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Mesa Homes
28765 Single Oak Drive, Suite 100
Temecula, California 92390

Attn.: Carolyn Agnew

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE VILLA AVANTI ASSOCIATION

A Residential Planned Development

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| | <u>Page</u> |
|--|-------------|
| 1. DEFINITIONS | 2 |
| 2. GENERAL PLAN OF DEVELOPMENT | 5 |
| 3. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS | 6 |
| 4. POWERS, RIGHTS, AND DUTIES OF THE ASSOCIATION | 8 |
| 5. ASSESSMENTS AND LIENS | 8 |
| 6. INSURANCE | 12 |
| 7. COMMON AREA AND LANDSCAPE MAINTENANCE AREA | 14 |
| 8. MAINTENANCE AND REPAIRS | 15 |
| 9. ARCHITECTURAL CONTROL | 16 |
| 10. DESTRUCTION OF PROJECT | 17 |
| 11. WAIVER OF PARTITION | 18 |
| 12. COVENANTS AND RESTRICTIONS REGARDING USE | 18 |
| 13. ANNEXATION OF ADDITIONAL PROPERTY | 22 |
| 14. AMENDMENT | 23 |
| 15. TRANSFER OF RESIDENTIAL LOT | 25 |
| 16. TERM OF RESTRICTIONS | 25 |
| 17. NOTICES | 25 |
| 18. MORTGAGEES | 26 |
| 19. ENFORCEMENT OF BONDED OBLIGATIONS | 29 |
| 20. CONDEMNATION | 30 |
| 21. DORMANT ASSOCIATION | 30 |
| 22. MISCELLANEOUS | 31 |

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
THE VILLA AVANTI ASSOCIATION**

This Declaration of Covenants, Conditions and Restrictions, is made as of October 15, 1988 by Mesa Homes, a California corporation ("Declarant").

W I T N E S S E T H:

A. Declarant is the owner of that certain real property (the "Property") consisting of "Lots" as hereinafter defined, located in unincorporated area of the County of Riverside, State of California more particularly described as follows:

"Lots"

Lots 1 through 9, inclusive, of Tract 21675-1, as per map recorded in Book 198, Pages 82 through 84, of Maps, in the Office of the County Recorder of Riverside County.

All other property owned by Declarant, including adjacent property, is specifically excluded from this Declaration.

B. Declarant intends to create and develop upon the Property and any additional real property that is annexed thereto pursuant to Article 13 of this Declaration (hereinafter referred to as the "Annexable Property"), a planned development consisting of single-family detached residential structures (hereinafter all property subject to this Declaration shall be referred to as the "Project" as more particularly described below).

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

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

E. THE VILLA AVANTI ASSOCIATION, a California nonprofit mutual benefit corporation, has been or will be incorporated under the laws of the State of California for the purpose of exercising the aforesaid powers.

F. Declarant intends to convey the Project, and any and all portions thereof, subject to the covenants, conditions and restrictions set forth herein.

NOW THEREFORE, Declarant hereby declares that the Project shall be held, sold and conveyed subject to the following Declaration as to division, easements, rights, liens, charges, covenants, servitudes, restrictions, limitations, conditions and uses to which the Project may be put, hereby specifying that such Declaration shall operate for the mutual benefit of all Owners of the Project and shall constitute covenants to run with the land and shall be binding on and for the benefit of Declarant, its successors and assigns, The Villa Avanti Association its successors and assigns, and all subsequent Owners of all or any part of the Project, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, for the benefit of the Project, and shall, further, be imposed upon all of the Project as a servitude in favor of each and every lot within the Project as the dominant tenement.

ARTICLE 1 **DEFINITIONS**

The following definitions and covenants shall be applicable to this Declaration:

(a) "Annexable Property" shall mean and refer to all of that certain real property described on Exhibit "A" hereto, and to all improvements constructed thereon. All or any part of the Annexable Property shall, if developed, be annexed to the Property pursuant to the Article entitled "Annexation of Additional Property" in this Declaration.

(b) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association as the same may be duly amended from time to time.

(c) "Association" shall mean and refer to The Villa Avanti Association, a California nonprofit mutual benefit corporation, its successors and assigns.

(d) "Board" or "Board of Directors" may be used interchangeably and shall mean and refer to the Board of Directors of the Association.

(e) "By-laws" shall mean and refer to the By-laws adopted by the Association as the same may be duly amended from time to time.

(f) "Common Areas" shall mean and refer to any real property within the Project owned by the Association for the common use, benefit and enjoyment of the Owners. There are no Common Areas

within the Property. However, Common Areas are provided for in the Annexable Property as described on Exhibit "E."

(g) "Declarant" shall mean and refer to Mesa Homes, a California corporation, and its successors and assigns if such successors and assigns acquire Declarant's rights and obligations hereunder by express written assignment which shall be recorded in the Office of the County Recorder for Riverside County.

(h) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, together with any amendments, supplements or modifications hereto.

(i) "Declaration of Annexation" shall mean and refer to those certain declarations of restrictions annexing one or more Phases of the Annexable Property or Common Area to the Project, in accordance with the provisions of the Article herein entitled "Annexation of Additional Property," thereby subjecting such Phase or Common Area to the terms and provisions of this Declaration, and bringing such Phase or Common Area within the jurisdiction of the Association.

(j) "Deed of Trust" shall mean and be synonymous with the word "Mortgage", and the same may be used interchangeably with the same meaning; and likewise, the word "Trustor" shall be synonymous with the word "Mortgagor", and the word "Beneficiary" shall be synonymous with the word "Mortgagee".

(k) "Improvements" shall mean and refer to all structures and appurtenances thereto of every kind, including, but not limited to, Residences and any additions thereto, swimming pools, spas, buildings, gazebos, driveways, walkways, fences, walls, retaining walls, poles, signs, patios, decks, and landscaping.

(l) "Landscape Maintenance Areas" shall mean and refer to all plantings, planted trees, shrubs, irrigation systems, walls, entry monuments, sidewalks and other landscaping improvements in those areas described and depicted as "Association Maintenance Responsibility" in Exhibit "B" attached, and which are to be maintained by the Association in accordance with the provisions of this Declaration. If annexation to the Property is effected pursuant to this Declaration, the Landscape Maintenance Areas shall then include (i) such portions of the Annexable Property subject to landscaping easements owned by the Association and (ii) those landscaping improvements behind the curb and within the right of way adjacent to the Annexable Property to be maintained by the Association. The Landscape Maintenance Areas within the Annexable Property are depicted in Exhibit "C" and attached, and are subject to change, which changes, if any, shall be reflected on the

Declaration of Annexation for that Phase. The areas designated as Association Maintenance Responsibility may be conveyed to CSA-143 as provided for in this Declaration.

(m) "Lot" shall mean and refer to a lot shown upon the recorded subdivision map of the Project, and all improvements constructed thereon, if any. Only those lots which are designated and intended for the construction of a Residence and ownership by an individual Owner shall be deemed "Lots."

(n) "Member" shall mean and refer to every person or entity who holds a membership in the Association.

(o) "Mortgage" shall mean and refer to any security device encumbering all or a portion of the Project or any Residential Lot, and the term "Mortgage" shall include a Deed of Trust.

(p) "Mortgagee" shall mean and refer to a person or entity to whom a Mortgage is made or who otherwise is the holder of a Mortgage; "Mortgagor" shall mean and refer to a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage.

(q) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a Lot which is part of the Project, but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall also include a contract buyer under a Real Property Sales Contract, provided that such Real Property Sales Contract is recorded in the Official Records of Riverside County, California, and complies with the provisions of Sections 2985-2985.6 of the California Civil Code.

(r) "Phase" shall mean and refer to one or more Lots within the Project for which a Final Subdivision Public Report has been issued by the California Department of Real Estate.

(s) "Project" shall mean and refer to the Property, including all Improvements constructed thereon, and to all portions of the Annexable Property which are hereafter annexed to the Property pursuant to this Declaration.

(t) "Property" shall mean and refer to the real property described in Paragraph A of the Preamble of this Declaration.

(u) "Residence" shall mean and refer to the individual dwelling and the related Improvements which are constructed upon a Lot and which are designed and intended for use and occupancy by a single family.

(v) "Rules and Regulations" shall mean and refer to those rules and regulations adopted by the Association or its Board, including any amendments or additions thereto.

(w) "Side Yard Easements" shall mean and refer to those easements in favor of an Owner of an adjacent Lot, as shown on Exhibit "D" and set forth more fully in Section 12(m).

(x) "Single Family" shall mean and refer to one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than six persons not all so related maintaining a common household.

(y) "VA/FHA" shall mean and refer to the United States Veterans Administration and the Federal Housing Administration.

ARTICLE II GENERAL PLAN OF DEVELOPMENT

A. Introduction. The Villa Avanti Association has been designed by Declarant as a master planned residential community, which, when completed, will consist of approximately 473 detached single-family residences together with certain Common Area improvements.

As presently scheduled, The Villa Avanti Association are to be developed in a series of Phases over a period of approximately three years. Declarant will construct Residences and related improvements on Lots in the Project, and will market the Residences to members of the general public. Declarant will attempt to annex the Property and all the Annexable Property into County Service Area No. 143 ("CSA"). If accepted for annexation, the CSA will maintain all or portions of Common Areas and Landscape Maintenance Areas as shown on Exhibits "B" and "C" after the annexation is completed and the CSA is funded. To the extent such maintenance is accepted by the CSA, the Association shall cease to maintain such areas.

