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*First American Title Ins. Co.*

**WHEN RECORDED MAIL TO:**

SONGSTAD, RANDALL & ULICH  
2201 DUPORE DRIVE, SUITE 420  
IRVINE, CA 92612  
ATTN: TIMOTHY L. RANDALL

FA 160035M PSC

Recorded in the County of Orange, California  
Gary L. Granville, Clerk/Recorder



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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND RESERVATIONS OF EASEMENTS  
FOR  
CASTAWAYS**

*(This document, **PREVIOUSLY RECORDED AS INSTRUMENT No. 19970391575.**  
is now being **RE-RECORDED** to show the Tract as No. 15012  
and to add the word "Lots" to Page 8 at Section 2.1;  
and to add Lots T & U to Exhibit "A")*

**THIS INSTRUMENT IS RECORDED IN THE COUNTY OF ORANGE AT THE  
REQUEST OF FIRST AMERICAN TITLE INSURANCE COMPANY AS AN  
ACCOMMODATION ONLY. IT HAS NOT BEEN EXAMINED AS TO  
ITS EXECUTION OR AS TO ITS EFFECT UPON THE TITLE.**

**THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(ADDITIONAL RECORDING FEE APPLIES)**

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FIRST AMERICAN TITLE INS. CO.

WHEN RECORDED RETURN TO:

SONGSTAD, RANDALL & ULICH  
2201 Dupont Drive  
Suite 420  
Irvine, California 92612  
Attn: Timothy L. Randall

FA 160035 m PSC

THIS ORIGINAL DOCUMENT HAS BEEN EXAMINED  
AND FOUND TO BE A TRUE AND CORRECT COPY

Document No. 19970391575  
First American Title Insurance Co.

DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND RESERVATIONS OF EASEMENTS  
FOR  
CASTAWAYS

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DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR CASTAWAYS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR CASTAWAYS ("Declaration") is made this 5th day of August, 1997, by TAYLOR WOODROW HOMES, INC., a California corporation ("Declarant"), with regard to the following facts:

P R E A M B L E

A. Declarant is the owner of that certain real property located in the City of Newport Beach, County of Orange, State of California, defined in Article I below as the First Phase and the Annexable Area.

B. Declarant proposes to develop the First Phase and other properties to be later annexed for residential use and in furtherance thereof desires to establish a general plan for their maintenance, care, use and management.

C. This Declaration is designed to create equitable servitudes and covenants applicable to and running with all property made subject hereto. Declarant may cause additional property to be annexed and thereby subject to this Declaration by causing to be recorded a Notice of Annexation. Such Notice of Annexation shall not conflict with the provisions of this Declaration, but may impose further conditions, covenants and restrictions for the operation, protection and maintenance of the property to be annexed, taking into account the unique aspects of such property.

D. Declarant hereby declares that the First Phase and those portions of the Annexable Area hereafter becoming subject to this Declaration in accordance with the provisions of Article III, below, shall, from the date declared to be subject to this Declaration in accordance with the provisions hereof, be owned, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions and terms hereinafter set forth for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and perfection of the First Phase, and those portions of the Annexable Area which eventually become subject hereto in accordance with the provisions hereof. The provisions of this Declaration

are expressly intended to and shall run with the land, and shall until their expiration in accordance with the terms hereof, bind, be a charge upon and inure to the benefit of all of the properties made subject hereto, Declarant and its successors or assigns, and all persons having or acquiring any right, title or interest in such properties, and their heirs, successors, executors administrators and assigns.

E. Each Owner (as defined herein) of any of the property made subject hereto will acknowledge, by acceptance of a deed or other conveyance, or by recordation of a notice of addition thereon, that the covenants, conditions, restrictions and reservations herein are reasonable and that Declarant has a substantial interest to be protected with regard to assuring compliance with, and the enforcement of, the covenants, conditions, restrictions and reservations herein.

F. Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit the right of Declarant to complete development of any property made subject hereto or the construction of any improvements thereon, nor the right of Declarant to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the property owned by Declarant or the Association (as defined herein), nor the right of Declarant to post signs incidental to construction, sales or leasing.

#### ARTICLE I DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

Section 1.1. Annexable Area: "Annexable Area" shall mean the real property described in Exhibit "A", which is attached hereto and incorporated herein by this reference.

