

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HERITAGE VILLAGE \*\***

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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HERITAGE VILLAGE

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THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this  
10<sup>th</sup> day of June, 1983, by HERITAGE HOMES, INC., a California corporation  
("Declarant").

RECITALS

- A. Declarant is the owner of certain real property in the City of Ridgecrest, County of Kern, State of California, which real property is described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Properties").
- B. Declarant has deemed it desirable to impose a general plan for the improvement and development of the Properties and the adoption and establishment of covenants, conditions and restrictions upon the real property and each and every Lot and portion thereof and upon the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties.
- C. Declarant has deemed it desirable for the efficient preservation of the value, desirability and attractiveness of the Properties, pursuant to the provisions of this Declaration, to create a corporation to which should be delegated and assigned the powers of maintaining certain Common Area within the Properties as hereinafter provided, and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to.
- D. HERITAGE VILLAGE MASTER COMMUNITY 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.
- E. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; shall inure to the benefit of and be binding upon Declarant, each Owner and their respective heirs, executors and administrators; and may be enforced by Declarant, by any Owner or by the Master Association (as hereinafter defined).

## DEFINITIONS

Section 1.        Architectural Committee: The term "Architectural Committee" shall mean the Committee created pursuant to the Article of this Declaration entitled "Architectural Control".

Section 2.        Assessments: The term "Assessments" as used herein shall mean and refer to any or all, as the context in which the term is used shall require, of the assessments defined below:

- a. "Capital Improvement Assessment" shall mean and refer to a charge against each Owner and his Lot representing a portion of the cost to the Master Association for the installation or construction of any capital improvements on the Common Area, as provided for in this Declaration.
- b. "Regular Assessment" shall mean and refer to a charge against each Owner and his Lot representing that portion of the common expenses of the Master Association attributable to such Owner and his Lot, as provided for in this Declaration.
- c. "Reimbursement Assessment" shall mean and refer to a charge against each Owner and his Lot for the purpose of reimbursing the Master Association for any costs incurred by the Master Association on behalf of an individual Owner. A Reimbursement Assessment may also be levied by the Master Association for purposes of collecting any monetary penalties, which may be imposed by the Master Association against an Owner who fails to comply with the provisions of this Declaration, the determinations of the Board or the Architectural Committee, or any rule or regulation adopted by the Master Association.

Section 3.        Board of Directors: The term "Board of Directors" or "Board" as used herein shall mean and refer to the duly elected Board of Directors of the Master Association.

Section 4        City: The term "City" as used herein shall mean the City of Ridgecrest, California.

Section 5        Common Area: The term "Common Area" as used herein shall mean all the real property and improvements owned by the Master Association for the common use and enjoyment of all of the Owners. The Common Area to be so owned by the Master Association at the time of the conveyance of the first lot within the Properties shall include that certain real property located in the City of Ridgecrest, County of Kern, State of California, described more particularly as follows: Lots A and G of Tract No. 4467-C, as per map recorded in Book 32, pages 34 through 37, inclusive, of Maps, Records of Kern County, California, and Lots D, E and F of Tract No. 4467, "Unit E", as per map recorded in Book 32, page 98 et seq., of Maps, Records of Kern County, California. Additional common area or areas to be maintained by the Master Association shall be designated in the Declaration of Annexation as each phase is annexed to this Declaration pursuant to the Article of this Declaration entitled "Annexation".

Section 6        Declarant: The term "Declarant" as used herein shall mean and refer to HERITAGE HOMES, INC., a California corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7        Declaration: The term "covenants" and/or "Declaration" as used herein shall mean and refer collectively to the covenants, conditions, restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration.

Section 8        Improvement: The term "Improvement" as used herein shall mean and refer to any structure or appurtenance thereto of every type and kind, including but not limited to buildings, walkways, sprinkler pipes, garages, swimming pools, recreational facilities, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softening fixtures of equipment.

Section 9        Institutional Holder: The term "institutional Holder" as used herein shall mean and refer to any holder (beneficiary) of a first deed of trust which encumbers a Lot, which holder 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, or any federal or state agency.

Section 10      Lot: The term "Lot" as used herein shall mean and refer to each parcel of real property in the Properties and any additional property annexed to this Declaration, as shown with a separate and distinct number or letter on a final subdivision map or parcel map, which has been duly recorded or filed in the Office of the County Recorder of Kern County, excluding, however, any parcel designated as Common Area and/or any parcels designated for use as public streets and alleys or as private streets. Notwithstanding the foregoing to the contrary, in the event a condominium plan is or has been rerecorded covering any portion of the Properties and any additional property which is annexed to this Declaration pursuant to the Article of this Declaration entitled "Annexation," then as to all of such property and/or additional property covered by such condominium plan, as used in this Declaration the term "Lot" shall also mean each Condominium Unit contained within the Properties and additional property annexed hereto.

Section 11      Master Association: The term "Master Association" as used herein shall mean and refer to HERITAGE VILLAGE MASTER COMMUNITY ASSOCIATION, a nonprofit mutual benefit corporation, its successors and assigns.

Section 12      Member: The term "Member" shall mean and refer to those persons entitled to membership in the Master Association as provided in this Declaration and in the Master Association Articles of Incorporation and By-Laws.

Section 13      Mortgage: The term "Mortgage" as used herein shall mean and refer to any duly recorded and valid mortgage or deed of trust encumbering a Lot.

Section 14      Owner: The term "Owner" as used herein shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 15      Properties: The term "Properties" as used herein shall mean and refer to that certain real property in the City of Ridgecrest, County of Kern, State of California, which real property is described on Exhibit "A" attached hereto and by this reference made a part hereof.

Section 16      Sub-Association: The term "Sub-Association" as used herein shall mean and refer to any California corporation formed pursuant to the Non-Profit Corporation Law of the State of California, or its successors or assigns, organized and established by Declarant to manage, operate and maintain a project also subject to the jurisdiction of the Master Association, as authorized by, and further provided in any Declaration of Covenants, Conditions and Restrictions applicable to such projects.

NATURE AND PURPOSE OF COVENANTS

The Covenants, conditions and restrictions set forth in this Declaration constitute a general scheme for the development, protection and maintenance of the Properties to enhance the value, desirability and attractiveness of the Lots for the benefit of all Owners of Lots therein. These covenants, conditions and restrictions are imposed upon Declarant and upon the Owners of all Lots. Said covenants, conditions and restrictions are for the benefit of all Lots, and shall bind the Owners of all such Lots. Such covenants, conditions and restrictions shall be a burden upon and a benefit to not only the original Owner of each Lot, but also his successors and assigns. All such covenants, conditions and restrictions are intended as and are hereby declared to be covenants running with the land or equitable servitudes upon the land, as the case may be.

USE RESTRICTONS

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions.

Section 1        Single Family Residence: Each Lot shall be used as residence for a single family and for no other purpose. Each garage and/or carport located on a Lot shall be used exclusively for the parking of vehicles and the storage of the personal property of the occupant of such Lot; no garage and/or carport area shall be used as, nor converted to, living and/or sleeping areas. All front yards of Lots shall be landscaped within six (6) months of the close of escrow for each such Lot. The landscaping of the front yard of every such Lot shall include a reasonably appropriate lawn area the area of which shall amount to at least fifty percent (50%) of the total area of each front yard, which lawn area shall thereafter be irrigated, fertilized, mowed and trimmed at intervals sufficient to maintain an attractive appearance. No owner may install or permit any alternative to such lawn areas; specifically prohibited within the front yards of all Lots are "desert scenes" or green (or other colored) concrete or gravel, except when used in conjunction with and not as a substitution for an appropriate lawn area. The Master Association shall (pursuant to Section 14 of this Article or as otherwise provided in this Declaration) have all powers necessary or appropriate to enforce the provisions of this Section, including, without limitation, the right to enter any Lot for the purpose of installing and maintaining the lawn area called for in this Section and the right to assess a Reimbursement Assessment against the appropriate Owner for all costs in connection therewith.