As any Annexable Property is developed with Residences, Declarant shall record a Declaration of Annexation of said Phase which shall serve to impose the covenants set forth in this Declaration upon said Phase, and subject said Phase to the jurisdiction of the Association. The voting rights in the Association, and the obligations of Owners, including Declarant, for the payment of Assessments levied by the Association shall be adjusted as set forth in the Declaration of Annexation.

B. Rights and Obligations of Owners. Each Owner of a Lot in the Project shall automatically become a Member of the Association and shall be obligated for the payment of Assessments to the Association. In addition, each Owner, his family members, tenants

and invitees will be entitled to the use of Common Areas which may be annexed to the Project pursuant to the provisions of this Declaration. The Association shall be responsible for the ownership, maintenance and operation of the Common Areas of The Villa Avanti Association and the maintenance and operation of the Landscape Maintenance Areas. When all or part of each area is accepted by the CSA, the CSA is funded to provide for their maintenance and the CSA assumes the maintenance responsibility, the Association shall turn over all maintenance, operation and ownership (to the extent possible by deed, lease or other means) to the CSA.

C. Declarant's Control of Development. In order that the Project be completed and established as a master planned community, Declarant shall have the sole discretion and control over the conceptual design of Residences and Improvements to be constructed in the Property. Further, Declarant shall have the sole discretion and control over all aspects of designing, constructing and completing all of the Common Area. Declarant shall have reasonable rights to maintain sales offices, model complexes, signs and displays on any portion of the Project for a period of seven years from the conveyance of the first Lot in the Property to a bona fide purchaser, or until all Lots in the last Phase of the Project are sold (and escrows closed), whichever later occurs, in order to market the sale, lease or other conveyance of Lots in the Project on other property in Rancho California owned or acquired by Declarant. Declarant shall be obligated to maintain all such model complexes, sales offices, signs and displays.

D. Non-Liability of Declarant. Nothing in this Article or elsewhere in this Declaration shall be understood or construed to compel Declarant to develop and construct any subsequent Phases of the Project. The purpose of this Article is merely to describe the proposed general plan of development for the Project and to describe the legal relationship between the Property and subsequent Phases which may be annexed to the Property. Without limiting the generality of the foregoing, nothing in this section or elsewhere in this Declaration shall limit the right of Declarant to complete construction of the Project, to alter same or to construct such additional Improvements as Declarant shall deem advisable prior to the completion and sale of all Lots in the Project. Declarant may assign any or all of its rights under this Declaration to any successor to all or any part of Declarant's interest in the Project by an express written assignment recorded in the Office of the County Recorder of Riverside County.

ARTICLE 3
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

A. Membership. An Owner of a Lot shall automatically, upon becoming the record owner thereof, be a Member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Such membership shall be appurtenant to and pass with the ownership of such Lot. The membership shall not be transferred, pledged or alienated in any way, except upon and with the transfer of such Lot. Any attempt to make a transfer of a membership prohibited by this section shall be void and shall not be reflected upon the Association's books and records. If the Owner of any Lot fails to transfer such membership appurtenant thereto upon any transfer, whether voluntary or involuntary, of the Lot, the Association shall have the right to record the transfer upon its books and thereupon the membership outstanding in the name of the prior Owner shall be null and void.

B. Voting. The Association shall have two classes of voting membership:

1. Class A. Class A Members shall be all Owners with the exception of the Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one Class A vote be cast with respect to any Lot.

2. Class B. The Class B Member is the Declarant. The Class B Member is entitled to three votes for each Lot (including any Lot annexed pursuant to Article 13) that Declarant owns. As to each Phase of the Project, the Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) Two years from the date of the original issuance of the Final Subdivision Public Report for the most recent Phase of the Project, or

(b) Four years from the date of the original issuance of the first Final Subdivision Public Report for the first Phase of the Project.

C. Administration and Compliance. The common affairs and management of the Project shall be administered by the Association, through its Board, officers and agents in accordance with the provisions of this Declaration, and the By-laws. In the event that the By-laws are in any way inconsistent with this Declaration, then this Declaration shall prevail and control. Each Owner, guest,

tenant, or occupant of a Lot shall comply with the provisions of this Declaration, the By-laws and Rules and Regulations of the Association, all as lawfully amended from time to time, and failure to so comply shall be grounds for (i) an action for damages and/or injunctive relief, and (ii) such remedies, by legal proceedings or

otherwise, as are available by reason of this Declaration or the By-laws, each of which remedies shall be cumulative and in addition to each other available remedy.

ARTICLE 4
POWERS, RIGHTS, AND DUTIES OF THE ASSOCIATION

The Association shall have the powers, rights and duties, in addition to those provided elsewhere in this Declaration, the Articles of Incorporation and the By-laws to: (i) enforce and comply with the provisions of this Declaration; (ii) levy assessments and perfect and enforce liens as hereinafter provided; (iii) borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners; provided, however, that the vote of a majority of each class of Members shall be required to borrow in excess of 5% of the budgeted gross expenses of the Association for that fiscal year and (iv) make reasonable Rules and Regulations for the operation and use of the Project and to amend them from time to time.

Whenever this Declaration or the By-laws require the approval, consent or action of the Association, said approval, consent or action shall be that of the Board, unless otherwise expressly provided by this Declaration or the By-laws.

The Board may transfer all the Association's rights, title and interest in the Common Areas and the Landscape Maintenance Areas, or any portions thereof, or lease same to County Service Area No. 143 or make such other arrangements as are satisfactory to provide for the maintenance of said Common Areas and Landscape Maintenance Areas. No consent of the Owners is required to effectuate this transfer, lease or other agreement provided the CSA agrees to ultimately assume the Association's maintenance obligations for its portion of the Common Areas or Landscape Maintenance Areas. The Association shall remain financially obligated for the maintenance of such Areas until such time as the CSA is actually funded for such maintenance. When the CSA takes over any maintenance, the Board shall promptly evaluate the effect of that action on the Association budget and reduce the assessments appropriately.

ARTICLE 5
ASSESSMENTS AND LIENS

A. Creation of Obligation and Lien. Each Owner, including Declarant, shall have a personal obligation to pay all assessments, charges and other monetary sums which are duly levied against his Lot by the Association and become due while he is the Owner of such Lot. Such assessments, charges and other sums are also hereby established as charges upon the Lot to which they relate and shall be a lien thereon.

B. Proportionate Share. Each Owner's proportionate share ("Proportionate Share") in the receipts and common expenses of the Association shall be a pro rata share equal to the number of Residential Lots owned by such Owner divided by the total number of Residential Lots within the Project.

C. Assessments. Except as otherwise provided in this Section 5(c), each Owner, including Declarant, shall be subject to the following assessments in amounts to be determined by the Board:

1. Regular monthly maintenance assessments equal to the Owner's Proportionate Share of the actual or estimated cost of all maintenance, repairs, taxes, insurance, management and other common expenses for which the Association is responsible. Said assessments shall be amortized and collected on a monthly basis and shall commence as to all Lots within a particular Phase, including Declarant's unsold Lots (other than Declarant's unsold Lots in future Phases), as of the first of the month following the close of escrow for sale of the first Lots in the particular Phase of the Project. Voting rights shall commence concurrently with said assessments and shall not be vested until assessments against said Lots have been levied by the Association.

The Board may not, without the vote or written consent of a majority of Association Members other than the Declarant impose a regular annual assessment per Lot which is more than 20% greater than the regular annual assessment for the immediately preceding year except as provided in Civil Code Section 1366(b).

2. Adequate reserves for replacement, whether by capital contribution or otherwise, which reserves shall be amortized and collected monthly on the same basis as for regular assessments.

3. Special assessments for Owner's Proportionate Share of capital expenditures or other purposes which shall be on the same basis as for regular assessments, provided that in any fiscal year, the Board may not, without the vote or written consent of a majority of Association Members other than Declarant, levy special assessments to defray costs of any action or undertaking on behalf of the Association which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year.

4. Charges, payments, fines, penalties and such other sums as become payable under this Declaration or the By-laws, provided said charges, payments, fines, penalties and such other sums to be imposed for disciplinary measures are pursuant to the notice and hearing requirements of Section 7341 of the California Corporations Code and are not in an amount which exceeds the amount necessary for the purpose or purposes for which it is levied. The provisions of this Section 5(c)(4) shall not limit the right of the

Board to levy and collect the sums specified herein as special assessments against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member into compliance with this Declaration or the By-laws.

Assessments on Lots in future Phases shall not commence until the close of escrow for the first Lot in each particular Phase.

D. Emergency Assessments. Notwithstanding any other provision contained in this Article, the governing body may increase assessments necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

1. An extraordinary expense required by an order of a court.

2. An extraordinary expense necessary to repair or maintain subdivided property or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered.

3. An extraordinary expense necessary to repair or maintain the subdivided property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the governing body in preparing and distributing the pro forma operating budget. However, prior to the imposition or collection of an assessment under this subsection, the governing body shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

E. Payment. Each Owner shall pay all assessments levied upon his Lot to the Association on or before the due date. If an assessment is not paid within 15 days of the date due, the Association may assess the Owner in the greater of 10% of the amount of the delinquency or \$10.00 for a late charge, interest at 12 percent per annum commencing 30 days after the assessment becomes due, and costs of collection and enforcement (including reasonable attorneys' fees). No Owner may exempt himself from liability for his share of assessments by abandoning his Lot.

