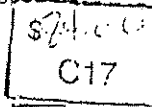


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Lee A. Branch COUNTY
RECORDER

DECLARATION OF RESTRICTIONS

FOR

PACIFIC SHORES AT RANCHO SAN CLEMENTE

TABLE OF CONTENTS

		<u>PAGE</u>
ARTICLE I	DEFINITIONS	2
Section 1	ARC	2
Section 2	Articles	2
Section 3	Association	2
Section 4	Board	3
Section 5	Bylaws	3
Section 6	Common Area	3
Section 7	Common Maintenance Area	3
Section 8	Declarant	3
Section 9	Declaration	3
Section 10	First Mortgagee	3
Section 11	Lot	3
Section 12	Master Association	3
Section 13	Master Declaration	3
Section 14	Mortgage	4
Section 15	Mortgagee	4
Section 16	Owner	4
Section 17	Phase	4
Section 18	Properties	4
ARTICLE II	PROPERTY RIGHTS IN COMMON AREA	4
Section 1	Owners' Easements of Enjoyment	4
Section 2	Delegation of Use	5
ARTICLE III	MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION	6
Section 1	Membership in Association	6
Section 2	Classes of Membership	6
ARTICLE IV	COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION	6
Section 1	Creation of the Lien and Personal Obligation of Assessments	6
Section 2	Purpose of Assessments	7
Section 3	Maximum Annual and Special Assessments	7
Section 4	Special Assessments for Capital Improvements	8
Section 5	Non-Lien Assessments to Reimburse Association	8
Section 6	Uniform Rate of Assessment	8
Section 7	Date of Commencement of Annual Assessments: Due Dates	8
Section 8	Effect of Non-Payment of Assessments: Remedies of the Association	8
Section 9	Subordination of the Lien to First Mortgages	10

		<u>PAGE</u>
ARTICLE V	ARCHITECTURAL REVIEW COMMITTEE	10
Section 1	The ARC	10
Section 2	No Improvement Without Approval	10
Section 3	Interpretations	11
Section 4	Failure to Comply	11
Section 5	Plans and Specifications; Fees; Violations	11
Section 6	Inspection	12
Section 7	No Waiver	13
Section 8	No Compensation	13
Section 9	Painting	13
Section 10	No Liability	13
Section 11	Variances	13
Section 12	No Move-Ons	14
ARTICLE VI	DECLARANT EXEMPTION	14
ARTICLE VII	USE RESTRICTIONS	15
Section 1	Residential Purposes Only	15
Section 2	New Building Only	16
Section 3	Balconies and Decks	16
Section 4	No Second-Hand Materials, Painting Required	16
Section 5	Diligence in Construction Required	16
Section 6	No Antennae	16
Section 7	Clothes Drying Areas	16
Section 8	No Tents, Shacks or Vehicles	16
Section 9	No Signs	17
Section 10	No Wells	17
Section 11	Animal Restrictions	17
Section 12	No Commercial Activity	17
Section 13	Drainage	17
Section 14	Slope Control, Use and Maintenance	18
Section 15	Leasing of Lots	18
Section 16	Garage Doors	18
Section 17	Equipment	18
Section 18	Weeds, Rubbish, Sanitary Containers, Etc.	19
Section 19	Plants	19
Section 20	Landscaping	19
Section 21	Right of Entry	19
Section 22	Liability of Owners	19
Section 23	Street Grades, Cuts and Fills	19
ARTICLE VIII	INSURANCE; RECONSTRUCTION	20
Section 1	Liability Insurance	20
Section 2	Fidelity Bond	20
Section 3	Hazard Insurance Policy	20
Section 4	Copies of Insurance Policies	20

		<u>PAGE</u>
Section 5	FNMA and FHLMC Requirements	21
Section 6	Other Insurance	21
ARTICLE IX	CONDEMNATION	21
ARTICLE X	COMMON MAINTENANCE AREA AND MAINTENANCE RESPONSIBILITIES	21
Section 1	Improvement of Common Maintenance Area	21
Section 2	Association Maintenance	21
Section 3	Owner Maintenance	22
Section 4	Association's Right to Repair Neglected Lots	22
Section 5	Transfer of Common Maintenance Area to Association	23
ARTICLE XI	ANNEXATION	23
Section 1	By Association	23
Section 2	By Declarant	23
ARTICLE XII	RIGHTS OF LENDERS	24
Section 1	Payments of Taxes or Premiums by First Mortgagees	24
Section 2	Priority of Lien of Mortgage	24
Section 3	Curing Defaults	24
Section 4	Approval of First Mortgagees	24
Section 5	Notice to Eligible Mortgagees	25
Section 6	Documents to be Available	26
Section 7	Conflicts	26
ARTICLE XIII	GENERAL PROVISIONS	26
Section 1	Enforcement	26
Section 2	Severability	26
Section 3	Amendments	26
Section 4	Annexation	28
Section 5	Encroachments	28
Section 6	Reservations of Easements by Declarant	29
Section 7	Special Responsibilities of Association	29
Section 8	Litigation	30
SUBORDINATION AGREEMENT		

DECLARATION OF RESTRICTIONS
Pacific Shores at Rancho San Clemente

THIS DECLARATION OF RESTRICTIONS, made this 10th day of June, 1988, by DIVIDEND DEVELOPMENT CORPORATION, a California corporation (hereinafter called "Declarant");

W I T N E S S E T H:

A. Declarant is the owner of that certain real property situated in the City of San Clemente, County of Orange, State of California, which is more particularly described as:

Lots 1 through 50, inclusive, Lots C, L, M, N, O, P and Q, and the following private streets: Santa Clara, Via Coco and Via Santa Maria, all as shown on TRACT NO. 12864 filed with the County Recorder of the County of Orange as per Map recorded in Book 597, Pages 35 through 42, inclusive, of Miscellaneous Maps,

which real property is referred to herein as "Phase 1".

B. Phase 1 is the first Phase of real property owned by Declarant and described on Exhibit "A" attached hereto (the "Properties"). Declarant intends that the Properties will be developed as a planned development project in approximately three (3) Phases as shown on Exhibit "A" attached hereto. Declarant shall have the right, however, to change such phasing without amending the Declaration. There is no guarantee that all Phases will be developed or annexed to this Declaration or developed or annexed in any particular order, and some phases may be developed concurrently.