Section 2        Business or Commercial Activity: No part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such non-residential purposes; except Declarant, its successors or assigns, may use any portion of the Properties for a model home site, and display and sales office during the construction and sales period. The provisions of this Section shall not preclude professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with all applicable governmental ordinances and are merely incidental to the use of the dwelling unit as a residential home.

Section 3        Nuisances: No noxious or offensive activity shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. Without limited the generality of the foregoing provisions, no loud noises or noxious odors, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road vehicles or items which may unreasonably interfere with television or radio reception or any Owner in the Properties shall be located, used or placed on any portion of the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee. The Board of Directors shall have the right to determine, in accordance with the By-Laws, if any noise, odor, interference or activity producing such noise, odor or interference constitutes a nuisance.

Section 4        Signs: No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot, without the prior written consent of the Architectural Committee, except (a) one (1) sign for each dwelling unit, of not more than six (6) square feet, plain block letters, advertising the dwelling unit for sale or rent, and (b) any and all signs, regardless of size or number, used by Declarant, its successors or assigns, to advertise the Properties during the construction and sales period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of all applicable governmental ordinances.



Section 5            Parking and Vehicular Restrictions: No Owner or other person shall park, store or keep any vehicle, except wholly within the parking area designated therefore, and any inoperable vehicle shall be stored only in an enclosed garage. No Owner or other person shall park any vehicle whatsoever on any private street within the Properties. Except as provided in Section 11 of Article XIV hereof, no Owner or other person shall park, store or keep on any property or street (public or private) within the Properties any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck), any recreational vehicle (including, but not limited to, any camper unit, motor home), any bus, trailer, trailer coach, camp trailer, boat, aircraft, mobile home, inoperable vehicle or any other similar vehicle or any vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board, upon any unenclosed parking space, so as to be visible from anywhere in the Properties. The above excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton rating when used for everyday-type transportation and subject to approval by the Board. No Owner of a Lot shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or upon the Common Area, except wholly within the Owner's garage, and then only when the garage door is closed; provided, however, that such activity shall at no time be permitted if it is determined by the Board or its agent to be a nuisance. Garage doors shall remain closed except for reasonable periods while the garages are being used.

Section 6            Animal Restrictions: No insects, reptiles, poultry or animals of any kind shall be raised, bred or kept on any Lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets (excluding, without limitation, equine, bovine, sheep, swine, goats and other such animals) which may be kept on Lots, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities, not in violation of the rules and regulations adopted by the Master Association. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Master Association (or the Architectural Committee or such other person or entity as the Master Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Master Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Any animals within the Properties must be either kept within an enclosure, an enclosed yard or on a leash being held by a person capable of controlling the animals. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area or any portion of another's Lot.

Section 7            Trash: No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise there from so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twenty-four (24) hours before and after scheduled trash collection hours). There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefore and fire pits in the enclosed yards designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap

or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.

Section 8        Temporary Buildings: No outbuilding, basement, tent, shack, shed or other temporary building or Improvement of any kind shall be placed upon any portion of the Properties either temporarily or permanently. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 9        Common Area Facilities: Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Architectural Committee, subject to the provisions of this Declaration limiting construction on portions of the Common Area.

Section 10      Outside Installations: No radio station or short-wave operators of any kind shall operate from any Lot or dwelling unit unless approved by the Board of Directors. No exterior radio antenna, C.B. antenna, television antenna, or other antenna of any type shall be erected or maintained in the Properties. No fence or wall shall be erected, altered or maintained in the Properties. No fence or wall shall be erected, altered or maintained on Lot in the Properties, except with the prior written approval of the Architectural Committee. All walls or fences initially constructed Declarant shall be permanently maintained by the Owners of the Lots on which they are located. Any alterations or modifications of the walls or fences not addressed herein shall be subject to the prior written approval of the Architectural Committee.

Section 11      Insurance Rates: Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Master Association without the approval of the Board, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Master Association or which would be in violation of any law.

Section 12      Drilling: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred feet (500') below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 13      Drainage: There shall be no interference with the established drainage pattern over any Lot within the Properties, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Declarant, or that which is shown on any plans approved by the Architectural Committee, which may include drainage from the Common Area over any Lot or Lots in the Properties.

Section 14      Violation of Governing Instruments: There shall be no violation of the restrictions of this Declaration or of the rules and regulations of the Master Association adopted in accordance with the provisions of the By-Laws. If any Owner, his family, guest, licensee, lessee or invitee, violates any such restrictions, the Board may impose a reasonable Reimbursement Assessment upon such Owner for each violation and may suspend the voting privileges of such Owner as further provided in the By-Laws. Such Reimbursement Assessment shall be collectible in the same manner as Regular Assessments hereunder, but the Board shall give such Owner notice and hearing before invoking any such Reimbursement Assessment or suspension.

Section 15      Construction by Declarant: Nothing in this Declaration, except as provided to the contrary hereinbelow, shall limit the right of the Declarant to commence and complete construction of Improvements to the Properties or to alter the foregoing or the Lots of Common Area or to construct such additional Improvements as the Declarant deems advisable prior to the completion and sale of all of the Properties. The Declarant may use any of the Lots within the Properties owned by it for model home sites and incidental

parking. For a period of ten (10) years from the date the first escrow closes in the first phase of the overall development covered (or to be covered upon annexation of additional real property) by this Declaration or until such time as Declarant has sold all properties owned by it in such overall development to individual Owners, whichever event first occurs, the Declarant shall have the right and an easement to enter upon, use and enjoy and designate and permit others (including, without limitation, Declarant's agents, employees, representatives, contractors and prospective purchasers) to enter upon, use and enjoy the Common Area for any purpose in connection with or incidental to the construction, development, sale, lease or other transfer of property within or adjacent to the Properties (including, without limitation, the erection, construction and maintenance of displays, sales offices and incidental parking, exhibits, signs and other structures), provided, however, that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of the Common Area by the Members.

Section 16      View Obstruction: No fence, structure, improvement or vegetation shall be constructed or planted anywhere on a Lot, if to do so may interfere with the view from any adjacent or nearby Lot, except that Declarant may vary or exceed said height or location of any Improvement in accordance with its architectural and landscaping plans. In the event of a dispute between Lot Owners as to the obstruction of a view, such dispute shall be submitted to the Architectural Committee whose decision in such matter shall be binding. Any such obstruction shall, upon request of the Architectural Committee, be removed or otherwise altered to the satisfaction of the Architectural Committee by the Owner of the Lot upon which the obstruction is located. Each Owner by accepting a deed to a Lot hereby acknowledges that any construction by Declarant may impair the view of such Owner and hereby consents to such impairment.

MEMBERSHIP AND VOTING RIGHTS

Section 1            Organization: The Master Association is organized as a California corporation under the California Non-Profit Corporation Law. The Master Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, By-Laws, and this Declaration. Neither the Articles nor By-Laws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or By-Laws, then such provision shall be construed, to the extent possible, so that such provision shall be consistent with the provisions of this Declaration.

Section 2            Membership: Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Master Association, shall be a Member of the Master Association. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lot which is subject to assessment by the Master Association. Ownership of such Lot shall be the sole qualification for membership. Transfer of a Lot shall automatically transfer membership in the Master Association.

Section 3            Voting Rights: The Master Association shall have Class A and Class B memberships with the following voting rights:

- (a) Class A: Class A Members shall be all Owners with the exception of Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be entitled to all rights and privileges of membership. The vote for such Lot shall be exercised as its Owners collectively determine, but in no event shall more than one vote be cast with respect to any Lot.
- (b) Class B: The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. 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.
  - (1) At such time as the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;
  - (2) On the second anniversary of the original issuance of the most recently issued final subdivision public report for a phase of development of the overall development of which the Properties are a part; or
  - (3) On the fourth anniversary of the original issuance of the final subdivision public report for the first phase of development of the Properties.