F. Lien. Such assessments (including late charges, interest, collection, attorneys' fees and other costs) shall, if not paid within 30 days of the due date, become a lien upon the Owner's Lot and shall continue to be such a lien until fully paid, subject to the following conditions provided, however, that an assessment levied by the Association as a monetary penalty as a

disciplinary measure for failure of a Member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of the Landscape Maintenance Areas for which the Member was allegedly responsible or in bringing the Member and his subdivision interest into compliance with the governing instruments may not be characterized nor treated as an assessment which may become a lien against the Owner's Lot enforceable by a power of sale or other nonjudicial procedure provided for by the laws of the State of California:

1. Such lien shall become effective against any such Lot only upon the recordation by the Association of a Notice of Delinquent Assessment, in the Office of the County Recorder of Riverside County, California. The Notice of Delinquent Assessment shall state the amount of delinquent assessments and other charges, a description of the Lot against which the same has been assessed, and the name of the Owner of such Lot and the name and address of the trustee authorized by the Association to enforce the lien by sale of the Lot. Such Notice of Lien shall be executed by an authorized representative of the Association. Upon the payment of all delinquent assessments and charges, or upon other satisfaction thereof, the Association shall cause to be recorded a release of lien, provided that the Association is reimbursed for the cost of preparing and recording the release (including reasonable attorneys' fees).

2. Any action brought to foreclose such lien shall be commenced within one year following such recordation; provided, however, that said period may be extended by the Association for a period not to exceed one additional year by recording a written extension thereof.

3. Any such lien shall not defeat nor render invalid the lien of any first Mortgage or first Deed of Trust affecting any Lot made in good faith and for value and recorded in the Office of the Riverside County Recorder prior to the recordation of any such lien, and any such lien shall be subordinate and subject to the lien of any such prior recorded first Mortgage or first Deed of Trust. Any person who acquires title to a Lot by or through trustee's sale or foreclosure of a first Mortgage or first Deed of Trust shall take such title free of the lien hereof for all assessments which accrued up to the time of such trustee's sale or foreclosure, but subject to the lien hereof for all assessments and charges subsequently accruing.

G. Foreclosure. The Association is hereby vested with the right and power to bring, at its option, any and all actions against an Owner for the collection of said assessments which are not paid when due, and to enforce the aforesaid lien by any and all methods available for the enforcement of contractual obligations

or liens including, without limitation, the right to bring a personal action against the Owner on such debt, the right to foreclose such lien in any method provided by law for foreclosure of a mortgage, and the right to sell the Owner's interest by power of sale. A sale of an Owner's interest by power of sale shall be conducted in the same manner provided in California Civil Code Sections 2924, 2924a, 2924b, 2924c, 2924f and 2924g (or any similar statutory provisions that may hereafter exist) for the foreclosure by power of sale of mortgages. The Association shall have the power to bid in its own name on the property sold and to hold, lease, mortgage and convey the same for the benefit of all the Owners. All rights and remedies granted to the Association hereunder shall be cumulative and the exercise of one or more rights or remedies shall not constitute a waiver or election preventing the use of other rights or remedies. The Association shall be entitled to collect from a defaulting Owner all costs and attorneys' fees incurred in connection with pursuing the collection of said assessments and/or the enforcement of said lien.

H. Suspension. During any period in which a Member shall be in default in the payment of any assessment levied by the Association, the voting rights and right of enjoyment of the Common Areas of such Member may be suspended by the Board until such assessment has been paid.

I. Capitalization of Association. Each purchaser of a Lot in the first and second Phases of the Project shall contribute to the capital of the Association an amount equal to one-sixth the amount of the then Regular Assessment for his respective Lot. Said amount shall be deposited by said Owner into the escrow for the purchase of his Lot from Declarant and shall be disbursed by the escrow holder to the Association at the close of escrow for the sale of the Lot to said Owner. This capital contribution is a prepayment of Regular Assessments. Within six months after the first close of escrow for the sale of a Lot in the first Phase, Declarant shall deposit with escrow holder an amount equal to one-sixth of the Regular Assessment for any and all Lots not yet sold in the first Phase of the Project. Upon the close of escrow for any Lot for which the capital contribution was prepaid by Declarant, the escrow holder shall remit to Declarant the capital contribution from the purchaser.

ARTICLE 6 INSURANCE

A. Required Insurance Coverage. The Board shall acquire for the Association the following insurance policies:

1. Casualty. A policy or policies of insurance for the full, insurable replacement value, without deduction for depreciation, but with a reasonable deductible amount at the Board's

discretion, of all improvements located on the Common Areas and Landscape Maintenance Areas of the Project, for the interest of and naming as insured the Association for the use and benefit of the Owners, as their interests may appear. Proceeds of such insurance shall be first used to repair damages to Common Areas and surplus shall go to the Association general fund. In any event, the amount of coverage shall be sufficient so that insurance proceeds from a covered loss shall provide the full amount of the covered damage or loss. Such policy or policies shall:

(i) Provide coverage against the perils of fire, extended coverage, vandalism and malicious mischief, as minimum requirements; and

(ii) Contain a waiver of subrogation rights by the insurer as against the Association, its officers, the Board and the Owners; and

(iii) Be primary to and shall not be affected by any right of setoff, proration or contribution by reason of any insurance held by an Owner.

2. **Public Liability.** A policy insuring the Association, its officers, the Board, members of the Architectural Control Committee and Owners against any liability, to the public or to the Owners, their guests, invitees, or tenants, incident to the ownership or use of the Project. Limits of liability under such policy or policies of insurance shall not be less than a combined limit of \$1,000,000.00. Said policy or policies shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of named insureds because of any neglect or other act or omission of another named insured.

3. **Fidelity.** Officers' and Directors' errors and omissions insurance, and fidelity bond or insurance for directors, officers, trustees, employees and volunteers responsible for handling funds collected and held for the Association or Owners, if obtainable, naming as insured the Association. Such coverage shall be in an amount deemed reasonable by the Association, but at least the greater of (i) an amount sufficient to cover at least one and one-quarter of the Association's estimated annual operating expenses and reserves, or (ii) the estimated maximum funds, including reserves, in the custody of the Association.

4. **Worker's Compensation.** Worker's compensation insurance, including employer's liability insurance to the extent necessary to comply with applicable laws.

B. Optional Insurance Coverage. The Association may purchase such other insurance as it may deem necessary or appropriate, including, but not limited to earthquake, slope and subsidence, or flood insurance.

C. Notice of Cancellation of Insurance. All policies of insurance maintained by the Association pursuant to this Article shall contain a provision that coverage under said policies may not be cancelled, terminated, allowed to expire by their own terms, or be substantially modified by any party without at least 30 days' prior written notice to the Board, to each Owner, and to such first Mortgagees who have filed written requests with the Association for such notice. A list of the Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

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

ARTICLE 7

COMMON AREAS AND LANDSCAPE MAINTENANCE AREAS

A. Transfer of Common Areas and Landscape Maintenance Areas. Prior to or concurrent with the first conveyance of a Lot in each Phase of the Project, Declarant will transfer ownership and control of the appropriate Common Areas and grant the necessary landscaping easements for the Landscape Maintenance Areas located in said Property or Annexable Property, respectively, to the Association. Where applicable, the Association shall obtain an Encroachment Permit from the County of Riverside for the maintenance, repair and restorations of those portions of the Landscape Maintenance Areas within the public roads and streets rights of way. The Association, upon such first conveyance of a Lot in the Property or in the Annexable Property, will assume the obligation for and thereafter perform all the maintenance, repair and restoration of such Common Areas and Landscape Maintenance Areas in said Property and Annexable Property. If the CSA is funded to accept maintenance responsibility for Common Areas or Landscape Maintenance Areas, these may be transferred directly to the CSA by Declarant.

B. Release of Bond. With that first conveyance of a Lot in each Phase of the Project, the bond securing lien-free completion and maintenance of the Landscape Maintenance Areas or Common Areas transferred to the Association in connection with that Phase shall be exonerated and released by the Association, as obligee, if a Notice of Completion, or its equivalent, has been filed for installation of landscaping and other improvements in such Landscape Maintenance Areas or Common Areas.

C. Owners' Easements of Enjoyment. The particular Landscape Maintenance Areas owned by the Owners, as part of their Lots, and over which the Association owns an easement for maintenance, shall be restricted to the exclusive use and enjoyment of the particular Lot Owner, except for said Association's easement for maintenance and any other easement or rights specifically provided for herein.

D. Easements for Maintenance. Declarant hereby reserves for itself (for the limited purposes set forth in the last sentence of this paragraph) and grants to the Association, a nonexclusive easement over the Lots within the Property as shown on Exhibit B and B-1, for the purposes of repair, reconstruction, restoration, landscaping and maintaining the landscaping of the Landscape Maintenance Areas on those Lots. Said easement may be conveyed to the CSA by the Association or by Declarant. Declarant's rights under said easement shall expire five years after the first conveyance of any lot in the Project.

E. Encroachments. Each Lot and any Landscape Maintenance Areas are hereby declared to have an easement over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other similar cause, and any encroachment due to building overhang or projection. 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 misconduct 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.

ARTICLE 8
MAINTENANCE AND REPAIRS

A. General. Notwithstanding the existence of any insurance covering an Owner, the Association, or both, against loss, damage and destruction, the Association and each Owner shall have the affirmative obligation for maintenance, repair and restoration as set forth in this Article.