C. The private streets and Common Area lots will be owned and maintained by PACIFIC SHORES AT RANCHO SAN CLEMENTE HOME-OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), the members of which will be the Owners of Lots. The Association will also maintain any Common Maintenance Area which will be portions of those Lots upon which Common Maintenance Area easements have been granted to the Association. These areas, should easements be granted, would generally consist of landscaping areas adjacent to the public streets within the Properties. Present plans do not, however, envision any such Common Maintenance Area in this project.

D. This Declaration will initially affect and encumber only Phase 1 described above.

E. This project is a planned development common interest development.

F. The Properties are a portion of the "Residential Property" of Rancho San Clemente described in that certain Master Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Rancho San Clemente ("Master Declaration"). It is intended that Phase 1 of the Properties and each subsequent Phase annexed to this Declaration will be annexed to the Master Declaration.

G. Before selling any of the Lots, Declarant wishes to impose on each Lot within Phase 1 and each other Lot which becomes annexed hereto the following plan of covenants, conditions and restrictions.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of the Properties and has fixed and does hereby fix the following protective covenants and restrictions upon each and every ownership interest in Phase 1, under which said covenants and restrictions each ownership interest therein shall be hereafter held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of said covenants and restrictions are for the purpose of protecting the value and desirability of and shall inure to the benefit of the Property and shall run with and be binding upon and pass with Phase 1 and each and every ownership interest therein and shall inure to the benefit of, apply to and bind the respective successors in title or interest of Declarant.

ARTICLE I

DEFINITIONS

Section 1. "ARC" means and refers to the Architectural Review Committee appointed pursuant to the Article herein entitled "Architectural Review Committee".

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

Section 3. "Association" shall mean and refer to PACIFIC SHORES AT RANCHO SAN CLEMENTE HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 4. "Board" shall mean and refer to the Board of Directors of the Association.

Section 5. "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 6. "Common Area" shall mean all real property and easements (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of conveyance of the first Lot is described as follows:

Lots C, L, M, N, O, P and Q, and the following private streets: Santa Clara, Via Coco and Via Santa Maria, all as shown on TRACT NO. 12864 filed with the County Recorder of the County of Orange as per Map recorded in Book 597, Pages 35 through 42, inclusive, of Miscellaneous Maps.

Section 7. "Common Maintenance Area" shall mean and refer to portions of those Lots, if any, upon which easements for maintenance are conveyed to the Association. There may not, however, be any Common Maintenance Area within this project.

Section 8. "Declarant" shall mean and refer to DIVIDEND DEVELOPMENT CORPORATION, a California corporation, its successors and assigns, if Declarant assigns to such successors the rights of Declarant under this Declaration and if such successors assume any obligations of Declarant hereunder. Such assignment of rights need not include all of the original Declarant's rights.

Section 9. "Declaration" shall mean and refer to this enabling Declaration of Restrictions as it may from time to time be amended.

Section 10. "First Mortgagee" shall mean and refer to any person who holds a Mortgage which is not inferior in priority to any other Mortgage.

Section 11. "Lot" shall mean and refer to any plot of land which is or has been made subject to this Declaration or another Declaration which requires the Lot Owner to be a member of the Association and is shown upon any recorded subdivision map of the Properties. Lot shall not refer to Common Area.

Section 12. "Master Association" shall mean and refer to RANCHO SAN CLEMENTE COMMUNITY ASSOCIATION, a California Mutual Benefit Association.

Section 13. "Master Declaration" shall mean and refer to that certain Master Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Rancho San Clemente recorded August 30, 1985 with the Office of the County Recorder of the County of Orange as Instrument No. 85-327173.

Section 14. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage encumbering a Lot.

Section 15. "Mortgagee" shall mean and refer to the beneficiary of a deed of trust as well as the mortgagee of a mortgage encumbering a Lot.

Section 16. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract purchasers who have a possessory interest pursuant to their contract to purchase, and excluding contract sellers having such interest merely as security for the performance of an obligation.

Section 17. "Phase" shall mean and refer to those portions of the Properties which are covered by a separate Final Subdivision Public Report issued by the California Department of Real Estate. More than one Phase may be subject to the same Declaration of Annexation.

Section 18. "Properties" shall mean and refer to that certain real property located in the City of San Clemente, County of Orange, State of California, referred to on the first page hereof and described on Exhibit "A" attached hereto.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREA

Section 1. Owner's Easements of Enjoyment. The Common Area generally consists or will consist of private streets, view parks and landscaped and natural slopes, and no recreational use of the Common Area by Owners is contemplated. Should, however, the Association allow use of any portion of the Common Area, such use will be subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility or parking area situated upon the Common Area;

(b) Pursuant to the procedures set forth in the Association's Bylaws, the right of the Association to suspend the voting rights and right to use of the recreational facilities, if any, by an Owner for any period during which any assessment by the Association against his Lot remains unpaid; and for a period

not to exceed thirty (30) days for any infraction of its published rules and regulations after reasonable written notice and an opportunity for a hearing before the Board as specified in the Bylaws;

(c) The right of the Association to establish and enforce reasonable rules and regulations pertaining to the use and enjoyment of the Common Area and any facilities thereon;

(d) The right of the Association to dedicate or transfer all or substantially all of its assets, including all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by a majority of each class of members. The granting of easements for utilities and sewer facilities to serve the project shall not require the consent of the members;

(e) The right of the Association to limit the number of guests of members and to limit or prevent the use of the Common Area by persons not in possession of a Lot;

(f) The right of the Association to grant exclusive use easements to Owners over, under, upon and across portions of the Common Area, provided that such areas (i) adjoin the Owner's Lot and (ii) in the Board's opinion would not be used by other Owners;

(g) Subject to a concomitant obligation to restore, Declarant and its sales agents, employees and independent contractors shall have:

(i) a non-exclusive easement over the Common Area for the purpose of making repairs to the Common Area or to residences on the Lots it owns, provided access thereto is otherwise not reasonably available, and for the purpose of constructing, marketing and maintaining the project, including residences on the Lots it owns and the Common Area;

(ii) the easements referred to herein, including those set forth in Sections 6 and 7 of the Article herein entitled "GENERAL PROVISIONS".