Section 4            Two Classes of Membership: Any action by the Master Association which must have the approval of the membership of the Master Association before being undertaken, shall require the vote or written assent of both a majority of the Class B membership as well as a majority of the Class A membership so long as there are two (2) outstanding classes of membership, unless a specific provision of this Declaration or the By-Laws or Articles of the Master Association requires the approval of a greater percentage of the membership. Notwithstanding the foregoing, any action by the Master Association pursuant to the Article of this Declaration entitled "ENFORCEMENT OF BONDED OBLIGATIONS" shall only require a majority of the voting power of the Owners other than Declarant.

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 By-Laws to elect at least 20% of the directors at any meeting at which directors are to be elected, and at which Class A Members are entitled to vote, then such Class A Members shall, by majority vote, among

themselves, elect 20% of the directors and the remaining vacancies on the Board shall be elected by the Class B Member so long as there are two outstanding classes of membership in the Association or so long as a majority of the voting power of the Association resides in the Declarant. In no event shall the Class A Members be entitled to elect more than 20% of the directors to the Board pursuant to the provisions of this special Class A voting right.

Section 6      Vesting of Voting Rights: All voting rights which are attributable to a specific Lot pursuant to the terms of this Declaration shall not vest until such time as such Lot is subject to annual assessments pursuant to the terms of this Declaration.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1            Covenant to Pay Assessment: Declarant on behalf of itself, and for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not is shall be so expressed in such deed, is deemed to covenant and agree to pay to the Master Association: (1) Regular Assessments, (2) Capital Improvement Assessments, and (3) Reimbursement Assessments, all such Assessments to be established and collected as hereinafter proved. The Regular Assessments must be in an amount sufficient to include an adequate reserve fund for maintenance, repairs and replacement of those portions of the Common Area that must be replaced on a periodic basis; this reserve fund must be collected as a Regular Assessment rather than as a Capital Improvement Assessment. Each of the Assessments, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to such person's successors in title unless expressly assumed by them.

Section 2            Purpose of Assessments: The Assessments levied by the Master Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Lots and for the improvement, operation and maintenance of the Common Areas and the performance of the duties of the Master Association as set forth in this Declaration.

Section 3            Amount of Regular Assessments: The amount and time of payment of Regular Assessments against each Lot shall be determined by the Board of Directors of the Master Association giving due consideration to the current maintenance costs and future needs of the Master Association. The Regular Assessments against each Lot shall not be increased more than twenty percent (20%) over the Regular Assessments for the preceding year against each Lot without the vote or written consent of a majority of the total voting power of the Master Association which shall include a majority of the votes residing in Members other than the Declarant.

Section 4            Capital Improvement Assessments: In addition to the Regular Assessments authorized above, the Master Association may levy, in any assessment 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, reconstruction, restoration, repair or replacement of a capital improvement within the Common Area, including fixtures and personal property related thereto, or any other action or undertaking on behalf of the Master Association; provided, however, that any such Assessment for all Lots for the fiscal year which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Master Association for that fiscal year shall be approved by the vote or written assent of a majority of the voting power of the Master Association, which shall include a majority of the votes resident in Members other than the Declarant.

Section 5            Reimbursement Assessments: The Master Association shall levy a Reimbursement Assessment against any Owner who fails to comply with the provisions of this Declaration, the determinations of the Architectural Committee, the Master Association's Articles or By-Laws, or any rule or regulation adopted by the Master Association, if such failure results in the expenditure of monies by the Master Association in carrying out its functions hereunder or for purposes of collecting any fines which may be levied by the Master Association. Except for collection of fines, such assessment shall be for the purpose of reimbursing the Master Association, shall be limited to the amount so expended, and shall be due and payable to the Master Association when levied.

Section 6            Notice and Quorum for Meetings Called Under Sections 3 and 4: Written notice of any meeting called to approve an increase in Regular Assessments greater than 20% under Section 3 of this

Article or a Capital Improvement Assessment under Section 4 of this Article shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of the voting power of the Master Association other than Declarant shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same quorum requirement.

Section 7            Uniform Rate of Assessment: Both regular and Capital Improvement Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, unless some other period for collection is adopted by the Board.

Section 8            Date of Commencement of Regular Assessments; Due Dates: The Regular Assessments provided for herein shall commence as to all Lots (including those owned by Declarant) on the first day of the month following the conveyance of the first Lot by Declarant to an individual Owner, provided, however, that Regular Assessments shall commence for all Lots located within a phase of the Properties which have been annexed hereto on the first day of the month following the conveyance of the first Lot in such phase by Declarant to an individual Owner. The first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year of the Master Association. The Board of Directors shall fix the amount of the Regular Assessments against each Lot at least sixty (60) days in advance of each fiscal year of the Master Association. Written notice of the amount of the Regular Assessments against each Lot shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. In the event the Board shall determine at any time that the estimate of the Regular Assessments for the current fiscal year is, or will become, inadequate to meet the expenses of the Master Association for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the total Master Association expenses and determine the revised amount of the Regular Assessments against each Owner.

Section 9            Certification of Payment: The Master Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Master Association setting forth whether the Assessments on a specified Lot have been paid. Said signed certificate shall be conclusive evidence as to all third parties relying thereon to shall that all Assessments acknowledged therein have been paid but shall not relieve any Owner of the responsibility for Assessments not in fact paid.

Section 10          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 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 Master Association. Such reserves shall be deemed a contribution to the capital account of the Master Association by the Members.

Section 11          Effect of Nonpayment of Assessments; Remedies of the Association: Each Owner of any Lot on becoming an Owner of any Lot, is and shall be deemed to covenant and agree to pay to the Master Association each and every of the Assessments provided for in this Declaration; and agrees to the enforcement of all such Assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. Any assessment not paid within fifteen (15) days after the date on which it becomes due shall thereafter bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and a late charge of Ten Dollars (\$10) shall be assessed. In addition to any other

remedies herein or by law provided, the Board, or its authorized representative, may enforce the obligations of the Owners to pay the Assessments provided for in this Declaration, and each of them, in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

- (a) Enforcement by Suit: By commencement and maintenance of a suit at law against any Owner or Owners personally obligated to pay Assessments for such delinquent Assessments as to which they are personally obligated, such suit to be maintained in the name of the Master Association. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon as provided for herein, costs of collection, court costs and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent owner. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.
- (b) Enforcement by Lien: There is hereby created a claim of lien, with power of sale, on each and every Lot to secure payment to the Master Association of any and all Assessments levied against any and all Owners of such Lots pursuant to this Declaration, together with interest thereon as provided for in this Declaration, and all costs of collection which may be paid or incurred by the Master Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any delinquency in the payment of any such Assessment, the Board or any authorized representative thereof may make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each delinquency shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien and any demand or claim of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due account thereof. If such delinquency is not paid within ten (10) days after delivery of such demand, the Board or its duly authorized representative may thereafter elect to file and record a claim of lien on behalf of the Master Association against the Lot of the defaulting Owner in the Office of the County Recorder of Kern County. Such claim of lien shall be executed and acknowledged by any officer of the Master Association and shall contain substantially the following information.
  - (1) The name of the record Owner;
  - (2) The legal description of the Lot against which claim of lien is made;
  - (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and estimated attorneys' fees (with any proper offset allowed);
  - (4) That the claim of lien is made by the Master Association pursuant to this Declaration; and
  - (5) That a lien is claimed against said Lot in an amount equal to the amount stated, together with all other amounts becoming due from time to time in accordance with this Declaration.