B. Maintenance of Common Areas and Landscape Maintenance Areas. The Association shall maintain the Common Areas and the Landscape Maintenance Areas, including all improvements, facilities, landscaping and planting thereon in good condition and repair and in substantial conformance to The Villa Avanti Association Development Guidelines prepared by John Ballew, Architect, and Hogan and Roy Associates, Landscape Architects. All or a portion of this obligation may be transferred to the CSA.

C. Owner's Maintenance Obligation of Residential Lots. Each Owner shall maintain in good condition and repair at his cost and expense, the exterior of his Residence, including, without limitation, roofs, doors, windows, gutters, downspouts, exterior building surfaces, walls, fences and gates, sidewalks, paving, trees, landscaping, including slope area maintenance, planting, and all other exterior improvements. Notwithstanding the provisions of the preceding section, Declarant shall not have any obligation to maintain any trees, landscaping and plantings on any Lot upon which construction of a Residence has not been completed.

D. Drainage. No Owner shall interfere with or obstruct the established surface drainage pattern over any Lot, unless an adequate alternative provision is made for the proper drainage and is first approved in writing by the Architectural Control Committee and the County Engineer of the County of Riverside. Any alteration of the established drainage pattern must at all times comply with all applicable local governmental ordinances. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time the overall grading of a Lot is completed by Declarant, as is drawn on the approved grading plan for the lot. Each Owner shall maintain, repair, and replace and keep free from debris or obstructions the drainage system and devices, if any, located on his Lot. Water from any Lot may drain into adjacent streets, but shall not drain onto adjacent Lots unless an easement for such purposes is granted herein or in the recorded subdivision map for the Project; provided, however, that atrium drains for homes constructed adjacent to Side Yard Easements may drain onto adjacent property. Owners of said adjacent property shall not block those atrium drains. Declarant hereby reserves for itself and its successive owners, over all areas of the Project, easements for drainage from slope areas and drainage ways constructed by Declarant.

E. Lateral Support. Each Owner shall maintain his Lot with sufficient landscaping and plantings so as to prevent erosion upon his Lot that will result in damage to any adjacent Lot. No Owner shall perform any excavation upon his Lot that will result in damage to any adjacent Lot.

F. Cost of Maintenance. The cost of the maintenance for which the Association is responsible under Section 8(b) shall be assessed uniformly in accordance with Article 5, provided, however, that the cost of any maintenance, repair or replacement of the Landscape Maintenance Areas which is not covered by insurance and which results from the negligence or willfulness of an Owner, an Owner's guest or the occupant of an Owner's Lot shall be an obligation of such Owner and shall be due and payable in all respects as provided in Article 5.

ARTICLE 9 ARCHITECTURAL CONTROL

A. A committee for the control of structural, exterior and landscaping architecture and design ("Architectural Control Committee") within the Project, shall be established, consisting of three persons. Declarant may, at its sole option, appoint all of the original committee members to the Architectural Control Committee and all replacements until the first anniversary of the California Department of Real Estate Final Subdivision Public Report for the first Phase of the Project. Thereafter, the Board shall have the right to appoint at least one committee person, but Declarant may, at its sole option, appoint a majority of said committee persons until (i) 90 percent of the Lots (including any Lots annexed pursuant to this Declaration) have been sold, or (ii) until the fifth anniversary of the original issuance of the California Department of Real Estate Final Subdivision Public Report for the first Phase of the Project, whichever occurs first. Thereafter, the Board shall appoint all of said committee persons and may, at its discretion, expand the Architectural Control Committee to five persons. Architectural Control Committee members appointed by the Board shall be Members of the Association, but those appointed by Declarant need not be Members of the Association.

B. No additions, alterations, repairs or restorations to the exterior or structural portions of any Residence nor changes in or additions of fences, hedges, patio covers, landscaping, lighting structures, carports, garages, awnings, walls, exterior paint or decor, fountains, or other matter visible from the exterior of a Lot shall be commenced, applied, constructed, erected, or maintained by any person, other than the Declarant or any Merchant Builder (through its officers, agents or employees), until the plans and specifications showing the nature, kind, shape, height, materials, color, and location have been submitted to and approved

in writing as to the conformity and harmony of external color, design and location with existing structures in the Project by the Architectural Control Committee. If (i) the Architectural Control Committee fails to approve or disapprove such design and location within 30 days after said plans and specifications have been received by it, or (ii) no plans and specifications have been submitted to it, and no suit relating to or arising out of the making of such additions, alterations or changes has been commenced prior to one hundred and 180 days after the completion thereof, such approval will not be required and this paragraph will be deemed to have been fully complied with as to such particular item.

C. The Board shall adopt architectural guidelines and set forth procedures, rules and regulations for submission of plans for improvements and shall also adopt appeal procedures and rules for enforcement of architectural and use restrictions.

ARTICLE 10 DESTRUCTION OF PROJECT

A. Bids and Insurance Proceeds. As soon as practicable after the damage or destruction of all or any portion of the Common Areas or Landscape Maintenance Areas, the Board shall (i) obtain bids from at least two reputable contractors, licensed in California, which bids shall set forth in detail the work required to repair, reconstruct and restore such damaged or destroyed portions of the Common Areas or Landscape Maintenance Areas to substantially the same condition as existed prior to such damage and the itemized cost of such work, and (ii) determine the amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

B. Sufficient Insurance Proceeds. If upon such damage or destruction the insurance proceeds available to the Association are sufficient to effect the total repair, reconstruction and restoration of the damaged or destroyed portions of the Common Areas or Landscape Maintenance Areas, then the Association shall cause such to be repaired, reconstructed and restored to substantially the same condition as the same existed prior to such damage or destruction.

C. Insurance Proceeds Insufficient. If upon such damage or destruction the proceeds of insurance available to the Association are insufficient to cover the cost of repair, reconstruction and restoration of the damaged or destroyed portions of the Common Areas or Landscape Maintenance Areas, the Board shall then be authorized to specially assess all Lots equally for all additional funds needed to repair and maintain the Common Areas or Landscape Maintenance Areas.

D. Requirements of FHLMC, FNMA and FHA/VA. Notwithstanding the provisions of this Article, the Board shall comply with all the requirements of Article 18, herein.

ARTICLE 11 **WAIVER OF PARTITION**

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

ARTICLE 12 **COVENANTS AND RESTRICTIONS REGARDING USE**

A. Except as provided in Section 12(i) (respecting Declarant's use of the Project), the Project shall be used solely for residential use and each Lot shall be used solely for single-family detached residential use. No business or commercial activities are permitted.

B. Subject to such Rules and Regulations as the Association may adopt, dogs, cats or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose and are controlled on a leash when outside any fenced areas on their master's Residence. Any pet deemed a nuisance by the Association shall be removed from the premises.

C. No buildings, structures, house trailers, tents or similar objects shall be erected or placed, temporarily or permanently, on any Lot, other than the buildings originally constructed thereon or replacements of such buildings and structures appurtenant to such buildings. No trucks, vans, campers, boats, recreational vehicles, trailers, motor homes, or similar items shall be parked or placed temporarily or otherwise on any Lot, other than in an enclosed garage originally constructed on said Lot or screened from view of the street in a fenced or enclosed area as approved by the Architectural Control Committee.

D. No Owner, tenant or other occupant of the Project shall post any advertisements, signs, flags, banners or posters of any kind for public display except that with the prior written approval of the Architectural Control Committee as to size, type, color, style and location, a sign of customary and reasonable dimension may be posted to advertise a Lot for sale or lease. However, this restriction shall neither apply to nor limit the right of Declarant to display or have displayed signs, posters, banners, flags and

similar items advertising the sale or lease of the Project or Lots therein, provided that Declarant, in exercising its rights under this paragraph, will not unreasonably interfere with any Owner's use and enjoyment of his Lot.

E. No Lot or other part of the Project shall be used in such manner as to unreasonably obstruct or interfere with the enjoyment of other residents or to annoy them by unreasonable noises or otherwise; and no nuisance, illegal or noxious activity or waste shall be committed or permitted to occur within the Project.

(f) No Owner, resident or lessee shall install television antennae, including satellite dish antennae, CB or ham radio antennae, machines or air conditioning units on the exterior of the buildings of the Project.

G. Except as otherwise provided in this Declaration, there shall be no obstruction of the Common Areas or Landscape Maintenance Areas, and nothing shall be altered, constructed, planted in, or removed from the Common Areas or Landscape Maintenance Areas without the prior written consent of the Association. The Landscape Maintenance Areas shall be kept free of rubbish, debris and other unsightly or unsanitary materials.

H. No Owner shall do or permit or suffer anything to be done or kept on his Lot or on the Landscape Maintenance Areas (i) which will result in any increase of the Association's insurance premiums or the cancellation of insurance on any part of the Landscape Maintenance Areas, (ii) which would be in violation of any law or (iii) which will or may have a tendency to decrease the attractiveness or value of the other Lots or the Landscape Maintenance Areas.

I. Until Declarant has completed all of the contemplated improvements on the Project and closed escrow for the sales of all of the Lots, including those in Phases subject to annexation pursuant to Article 13, neither the Owners nor the Association shall interfere with the completion of the contemplated improvements and the sale of the Lots. Declarant and its authorized agents and assigns may make such use of the unsold Lots as may facilitate completion and sale, including, without limitation, (i) maintenance of model homes, landscaping, parking areas, tot lots, and sales, design, media and construction offices, and (ii) the showing of the Project and the Lots thereon; provided, however, that Declarant, in exercising its rights under this paragraph, shall not unreasonably interfere with any Owner's use and enjoyment of his Lot.