Section 1.2. Annexed Land: "Annexed Land" shall mean that portion of the Annexable Area which has been annexed into the property which is subject to this Declaration pursuant to Article III hereof.

Section 1.3. Architectural Committee: "Architectural Committee" shall mean the architectural and landscaping committee created pursuant to Article IX hereof.

Section 1.4. Architectural Committee Rules: "Architectural Committee Rules" shall mean the rules adopted by the Architectural Committee pursuant to Article IX hereof.

Section 1.5. Articles: "Articles" shall mean the Articles of Incorporation of the Association as filed in the Office of the Secretary of the State of California.

Section 1.6. Association: "Association" shall mean the Castaways Homeowners Association, a California non-profit mutual benefit corporation, its successors and assigns.

Section 1.7. Association Maintenance Area: "Association Maintenance Area" shall mean all of the real property, which may include, without limitation, vegetation, equestrian trails, sidewalks, bicycle pathways, the median strips within streets, recreation buildings and other Improvements, which is located (a) in the Properties to be (i) owned by the Association or (ii) maintained by the Association and so classified in accordance with any Notice of Annexation, if and after such Notice of Annexation is recorded, or (b) adjacent to the Properties and to be maintained by the Association pursuant to the terms of a license, easement or other agreement between the adjacent landowner and Declarant and/or the Association.

Section 1.8. Association Property: "Association Property" shall mean all Association Maintenance Areas and all real and personal property now or hereafter owned in fee by the Association.

Section 1.9. Beneficiary: "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.10. Board: "Board" shall mean the Board of Directors of the Association, elected in accordance with the Bylaws and the Declaration.

Section 1.11. Bylaws: "Bylaws" shall mean the Bylaws of the Association, as adopted by the Board and approved by the Members of the Association.

Section 1.12. Capital Improvement Assessment: "Capital Improvement Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the costs of the Association for installation or construction of any improvements on any portion of the Association Maintenance Areas which the Association may from time to time authorize, pursuant to the provisions of this Declaration.

Section 1.13. Close of Escrow: "Close of Escrow" shall mean the date on which a deed or long-term ground lease conveying any portion of the Properties is recorded in the Office of the County Recorder.

Section 1.14. Common Assessment: "Common Assessment" shall mean the annual charge against each Owner and his Lot, representing a portion of the total, ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Association Maintenance Area and for other Common Expenses, which charge is to be paid by each Owner to the Association, as provided herein.

Section 1.15. Common Expenses: "Common Expenses" shall mean and refer to the actual and estimated costs of maintenance, management, operation, repair, replacement and improvement of the Association Maintenance Area (including unpaid Special Assessments, Common Assessments, Reconstruction Assessments, and Capital Improvement Assessments); costs of any gardening, utilities and other services benefiting the Association Maintenance Area and any recreational facilities which may be constructed thereon; costs of management and administration of the Association, including, without limitation, compensation paid by the Association to managers, recreational directors, accountants, attorneys and other employees; costs of bonding members of the Board; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Association Property, or any portion thereof; and the costs of any other item designated by the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners.

Section 1.16. Declarant: "Declarant" shall mean:

(a) Taylor Woodrow Homes, Inc., a California corporation, its successors and assigns, by merger, consolidation or by purchase of all or substantially all of its assets;

(b) Any person or entity, his or its successors and assigns, to which the foregoing Declarant has assigned any or all of the rights and obligations of the Declarant by an assignment expressed in a recorded instrument including, without limitation, a deed, lease, option agreement, land sale contract or assignment, as the case may be, transferring such interest, if such assignee agrees in writing with Declarant to accept such assignment; and

(c) A Participating Builder as to all rights and obligation of Declarant excepting the following: (i) the right to appoint members to the Architectural Committee; and (ii) the right to annex any portion of the Annexable Area or to deannex any portion of the Annexed Land without the approval of Declarant under (a), above.

Section 1.17. Declaration: "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Castaways, as it may be amended from time to time.

Section 1.18. Deed of Trust: "Deed of Trust" shall mean a mortgage or a deed of trust, as the case may be.

Section 1.19. DRE: "DRE" shall mean the California Department of Real Estate.