Upon such recordation of a duly executed original or copy of such a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Master Association as a lien upon the Lot against which such Assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration, except for tax liens for real property taxes on any Lot and assessments on any Lot in favor of any municipal or other governmental assessing unit and except for certain Trust Deeds as provided in Section 12 below. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by the California Civil Code for the foreclosure of a deed of trust with power of sale, or in any other



manner permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Master Association, or any Title Company authorized to do business in California as Trustee for the purpose of conducting such power of sale foreclosure. The lien provided for herein shall be in favor of the Master Association and shall be for the benefit of all other Lot Owners and shall secure payment of all sums set forth in the claim of lien, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said claim of lien. The Master Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. In the event such foreclosure is by action in Court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner. Upon the timely curing of any default for which a notice of claim of lien was filed by the Board and the payment of all sums secured by the lien created by the recordation of such claim of lien, the Board shall cause an officer of the Master Association to file and record an appropriate release of such claim of lien in the Office of the County Recorder of Kern County, California. No Owner may waive or otherwise escape liability for the Assessment provided for in this Declaration by non-use or abandonment of his Lot. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of a claim of lien, whether judicially, by power of sale, or otherwise, until the expiration of ten (10) days after a copy of said claim of lien, showing the date of recordation thereof has been mailed to the Owner of the Lot which is described in such claim of lien.

Section 12 Subordination to Certain Trust Deeds: The lien for the Assessments provided for herein in connection with a given Lot shall not be subordinate to the lien of any deed of trust or mortgage, except the lien of a first deed of trust or first mortgage, or contract of sale given and made in good faith and for value that is of record as an encumbrance against such given Lot prior to the recordation of a claim of lien for the Assessments provided for in this Declaration against such given Lot (such deed of trust or mortgage being hereinafter referred to as a "prior deed of trust"). The sale or transfer of any Lot shall not affect any Assessment lien created pursuant to the term of this Declaration to secure Assessments becoming due whether prior to, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided by Section 1 of this Article; provided, however, that the sale or transfer of any Lot pursuant to a judicial foreclosure or foreclosure by power of sale of a prior deed of trust shall extinguish any Assessment lien which has attached and become effective with regard to the Lot being so transferred prior to the time of such sale or transfer, and shall prohibit the recordation of any Assessment lien against such Lot on account of Assessments which became due prior to the date of such sale or transfer; provided, however, that there shall be a lien on the interest of the purchaser at such sale which shall attach, be created and become effective and be foreclosed in accordance with this Declaration and which shall secure all Assessments becoming due after the date of any such sale or transfer. For the purpose of this Section 12, a sale or transfer of a Lot shall occur on the date of recordation of a deed or other instrument of title evidencing the conveyance of record title to the Lot.

Section 13 Exempt Property: The following property subject to this Declaration shall be exempt from the Assessments created herein: All properties dedicated to an accepted by any local public authority and the Common Area.

Section 14 Enforcement of Reimbursement Liens:

- (a) Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, in the event the Master Association imposes a Reimbursement Assessment as a monetary penalty for

failure of a Member to comply with the terms of the Declaration or as a means of reimbursing the Master Association for costs incurred by the Master Association in the repair of damage to the Common Area for which Member was allegedly responsible or as a means to force a Member to comply with the terms of this Declaration, such Reimbursement Assessment shall not be characterized or treated as an assessment which may become a lien against a Member's Lot enforceable in the manner provided by the California Civil Code for the foreclosure of a deed of trust with power of sale as provided in Section 11 of this Article. A Reimbursement Assessment imposed for any purpose other than the purposes enumerated hereinabove in this Section shall be enforceable in accordance with the procedures set forth in Section 11 of this article.

- (b) The provisions of subsection (a) hereinabove relating to restrictions on the enforcement of Reimbursement Assessments for certain purposes shall not apply to any interest charge or late charge for delinquent assessments imposed pursuant to Section 11 of this Article or to any costs reasonably incurred by the Master Association (including attorneys' fees) in its efforts to collect delinquent assessments.

DUTIES AND POWERS OF THE MASTER ASSOCIATION

Section 1            General Powers of the Master Association: All powers relating the management, operation and maintenance of the Common Area, as well as certain rights, duties and powers relating to the Lots, as hereinafter set forth, shall be vested in the master Association and in its Board of Directors. The specific and primary purposes and powers of the master Association and its Board of Directors are to provide for the operation, control, repair, maintenance and restoration of the Common Areas, provide architectural control of the Properties, provide recreational activities for the Members, and to enforce the provisions of this Declaration and the Master Association's Articles and By-Laws, and any other instruments relating to the management and control of the Master Association and the Properties. The Master Association may do any and all other acts and things that a nonprofit corporation is empowered to do, which may be necessary, convenient or desirable in the administration of its affairs for the specific and primary purposes of meeting its duties as set forth in this Declaration. The Master Association, through its Board of Directors, shall have the authority to delegate its powers to committees, officers of the Master Association or its employees.

Section 2            Contracts of the Master Association: The Master Association shall have the right and power to employ or engage a manager and other employees or agents and contract for such services, labor and materials as it may deem reasonable or necessary to operate and maintain the Properties, the Common Area, and the improvements thereon and to discharge its other duties as herein provided. Any agreement for professional management of the Master Association or for services of the Declarant must provide that the agreement may be terminated by either party without cause or payment of a termination fee upon thirty (30) days written notice and the term of such contract shall not exceed one (1) year.

Section 3            General Duties of the Master Association: In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limited the generality thereof, and subject to the limitations on the power of the Board as set forth in Sections 4 and 5 of this Article, the Master Association acting through the Board shall:

- (a) Own and maintain all Common Area within the Properties, including, but not limited to, all sewer lines not otherwise owned or maintained by a public agency, and the exterior of all perimeter walls, all private streets within the Properties, street lights, and all landscaping which is between the public right of way and the perimeter wall within the Properties. The Master Association shall have the right, but shall not be obligate to maintain the street trees. The Master Association shall maintain the Common Area in a good, sanitary and attractive condition and in a manner which is in accordance with such standards for maintenance as may be prevalent in the neighborhood and as may be required from time to time by the City of Ridgecrest;
- (b) Maintain such policy or policies of insurance as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Master Association and its Members including, but not limited to, hazard and liability insurance, plate glass insurance, fidelity bonds, workmen's compensation and officers' and directors' liability insurance. The Master Association shall be required, if available, to maintain fire and extended coverage insurance on insurable Common Area improvements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs);

- (c) Have the authority to obtain, for the benefit of the Common Area, all utility services unless such services are separately charged to the Owners;
- (d) Maintain all drainage facilities and easements owned by the Master Association, if any;
- (e) Pay taxes and assessments which are or could become a lien on the Common Area, if any, or some portion thereof;
- (f) Prepare budgets and financial statements for the Master Association and its Members as prescribed in the By-Laws of the Master Association;
- (g) Initiate and execute disciplinary proceedings against Members of the Master Association for violations of provisions of this Declaration or the Master Association's Articles of Incorporation or By-Laws in accordance with the procedures set forth in this Declaration;
- (h) Maintain, repair and replace certain parking areas over portions of the Properties as provided in Section 10 of Article XIV of this Declaration.

**Section 4**            Restrictions on Power of the Board: The Master Association shall be prohibited without the prior vote or written assent of a majority of the voting power of the Master Association, which shall include a majority of the votes residing in Members other than Declarant, from doing any of the following;

- I. incurring aggregate expenditures for capital improvements to any portion of the Properties in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Master Association for that fiscal year;
- II. selling during any fiscal year of the Master Association property of the Master Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Master Association for the year;
- III. paying compensation to members of the Board or to officers of the Master Association for services performed in the conduct of the Master Association's business; provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Master Association: and
- IV. filling a vacancy on the Board created by the removal of a Board member.