J. All Owners, lessees, guests and occupants of Lots shall abide by this Declaration, the By-laws and any Rules and Regulations adopted by the Association.

K. 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 below the surface of the Property. 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.

L. No Owner shall further partition or subdivide his Lot, provided, however, that this provision shall not be construed to limit the right of an Owner (i) to rent or lease all or any portion of his Residence by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Residence is not leased for transient, hotel or other commercial purposes; (ii) to sell his Residence; or (iii) to transfer or sell his Residence to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject in all respects to the provisions of this Declaration, the By-laws and the Rules and Regulations of the Association, and any failure by the lessee of such Residence to comply with the terms of this Declaration, the By-laws or the Rules and Regulations of the Association shall constitute a default under the lease.

M. There are hereby reserved Side yard Easements over the Lots shown on Exhibit D. Each such easement over a particular Lot (sometimes herein referred to as the servient tenement) shall be for and is granted to the Owner of the Lot immediately adjacent to the Side Yard Easement (sometimes herein referred to as the dominant tenement). Each easement is in the approximate size and location shown on Exhibit D, but shall be adjusted, as necessary, such that the width of the easement is from the common property line between the dominant and servient tenements to the face of the wall nearest that lot line of the Residence constructed or the servient tenement. The Owner of the dominant tenement may fence, place landscaping, irrigation systems, drain lines, patios, decks, walkways, and similar items on his Side Yard Easement, subject to Architectural Control Committee approval of all such improvements. The Owner of the dominant tenement may not attach anything to the wall of the Residence (adjacent to the Side Yard Easement) constructed on the servient tenement, block adjacent atrium drainage, or place a pool or spa on the Side Yard Easement. The Owner of the servient tenement is obligated to maintain that wall and shall have a reasonable right of entry onto the Side Yard Easement for purposes of maintaining that wall and his Residence.

N. No water softener system of any kind shall be permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and

recommendations of the Rancho California Water District, the County and the Architectural Control Committee. No amendment or modification to this Section may be effected without the express written consent of the Rancho California Water District.

O. The Article herein entitled "Architectural Control" sets forth procedures for the approval of Improvements which may be constructed upon Lots in the Project which are consistent with the architectural guidelines adopted, from time to time, pursuant to said Article. The architectural guidelines may have some effect on preserving views from the insuring the passage of light and air to individual Lots. However, by promulgation and enforcement of the architectural guidelines, or otherwise, neither Declarant, the Board nor the Architectural Control Committee, or the members employees or consultants of any of the foregoing, have made any representation whatsoever concerning the view, if any, that a particular Lot, Residence or other Improvement thereon will enjoy. There are no express or implied easements whatsoever appurtenant to any Lot for view purposes, or for the passage of light and air across any other Lot, or any property not within the Project, regardless of whether such Lot is owned by Declarant. Each Owner, by accepting a deed of a Lot, hereby expressly acknowledges and agrees that further construction within the Project may impair the view from such Owner's Lot, and each Owner hereby expressly consents to any such impairment.

ARTICLE 13 ANNEXATION

A. Annexation by Declarant. All or any portion of the Annexable Property described in Exhibit A may be annexed by Declarant, without the consent of Members or Owners, provided and on condition that:

1. The development of the Annexable Property shall be in substantial accordance with the general plan of development for the Project submitted to the California Department of Real Estate together with the application documents for the first Phase of the Project, as modified by later submittals to the Department of Real Estate;

2. Such annexation will not cause a substantial increase in Annual Assessments against existing Owners which was not disclosed in the subdivision public reports under which pre-existing Owners purchased their interests;

3. Any annexation pursuant to this Section shall be made prior to three years from the date of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Report for a Phase of the Project; and

4. A Declaration of Annexation, as described in section (c) of this Article, shall be recorded covering the property to be annexed.

B. Annexation by Consent. After the three-year period for annexation by Declarant described in Section 12(a) has passed, additional residential property and Landscape Maintenance Areas may be annexed to the Project, either directly or by merger or consolidation with any other similar association, with the consent of not less than 66-2/3 percent of the voting power of the Association, excluding the Declarant.

C. Procedure. The additions authorized hereby shall be made by recording a Supplementary Declaration of Covenants, Conditions and Restrictions; Declaration of Annexation; or similar instrument, with respect to the additional properties which shall extend this Declaration and the jurisdiction of the Association to such properties. Subject to the provisions of Article 14 below, such supplementary declarations contemplated herein may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. Such Declarations shall identify Common Areas and Landscape Maintenance Areas, if any; shall reserve for and grant unto the Association easements for the Landscape Maintenance Areas; and shall identify, reserve, and grant Side Yard Easements, if any.

D. Assessments and Voting. Assessments on the Lots in a future annexed Phase of the Project shall commence on the first day of the month following the close of escrow for the first sale of a Lot in that Phase. Voting rights shall not vest in annexed Lots until assessments on those Lots have been levied by the Association.

ARTICLE 14 AMENDMENT

A. This Declaration may be amended only by an affirmative vote of Owners representing not less than 67 percent of each of the Class A voting power and the Class B voting power of the Master Association. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Owners representing both: (a) 67 percent of the total voting power of the Association, and (b) 67 percent of the votes of Members other than the Declarant; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. In addition, in the event that FNMA participates in the financing of

Lots in the Project, the written consent of not less than 67 percent of the first Mortgagees shall be required for any amendment which affects or purports to affect any of the following:

1. The legal status of the Project as a planned development;
2. Voting rights;
3. Assessments, including the levy and collection thereof, enforcement provisions for nonpayment and subordination of liens for nonpayment;
4. Responsibility for Common Area maintenance;
5. Reserves for maintenance, repair and replacement of Common Area;
6. Insurance or fidelity bonds;
7. Common Area use rights;
8. Boundaries of any Lot;
9. Ownership interest in common Area;
10. Encroachment by Improvements into Common Area, or by Common Area into individual Lots;
11. Leasing of Lots;
12. Restrictions on alienation, including, but not limited to, rights of first refusal;
13. Mortgagee protection provisions as set forth in that Article hereinabove entitled "Mortgagees" and such other provisions in this Declaration for which the consent of Mortgagees shall be required or which are expressly for the benefit of Mortgagees, insurers or guarantors of Mortgagees; and
14. Annexation or de-annexation of additional property to or from the Project.

Notwithstanding the foregoing, in the event any first Mortgagee receives a written request from the Board to approve any amendment to this Declaration, and such first Mortgagee does not deliver a negative response in writing to the Board within 30 days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved such proposed amendment. The Board shall send such request to any Mortgagee that has requested such notice and amendments. This amendment provision shall not be

amended to allow amendments by less than the percentages set forth hereinabove except by judicial procedures authorized in California Civil Code section 1356. An amendment made in accordance with the provisions set forth hereinabove shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been approved by the membership and, where appropriate, by the first Mortgagees, in the percentages set forth hereinabove and recorded in the Office of the County Recorder for Riverside County. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment.

B. Notwithstanding the provisions of Section 14(a) above, no amendment of Articles 7, 8 and 10 of this Declaration nor any amendment of any other provisions of this Declaration which materially or substantially affects the obligations or ability of the Association to maintain the Common Areas or the Landscape Maintenance Areas shall be valid unless the prior written consent of the Planning Director of the County of Riverside or the County's successor in interest is obtained.

C. The percentage of a quorum or the percentage of the voting power necessary to amend a specific clause or provision of the Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

ARTICLE 15 **TRANSFER OF RESIDENTIAL LOT**

A. Each Owner shall, as soon as practical before transfer of title or the execution of a Real Property Sales Contract (as defined in Section 2985 of the California Civil Code) as to a Lot, give to the prospective purchaser a copy of this Declaration, the Articles, the By-laws, and a statement from the Board as to the amount of any delinquent assessments, penalties, attorney's fees and other charges payable with respect to that Lot.

B. Upon the sale or other transfer of a Lot, either the Owner who transfers the Lot or the transferee shall promptly notify the Association in writing of the name and address of the transferee, the nature of the transfer and the Lot number involved, as well as such other information relative to the transfer and the transferee as the Association may reasonably request.

ARTICLE 16 **TERM OF RESTRICTIONS**

This Declaration shall remain in full force and effect for a period of 60 years from the date hereof. Thereafter, it shall be deemed to have been renewed for successive terms of ten years each

unless revoked by an instrument in writing, executed and acknowledged by the Owners of a majority of the Lots within the Project and recorded in the office of the County Recorder of Riverside County, California, at least ninety days prior to the expiration of the initial effective period hereof or any ten-year extension.

ARTICLE 17 **NOTICES**

Any notice required to be sent to any Member of the Association or an Owner under the provisions of this Declaration shall be deemed to have been delivered five days after the date of mailing with proper postage prepaid to the last known address of the person who appears as Member on the records of the Association at the time of such mailing, or in the case of hand delivery, upon delivery to such last known address.

ARTICLE 18 **MORTGAGEES**

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

1. The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

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

from a reallocation of such Assessments or charges to all Lots, including the mortgaged Lot.)