Section 1.20. First Phase: "First Phase" shall mean the real property described in Section 2.1, below.

Section 1.21. Governing Documents. "Governing Documents" shall mean this Declaration, the Articles, Bylaws, Architectural Committee Rules, Rules and Regulations and any Notice of Annexation applicable to the Properties.

Section 1.22. Improvements: "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including, but not limited to, buildings, out-buildings, walls, fences, walkways, bicycle trails, sprinkler pipes, garages, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment, arbors, trellises, barbecues and wind chimes.

Section 1.23. Lot: "Lot" shall mean any lot or parcel of land shown upon any recorded subdivision map or recorded parcel map of the Properties, including, without limitation, a residential lot or parcel of land, but excepting the Association Property.

Section 1.24. Manager: "Manager" shall mean the Person employed by the Association, pursuant to the provisions hereof, and delegated the duties, power or functions of the Association as limited by the terms hereof.

Section 1.25. Member: "Member" shall mean every Person holding a membership in the Association.

Section 1.26. Mortgage: "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot, Condominium or other portion of the Properties to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used shall be synonymous with the term "Mortgage".

Section 1.27. Mortgagee: "Mortgagee" shall mean a person or entity to whom a Mortgage is made and shall

include the beneficiary of a Deed of Trust. The term "Beneficiary" shall be synonymous with the term "Mortgagee".

Section 1.28. Mortgagor: "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor".

Section 1.29. Notice and Hearing: "Notice and Hearing" shall mean written notice and a public hearing before the forum appointed by the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at the Owner's expense, in the manner further provided in the Bylaws.

Section 1.30. Notice of Annexation: "Notice of Annexation" shall mean any declaration of covenants, conditions and restrictions, or similar document, which may in the future be imposed by Declarant or a Participating Builder or which may have been imposed upon any of the real property included in the Annexable Area and which subjects such property to this Declaration and the jurisdiction of the Association.

Section 1.31. Owner: "Owner" shall mean the Person or Persons, including Declarant and any Participating Builder, holding a fee simple or long-term leasehold interest of record to a Lot, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.32. Participating Builder: "Participating Builder" shall mean a Person which acquires a portion of the Properties for the purpose of improving such portion for resale to Owners.

Section 1.33. Person: "Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property.

Section 1.34. Phase: "Phase" shall mean (i) the First Phase or (ii) all the real property defined and described in a Notice of Annexation recorded pursuant to the terms of Article III of this Declaration for which a Final Subdivision Public Report is issued by the California Department of Real Estate, unless otherwise defined in such notice of annexation.

Section 1.35. Planned Development: "Planned Development" shall mean an area of the Properties, other than a condominium project or apartment project, which may or may not be defined as a planned development in Section 1351(c) of the California Civil Code.

Section 1.36. Properties: "Properties" shall mean all property which is or may hereafter become subject to this Declaration and to the jurisdiction of the Association as provided herein.

Section 1.37 Project: "Project" shall mean Castaways, consisting of the Annexed Land and all Improvements thereon.

Section 1.38. Records, Recorded, Filed and Recordation: "Records", "recorded", "filed" and "recordation" shall mean, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

Section 1.39. Reconstruction Assessment: "Reconstruction Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion of the Improvements on the Association Maintenance Area pursuant to the provisions of this Declaration.

Section 1.40. Residential Area: "Residential Area" shall mean those portions of the Properties which may be so classified in accordance with Article III.

Section 1.41. Residential Lot: "Residential Lot" shall mean a Lot located within a Residential Area, together with the improvements, if any, thereon intended for use as a single-family residence.

Section 1.42. Residence: "Residence" shall mean a dwelling on a Residential Lot intended for use and occupancy by a single family.

Section 1.43. Rules and Regulations: "Rules and Regulations" shall mean such rules and regulations as adopted by the Board governing the use and occupancy of the Properties or any portion thereof.

Section 1.44. Special Assessment: "Special Assessment" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the cost incurred by the Association or those acting under its direction for corrective action, pursuant to the provisions of this Declaration.

Section 1.45. Subdivision: "Subdivision" shall mean a parcel of real property which has been divided or separated into Lots, or a single Lot, as shown on a recorded Subdivision Map or recorded Parcel Map.