**Section 5**            Limitation on Board Authority on Contract: The Board of Directors shall not enter into any contracts for goods or services with a duration greater than one (1) year without the vote or written consent of a majority of the voting power of the Master Association, which shall include a majority of the votes residing in Members other than the Declarant, with the following exceptions:

- I. a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;
- 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;
- III. prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short rate cancellation by the insured or
- IV. a lease agreement for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessee under the agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

**Section 6**            Master Association Rules: The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable which may include the establishment of a system of fines and penalties enforceable as Reimbursement Assessments. The rules of the Master Association shall govern such matters in furtherance of the purposes of the Master Association, including, without limitation, the use of the Common Areas, provided, however, that the rules of the Master Association may

not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or By-Laws. Any rule of the Master Association which imposes a system of fines or penalties must provide that the accused be given notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is imposed. A copy of the rules of the Master Association as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the rules of the Master Association 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 rules of the Master Association shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The rules of the Master Association, as adopted, amended or repealed, shall be available at the principal office of the Master Association to each Owner, Associate Member and Institutional Holder of a Mortgage upon request. In the event of any conflict between any such rules of the Master Association and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the rules of the Master Association shall be deemed to be superseded by the provisions of this Declaration, the Articles or the By-Laws to the extent of any such conflict.

Section 7            Entry Onto Lots: The Master Association and its representatives shall have the right to enter upon any Lot within the Properties to the extent such entry is necessary in connection with the performance by the Master Association of its duties and responsibilities under this Article or under this Declaration, including, without limitation, the construction, maintenance or effectuation of emergency repairs for the benefit of the Lots, the Common Areas, or for any of the Owners within the Properties.

Section 8            Rights of the Master Association to Maintain: In the event an Owner fails to maintain the landscaping of his residence, the Master Association may, but shall not be obligated to, cause such maintenance to be accomplished. In the event the Master Association elects to cause such maintenance to be accomplished, the cost of all or any portion of such maintenance shall be deemed to be a Reimbursement Assessment to the affected Owner and residence.

INSURANCE

Section 1        Types: The Master Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

- (a) A comprehensive policy of public liability insurance covering the Common Areas with a limit of not less than One Million Dollars (\$1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against such risks as shall customarily be covered or available with respect to planned unit developments and shall contain an endorsement which shall preclude the insurer from denying the claim of an Owner or Designee because of negligent acts or omissions of the Master Association, other Owners or other Designees;
- (b) A policy of fire and casualty insurance with extended coverage for the full replacement value of the Common Area improvements, without deduction for depreciation, and clauses waiving subrogation against Owners, Designees and the Master Association and persons upon the Properties with the permission of Owner, such insurance to afford protection against loss or damage by fire and other hazards covered by the standard extended coverage policy of hazard insurance;
- (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 Master Association, and such fidelity bonds shall name the Master Association as obligee, shall be written in an amount equal to one hundred and fifty percent (150%) of the estimated annual operating expenses of the Master Association, including reserves.

Section 2        Waiver by Members: As to each of said policies which not be voided or impaired thereby, the Members hereby waive and release all claims against the Master Association, the Board, 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; Annual Review: The Master Association may purchase such other insurance as it may deem necessary, including, but not limited to, plate glass insurance, workmen's compensation, officers' and directors' liability, errors and omissions insurance and blanket policies of hazard insurance for the Lots. The Board shall annual determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Master Association in light of inflation, practice in the area in which the Properties are 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 Master Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 4        Premiums and Proceeds: Insurance premiums for any such blanket insurance coverage obtained by the Master Association and any other insurance deemed necessary by the Master Association shall be an expense to be included in the Regular Assessments levied by the Master Association. The Master Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the Master 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 Master Association and the Members.

Section 5            Payment of Taxes or Premiums by Institutional Holders of Mortgages: Institutional Holders of Mortgages 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, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Holders of Mortgages shall be governed by the Provisions of their Mortgages. Institutional Holders of Mortgages 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 and Institutional Holder of a Mortgage making such payments shall be owed immediate reimbursement therefor from the Master Association.

DAMAGE AND DESTRUCTION AFFECTING COMMON AREA

Section 1            Consent of Owners to Rebuild: If all or any portion of the Common Area is damaged or destroyed by fire, or other casualty, then neither the Board, the Master Association, or any agent or employee thereof shall be required or permitted to take any action to repair or rebuild the damaged portions, or to cause the damaged portions to be repaired or rebuilt without the written consent of at least fifty-one percent (51%) of the Members of each class as to the manner of repair or reconstruction and the payment therefor, except as provided in Section 2 of this Article in the event adequate insurance proceeds are available as set forth therein.

Section 2            No Consent Required With Adequate Insurance: Notwithstanding anything contained in Section 1 above to the contrary, if the cost of repairing or rebuilding the portion of the Common Area so damaged or destroyed does not exceed the amount of insurance proceeds available to the Master Association, the Board shall be authorized and required without the consent or approval of the Members, to contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor. In the event any excess insurance proceeds remain, or in the event of a decision of the Master Association not to reconstruct or replace such damages or destroyed improvements, the Board, in its sole discretion, may retain such sums in the general funds of the Master Association or distribute pro rata all or a portion thereof to the Owners, subject to the prior rights of Institutional Holders of any first Mortgages whose interests may be protected by insurance policies carried by the Master Association. The rights of an Owner and the Institutional Holder of a first Mortgage on his Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.



IX

EMINENT DOMAIN

The term 'taking' as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Area or the Improvements thereon, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the contemnor in lieu of engaging in the condemnation action. Any awards received on account of the taking shall be paid to the Master Association. IN the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the Improvements thereon shall apply as in the case of destruction of Improvements upon the Common Area. In the event of a total taking, the Board may in its sole discretion retain any award in the general funds of the Master Association or distribute pro rata all or a portion thereof to the Owners. The rights of an Owner and the Institutional Holder of a Mortgage on his Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

ARCHITECTURAL CONTROL

Section 1            Members of Committees: The Architectural Committee shall consist of three (3) members. The initial members of the Architectural Committee shall be representatives of Declarant, whose business address is 17961 Cowan, Irvine, California 92714. Subject to the following provisions, Declarant shall have the right and power at all times to appoint and remove a majority of the members of the Architectural Committee or to fill any vacancy of such majority until the "turnover date" which shall be the date on which either (i) ninety percent (90%) of the Lots in the overall development subject (or which will be subject) to this Declaration have been sold and the deeds recorded ("close of escrow"), or (ii) five (5) years following the date of issuance of the Final Subdivision Report for the first phase of the Properties, whichever occurs earlier. Commencing one (1) year from the date of issuance of the Final subdivision Public Report for the first phase of the Properties, the Board shall have the power to appoint one (1) member to the Architectural Committee, until the turnover date. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Persons appointed to the Architectural Committee by the Board shall be from the membership of the Master Association, but persons appointed to the Architectural Committee by Declarant need not be Members of the Master Association. The Architectural Committee shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Properties. The Architectural Committee may designate and appoint a representative who is a licensed architect and a majority of the members of said Architectural Committee may, from time to time, remove or replace such representative. The designated representative of the Architectural Committee may be, but need not be, a member of the Architectural Committee.

Section 2            Review of Plans and Specifications: The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. No construction, alteration, addition, modification, decoration, redecoration or reconstruction of an Improvement in the Properties shall be commenced or maintained until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Architectural Committee and approved in writing by the Architectural Committee. The address for submission of such plans and specifications shall be at the address of the principal place of business of the Master Association. The Architectural Committee shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Area or the enjoyment thereof the Members, and that the upkeep and maintenance thereof will not become a burden on the Master Association. The Architectural Committee may condition its approval of proposals or Plans and specifications for any improvement (i) on such changes therein as it deems appropriate, (ii) upon the agreement by the person (referred to in this Section 2 as "applicant") submitted the same to grant appropriate easements to the Master Association for the maintenance of the Improvement, or (iii) upon the agreement of the applicant to reimburse the Master Association for the cost of such maintenance, or all three, and may require submission of the additional plans and specifications or other information prior to

approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Master Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee to the applicant to the address set forth in the application for approval, within thirty (30) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any application submitted pursuant to this Section 2 shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Committee shall have been transmitted to the applicant within (30) days after the date of receipt by the Architectural Committee of such application or additional information.