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

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

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

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

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

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

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

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

4. All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Lots, and not to the Project as a whole.

5. No provision of the constituent documents shall be interpreted to give any Owner or any other party priority over any rights of the first Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Areas or such Owner's Lot. All applicable fire and casualty insurance policies shall contain loss payable clauses acceptable to each Mortgagee, naming the Mortgagees, as their interests appear, as additional insureds.

6. The Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Areas that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments.

7. Each holder, insurer or guarantor of a first Mortgage who has filed with the Association a written request for notice shall be entitled to timely written notice of: (i) any condemnation or eminent domain proceeding, and any loss or taking resulting from such proceeding which affects the Project, or any portion thereof; (ii) any substantial damage or destruction to the Project, or any portion thereof, when such loss exceeds \$10,000; (iii) any default in the performance by an individual Owner of any obligation under the constituent documents, including, without limitation, the nonpayment of Assessments, which is not cured within 60 days after the Association learns of such default, which notice shall state the length of time which such Owner has been delinquent; (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (v) any abandonment or termination of the Project; and (vi) any proposed action that requires the consent of a specified percentage of eligible Mortgagees.

8. Any agreement for professional management of the Project, or any contract providing for services of the Declarant may not exceed one year, renewable by agreement of the parties for successive one year periods. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on 30 days' written notice.

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

10. A first Mortgagee of a Lot in the Project will, upon request, be entitled to: (i) examine the books and records of the Association during normal business hours; (ii) receive an annual audited financial statement of the Association, and other financial data as may be distributed to the Owners, within 90 days following the end of any fiscal year of the Association, if such statement has been prepared for the Association; and (iii) receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

11. Each Owner shall notify the Association in writing within 10 days after the close of escrow for the purchase of his Lot of the name and address of his first Mortgagee, and thereafter, each Owner shall promptly notify the Association of any changes of name or address for his first Mortgagee.

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

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

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

ARTICLE 19 ENFORCEMENT OF BONDED OBLIGATIONS

In the event that the improvements to the Common Areas have not been completed prior to the issuance of a Final Subdivision Public Report by the DRE, and the Association is obligee under a bond or other arrangement (hereinafter referred to as the "Bond")

to secure a performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

A. The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within 60 days after the completion date specified for such improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within 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 35 days nor more than 45 days after receipt by the Board of a petition for such meeting signed by Members representing five percent of the total voting power of the Association.

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

ARTICLE 20

CONDEMNATION

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

B. Board of Directors as Attorney-in-Fact. All Owners, with the exception of the Administrator of Veterans Affairs, an Officer of the United States of America, hereby appoint the Board as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Common Areas.

ARTICLE 21
DORMANT ASSOCIATION

Notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply:

1. The Association established herein shall, if dormant, be activated, by incorporation or otherwise, at the request of the County of Riverside, and the Association shall unconditionally accept from the County of Riverside, upon the County's demand, title to all or any part of the Common Areas, more particularly described on Exhibit "E" attached hereto. The decision to require activation of the Association and the decision to require that the Association unconditionally accept title to the Common Areas shall be at the sole discretion of the County of Riverside.

2. In the event that the Common Areas, or any part thereof, is conveyed to the Association, the Association, thereafter shall own such Common Areas, shall manage and continuously maintain such Common Areas and shall not sell or transfer such Common Areas, or any part thereof, absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. The Association shall have the right to assess the Owners of each individual Lot for the reasonable cost of maintaining such Common Areas, and shall have the right to lien the property of any such Owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded after the notice of assessment or other document creating the assessment lien.

3. This Declaration shall not be terminated, "substantially" amended or property deannexed therefrom absent the prior written consent of the Planning Director of the County Riverside of the County's successor-in-interest. A proposed amendment shall be considered "substantial" if it affects the extent, usage or maintenance of the Common Areas.

4. In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the Association Rules and Regulations, if any, this Declaration shall control.

ARTICLE 22
MISCELLANEOUS

A. Enforcement of Restrictions. After the date on which this instrument has been recorded, these covenants, conditions, servitudes, rights, reservations, limitations, liens, charges and restrictions may be enforced by any and all of the available legal remedies, including, but not limited to, injunction, declaratory

relief and action to abate a nuisance by the Association, which shall have the right and duty to enforce the same and expend its assessment funds for that purpose, and/or by any one or more Owners, except that no such Owner shall have the right to enforce independently of the Association any assessment or lien created herein. Failure to enforce any provision hereof shall not constitute a waiver of the right to subsequently enforce said provision or any other provision hereof.

B. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a general plan for the development and operation of the Project. The various headings used herein are for convenience only and shall not affect meaning or interpretation.

C. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof.

D. Limitation of Liability. Neither the Declarant, its agents or employees, nor the Association, its Board or any member or officer thereof, nor any of them, shall be liable for any failure to provide any service or perform any duty, function or responsibility designated or provided in this Declaration or the By-laws to be performed by the same unless caused by the willful misconduct of the person or entity seeking the benefit of this limitation of liability.

E. Indemnification. The Association shall indemnify the Board (and each member thereof), and the officers of the Association (and each of them), and the members of the Architectural Control Committee (and each of them) against all expenses and liabilities, including attorneys' fees, reasonably incurred by such person or persons in connection with any proceeding to which he may be a party, by reason of his being or having been a Board member or officer of the Association, or member of the Architectural Control Committee, except in such cases where he has committed a willful misfeasance or malfeasance in the performance of his duties.

F. Waiver of Homestead Exemption. Each Owner does hereby waive to the fullest extent permitted by law, with respect only to assessment liens created pursuant to this Declaration, the benefit of any homestead or exemption or redemption laws of the State of California in effect at the time any payment of any assessment, whether regular or special, becomes delinquent as herein provided, and such Owner shall be deemed to be estopped to raise said homestead or other exemption or redemption in any action or proceeding to enforce or foreclose such assessment liens.

G. Assignment by Declarant. Declarant may assign any or all of its rights under this Declaration to any successor to all or any part of Declarant's interest in the Property as developer by an express assignment incorporated in a recorded deed transferring such interest to such successor. In addition to the foregoing, there shall be an automatic transfer and assignment of all of Declarant's rights hereunder to any successor to Declarant that acquires Declarant's ownership interest in the Property through foreclosure or a deed in lieu thereof.

H. Additional Covenants in Favor of the VA/FHA. So long as there is Class B membership in the Association, the following actions shall require the prior approval of the VA: annexation of Annexable Property, mergers and consolidations, any Special Assessments for capital improvements to the Common Areas, and any amendment to this Declaration.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date first set forth above.

MESA HOMES, A California Corporation

By: 

WILLIAM BUTLER, President

STATE OF CALIFORNIA)
) Association.
COUNTY OF RIVERSIDE)

On June 21, 19 89, before me, the undersigned, a Notary Public in and for said County and State, personally appeared William Butler, known to me to be the President of Mesa Homes, the corporation that executed the within Instrument, and known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within Instrument on behalf of said corporation, and acknowledged to me that said corporation executed the within Instrument pursuant to its By-Laws or a Resolution of its Board of Directors.

WITNESS my hand and official seal.

Martha A. Waardenburg
Notary Public in and for said
County and State



EXHIBIT "A"**ANNEXABLE PROPERTY**

- (A) Lots 1 thru 43, inclusive of tentative Tract Map 21674, Riverside County, California.
- (B) Lots 1 thru 40, inclusive of tentative Tract Map 21674-1, Riverside County, California.
- (C) Lots 1 thru 28, inclusive of tentative Tract Map 21674-2, Riverside County, California.
- (D) Lots 1 thru 42, inclusive of tentative Tract Map 21674-3, Riverside County, California.
- (E) Lots 1 thru 51, inclusive of tentative Tract Map 21675, Riverside County, California.
- (F) Lots 1 thru 50, inclusive of tentative Tract Map 21675-2, Riverside County, California.
- (G) Lots 1 thru 56, inclusive of tentative Tract Map 21675-3, Riverside County, California.
- (H) Lots 1 thru 47, inclusive of tentative Tract Map 21675-4, Riverside County, California.
- (I) Lots 1 thru 63, inclusive of tentative Tract Map 21675-5, Riverside County, California.
- (J) Lots 1 thru 45, inclusive of tentative Tract Map 21675-6, Riverside County, California.

