. Recitals. Buyer is purchasing or has purchased a single-family dwelling (hereinafter the "Residence") in the condominium development known as Heritage Park Townhomes in the City of Irvine, Orange County, California, described as Unit \_\_\_\_\_, Tract \_\_\_\_\_, and commonly known by its street address of \_\_\_\_\_. The residence is subject to, among other things, that certain Declaration of Covenants, Conditions and Restrictions recorded on \_\_\_\_\_ inclusive, of Official Records of Orange County, California, (hereinafter the "Declaration"), which Declaration is incorporated herein by this reference with the same force and effect as if fully set forth herein. The Declaration requires, among other things, that Buyer shall execute this Membership Agreement, in consideration of which Buyer shall be granted voting privileges in the Association and the right to use certain facilities owned by the Association, all as provided in the Declaration. Buyer acknowledges that in order to best ensure that none of Buyer's rights and privileges as a Member and an Owner are suspended, Buyer should deliver, or cause an escrow company or other agent to deliver, an executed copy of this Membership Agreement to the Association immediately upon transfer of the Residence to Buyer.

2. Membership. By virtue of Buyer's ownership interest in the Residence, Buyer is a member of the Association and is both a "Member" and an "Owner" as those terms are defined in the Declaration. As such, Buyer is subject to the Articles of Incorporation (the "Articles") and the Bylaws (the "Bylaws") of the Association and any "Association Rules" or other rules and regulations adopted pursuant to the Declaration and the Bylaws. (The Declaration, Articles, Bylaws, Association Rules and other duly adopted rules and regulations of the Association are hereinafter collectively referred to as the "Management Documents.")

3. Rights and Duties. Buyer's ownership of the Residence and membership in the Association renders Buyer subject to all of the duties, obligations, restrictions and liabilities of an Owner and a Member under any of the foregoing, whether or not specifically enumerated in this Membership Agreement and regardless of whether Buyer executes this Membership Agreement. Buyer hereby agrees to perform such duties and obligations, to discharge such liabilities and to be subject to such restrictions as provided in the Management Documents. Unless the Association has provided otherwise, Buyer's rights and privileges as a Member and an Owner shall be suspended unless Buyer executes this Agreement.

4. Assessments. Buyer hereby agrees to pay the Association each and every Assessment levied by the Association on Buyer pursuant to the Declaration or the other Management Documents. In the event of any delinquency in the payment of any Assessment levied on Buyer, in addition to any remedy authorized by law or the Management Documents the Association may at its option enforce any such delinquent Assessment by bringing an action at law, by foreclosing the Assessment lien provided in the Declaration by judicial action or by proceeding under the power of sale provided in the Declaration. Any judgment rendered in any such action or the amount paid to the Association from the proceeds of such sale shall include the amount of the delinquency, interest on the unpaid Assessment, a late charge, attorneys' fees, court costs, expenses of collection and any other amounts or charges specified in the Declaration.

5. Designation for Vote. As provided in the Management Documents, each of the persons herein referred to as a Buyer shall be an Owner and a Member. However, only one (1) vote shall be cast with respect to the Residence. The person signing this Membership Agreement on the appropriately indicated signature line below is hereby designated as the person who shall deliver the vote or written assent for any matter on which Buyer is entitled to vote under the Management Documents. The Association shall not be required to recognize or accept the vote or written assent of any other person herein termed a Buyer unless all of the undersigned execute and deliver to the Association a writing designating another Buyer to deliver the vote or written assent attributable to the Residence.

6. Responsibilities Upon Transfer. Upon the transfer of Buyer's interest in the Residence, Buyer shall notify the Association in writing, or shall cause the sales escrow to notify the Association in writing, of the name of the person or persons to whom Buyer is transferring the Residence. Buyer shall also notify, or cause the sales escrow to notify, such transferee of such transferee's obligation to execute and deliver a Membership Agreement to the Association. On or before the effective date of such transfer, Buyer shall return to the Association any key, membership card or other token evidencing or facilitating the right to use any recreational or other facility or service owned or operated by the Association, and Buyer shall not deliver any such token or replica thereof to Buyer's transferee. If Buyer's transferor has not returned any such key, membership card or other token to the Association, Buyer agrees that the Association may charge Buyer a fee for any key, membership card or other token issued to Buyer by the Association.

7. Architectural Control. As provided in the Declaration, the Residence is subject to the architectural control of the Master Association, as such term is defined in the Declaration. The Board of Directors of the Association may promulgate procedures for establishing additional standards, rules and regulations as it deems appropriate and as are not in conflict with Architectural Standards of the Master Association. Buyer hereby agrees to be bound by all of the provisions of the Declaration relating to architectural control.

8. Estoppel Certificate. Buyer acknowledges that the Declaration provides that Buyer, or Buyer's transferor, may obtain from the Association, upon payment of a reasonable charge, a written statement setting forth whether Assessments on the Residence have been paid, and the amount of delinquency, if any.

9. Amendment of Management Documents; Conflicts. As used herein, "Management Documents" shall include any duly adopted amendments thereto, and the designation individually used for any of the documents collectively referred to herein as Management Documents shall likewise include any duly adopted amendment. Any inconsistency between any of the Management Documents and this Membership Agreement shall be resolved in favor of the Management Documents.