Section 3            Meetings of the Architectural Committee: The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural committee may from time to time, by resolution unanimously adopted in writing, designate an Architectural Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances pursuant to Section 8 of this Article. In the absence of such designation, the vote of any two (2) members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

Section 4            No Waive of Future Approvals: The approval of the Architectural Committee 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 Architectural Committee, 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 whatever subsequently or additionally submitted for approval or consent.

Section 5            Compensation of Members: The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6            Inspection of Work: 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 Architectural Committee.
- (b) Within sixty (60) days thereafter, the Architectural Committee or its duly authorized representative may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans it shall notify the Owner in writing of such noncompliance within such sixty (60) day prior, specifying the particulars of noncompliance, 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 noncompliance, the Architectural Committee shall notify the Board in writing of such failure. After affording such Owner notice and hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correction or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) 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 record a notice of noncompliance in the Office of the

Kern County Recorder and may peacefully remove the noncomplying Improvement or otherwise peacefully remedy the noncompliance, and the Owner shall reimburse the Master Association, upon, demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Master Association, the Board shall levy a special Reimbursement Assessment against such Owner for reimbursement.

- (d) If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) 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            Nonliability of Architectural Committee Members: Neither Declarant, the Architectural Committee nor any member of the Architectural Committee, the Board nor their duly authorized representative, shall be liable to the Master Association, to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee 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 over-all benefit or detriment which would result to the immediate vicinity and the Properties generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Architectural Committee's approval or disapproval shall be based solely on the considerations set forth in this Article, and the Architectural Committee's approval or disapproval shall be based solely on the considerations set forth in this Article, and the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plans or design from the standpoint of structural safety or conformance with building or other codes.

Section 8            Nonapplicability to Declarant: The provisions of this Article shall not apply to any Lot owned by Declarant or prior to its first conveyance to a member of the public.

Section 9            Variance: The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions upon height, size, 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 Architectural Committee, and shall become effective upon recordation in the Office of the County Recorder of Kern County. 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 ordinance and Lot setback lines or requirements imposed by the City of Ridgecrest or any other governmental authority.

Section 10          Appeal: In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision of favor of the applicant.

NOTICES

In each instance in which notice is to be given to the Owner of a Lot, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice to one or two or more co-owners of a Lot, or to any general partner of a partnership owning such a Lot, shall be deemed delivery to all of the co-owners or to the partnership as the case may be, and personal delivery of the notice to any officer or agent for the service of process of a corporation owning such Lot shall be deemed delivery to the corporation or such notice may be delivered by United States mail, certified or registered, postage prepaid, return receipt requested, addressed to the Owner of such Lot at the most recent address furnished by the Owner in writing for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Lot, and any notice so deposited in the mail within Kern County, California, shall be deemed delivered forty-eight (48) hours after such deposit. Any notice to be given to the Master Association may be delivered personally to any member of the Board, or delivered in such manner as may be authorized by the Master Association. Any notice to be given to the Master Association shall be delivered by the United States mail, certified or registered, postage prepaid, return receipt requested, and any notice so deposited in the mail within Kern County, California, shall be deemed delivered forty-eight (48) hours after such deposit.

RIGHTS OF LENDERS

Notwithstanding any provisions to the contrary as may be provided elsewhere in this Declaration, Lenders shall have the following rights:

Section 1        Notice to Institutional Holders of Default: Any Institutional Holder of any Mortgage on a Lot shall be entitled to receive, upon written request to the Master Association, written notification from the Master Association of any default by the Owner (trustor) of such Lot in the performance of such Owner's obligations under the Declaration or the Master Association's Articles or By-Laws which is not cured within thirty (30) days from the date of such default.

Section 2        Assessments on Foreclosure: Any Institutional Holder of any First Mortgage who obtains title to a Lot pursuant to the remedies provided in the Mortgage (but exclusive of a deed in lieu of foreclosure), or through foreclosure of the First Mortgage, shall not be liable for any claims for unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the Institutional Holder of the First Mortgage.

Section 3        Right of First Refusal: Any Institutional Holder of a Mortgage who comes into possession of a Lot pursuant to the remedies provided in such Mortgage, or foreclosure of the Mortgage, shall be exempt from any right of first refusal, and any right of first refusal shall not impair the rights of an Institutional Holder to:

- (a) Foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by the Trustor of the Mortgage, or
- (c) Sell or lease a Lot acquired by the Institutional Holder.

Section 4        Required Consent of Owners: Unless at least two-thirds (2/3) of the Owners, excluding the vote of Declarant (based on one vote for each Lot owned), have given their prior written approval, the Master Association and the Owners shall not be entitled to:

- (a) Change the method of determining the obligation, Assessments (whether Regular Assessments of Capital Improvement Assessments), dues or other charges which may be levied against the Owner of a Lot;
- (b) By act or omission seek to abandon, partition, release, subdivide, encumber, sell or transfer any property or any improvements which are owned, directly or indirectly, by the Master Association;
- (c) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design of the dwellings situated on each Lot or the upkeep of the Common Areas within the Properties;
- (d) Use hazard insurance proceeds for losses to the Common Area property for other than the repair, replacement or reconstruction of such improvements;
- (e) Fail to maintain fire and extended coverage insurance on insurable Common Area property 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);
- (f) Abandon or terminate the Master Association, except for abandonment, partition or termination as may be provided by law;
- (g) Fail to maintain an adequate reserve fund for the replacement of equipment and facilities used for Common Area maintenance.

Section 5            Rights of institutional Holders: All Institutional Holders of Mortgages on individual Lots shall, upon written request to the Master Association, be entitled to:

- (a) Inspect the books and records of the Master Association during normal business hours;
- (b) Receive an annual audited financial statement of the Master Association within ninety (90) days following the end of any fiscal year of the Master Association, provided, however, that such audited statements shall be made available only if they have been prepared by the Master Association in the regular course of business;
- (c) Receive written notice of all meetings of the Owners of the Master Association and shall be entitled to designate a representative to attend all such meetings.

Section 6            Payment of Taxes and Insurance Premiums: Institutional Holders of Mortgages on Lots within the Properties may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any Common Area property, if any, and may pay overdue premiums on hazard insurance policies or secure hazard insurance coverage upon the lapse of a policy for any Common Area property and the mortgages making such payments shall be owed immediate reimbursement therefor from the Master Association.

Section 7            Priority on Distribution of Proceeds: No Owner or any other party shall have priority over any rights of Institutional Holders of Mortgages upon individual Lots pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the commonly owned property, if any, and/or the individual Lots and improvements thereon.

Section 8            Notice of Destruction or Taking: In the event that any Lot or the improvements thereon or any commonly owned property, if any, or portions thereof, are substantially damaged or destroyed, or are made the subject of any condemnation proceeding in eminent domain or any otherwise sought to be acquired by a condemning authority, the Master Association shall promptly notify all Institutional Holders of Mortgages affected by such destruction, taking or threatened action.

Section 9            Insurance: Notwithstanding any other provisions herein, the Master Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by the Federal Home Loan Mortgage Corporation, so long as it is a mortgagee or owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by the Federal Home Loan Mortgage Corporation.

Section 10          Mortgage Protection Clause: No breach of the covenants, conditions or restrictions herein contained, nor any lien created hereby, shall defeat or render invalid the lien of any first mortgage or first deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

Section 11          Conflicts: In the event of any conflicts between any of the provisions of this Article and any other provisions of the Declaration, the provisions of this Article shall control.

ENFORCEMENT OF BONDED OBLIGATIONS

In the event that the improvements to any commonly owned or maintained property within the Properties have not been completed prior to the issuance of a Final Subdivision Public Report covering such tract by the Department of Real Estate of the State of California, and the Master Association is obliged 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 Master 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 improvement in the Planned Construction Statement appended to the Bond. If the Master Association has given an extension in writing for the completion of any common improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.
- (b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting, signed by Members representing five percent (5%) or more of the total voting power of the Master Association.
- (c) The only Members entitled to vote at such meeting 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 Master Association and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Master Association.