Section 2. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership in Association. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to assessment.

Section 2. Classes of 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, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any one (1) Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever is the earliest to occur:

(i) Two (2) years following the original date of issuance by the California Department of Real Estate of the most recently issued final subdivision public report covering a Phase of the Properties; or

(ii) Four (4) years following the date of the original issuance by the California Department of Real Estate of the final subdivision public report covering Phase 1 of the Properties.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, late charges and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment,

together with interest, costs, late charges and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of its members and for the improvement and maintenance of the Common Maintenance Area and the Common Area.

Section 3. Maximum Annual and Special Assessments. The Board shall not, without the vote or written assent of a quorum of the members of the Association, impose a regular annual assessment against each Lot which is more than twenty percent (20%) greater than the regular assessment for the immediately preceding fiscal year or impose special assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes hereof, "quorum" shall have the same meaning as set forth in California Civil Code Section 1366 (as the same may be amended from time to time), with any co-Owners of a Lot being deemed to be one Owner. This section shall not, however, limit increases in annual assessments necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(a) An extraordinary expense required by an order of a court;

(b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety in the Project is discovered;

(c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget under Section 1365 of the California Civil Code. However, prior to the imposition or collection of an assessment under this Subsection (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members of the Association with the notice of assessment.

Written notice of the regular assessment shall be sent to every Owner subject thereto. The due dates shall be established by the

Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above and subject to the limitations stated above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Maintenance Area and/or the Common Area, including fixtures and personal property related thereto.

Section 5. Non-Lien Assessments to Reimburse Association. The Board may impose non-lien assessments against individual Owners to reimburse the Association for costs and expenses incurred in enforcing compliance by such Owner of his Lot with the provisions of this Declaration, the Articles and Bylaws of the Association, and the rules and regulations adopted by the Board, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfies the requirements of Section 7341 of the California Corporations Code, as set forth in the Bylaws.

Section 6. Uniform Rate of Assessment. Both annual and special assessments (other than the special assessments referred to in Section 5 above) must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, and the Owner of each Lot shall pay the same assessment amounts.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots within Phase 1 on the first day of the month following the close of sale of any such Lot by Declarant. The annual assessments provided for herein shall commence as to all Lots within subsequent Phases, respectively, on the first day of the month following the conveyance of the first Lot in each respective Phase to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Lot at the time the

assessment is made. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum and the Association may impose late charges not exceeding the maximum amount allowed by California law for any assessment not paid within fifteen (15) days of its due date. The Association may bring an action at law against the Owner personally obligated to pay the same, and in addition thereto or in lieu thereof, except for assessments imposed pursuant to Section 5 above, the Association may foreclose the lien of a regular or special assessment against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent. Except for assessments imposed pursuant to Section 5 above, the amount of any such delinquent regular or special assessment, plus any other charges thereof, as provided for in this Declaration, shall be and become a lien upon the Lot when the Association causes to be recorded with the County Recorder of the County of Orange, a Notice of Delinquent Assessment, which shall state the amount of such delinquent assessment and such other charges thereon as may be authorized by this Declaration, a description of the Lot against which the same has been assessed and the name of the record owner thereof. In addition, in order for such lien to be non-judicially foreclosed, the notice shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. Such notice shall be signed by any officer of the Association. Upon payment of such delinquent assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.

Unless sooner satisfied and released, or the enforcement thereof initiated as hereinafter provided, such lien shall expire and be of no further force and effect one (1) year from the date of recordation of the Notice of Delinquent Assessment. The one (1) year period may be extended by the Association for not to exceed one (1) additional year by recording a written extension thereof.

Such lien may be enforced by sale by the Association, its attorney or other person authorized to make the sale, after failure of the Owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code, applicable to the exercise of powers of sale in Mortgages, or in any other manner permitted by law. The Association shall have the power to purchase the Lot at foreclosure sale and to hold, lease, mortgage and convey the same.

Section 9. Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein, together with any interest, costs, late charges or fines pertaining thereto, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

ARTICLE V.

ARCHITECTURAL REVIEW COMMITTEE

Section 1. The ARC. There shall be an initial ARC consisting of three (3) persons, each appointed by Declarant. Members of the Board may be appointed as ARC members but ARC members need not be Board members. Upon appointment or replacement of an ARC member, a notice thereof shall be filed in the Official Records of the County of Orange. Until one (1) year following the date of original issuance by the California Department of Real Estate of the Final Subdivision Public Report covering the Properties, each ARC member shall be subject to removal at the direction of Declarant at any time and from time to time, and all vacancies on the ARC shall be filled by appointment of Declarant. Commencing one (1) year following the date of issuance of such Public Report and ending on the fifth (5th) anniversary of the date of issuance of such Public Report, or on the date ninety percent (90%) of the aggregate number of the Lots within the Properties have been sold and escrow closed by Declarant to retail purchasers thereof, whichever shall first occur, Declarant shall have the power to appoint two (2) of the members of the ARC and the Board shall have the power to appoint one (1) member thereof. Thereafter, the Board shall have the power to appoint all of the members of the ARC. Members of the ARC appointed by the Board shall be members of the Association. Members of the ARC appointed by Declarant need not be members of the Association. A majority of the ARC may designate a representative to act for it. Any member of the ARC may at any time resign therefrom by recording a resignation with the Office of the County Recorder of the County of Orange.

Section 2. No Improvement Without Approval. No building or other structure or improvement, including, but not limited to, landscaping and grading, shall be erected, placed or altered upon any Lot until the location and the complete plans and specifications thereof (including the color scheme of each building, fence and/or wall to be erected) have been approved in writing by the ARC. Such plans and specifications shall, at the request of the ARC, include an analysis of whether the proposed improvements or

landscaping would impair any view from another residence or Lot within the Properties. It is not intended that the ARC have jurisdiction concerning any changes to the interior portions of any of the residences within the Properties.