ARTICLE II  
FIRST PHASE

Section 2.1. Property Description: Declarant hereby declares that the following described real property is hereby made subject to this Declaration (the "First Phase"), and is more particularly described as follows:

Lots 21-22, 95-99, 118 and 119 and Lots A, C, G, K, L and M of Tract No. 15012, as shown on Amended Map No. 1 filed in Book 753, Pages 23 through 32 inclusive, of Maps, in the Official Records of Orange County, California.

Section 2.2. Conveyance to Association. Declarant hereby covenants for itself, its successors and assigns that fee title to Lots A, C, G, K, L and M of Tract 15012 shall be conveyed to the Association prior to Close of Escrow for the sale of the first Lot in the First Phase to an Owner and such Lots shall thereafter be classified as Association Maintenance Area to be maintained by the Association pursuant to the terms of this Declaration. In the event that fee simple title is conveyed to the Association, such title shall be conveyed free and clear of all encumbrances and liens, except current real property taxes, which taxes shall be pro rated to the date of transfer, and except for dedications, easements, conditions and reservations then of record, including those set forth in this Declaration.

Section 2.3. Association Maintenance Area Easements. Subject to the terms of Section 8.4, below, Declarant hereby reserves an easement for maintenance purposes over those portions of the Lots as shown on Exhibit "B" attached hereto, in favor of the Association effective upon the Close of Escrow for the sale of the first Lot in the First Phase to an Owner and the areas set forth as Association Maintenance Areas on Exhibit "B" attached hereto shall thereafter be classified as Association Maintenance Area to be maintained by the Association pursuant to the terms of this Declaration. In the event that an easement to such property is conveyed to the Association, such title shall be conveyed free and clear of all encumbrances and liens, except current real property taxes, which taxes shall be pro rated to the date of transfer, and except for dedications, easements, conditions and reservations then of record, including those set forth in this Declaration.

Section 2.4 Mailbox Easements. Mailboxes may be provided in clusters in front yards in conformity with current federal postal regulations. The precise location of such mailboxes shall be determined by Declarant, and each Owner will be notified at the time of sale of the location of his mailbox and any other mailboxes to be located on his Lot. Mailboxes shall be uniform in design and color, and

the maintenance of each mailbox shall be the duty of the Association. Each Lot on which there are mailboxes located for the delivery of mail to Owners of Lots, other than the Lot on which the mailboxes are located, shall be subject to irrevocable licenses in favor of the United States Parcel Service and persons for whom mail is delivered in said mailboxes for the delivery and receipt of mail. The rights and duties provided in this Section shall run with the land and shall be binding on each Owner and their heirs, successors and assigns, but shall expire at such time as the United States Postal Service shall agree to deliver mail to individual Lots in other than curbside mailboxes.

Section 2.5. Delivery of Documents by Declarant.

Not later than ninety (90) days after the Close of Escrow for the sale of the first Lot in the First Phase to an Owner, Declarant shall deliver to the Board copies of the documents listed below at the offices of the Association, or such other place as the Board shall prescribe. Declarant's obligation to deliver the documents listed below shall apply to any documents obtained by Declarant no matter when obtained; provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last Lot covered by a subdivision public report or (ii) three (3) years after the expiration of the most recent public report on the Phase:

- (a) The recorded subdivision map(s) for the Project.
- (b) The deeds and easements executed by Declarant conveying the Association Maintenance Area or other interest to the Association.
- (c) The Declaration.
- (d) The Articles and Bylaws.
- (e) The Architectural Committee Rules and the Rules and Regulations.
- (f) The plans approved by the local agency or county where the Project is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restriction on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.
- (g) All notices of completion certificates issued for Association Maintenance Area improvements.
- (h) Any bond or other security device in which the Association is the beneficiary.

(i) Any written warranty being transferred to the Association for Association Maintenance Area equipment, fixtures or improvements.

(j) Any insurance policy procured for the benefit of the Association, the Board or the Association Maintenance Area.

(k) Any lease or contract to which the Association is a party.

(l) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Owners, the Board and of committees of the Board.

(m) Any other instrument which establishes or defines the common, mutual or reciprocal rights or responsibilities of the Owners.