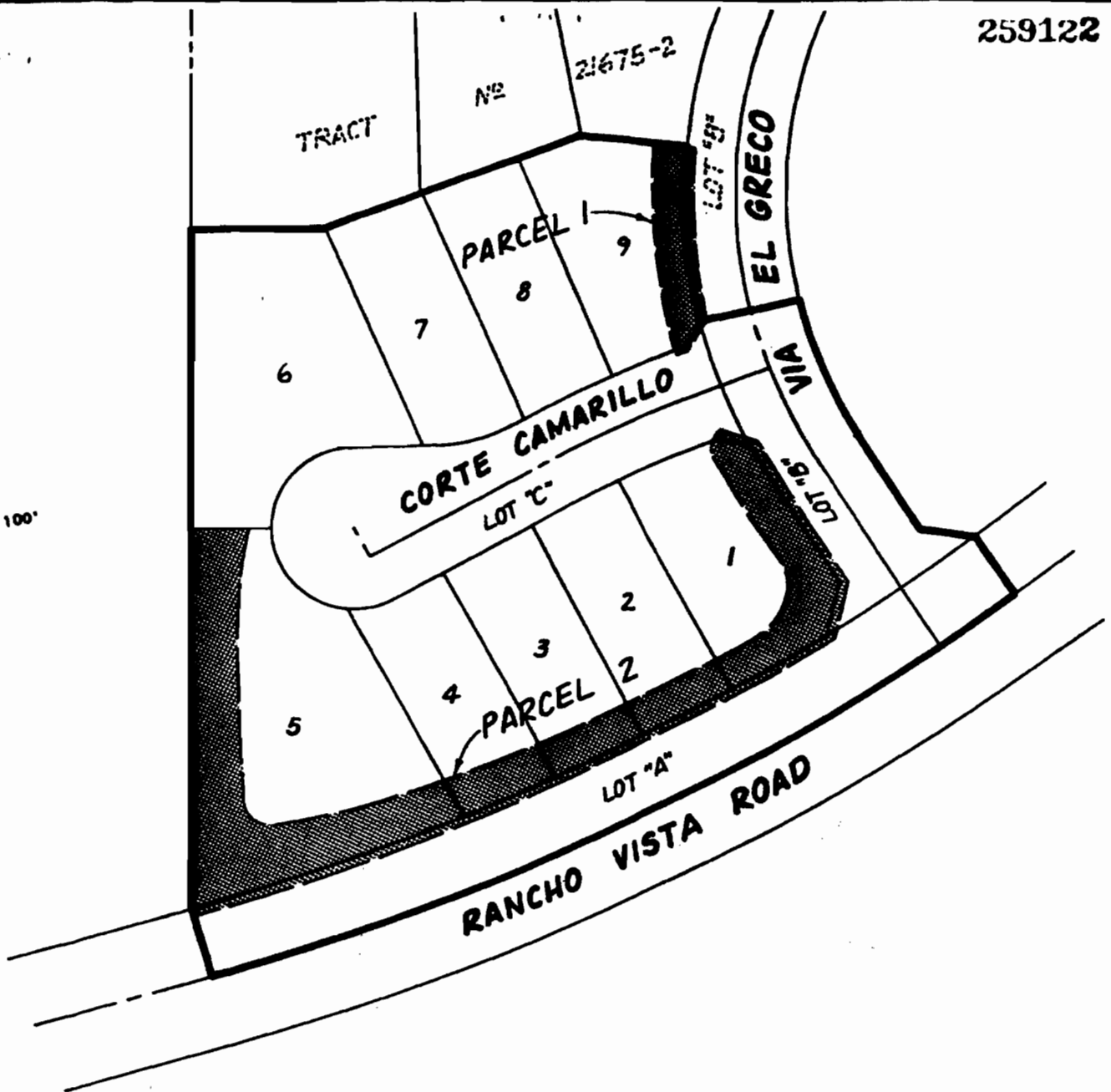
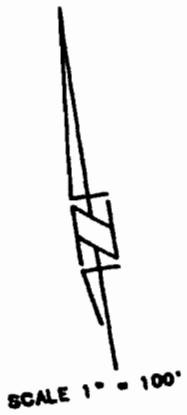


EXHIBIT "B"

HOME OWNERS ASSOCIATION
LANDSCAPE MAINTENANCE EASEMENT
TRACT No 21675-1



Robert Bein, William Frost & Associates

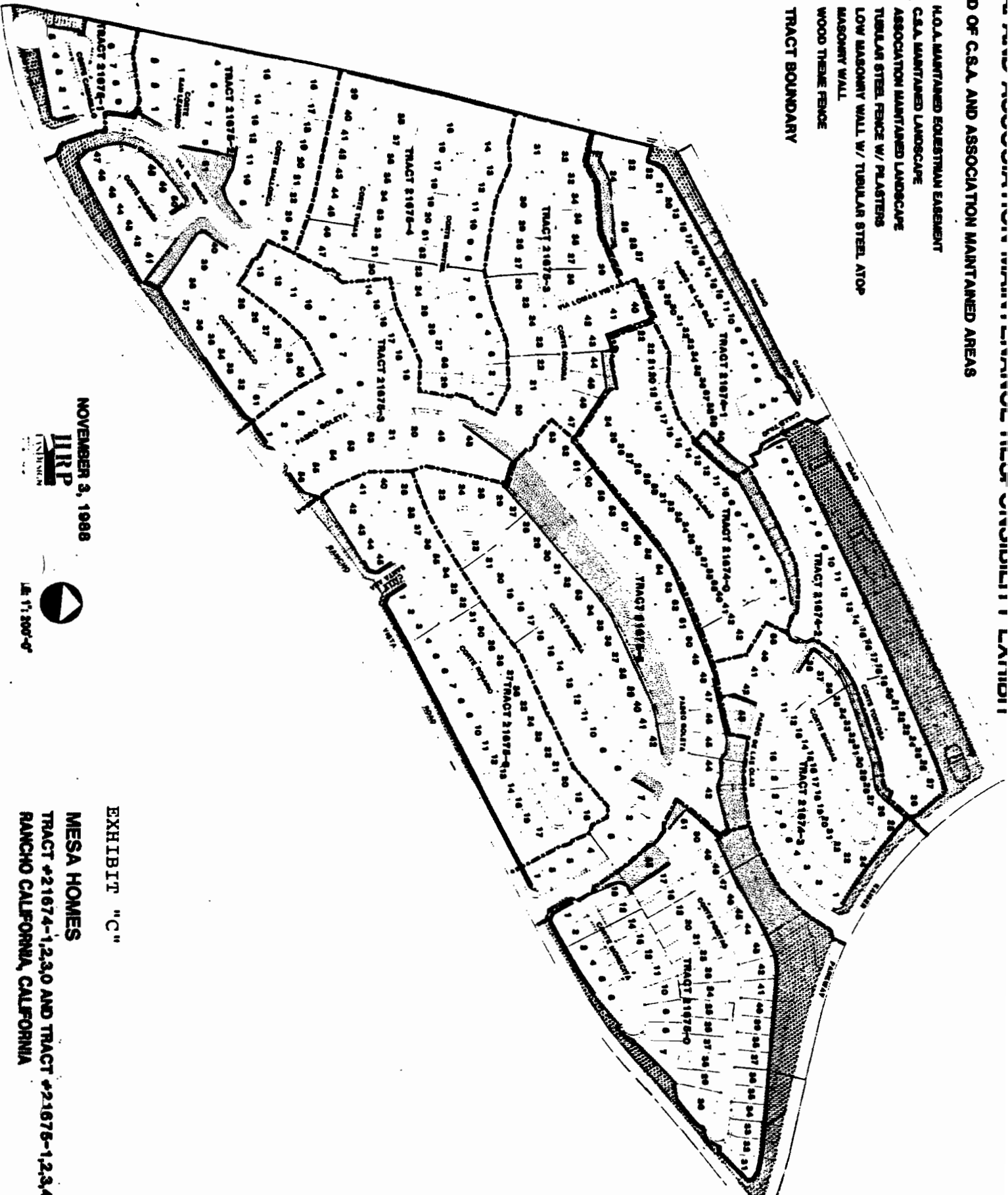
PROFESSIONAL ENGINEERS, PLANNERS & SURVEYORS
P.O. BOX 18135 • 4725 ALTON PARKWAY IRVINE, CALIF. 92614-0135
(714) 442-7500

ECR 2 1089

IN 23923

LEGEND OF C.S.A. AND ASSOCIATION MAINTAINED AREAS

- HOA MAINTAINED EQUESTRIAN EASEMENT
- C.S.A. MAINTAINED LANDSCAPE
- ASSOCIATION MAINTAINED LANDSCAPE
- TUBULAR STEEL FENCE W/ PLASTERS
- LOW MASONRY WALL W/ TUBULAR STEEL ATOP
- MASONRY WALL
- WOOD TRELLIS FENCE
- TRACT BOUNDARY



NOVEMBER 3, 1988

LRP



1" = 200'-0"

EXHIBIT "C"

MESA HOMES

TRACT #21674-1,2,3,0 AND TRACT #21676-1,2,3,4,5,6
RANCHO CALIFORNIA, CALIFORNIA

EXHIBIT "D"**SIDE YARD EASEMENTS**

There are no side yard easements reserved in this phase of The Project.

EXHIBIT "E"**ANNEXABLE COMMON AREAS**

- (A) Lot 51 of tentative Tract Map 21675-2, Riverside County, California.
- (B) Lots 52 and 53 of tentative Tract Map 21675, Riverside County, California.
- (C) Lot 64 of tentative Tract Map 21675-5, Riverside County, California.
- (D) Lot 29 of tentative Tract Map 21674-2, Riverside County, California.
- (E) Lot 43 of tentative Tract Map 21674-3, Riverside County, California.