10. Insurance. Buyer acknowledges that the Declaration restricts Buyer's ability to separately insure the Residence against loss by fire or other casualty covered by an insurance policy carried by the Association. Buyer further acknowledges that should any such insurance carried by Buyer result in reduced insurance proceeds payable to the Association by reason of fire or other casualty Buyer is obligated to pay to the Association an amount equal to such reduction. Notwithstanding the foregoing, Buyer has the right to obtain insurance for the Residence commonly known as "tenant's improvements" coverage.

IN WITNESS WHEREOF, the undersigned have executed this Membership Agreement on the day and year first above written.

The person signing on this line shall be designated to give the vote or written assent attributed to the Residence, as provided in Section 5 above.

---

---

---

EXHIBIT E

BK 12324 PG 1217

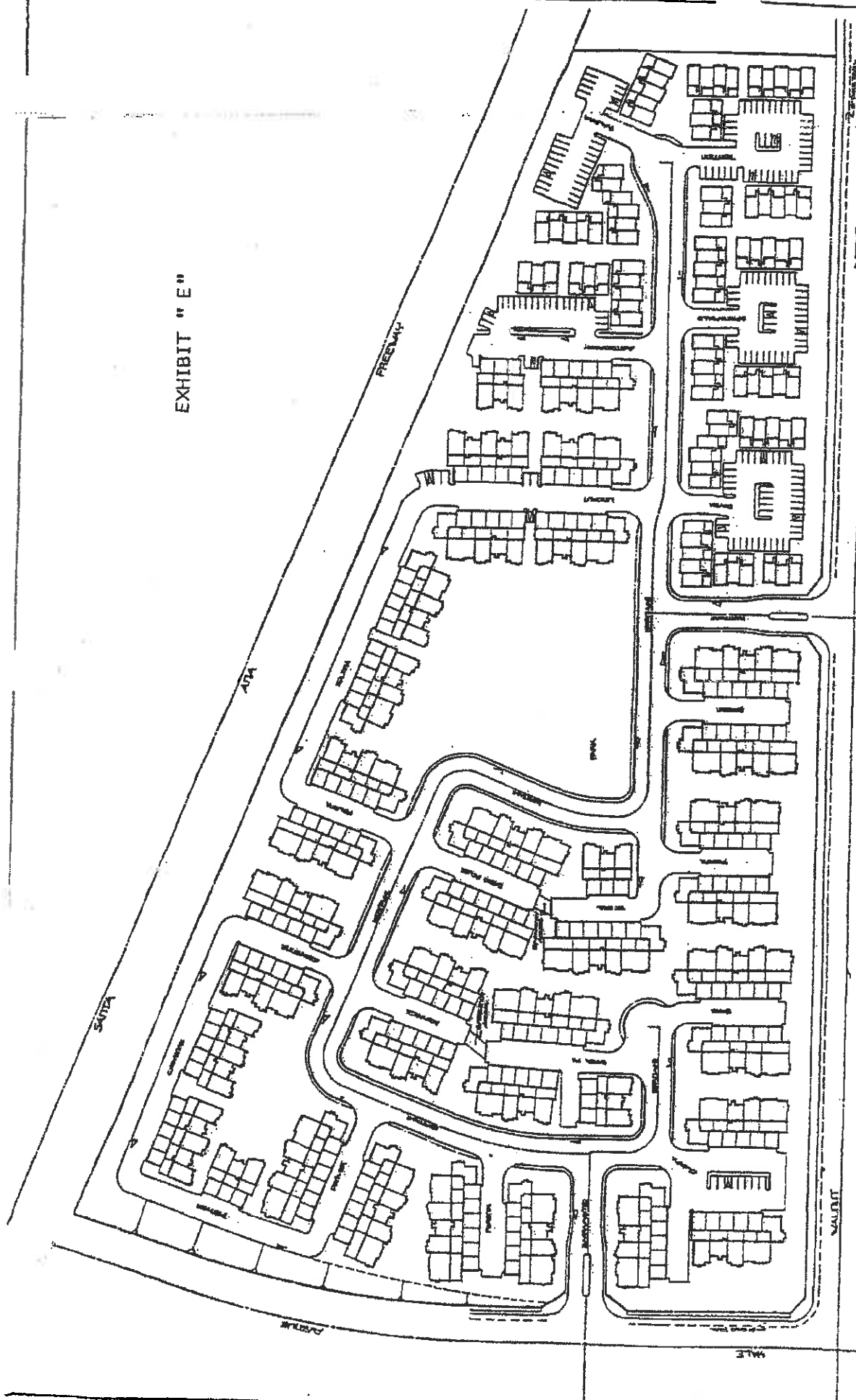
PROPERTY COVERED BY THE MASTER DECLARATION

Parcel 1: Tract 9720 as per map filed in Book 405, Pages 39 to 43 inclusive, of Miscellaneous Maps, records of Orange County, California;

Parcel 2: Tract 9643 as per map filed in Book 406, Pages 13 and 14, of Miscellaneous Maps, records of Orange County, California.



EXHIBIT "E"



# Master Association Property

**WA**

WATSON & ASSOCIATES, INC.  
ARCHITECTS  
1000 10TH AVENUE  
SUITE 100  
DENVER, CO 80202  
TEL: 333-1111  
FAX: 333-1111