EASEMENTS AND OWNERS' PROPERTY RIGHTS

Section 1            Owners' Easements of Enjoyment: Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area (except for any slope areas on the Common Area) which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (a) The right of the Master Association to reasonably limit the number of guests of Owners using the Common Area facilities;
- (b) The right of the Master Association to establish uniform rules and regulations pertaining to the use of the Common Area;
- (c) The right of the Master Association in accordance with the Articles, By-Laws and this Declaration, with the vote or written assent of a majority of the total voting power of the Association, which shall include a majority of the votes residing in Members other than the Declarant, to borrow money for the purpose of improving the Common Area and the facilities and in aid thereof, and, subject to the provisions of the Article of this Declaration entitled "RIGHTS OF LENDERS," to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Institutional Holders of Mortgages shall be subordinated to the rights of the Owners;
- (d) Subject to the provisions of the Article of this Declaration entitled "RIGHTS OF LENDERS," the right of the Master Association to dedicate, release, alienate or transfer the Common Area to any public agency, authority, utility or other person for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast at least a majority of the total voting power of the Master Association, which shall include a majority of the votes residing in Members other than the Declarant, agreeing to such dedication, release, alienation or transfer has been recorded;
- (e) The rights and reservations of Declarant as set forth in this Declaration, including the right of Declarant and its sales agents, representatives and prospective purchasers, to the non-exclusive use of the Common Area and any facilities thereof, without cost, for access, ingress, egress, use and enjoyment, in order to dispose of the Properties as provided herein, until the time set forth in Section 15 of Article III of this Declaration; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;
- (f) The right of the Board to suspend the rights and easements of use and enjoyment of the recreational facilities, if any, located on the Common Area of any Member, and the persons deriving such rights and easements from any Member, for any period during which the payment of any Assessment against such Member and his Lot remains delinquent; and, after notice and hearing with an opportunity to be heard, to impose monetary penalties or suspend such use rights and easements for a reasonable period of time as determined by the Board for any violation of this Declaration, Articles, By-Laws or rules and regulations of the Master Association, it being understood that any suspension for either nonpayment of any Assessment or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligation to pay Assessments as provided herein;

- (g) The right of the Master Association, acting through the Board, to reasonably restrict access to areas of the Common Area.

Section 2            Waiver of Use: No Owner may exempt himself from personal liability for Assessments duly levied by the Master Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot or any other property in the Properties.

Section 3            Title to Common Area: Declarant hereby covenants for itself, its successors and assigns, that it will convey to the Master Association fee simple title to the Common Area in the Properties, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants and conditions then of record, including those set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from Declarant pursuant to a Final Subdivision Public Report covering the Properties.

Section 4            Owners' Rights and Duties: Utilities: The rights and duties of the Owners of Lots within the Properties with respect to sanitary sewer and water, electricity, gas and telephone and cable television lines and drainage facilities shall be governed by the following:

- (a) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone and cable television lines or drainage facilities are installed within the Properties, which connections, lines or facilities, or any portion thereof, lie in or upon Lots owned by persons other than the Owner of a Lot served by said connections, the Owners of any Lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots or to have utility companies enter upon the Lots within the Properties in or upon which said connection, 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;
- (b) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone or cable television lines or drainage facilities are installed within the Properties, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his lot:
- (c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Master Association, the matter shall be submitted to the Board of Directors who shall decide and levy an Assessment against any or all of the Owners involved, which Assessment shall be collected and enforced in the manner provided by this Declaration.

Section 5            Common Area Easements: The Master Association shall own the Common Area for the use, enjoyment and convenience of the Owners. Each Lot within the Properties subject to this Declaration is hereby declared to have an easement over all of the Common Area, for the benefit of the Lots, the Owners of the Lots, and each of them, and for their respective families, guests, invitees, tenants and contract purchasers, for all of the purposes and uses hereinabove set forth, and without limiting the generality of the foregoing, for ingress and egress over and through the Common Area.

Section 6            Drainage Easements: There are hereby created by Declarant non-exclusive drainage easements over certain of the Lots within the Properties for purposes of accommodating drainage waters from adjacent Lots and Common Area within the Properties. Each Owner of a Lot in the Properties agrees for himself and his successors and assigns that he will not in any way interfere with the established drainage

pattern over his Lot from adjoining Lots or Common Area, and that he will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot in order to accommodate drainage waters from adjoining Lots. For the purposes hereof, established drainage is defined as the drainage which occurred at the time the overall grading of the Properties was completed by Declarant and thereafter inspected and approved by the County of Kern as being in compliance with the requirements of the County of Kern.

Section 7            Party Walls and Fences: Those Owners who have a common wall or fence adjoining their Lots and such a wall or fence dividing the Lots upon which their homes are constructed, shall equally have the right to the use of such wall or fence except that each shall have the exclusive right to the use of the interior surface of the wall or fence on his side. Neither Owner shall use any portion of the wall or fence so as to interfere with the use and enjoyment of the other Owner. In the event that any portion of such wall or fence, except the interior surface of one side, is damaged or injured from any cause, other than the act or negligence of either party, it shall be repaired or rebuilt at their joint expense.

Section 8            Creation of Easements: Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots superior to all other encumbrances applied against or in favor of any portion of the Properties which is the subject of this Declaration. In furtherance of the easements provided for in this Declaration the individual grant deeds to Lots may, but shall not be required to, set forth said easements.

Section 9            Easement for the Benefit of Convalescent Hospital: Declarant hereby grants over all private streets within the overall development an easement for vehicular ingress and egress for the benefit of the Convalescent Hospital which is located on Unit "N" of Tract 4467, as per map recorded in Book 32, pages 34 through 37, inclusive, of Maps, Records of Kern County, California. The Master Association may initiate an action or actions pursuant to California Civil Code Section 845, or any successor provision, in order to collect funds from the owners and/or operators of such Convalescent Hospital to compensate the Master Association for the use of the private streets within the overall development pursuant to the easement granted in the preceding sentence. In any such action the award may include reasonable attorneys' fees as the court may deem appropriate.

Section 10           Parking Easement: Every owner of a Lot within the real property covered (or to be covered upon annexation of additional real property) by this Declaration shall have a nonexclusive right and easement, which will be appurtenant to and shall pass with the title to such Lot, to park motor vehicles over those areas of such real property designated as "Parking Areas" in the Declaration of Covenants, Conditions and Restrictions governing the Sub-Associations organized and maintained with regard to projects also subject to the jurisdiction of the Master Association. The Master Association shall have the authority to adopt rules and regulations to govern the use of such Parking Areas and the Master Association shall have an easement over such Parking Areas for the purpose of maintaining, repairing and replacing such Parking Areas.

Section 11           Recreational Vehicle Easement: Every owner of a Lot within the real property covered (or to be covered upon annexation of additional real property) by this Declaration shall have a nonexclusive right and easement, which will be appurtenant to and shall pass with the title to such Lot, to park recreational vehicles, trailers and other vehicles, all in accordance with rules and regulations applicable thereto adopted by the Master Association, over that portion of the Common Area described as: Lot A of Tract No. 4467-C as per map recorded in Book 32, Pages 34 through 37, inclusive, of Maps, Records of Kern County, California, and over other portions of the land described in Exhibit "B" hereto, as designated for such

purposes in the documents causing such lands to be annexed to the Properties in accordance with Article XV of this Declaration.

Section 12      Encroachment Easements: Each Lot and the Common Area is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to the engineering errors, errors in original construction, settlement or shifting of any building, or any other similar cause, and any encroachment due to building overhang or projection whether roof, eaves or otherwise, specifically including, without limitation, bay windows, fireplaces and floor area cantilevers. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

ANNEXATION

Section 1            Annexation with Consent: Additional Lots and Common Area may be annexed to the Properties with the consent of at least 66-2/3% of the voting power of the Association residing in Members other than the Declarant.