### ARTICLE III ANNEXATION

Section 3.1. By Declarant/Consents: Declarant may, but shall not be required to, from time to time, add to the real property which is covered by this Declaration all or any portion of the real property described above as the Annexable Area by recording a Notice of Annexation with respect to the real property to be annexed ("Annexed Land"). Notwithstanding the foregoing, if any portion of the Annexable Area is developed by Declarant or Declarant's successors in interest with residential dwelling units, such portion shall be annexed to this Declaration prior to the sale of any dwelling unit in such Annexed Land to a member of the home buying public. If any proposed annexation under this Section 3.1 shall not be effected in accordance with a detailed plan of phased development submitted to the DRE with the application for the subdivision public report for the First Phase, then such annexation shall further require the vote or written consent of sixty-six and two-thirds percent (66 2/3%) of the Members excluding Declarant and all Participating Builders.

Section 3.2. Effect of Annexation: Upon the recording of a Notice of Annexation, this Declaration shall apply to the Annexed Land in the same manner as if such Annexed Land had originally been subject to this Declaration and had originally constituted a portion of the Properties; and thereafter the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the Annexed Land shall be the same as with respect to the First Phase, and the rights, obligations, privileges, duties

and liabilities of the Owners, lessees and occupants of Lots on or in the Annexed Land shall be the same as though the Annexed Land had originally been subject to this Declaration.

Section 3.3. Delivery of Documents for Subsequent Phases: Not later than ninety (90) days after the annexation of a Phase subsequent to the First Phase, Declarant shall deliver to the Board those documents set forth in Section 2.5, above, which are applicable to that Phase. Declarant's obligation to deliver these documents shall apply to any documents obtained by Declarant no matter when obtained; provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last Lot covered by a subdivision public report or (ii) two (2) years after the expiration of the most recent public report on the Phase.

Section 3.4. FHA/VA Approval: For so long as and provided the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") is insuring or guaranteeing loans on any portion of the Properties, or has agreed to insure or guarantee such loans, then a condition precedent to such annexation shall be that the annexation be in accordance with and approved by the FHA or VA.

Section 3.5. Notice of Annexation : Each Notice of Annexation shall contain at least the following provisions:

- a. A reference to this Declaration and any amendments hereof, which shall include the date of recordation and the book and page numbers or document number where this Declaration and any amendments hereof are recorded.
- b. A statement that this Declaration shall apply to the Annexed Land as set forth herein.
- c. An exact description of the Annexed Land and the total number of residential units then contemplated by Declarant for the Project.
- d. The use classification of the Annexed Land.

The provisions of any Notice of Annexation shall not conflict with the provisions hereof but may impose such further conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the particular requirements of each increment. This Declaration shall control in the event of any conflict between any Notice of Annexation and the provisions of this Declaration, although the documents shall be construed to be consistent with one another to the extent possible.

Section 3.6. Execution of Notice of Annexation: For so long as Declarant has the right to annex real property without the approval of the Members as provided herein, each Notice of Annexation relative to real property owned by Declarant must be signed only by Declarant. From and after the date on which any annexation shall require the approval of the Members as herein provided, each Notice of Annexation must also be signed by at least two (2) officers of the Association, certifying that such approval has been given.

Section 3.7. Notice of Deletion: Declarant may delete all or any portion of the Annexed Land from the coverage of this Declaration and rescind any Notice of Annexation, provided Declarant is the sole owner of all of the real property described in the Notice of Annexation to be rescinded. Such deletion shall be effective by the recordation of a Notice of Deletion of Territory, signed by Declarant, in the same manner as the Notice of Annexation to be rescinded was recorded.

#### ARTICLE IV ASSOCIATION

Section 4.1. Organization: The Association is organized as a California non-profit mutual benefit corporation under the California Non-profit Corporation Law. The Association is charged with the duties and vested with the powers prescribed by law and as set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so that such provision shall be consistent with the provisions of this Declaration.

Section 4.2. Membership: Each Owner of one or more Lots in a Residential Area of the Properties shall be a Member of the Association and subject to this Declaration, the Articles, the Bylaws, and the Rules and Regulations. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and all memberships in the Association shall be appurtenant to the Lot owned by such Owner. The memberships in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot, and then only to the transferee of title to said Lot. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

Section 4.3. Easement over Association Property: A non-exclusive easement of use and enjoyment in and to all

Association Property is hereby granted to all Members. Such easement shall be appurtenant to and shall pass with the title to such Lot. A Member shall have the right to delegate his rights of use and enjoyment of the Association Property to a lessee or tenant of his Lot.