The ARC shall provide guidelines for the submission of plans and specifications which may be amended by the ARC from time to time. Failure to comply with the requirements for ARC approval shall be deemed sufficient basis for the ARC to refuse to review the submission. No improvement shall be made which interferes with any easement encumbering any Lot. In the event the ARC fails to approve or disapprove the location, plans and specifications or other request made of it within sixty (60) days after the submission thereof to it, then such approval will not be required, provided any improvement so made conforms to all other conditions and restrictions herein contained and is in harmony with similar improvements erected within the Properties. No alteration shall be made in the exterior of any structure (including, but not limited to, color, design or openings of any building or other construction) unless written approval of said alteration shall have been obtained from the ARC. The grade, level or drainage characteristics of any Lot or portion thereof, shall not be altered without the prior written consent of the ARC. When the ARC issues an approval as provided for herein, a copy of the plans and specifications shall be returned to the ARC for permanent record. Nothing herein stated is intended to give the ARC architectural control over portions of the Common Maintenance Area or Common Area. The Common Maintenance Area and Common Area shall be managed and controlled by the Association and no improvements shall be built thereon or no changes made thereto without the prior written consent of the Board.

Section 3. Interpretations. All questions of interpretation or construction of any of the terms or conditions in this Article V shall be resolved by the ARC, and its decision shall be final, binding and conclusive on all of the parties affected.

Section 4. Failure to Comply. In the event of the failure of any individual Owner to comply with a written directive or order from the ARC, then, in such event, the ARC shall have the right and authority to perform the subject matter of such directive or order, including, if necessary, the right to enter upon the Lot, and the cost of such performance shall be charged to the Owner of the Lot in question, which cost shall be due within five (5) days after receipt of written demand therefor, and may be recovered by the ARC in an action at law against such individual Owner.

Section 5. Plans and Specifications; Fees; Violations. When plans and specifications for the construction of improvements are submitted to the ARC pursuant to these restrictions, said submission shall, at the request of the ARC, be accompanied

by a deposit of \$200.00 to guarantee that the construction site during the course of construction will be maintained reasonably free of debris at the end of each working day and that the construction will be completed and the Lot drainage swales and structures will correctly drain surplus water to the street or other approved locations, all as shown on the plans and specifications submitted to the ARC for approval. In the event of a violation of this restriction, the ARC may give written notice thereof to the Owner of the Lot in question that if such violation is not cured or work commenced to cure the same within forty-eight (48) hours after the mailing of such notice, the ARC may correct or cause to be corrected said violation and use said deposit or as much thereof as may be necessary to cover the cost of such corrective work. In the event that the cost of curing said violation shall exceed the amount of said deposit, said excess cost shall be paid by the Owner of the Lot in question to the ARC. Said deposit, or any part thereof remaining in the hands of the ARC at the completion of the construction work, shall be returned by the ARC to the person who made the deposit.

Section 6. Inspection. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the ARC.

(b) Within ninety (90) days thereafter, the ARC or its duly authorized representative, may inspect such improvement. If the ARC finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such ninety (90) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy the same.

(c) If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the ARC shall notify the Board in writing of such failure. After affording such Owner notice and hearing, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a special assessment against such Owner for reimbursement.

(d) If for any reason the ARC fails to notify the Owner of any non-compliance within ninety (90) days after receipt of said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

Section 7. No Waiver. The approval of the ARC to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatsoever subsequently or additionally submitted for approval or consent.

Section 8. No Compensation. The members of the ARC shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

Section 9. Painting. All buildings and fences on any Lot which are of frame construction shall be painted or stained with at least two (2) coats upon completion, unless otherwise approved in writing by the ARC.

Section 10. No Liability. Neither Declarant nor the ARC, nor any member thereof, nor their duly authorized representatives shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the ARC's duties hereunder, unless due to the willful misconduct or bad faith of the ARC. The ARC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The ARC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 11. Variances. The ARC may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, setbacks, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the ARC,

and shall become effective upon recordation in the Office of the County Recorder of the County of Orange. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including, but not limited to, zoning ordinances and Lot setback lines or requirements imposed by the County of Orange or any other governmental authority.

Section 12. No Move-Ons. No structure of any kind shall be moved from any other place onto any Lot without the prior written permission of the ARC.

ARTICLE VI

DECLARANT EXEMPTION

Nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, or its contractors or subcontractors, from doing on any of the Properties owned by it whatever they determine to be necessary or advisable in connection with the completion of said work, including, without limitation, the alteration of construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, or its representatives, from erecting, constructing and maintaining on any of the Properties owned or controlled by Declarant, or its contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Properties as a residential community and disposing of the same by sale, lease or otherwise; or

(c) Prevent Declarant, or its contractors or subcontractors, from conducting on any land owned or controlled by Declarant, its or their business of developing, subdividing, grading and constructing dwelling units and other improvements on the Properties as a residential community and of disposing of dwelling units thereon by sale, lease or otherwise; or

(d) Prevent Declarant, its contractors or subcontractors, from maintaining such sign or signs on any land owned or controlled by any of them as may be necessary in connection with

the sale, lease or other marketing of Lots or dwelling units on the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot by a purchaser from Declarant, to establish on that Lot additional licenses, reservations and rights of way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Properties; or

(f) Prevent Declarant from using any Lot owned or leased by it for model home display purposes or for real estate sales purposes during the period of time described in Section 1 of the Article herein entitled "PROPERTY RIGHTS IN COMMON AREA"; or

(g) Limit or interfere with the right of Declarant to subdivide or resubdivide any portion of the Properties nor to complete improvements to the Common Area nor to any Lot owned by Declarant nor to construct additional improvements as Declarant deems advisable in the course of selling the Properties, including constructing and maintaining on the Properties such structures and displays as may be reasonably necessary for the conduct of its business of completing the work of development of the Properties and disposing of the same by sale, lease or otherwise; or

(h) Require Declarant to seek or obtain ARC approval of any improvement constructed or placed by Declarant on any portion of the Properties owned by Declarant; or

(i) Limit the right of Declarant to non-exclusive use of the Common Area; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.

Anything herein stated to the contrary notwithstanding, Declarant in exercising its rights under this Article shall not unreasonably interfere with the use of the Common Area by any Owner, and Declarant shall not unreasonably interfere with the use by an Owner of his Lot.