ROBERT BEIN, WILLIAM FROST & ASSOCIATES
14725 Alton Parkway
Irvine, California 92718

February 8, 1989
JN 23923-1.L1
Page 1 of 3

LEGAL DESCRIPTION

HOA - LANDSCAPE MAINTENANCE EASEMENT
TRACT NO. 21675-1

PARCEL 1

That certain parcel of land situated in the unincorporated territory of the County of Riverside, State of California, being that portion of Lot 9 and Lots "B", "C" and "D" of Tract No. 21675-1 as shown on a map thereof filed in Book 198, Pages 82 through 84 of Maps together with that portion of Lot "B" of Tract No. 21675-2 as shown on a map thereof filed in Book 198, Pages 85 through 90 of Maps, both in the Office of the County Recorder of said Riverside County, described as follows:

BEGINNING at the northeast corner of said Lot 9;

thence along the easterly prolongation of the northerly line of said lot South 76°38'00" East 4.00 feet to a point on a non-tangent curve concave easterly, having a radius of 326.00 and being concentric with and 4.00 feet easterly from a curve in the easterly line of said Lot 9 having a radius of 330.00 feet, a radial line of said concentric curve from said point bears South 76°38'00" East;

thence along said concentric curve southerly 107.39 feet through a central angle of 18°52'25";

thence non-tangent from said curve South 35°54'48" West 25.14 feet;

thence North 12°40'00" West 6.00 feet to the southwesterly terminus of that certain course shown as "North 40°32'31" East 18.58 feet" in the southeasterly line of said Lot 9;

thence North 12°40'00" West 7.74 feet;

thence North 2°15'00" East 118.55 feet to the northerly line of said Lot 9;

thence along said northerly line South 76°38'00" East 17.00 feet to the POINT OF BEGINNING.

CONTAINING: 0.04 Acres, more or less.

ROBERT BEIN, WILLIAM FROST & ASSOCIATES
 HOA - Landscape Maintenance Easement
 Tract No. 21675-1

February 8, 1989
 JN 23923-1.L1
 Page 2 of 3

PARCEL 2

That certain parcel of land situated in the unincorporated territory of the County of Riverside, State of California, being that portion of Lots 1 through 5 and Lots "A", "B" and "C" of Tract No. 21675-1 as shown on a map thereof filed in Book 198, Pages 82 through 84 of Maps in the Office of the County Recorder of said Riverside County, described as follows:

BEGINNING at the southwest corner of said Lot 5;

thence along the westerly line of said Lot 5 North 8°19'34" East 236.00 feet to the northwest corner thereof;

thence along the northerly line of said Lot 5 South 81°40'26" East 42.00 feet;

thence South 6°35'00" West 143.92 feet to the beginning of a tangent curve concave northeasterly and having a radius of 25.00 feet;

thence along said curve southeasterly and easterly 46.72 feet through a central of 107°05'00";

thence tangent from said curve North 79°30'00" East 70.57 feet;

thence North 76°15'00" East 122.73 feet;

thence North 72°55'00" East 100.52 feet to the beginning of a tangent curve concave northwesterly and having a radius of 25.00 feet;

thence along said curve northerly 40.36 feet through a central angle of 92°30'00";

thence tangent from said curve North 19°35'00" West 71.82 feet;

thence North 12°40'00" West 13.00 feet to the northwesterly terminus of that certain course shown as "North 65°52'31" West 18.58 feet" in the northerly line of said Lot 1;

thence North 12°40'00" West 6.00 feet;

thence South 61°14'48" East 25.14 feet to a point on a non-tangent curve concave easterly, having a radius of 326.00 feet and being concentric with and 4.00 feet easterly from a curve in the easterly line of said Lot 1 have a radius of 330.00 feet, a radial line of said concentric curve from said point bears North 70°10'25" East;

ROBERT BEIN, WILLIAM FROST & ASSOCIATES
HOA - Landscape Maintenance Easement
Tract No. 21675-1

February 8, 1989
JN 23923-1.L1
Page 3 of 3

thence along said concentric curve southerly 29.72 feet through a central angle of $5^{\circ}13'25''$ to a line parallel with an 4.00 feet easterly from the easterly line of said Lot 1;

thence along said parallel line, tangent from said curve South $25^{\circ}03'00''$ East 70.01 feet;

thence South $20^{\circ}58'41''$ West 41.74 feet to a point on a non-tangent curve concave northerly, having a radius of 1562.00 feet and being concentric with and 6.00 feet southerly from a curve in the northerly line of said Lot "A" having a radius of 1556.00 feet, a radial line of said concentric curve from said point bears North $22^{\circ}59'38''$ West;

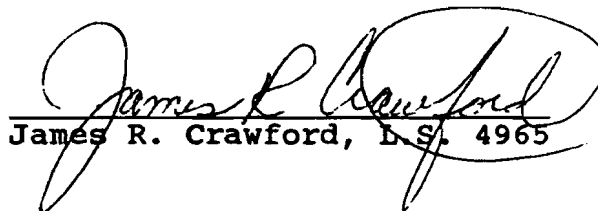
thence along said concentric curve westerly 424.72 feet through a central angle of $15^{\circ}34'45''$ to a point on the westerly line of said Lot "A";

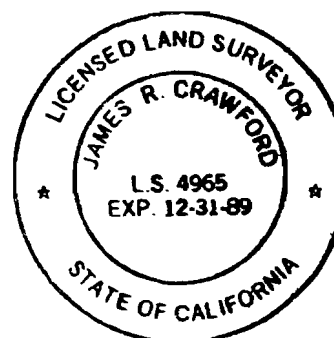
thence radially from said curve North $7^{\circ}24'53''$ West 6.00 feet to the POINT OF BEGINNING.

CONTAINING: 0.68 Acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.


James R. Crawford, L.S. 4965



259122

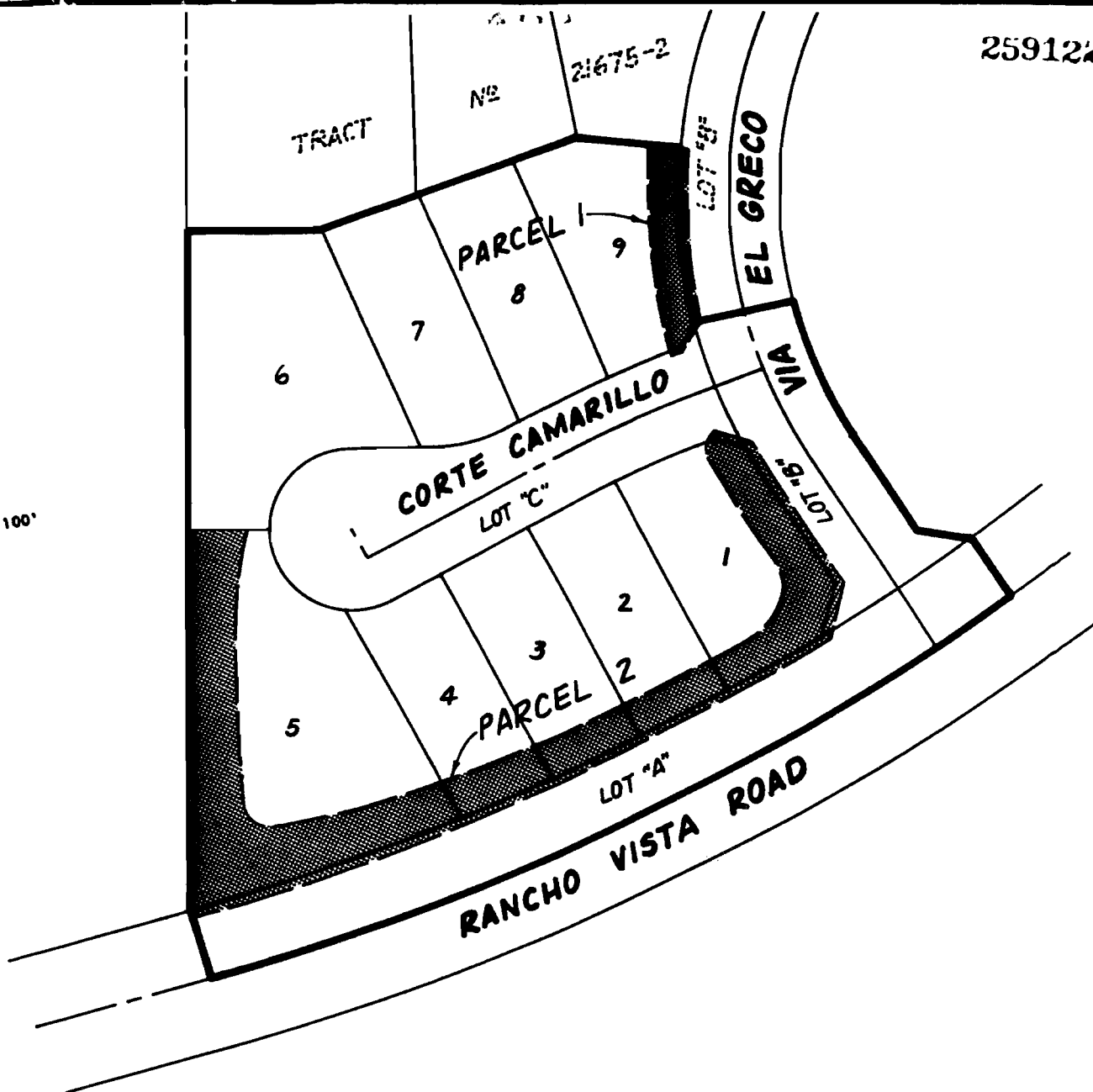
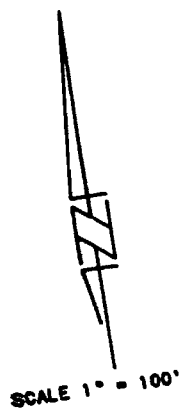


EXHIBIT "B"

HOME OWNERS ASSOCIATION
LANDSCAPE MAINTENANCE EASEMENT
TRACT NO. 21675-1



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FEB. 8, 1989

JM 23923