Section 4.4. Voting by Members. All voting rights attributable to a Lot shall vest upon the commencement of assessments against such Lot and shall be subject to the restrictions and limitations provided herein and in the Articles and Bylaws of the Association. Unless otherwise specifically stated in this Declaration, the Bylaws, or as required by law, actions to be taken by the Members shall be so taken by Members holding a majority of the voting power of the Association in accordance with the voting procedures set forth below:

(a) Voting Classes. There shall be two classes of voting memberships:

Class A. Initially, Class A Members shall be all Members except Declarant and any Participating Builder. Each Class A Member shall be entitled to one (1) vote for each single-family Residential Lot which he owns within the Properties. Declarant and any Participating Builder shall become Class A Members, with regard to Lots owned by Declarant or any Participating Builder, upon the conversion of Class B memberships to Class A memberships as provided below.

Class B. Declarant and the Participating Builders shall be the sole Class B Members. Each Class B Member shall be entitled to three (3) times the number of votes to which the Class B Member would have been entitled as a Class A Member. The Class B Members shall cease and be converted to Class A Members on the happening of first to occur of the following events:

(aa) On the second (2nd) anniversary following the most recent conveyance to a Class A Member of the first Lot in any Phase pursuant to a final public report issued by the California Department of Real Estate; and

(bb) On the fourth (4th) anniversary of the first conveyance of a Lot to a Class A Member under the authority of a final public report issued by the California Department of Real Estate for the First Phase.

(b) Appurtenant to Lot. The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Member may give a revocable proxy in the manner described

above, or may assign his right to vote to a lessee or tenant actually occupying his Lot or to a Mortgagee of the Lot concerned, for the term of the lease or mortgage, and any sale, transfer or conveyance of such Lot to a new Owner shall operate automatically to transfer the appurtenant vote to the new Owner, subject to any assignment of the right to vote to a lessee or Mortgagee as provided herein.

(c) Suspension of Voting Rights. The Board shall have the authority to suspend the voting rights of any Member to vote in any meeting of the Members, for any period during which the payment of any Common, Capital Improvement or Reconstruction Assessments against such Member and the real property owned by such Member remains delinquent, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay Assessments provided for herein.

ARTICLE V  
FUNCTIONS OF ASSOCIATION

Section 5.1. Powers and Duties: The Association shall have all of the powers of a California nonprofit mutual benefit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, the Articles, and the Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing provisions, the Association shall have the power and obligation at any time:

(a) Meetings. To take such actions as necessary to notice and conduct meetings of the Members in accordance with Section 4.4, above.

(b) Assessments. To levy assessments on the Owners of Lots within the Properties and to enforce payment of such assessments in accordance with the provisions of Article VI hereof.

(c) Rights of Entry and Enforcement. After Notice and Hearing, without being liable to any Owner, to enter upon any Association Property or Lot for the purpose of enforcing by peaceful means this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever

the Owner thereof fails to maintain or repair any such area as required by this Declaration. Unless there exists an emergency, there shall be no entry into a dwelling unit on a Lot without the prior consent of the Owner thereof. The Association shall also have the power and authority from time to time in its own name, on its behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of this Declaration. In the event of any action brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees to be fixed by the court.

(d) Easements and Rights-of-Way. To grant and convey, with the consent of Declarant (which consent shall not be unreasonably withheld) for so long as Declarant is entitled to appoint members to the Architectural Committee, to any Person, easements, rights-of-way, parcels or strips of land, in, on, over or under any portion of the Association Maintenance Area or other Association Property for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (i) roads, streets, walks, driveways, parkways and park areas; (ii) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, television, telephone and other similar purposes; (iii) sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and (iv) any similar public or quasi-public Improvements or facilities.