ARTICLE VII

USE RESTRICTIONS

Section 1. Residential Purposes Only. No Lot shall be used, except for residential purposes; provided, however, Declarant may use any of the Lots owned by it for model homes and sales office purposes until the sale by Declarant to Owners of all Lots.

Section 2. New Building Only. No building of any kind shall be moved from any other place onto any Lot, nor from one Lot to another Lot, without the prior written permission of the Board or the ARC.

Section 3. Balconies and Decks. No balcony or deck shall be higher above the ground than the highest dwelling floor level, except with the written approval of the Board or the ARC. No balcony or deck shall at any time be used for storage purposes and each shall at all times be kept in a neat and clean appearance and in good repair.

Section 4. No Second-Hand Materials, Painting Required. No secondhand materials shall be used in the construction of any building or other structure on any Lot without the prior written approval of the Board or the ARC. All buildings and fences which are of frame construction shall be painted or stained upon completion with the paint or stain coverage (including the number of coats) as provided in the approval of the plans therefor by the Board or the ARC.

Section 5. Diligence in Construction Required. The work of constructing and erecting any building or other structure shall be prosecuted diligently from the commencement thereof, and the same shall be completed within a reasonable time in accordance with the requirements herein contained. No outbuilding shall be completed prior to the completion of the dwelling, except that temporary storage and convenience facilities may be erected for workmen engaged in building a dwelling on the Lot, but such temporary facilities shall be removed as soon as the dwelling is completed.

Section 6. No Antennae. There shall be no outside television, radio antennae or satellite dish constructed, installed or maintained on any Lot for any purpose whatsoever.

Section 7. Clothes Drying Areas. No clothes drying areas shall be permitted unless screened from all views exterior to the Lot on which the drying area is located by fence, hedge or shrubbery, which screening and the adequacy thereof shall be subject to the approval of the Board or the ARC.

Section 8. No Tents, Shacks or Vehicles. No tent, shack, recreational vehicle, trailer, basement, garage or outbuilding shall at any time be used on any Lot as a residence, either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot. No boat, camper, recreational vehicle, trailer, van or motor vehicle of any type other than a standard automobile shall be stored or parked on any Lot other than in the garage, except temporarily and solely for the purpose of loading and unloading.

Section 9. No Signs. No sign other than one (1) sign of customary and reasonable dimensions advertising a Lot for sale or lease and numerals identifying the address of the residence on the Lot shall be erected or displayed upon any of said Lots or upon any building or other structure thereon without the prior written permission of the Board or the ARC. No sign of a permanent nature shall be allowed except house numbers indicating the street address of such Lots. Anything herein to the contrary notwithstanding, so long as Declarant retains ownership of any Lot, it may erect such signs as it reasonably determines is necessary for the sales promotion of such Lots.

Section 10. No Wells. No well for the production of, or from which there is produced, water, oil or gas shall be operated upon any Lot, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business without the approval of the ARC. No slant drilling shall be permitted above a plane 500 feet below the surface of the land.

Section 11. Animal Restrictions. No animals, fowls, reptiles, insects or poultry shall be kept by any person within the Properties, except that domestic dogs, cats, birds and fish may be kept as household pets, provided that they do not, in the opinion of the Board, constitute a nuisance to any other Owner. Any dispute as to whether a particular pet constitutes a nuisance shall be arbitrated before the Board. No animals shall be kept, bred or raised within the Properties by any person for commercial purposes or in unreasonable quantities. All animals permitted herein to be kept shall be kept on a leash within the Properties when not within an enclosed area of a Lot. Each Owner of a pet shall be responsible for the removal of any waste from his pet.

Section 12. No Commercial Activity. No commercial business shall be conducted on any of the Lots, and nothing shall be done upon any Lot which may become an annoyance or nuisance to the neighborhood or other Lot Owners. No external speakers, bells or horns shall be permitted on any Lot. Nothing herein stated shall disallow installation of a burglar alarm system. Any Owner who has an alarm system installed shall use reasonable care to prevent false alarm occurrences.

Section 13. Drainage. No structure, planting or other material shall be placed or permitted to remain, or other activities undertaken on any slope area or any other area within the Properties which might damage or interfere with established slope ratios, create erosion or sliding problems, or interfere with established drainage systems or patterns. Any area drains and other drainage facilities and systems not maintained by the Association shall be maintained by the Owner thereof in a neat, orderly and safe condition and in such a manner as to facilitate the orderly discharge of water by means of same.

As used herein, the term "drainage pattern and system" includes, but is not necessarily limited to, underground drain pipes and patterns of drainage over Lots or Common Area. The Owner of each Lot and the Association shall have the right to use the established drainage pattern and system for the purpose of draining his Lot and Common Area and improvements thereon; provided that such right of drainage shall not include the right to discharge noxious or offensive matter. Water from any Lot or Common Area and any improvements thereon may not drain or flow onto adjacent Lots or Common Area except to the extent provided for in the established drainage pattern and system. All slopes or terraces on any Lot or Common Area shall be maintained as provided herein so as to prevent any erosion thereof upon adjacent streets or adjoining property. Each Owner who grades his Lot shall provide for adequate drainage of his Lot so as not to interfere with any other Owner's use of his Lot or injure any portion of the Common Area.

Section 14. Slope Control, Use and Maintenance. Each Lot Owner will keep, maintain, water, plant and replant all slope banks located on such Owner's Lot, so as to prevent erosion and to create an attractive appearance. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any of said slope banks which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels.

Section 15. Leasing of Lots. Each Owner shall have the right to lease his Lot, provided that all such leases must be in writing and shall provide that the lease is subject in all respects to the provisions of this Declaration and to the Articles and Bylaws and that any failure of the lessee to comply with the provisions of each such document shall constitute a default under the lease. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. No Owner may lease his Lot or improvements thereon for hotel, motel, time share or transient purposes. Any lease which is either for a period of fewer than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

Section 16. Garage Doors. Any garage doors shall be closed at all times other than when a vehicle is entering or leaving the garage.