Section 2            Annexation Without Consent: If, at any time within the third anniversary date of the original issuance of the most recently issued public report for a phase of the Properties, the Declarant should develop additional lands which are described in Exhibit "B" and which are attached hereto and by this reference made a part hereof, such additional lands may be annexed to the Properties without the assent of the Class A members under Section 1 immediately above and be made subject to the Declaration and thereby become subject to the jurisdiction of the Master Association; provided, however, that the development of the additional lands described in this Section shall be in accordance with the general plan set forth in Exhibit "C" attached hereto and by this reference made a part hereof, will not overburden common facilities within the Properties and will not cause a substantial increase in assessments against existing Owners which was not disclosed in Subdivision Public reports under which pre-existing Owners purchased their Lots. Notwithstanding the preceding sentence and/or any other provision of this Declaration, the general plan attached hereto as Exhibit "C" shall not be binding upon the Declarant should the Declarant desire to annex to the Properties some or all of the lands described in Exhibit "B" hereto and further desire to alter the phasing plan and/or the number of lots set forth in such general plan to accommodate then current circumstances. Detailed plans for the development of additional lands must be submitted to the California Department of Real Estate prior to such development of additional lands. If the California Department of Real Estate determines that such detailed plans are not in accordance with the general plan on file and such agency so advises the Master Association and the Declarant, the annexation of the additional lands must be in accordance with Section 1 immediately above. A Declaration of Annexation as described hereinafter in Section 3 of this Article, covering the real property or portions thereof described in Exhibit "B" hereto, shall be executed and recorded by the Owner of such property to be annexed.

Section 3            Declaration of Annexation: The additions authorized under the foregoing section shall be made by filing of record a Declaration of Annexation, or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property. Such Declaration of Annexations contemplated above may contain such complementary additions or modifications of the covenants, conditions and restrictions contained in this Declaration to such property. Such Declaration of Annexations contemplated above may contain such complementary additions or modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property which are not inconsistent with the plan of this Declaration. In no event, however, shall any such Declaration of Annexation revoke, modify or add to the covenants established by this Declaration within the existing property, except as hereinafter otherwise provided. The execution and recordation of a Declaration of Annexation 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 HERITAGE VILLAGE MASTER COMMUNITY ASSOCIATION, and thereafter all of the Owners of Lots in said real property shall be Members of the HERITAGE VILLAGE MASTER COMMUNITY ASSOCIATION in accordance with the terms and provisions of this Declaration and such Declaration of Annexation. Upon such annexation all Owners of Lots within the Properties shall have an equal right to the use of all of the Common Areas within the Properties. Nothing herein shall obligate

Declarant to annex to the Properties all or any portion of the Lots described in Exhibit "B" hereto and any decision to effect such annexation shall be in the sole discretion of Declarant.

GENERAL PROVISIONS

Section 1            Enforcement: The Master Association, or any Owner or the successor in interest of an Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges 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; provided, however, that with respect to Assessment liens, the Master Association shall have the exclusive right to the enforcement thereof. Failure by the Master Association or by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2            Severability: Should any of the covenants contained in this Declaration be void or be or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 3            Term: Subject to the limitations set forth in Section 4 of this Article, this Declaration and the covenants herein contained shall be in effect until December 31, 2042, and shall automatically be extended for successive period of ten (10) years unless within six (6) months prior to the expiration of the initial term or any ten (10) year renewal period a written agreement executed by the then record Owners of more than three-fourths (3/4) of the Lots within the Properties shall be placed on record in the Office of the County Recorder of the County of Kern by the terms of which agreement the effectiveness of this Declaration is terminated or the covenants herein contained are extinguished in whole or in part as to all or any part of the property then subject thereto.

Section 4            Amendments: Subject to the rights of lenders as set forth in the Article of this Declaration entitled "RIGHTS OF LENDERS," this Declaration of Covenants, Conditions and Restrictions may be amended only the affirmative assent or vote of both

- (i) seventy-five percent (75%) of the voting power of the Master Association, including the voting power of the Declarant, and
- (ii) seventy-five percent (75%) of the voting power of Members other than Declarant; provided, however, that the percentage of voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause; provided further, that if the two class voting structure as provided in this Declaration is still in effect, this Declaration may not be amended without the vote or written assent of seventy-five percent (75%) of the voting power of each class of Members. This amendment provision shall not be amended to allow amendments by the assent or vote of less than the prescribed percentage of voting power required for amendments hereof. An amendment or modification shall be effective when executed by the President and Secretary of the Master Association who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of Kern County, California. Notwithstanding the foregoing, no such amendment or modification of this Declaration which would affect a provision of this Declaration over which the City of Ridgecrest has direct authority (e.g., building permits or the maintenance of public water and sewer lines) shall be effective without the prior written consent of the Planning Directors of the City.

Section 5            Nonliability of Officials: To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Master Association or any member of such Board or committee shall be liable to any Member of the Master 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 6            Construction: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community or tract and for the maintenance of the Common Area. 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.

Section 8            Nuisance: The result of every act or omission, whereby and 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 Architectural Committee, the Master Association, or any other land owner in the Properties. Such remedy shall be deemed cumulative and not exclusive.

Section 9            Conflicts: In case of any conflict between this Declaration and the Articles of Incorporation or By-Laws of the Master Association, this Declaration shall control.

Section 10          Attorneys' Fees: In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs and damages, to reasonable attorneys' fees, whether or not such controversy or claim is litigated and prosecuted to judgment.

Section 11          The Declaration: By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby, and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

Section 12          Enforcement by City: The terms of this Declaration shall be enforceable by the City as they relate those matters over which the City of Ridgecrest has direct authority (e.g., building permits or maintenance of public water and sewer lines).



EXHIBIT "A"  
LEGAL DESCRIPTION

That certain real property in the City of Ridgecrest, County of Kern, State of California, described as Lots 1 through 32, inclusive, and Lots A through G, inclusive, of Tract No. 4467-C as per map recorded in Book 32, Pages 34 through 37, inclusive, of Maps, Records of Kern County, California, and Lots D, E and F Of Tract No. 4467, "Unit E", as per map Recorded in Book 32, Page 98 et seq., of Maps, Records of Kern County, California.

EXHIBIT "B"  
LEGAL DESCRIPTION  
OF REAL PROPERTY TO BE ANNEXED

PARCEL 1;

Parcel 3 of Parcel Map 6684, in the City of Ridgecrest, County of Kern, State of California, as per map recorded December 3, 1982 in Book 28, Page 193 of Parcel Maps, in the Office of the County Recorder of said County.

EXCEPTING THEREFROM all of Tract 4467, Unit "C" as per map recorded February 16, 1983 in Book 32, Page 34 of Maps, in the Office of the County Recorder of said County.

ALSO EXCEPTING THEREFROM all of Tract 4467, Unit "N", as per map recorded March 18, 1983 in Book 32, Page 49 of Maps, in the Office of the County Recorder of said County.

ALSO EXCEPTING THEREFROM that portion of said Parcel 3, described as follows:

Beginning at the southwest corner of Lot 1 of Tract 4467, Unit "N", as recorded in Map Book 32 at Page 49 in the Kern County Recorder's Office, thence the following 4 courses: (1) South 00°08'27" east, 266.25 feet; (2) North 89°51'33" east 241.00 feet to the east line of said Parcel 3; (3) North 00°08'27" west 266.35 feet along the last named Parcel 3; and (4) South 89°51'33" west 241.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM Lots D, E and F of tract No. 4467, "Unit E", as per map recorded in Book 32, Pages 98 et seq., of Maps, in the Office of the County Recorder of said County.

*Exhibit "C" available for view in the Heritage Village Master Community Association office*