(e) Repair and Maintenance of Association Property. To paint, plant, maintain and repair in a neat and attractive condition all Association Maintenance Area and any other Association Property and all Improvements thereon, and to pay for utilities, gardening service and other necessary utility or other services for the said Association Maintenance Areas and any other Association Property; provided, however, that the Association shall have no responsibility to provide the services referred to in this paragraph with respect to any Improvement which is not classified as a portion of the Association Maintenance Area in this Declaration or in a Notice of Annexation. Such responsibility shall be that of the Owner concerned, as provided in this Declaration, or as described in the Notice of Annexation.

(f) Manager. To retain and pay for the services of a professional person or firm to manage the

Association Maintenance Area and any other Association Property (the "Manager"), as well as such other personnel as the Board shall determine shall be necessary or proper for the operation of the Association Property or the conduct of the business of the Association, whether such personnel are employed directly by the Association or are furnished by the Manager. The Association and the Board may delegate any of their duties, powers or functions to the Manager, provided that any such delegation shall be revocable upon notice by the Association or Board.

(g) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association Property, enforcement of this Declaration, or in performing any of the other duties or rights of the Association.

(h) Insurance. To obtain and maintain in force the following policies of insurance:

(i) Fire and extended coverage insurance on all Improvements, if any, under the control or ownership of the Association, the amount of such insurance to be not less than one hundred percent (100%) of the aggregate full insurable value, meaning actual replacement value. Such insurance shall insure the Association and its Mortgagees, as their interests may appear. As to each such policy, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

(ii) Bodily injury liability insurance, with limits of not less than One Million Dollars (\$1,000,000.00) insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured.

(iii) Worker's Compensation insurance to the extent necessary to comply with any applicable laws.

(iv) Such other insurance, including malicious mischief, medical payments, liquor liability, directors and officers errors and omissions insurance, indemnity and other bonds, as the Board shall deem necessary or expedient to carry out the Association functions as set forth herein or in the Articles and Bylaws.

The liability insurance referred to above shall name as separately protected insureds, Declarant, the Association, the Board, and their representatives, members and employees, with respect to any liability arising out of the maintenance or use of any Association Property. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, the Board, and their representatives, members, employees and successors in interest.

Said fire and liability insurance policies may be blanket policies covering the Association Property and property of Declarant or Participating Builder, in which case the Association and Declarant or Participating Builder shall each pay their proportionate share of the premiums. With respect to insurance proceeds from the Association Property only, the Association shall be deemed trustee of the interests of all Members and Owners in any insurance proceeds paid to it under any such policies, and shall have full power to receive and to receipt for their interests in such proceeds and to deal therewith. In the event that the proceeds of such insurance policies are inadequate to pay for the entire cost of repair, replacement or reconstruction of the Association Maintenance Areas and any other Association Property, the Board may levy a Reconstruction Assessment on each Owner and his respective Lot in accordance with Section 6.5, below. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") and the Federal Home Loan Mortgage Association ("FHLMC"), so long as any of which is a Mortgagee or Owner of a Lot within the Properties, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA and FHLMC, as applicable.

(i) Construction on Association Property. To construct new Improvements or additions to the Asso-

ciation Property, or demolish existing Improvements or additions to the Association Property in accordance with the provisions of this Declaration.

(j) Contracts. To enter into contracts, provided neither Declarant, nor any Participating Builder nor any of their agents, shall enter any contract which would bind the Association or the Board for a period in excess of one (1) year. All such contracts shall be terminable by either party thereto without cause or payment of a termination fee upon ninety (90) days written notice thereof, and shall be terminable for cause on thirty (30) days written notice, except as provided in the Bylaws. The Association, acting through the Board, may enter into contracts with Declarant, Lot Owners or other Persons in the Properties or the Annexable Area to maintain and repair slope areas and other areas subject to the provisions of this Declaration. No Association contract may be awarded to any firm or entity, other than Declarant, in which any Board member or relative of any member of the Board of either the Association has any financial or other interest. This restriction applies to all contracts entered into by the Association within twelve (12) months after a member of the Board leaves his position on a Board.

(k) Audit. To provide an annual independent audit of the accounts of the Manager and Association and for delivery of a copy of such audit to each Owner in the manner provided in the Bylaws. Any Owner, accompanied by an accountant, may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Manager or the Association; provided that such audit or inspection is made during normal working hours and without unnecessary interference with the operations of the Manager or the Association.