Section 17. Equipment. No automobile or other equipment may be dismantled, repaired or serviced on any Lot except in the garage. No structure on any Lot shall be permitted to fall into

disrepair and all structures shall at all times be kept in good condition and repair, and adequately painted or otherwise finished.

Section 18. Weeds, Rubbish, Sanitary Containers, Etc. No weeds, rubbish, debris, objects or material of any kind shall be placed or permitted to accumulate upon any Lot which render such portion unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or its occupants. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers. All service yards or service areas, clothesline areas, sanitary containers and storage piles on any Lot shall be enclosed or fenced in such a manner that such yards, areas, containers and piles will not be visible from any neighboring Lot or road. Sanitary containers may be set in areas prescribed by the Board for a reasonable period of time before and after scheduled trash pick up times.

Section 19. Plants. No plants or seeds infected with noxious insects or plant disease shall be brought upon, grown or maintained upon any Lot.

Section 20. Landscaping. All landscaping of every kind and character, including shrubs, trees, grass and other plantings, within any Lot shall be neatly trimmed, properly cultivated and continuously maintained by the Owner thereof in a neat and orderly condition and in a manner to enhance its appearance. The ARC shall have the right to require any Owner to remove, trim, top or prune any shrub, tree, bush, plant or hedge which the Board reasonably believes impedes the view of any other Lot Owner. No Owner shall remove, damage or otherwise change any landscaping within the Common Maintenance Area.

Section 21. Right of Entry. During reasonable hours and after reasonable notice, Declarant or any agent thereof, so long as Declarant is an Owner of at least twenty-five percent (25%) of the Lots, and the Association shall have the right to enter upon and inspect any Lot and any dwelling or improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration are being complied with and shall not be deemed guilty of trespass by reasons thereof.

Section 22. Liability of Owners. Each Owner shall be liable to the Association for any damage to the Common Maintenance Area and/or Common Area or to any of the equipment or improvements thereon which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, relatives, guests or invitees, both minor or adult.

Section 23. Street Grades, Cuts and Fills. Declarant reserves the right to make such cuts and fills as are necessary to grade the streets or private ways within the Properties

whether dedicated or not dedicated to the City of San Clemente or other political subdivision, in accordance with such grades as the City of San Clemente or other political subdivision may establish, and the right to provide the necessary support and protection of streets so graded, including to slope upon abutting Lots. The Declarant may assign said rights or any of them to the Association.

ARTICLE VIII

INSURANCE; RECONSTRUCTION

Section 1. Liability Insurance. The Association shall procure and keep in force public liability insurance in the name of the Association and the Owners against any liability for personal injury or property damage resulting from any occurrence in or about the Common Maintenance Area or Common Area in an amount not less than \$500,000.00 in indemnity against the claim of one (1) person in one (1) accident or event and not less than \$1,000,000.00 against the claims of two (2) or more persons in one (1) accident or event, and not less than \$100,000.00 for damage to property.

Section 2. Fidelity Bond. At the request of any First Mortgagee or absent such request, should the Board deem it appropriate to do so, the Association shall maintain a fidelity bond in an appropriate amount naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

Section 3. Hazard Insurance Policy. The Association shall obtain and at all times keep in force a policy of hazard insurance with extended coverage and special form endorsements covering any buildings and other insurable improvements located on the Common Area. The proceeds from such insurance shall be paid to the Association which shall use such funds for reconstruction of the improvements which are covered by the insurance. It is not contemplated that any insurable improvements will be located on the Common Area.

Section 4. Copies of Insurance Policies. Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners.

Section 5. FNMA and FHLMC Requirements. Anything contained herein to the contrary notwithstanding, the Association shall maintain such insurance coverage as may be required by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") so long as FNMA or FHLMC holds a Mortgage on or owns any Lot.

Section 6. Other Insurance. Nothing stated in this Article shall be deemed to limit the amount or type of insurance which the Board may obtain on behalf of the Association.

ARTICLE IX

CONDEMNATION

In the event the Common Area or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association. No such sums shall be disbursed to the Owners (or their Mortgagees as their interests then appear) except on an equal basis. In the event the Common Area is destroyed or damaged, the Board shall cause the same to be reconstructed or repaired provided adequate insurance proceeds exist therefor; should insurance proceeds be deficient for such purposes, the Board may specially assess the Owners the amount of such deficiency provided that the requirements stated in Section 4 of Article IV hereof are met. No insurance proceeds shall be disbursed to the Owners (or their Mortgagees as their interests then appear) except on an equal basis.

ARTICLE X

COMMON MAINTENANCE AREA AND MAINTENANCE RESPONSIBILITIES

Section 1. Improvement of Common Maintenance Area. Declarant will landscape that portion of the Common Maintenance Area, if any, which covers each Lot which is subject to this Declaration. Declarant presently does not intend that there be any Common Maintenance Area.

Section 2. Association Maintenance. The Association shall, in perpetuity, maintain and provide for the maintenance of all the Common Area and Common Maintenance Area and all improvements thereon, including all of the following if located in the Common Area or Common Maintenance Area: any slopes, walls, buildings, parking facilities, private drainage systems, concrete terrace drains and desiltation/detention basins and other improvements. All of the same shall be at all times maintained in good repair,

appearance and working order. The Association shall provide landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation originally placed in the Common Area and Common Maintenance Area by Declarant. The Association shall have the right to enter onto any Lot (but not within the dwelling thereon) as may be necessary for the construction, maintenance or emergency repair of the Common Area or Common Maintenance Area or, if necessary, for the benefit of the Owners in common.

Section 3. Owner Maintenance. Each Owner shall, in perpetuity, keep and maintain in good repair and appearance all portions of his Lot and improvements thereon (other than any Common Maintenance Area), including, but not limited to, his residence, any private drainage system located within his Lot boundaries, any fence or wall and concrete terrace drains which are located on his Lot. The costs of maintenance and repair of fences and walls which are located at the boundary between Lots shall be shared equally by the Lot Owners; however, each Owner will be solely obligated to maintain the appearance of interior surfaces of such fences or walls. Each Owner shall also be solely obligated to maintain any fences or walls located between such Owner's Lot and Common Area or Common Maintenance Area, unless the instrument of conveyance of the Common Area or Common Maintenance Area states otherwise. Fences and walls which are installed by Declarant between Lots or between Lots and Common Area or Common Maintenance Area shall be deemed to establish the boundary line between such Lots or Lots and Common Area or Common Maintenance Area.

The Owner of each Lot shall water, weed, maintain and care for the landscaping located on his Lot (other than the Common Maintenance Area, if any, the maintenance of which is the responsibility of the Association) so that the same presents a neat and attractive appearance. The Owner of each Lot shall keep and maintain the exterior of his residence in good condition and appearance at all times. No Owner shall interfere with or damage the Common Area or Common Maintenance Area nor interfere with or impede Declarant or the Association in connection with the maintenance thereof as provided herein. NO OWNER WILL CHANGE THE TYPE OR COLOR OF ANY FENCING WITHOUT CONSENT OF THE ARC.

Section 4. Association's Right to Repair Neglected Lots. In addition to maintenance of the Common Area, in the event an Owner of any Lot should fail to maintain his Lot and improvements situated thereon in a manner satisfactory to the Board, the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right through its agents and employees, to enter on said Lot and to repair, maintain and restore the Lot and exterior of the building and any other improvements erected thereon. However, no entry into a dwelling unit may be made without the consent of the Owner, and such entry shall be made

only after not less than three (3) days notice has been given to the Owner. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject. There is hereby created an easement in favor of the Association to enter onto each Lot which is subject to assessment hereunder to provide maintenance as hereinabove stated, subject to the foregoing notice and consent requirements.

Section 5. Transfer of Common Maintenance Area to Association. The Common Maintenance Area, if any, over portions of the Lots shall be conveyed by easement from Declarant to the Association prior to the conveyance of record by Declarant of such Lot to an Owner.

ARTICLE XI

ANNEXATION

Section 1. By Association. Additional residential property, Common Area and Common Maintenance Area may be annexed to the Properties and to the Declaration upon the vote or written assent of two-thirds (2/3) of the voting power of members of the Association, excluding the vote of Declarant. Upon such approval, the owner of the property wishing it to be annexed may file of record a Declaration of Annexation which shall extend the scheme of this Declaration to such property.

Section 2. By Declarant. Additional land within the Properties may be annexed as Lots and Common Area to the Declaration and to the jurisdiction of the Association, and additional Common Maintenance Area easements may be added to the Common Maintenance Area by Declarant without the consent of members of the Association or the Board at any time within three (3) years following the original issuance by the California Department of Real Estate of the most recently issued final subdivision public report for a Phase of the development of the Properties, provided that the annexation is in substantial conformance with the plan of phased development set forth in Recital B above. Such annexation need not be in the same order as set forth in Recital B nor consist of the same Lots and Common Area therein described, provided that the proposed annexation will not cause a substantial increase in assessments against existing Owners which was not disclosed in final subdivision public reports under which preexisting Owners purchased their Lots. Any number of phases may be described on the same Declaration of Annexation and the inclusion of more than one phase on any Declaration of Annexation shall not result in merger of such phases.

ARTICLE XII

RIGHTS OF LENDERS

Section 1. Payments of Taxes or Premiums by First Mortgagees. First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of First Mortgagees shall be governed by the provisions of their deeds of trust. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any First Mortgagee who requests the same to be executed by the Association.

Section 2. Priority of Lien of Mortgage. No breach of the covenants, conditions or restrictions herein contained shall affect, impair, defeat or render invalid the lien or charge of any first Mortgage made in good faith and for value encumbering any Lot, 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 Lot.

Section 3. Curing Defaults. A 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. Approval of First Mortgagees. Unless at least sixty-seven percent (67%) of the First Mortgagees (based on one vote for each first Mortgage owned) have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this Subsection. Any restoration or repair of the Common Area after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by eligible holders of Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to eligible Mortgage holders. "Eligible Mortgage holder" as used in

this Article, means a holder of a first Mortgage on a Lot who has requested notice from the Association of those matters described in Section 5 below.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of residences, the exterior maintenance of residences, the maintenance of Common Area walks or common fences and driveways, or the upkeep of lawns and plantings in the Common Maintenance Area and other portions of the project.

(d) Fail to maintain fire and extended coverage insurance on any buildings within the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

(e) Use hazard insurance proceeds for losses to any portion of the Common Area for other than the repair, replacement or reconstruction of such Common Area.

(f) When professional management has been previously required by any eligible Mortgage holder, whether such entity became an eligible Mortgage holder at that time or later, any decision to establish self-management by the Association shall require the prior consent of at least sixty-seven percent (67%) of the voting power of the Association and the approval of eligible holders of Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to eligible Mortgage holders.

Section 5. Notice to Eligible Mortgagees. Upon written request to the Association identifying the name and address of the holder and the Lot number or address, any eligible Mortgage holder will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot on which there is a First Mortgage held by such eligible Mortgage holder.

(b) Any delinquency in the payment of assessments or charges owed by an Owner subject to a First Mortgage held by such eligible holder which remains uncured for a period of sixty (60) days.

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

(d) Any proposed action which would require the consent of a specified percentage of eligible Mortgage holders as specified above.

Section 6. Documents to be Available. The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, the Bylaws, other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The holders of fifty-one percent (51%) or more of First Mortgages shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any such financial statement so requested shall be furnished within a reasonable time following such request.

Section 7. 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.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violations and/or to recover damages.

Section 2. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 3. Amendments. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by the secretary of the Association certifying that at least seventy-five percent (75%) of the voting power of each class of

members of the Association have approved such amendment, which amendment shall become effective upon the recording thereof by the Office of the County Recorder of the County of Orange, California. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by the secretary of the Association certifying that at least (i) sixty-seven percent (67%) of the total voting power of the Association, and (ii) at least sixty-seven percent (67%) of the voting power of members of the Association other than Declarant have approved such amendment. Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of fifty-one percent (51%) or more of the Mortgagees of First Mortgages encumbering Lots within the Properties (based upon one vote for each such Mortgagee); provided, however, that each Mortgagee has informed the Association in writing of its appropriate address. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee":

- (a) The fundamental purpose for which the project was created (such as a change from residential use to a different use).
- (b) Assessments, assessment liens and subordination thereof.
- (c) The reserve for repair and replacement of the Common Maintenance Area and the Common Area.
- (d) Property maintenance obligations.
- (e) Casualty and liability insurance.
- (f) Reconstruction in the event of damage or destruction.
- (g) Rights to use the Common Maintenance Area and the Common Area.
- (h) Annexation.
- (i) Voting.
- (j) Any provision which, by its terms, is specifically for the benefit of the First Mortgagees, or specifically confers rights on First Mortgagees.

Notwithstanding anything contained herein to the contrary, so long as any portion of the Properties subject to this Declaration lies within the boundaries of the City of San Clemente ("City"),

the City shall have the power to veto any purported amendment or termination of this Declaration. Such veto right shall be based on whether, after such termination or amendment, this Declaration will continue to provide for adequate preservation and maintenance in reasonably good and sanitary condition of the Common Area and Common Maintenance Area, including, but not limited to, all personal property now or hereafter owned by the Association, and all real property and improvements constructed thereon (including, but not limited to, slopes, landscape areas, walls, driveways, parking areas, trash areas and buildings), now or hereafter owned by the Association in fee or over which the Association owns an easement for use, care or maintenance for the common use and enjoyment of the Owners as provided herein or for such other purposes as may be permitted by this Declaration. No amendment or written agreement purporting to terminate or modify the maintenance provisions of this Declaration, or which would change the description of or area included in the Common Area or Common Maintenance Area, shall take effect until approved by the San Clemente City Council. Written notice of such proposed amendment or termination shall be mailed, return receipt requested, to the San Clemente City Council. The San Clemente City Council shall either approve or veto such amendment or termination within ninety (90) days from the receipt of such notice. Nothing herein stated shall require the City Council to approve any addition to the Common Area or Common Maintenance Area.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties upon the written assent of two-thirds (2/3) of the voting power of each class of members of the Association. After conversion of the Class B membership in the Association to Class A membership, such annexation shall require the vote or written assent of (i) at least two-thirds (2/3) of the voting power of members of the Association, and (ii) at least two-thirds (2/3) of the voting power of members of the Association other than Declarant.

Section 5. Encroachments. Each Lot within the Properties is hereby declared to have an easement over all adjoining property (including Lots, Common Maintenance Area and Common Area) for the purpose of:

(a) Accommodating minor encroachments due to original engineering or surveying errors, errors in original construction, errors in reconstruction or repair in accordance with plans and specifications approved by the ARC, or settlement or shifting or movement of a building or other structure.

(b) Maintaining and repairing such encroachments.

(c) Accepting water from the established drainage patterns and systems referenced herein or as otherwise allowed.

Each Owner agrees for himself and his heirs, successors, executors, administrators and assigns, and the Association agrees, for itself, its successors and assigns, that each will permit free access at reasonable times and upon reasonable notice by the party for whose benefit an easement has been created hereunder for the purpose of exercising his rights under this Section.

Section 6. Reservations of Easements by Declarant.
Declarant hereby reserves the following easements:

(a) There is hereby reserved by Declarant, together with the right to grant and transfer the same, easements over the Properties for the installation, maintenance, service, repair, reconstruction and replacement of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded tract of the Properties.

(b) There is hereby reserved by Declarant, including, without limitation, its sales agents, representatives and prospective purchasers of Lots, together with the right of Declarant to grant and transfer the same, non-exclusive easements over the Common Maintenance Area and Common Area for construction, display, sales offices, incidental parking and exhibit purposes in connection with the construction, development and sale of residential Lots within the Properties and for other related purposes. Anything herein stated to the contrary notwithstanding, Declarant in exercising its rights under this Section shall not unreasonably interfere with the use of the Common Area by any Owner, and Declarant shall not unreasonably interfere with the use by an Owner of his Lot.

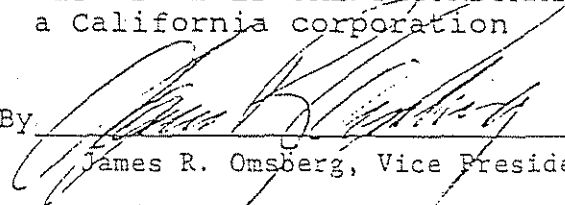
Section 7. Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to the Common Area of a particular Phase have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Phase, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement, then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or

does not vote on the question as above provided, then, in either such event, upon petition signed by members representing five percent (5%) or more of the voting power of the Association (excluding the voting power of Declarant), the Board shall call a special meeting of the members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 8. Litigation. In the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

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

DIVIDEND DEVELOPMENT CORPORATION,
a California corporation

By  Title
James R. Omsberg, Vice President

By _____ Title

EXHIBIT "A"

The Properties

<u>Phase</u>	<u>Residential Lots</u>	<u>Common Area Lots</u>	<u>Private Streets</u>	<u>Number of Residential Lots</u>
1	1-50	C, L, M, N, O, P, and Q	Santa Clara, Via Coco and Via Santa Maria	50
2	51-58; 98-130	H, I, J and R	San Martin, Paseo Alba and Via Zaragoza	41
3	59-97	D, E, F, G and K	Pastadero, Via La Mission, Calle Ricardo, Calle Fresno and Camino San Jose	39

All of the above Residential Lots, Common Area Lots and private streets are within the City of San Clemente, County of Orange, State of California, and shown on TRACT NO. 12864 filed with the County Recorder of the County of Orange as per Map recorded in Book 597, Pages 35 through 42, inclusive, of Miscellaneous Maps.

I hereby certify under penalty of perjury that the Notary Seal on the document to which this statement is attached reads as follows:

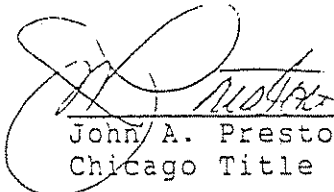
Name of Notary: KATHLEEN A. BROWNING

Date Commission expires: OCT. 21, 1988

County where Bond is filed: SAN DIEGO

Place of execution: SANTA ANA

Date: 7-27-88



John A. Preston
Chicago Title Insurance Company