(l) Maintenance of Flood Control Facilities and Other Areas. To maintain, inspect, repair and reconstruct flood control facilities on or servicing the Properties, including emergency services, and to repair slope easements, slopes, roads, roadways, roadway rights-of-way, parkways and decorative signs identifying the Properties not maintained by governmental entities to the extent deemed advisable by the Board; and in particular, to maintain medians and circles on those public roadways located on the Properties.

Section 5.2. Rules and Regulations: To adopt such Rules and Regulations as the Board deems proper for the use and occupancy of the Association Property. A copy of the Rules and Regulations, as they may from time to time be

adopted, amended or repealed, shall be posted in a conspicuous place in the Association Property and may be mailed or otherwise delivered to each Owner. Such Rules and Regulations may, but need not be, recorded; provided, however, that any decision to record the Rules and Regulations shall be first made by a majority vote of the Members. If the Rules and Regulations are recorded pursuant to this provision, and duly adopted amendments to the Rules and Regulations shall be recorded by the Board. Upon such mailing, delivery, recordation or posting, the Rules and Regulations shall have the same force and effect as if they were set forth and were a part of this Declaration; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with this Declaration, the Articles and the Bylaws, and the Rules and Regulations may not be used to amend any of said documents.

Section 5.3. Liability; Indemnification: No member of the Board, Declarant, Participating Builder nor the Manager shall have any liability to the Association or its Members based upon any alleged failure to properly discharge their respective powers and duties under this Article V as long as such persons perform such powers and duties in a manner not expressly contrary to law and in a manner such persons believe to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Such persons shall be entitled to rely on information in any form prepared or presented by employees or agents of the Association whom such persons believe to be reliable and competent in the matters presented and to rely on the information and advice of other outside consultants which such persons believe to be within such outside consultants' professional or expert competence. Such persons shall be indemnified to the full extent allowed by the California Corporations Code without limitation.

Section 5.4. Taxes: Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessments of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on the Association Property, or any part thereof, they may be paid by the Association, and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against the Association Property and attributable to his own Lot and interest in the Association Property.

Section 5.5. Limitation on Certain Actions: Notwithstanding any contrary provision in this Declaration or in the Articles or Bylaws of the Association, the amount of

Common Assessments levied in any fiscal year of the Association upon each Owner shall not be less than the amount reflected in the Final Subdivision Public Report for the First Phase per Lot prior to the date on which Declarant has lost the power to appoint members to the Architectural Committee, unless the consent of Declarant has first been obtained (in addition to any other vote, consent or approval required).

Section 5.6. Actions Without a Meeting: The Board may take actions and exercise those powers and duties specified in this Declaration or otherwise authorized by the Bylaws or statute without a meeting if all of the Directors consent in writing to the action to be taken. If the Board resolves by unanimous written consent to take an action, an explanation of the action taken shall be posted in a prominent place or places within the Common Area as the Directors may direct which is convenient to the Owners within three (3) days after the written consents of all Directors have been obtained.

#### ARTICLE VI ASSESSMENTS

Section 6.1. Covenant to Pay: Declarant and any Participating Builder, for each Lot owned by it, hereby agrees to pay, and each Owner of a Lot by accepting a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to agree to pay to the Association all Assessments as provided herein.

Section 6.2. Common Assessments: Sums sufficient to pay Common Expenses shall be assessed as Common Assessments against the Owners of Lots in the Phase for which the first Final Subdivision Public Report is issued by the California Department of Real Estate (hereinafter "DRE") in the amounts as set forth in the Association budget on file with the DRE. As Common Assessments commence with respect to additional Phases annexed to the Properties pursuant to Article III hereof, the Common Assessments shall be revised, subject to the limitations of Section 6.2(b), below, in accordance with the combined budget of the Association filed with the DRE for the such additional Phases annexed to the Properties.

(a) Equal Assessments. Those items of Common Expenses of the Association shall be assessed equally against all Owners, based upon the number of Lots owned by each Owner.

(b) Basis of Maximum Common Assessment. Until the first day of the fiscal year immediately following

conveyance of the first improved Lot in the Properties to an Owner, the maximum Common Assessment under this Article shall be the amount set forth in the Final Subdivision Public Report issued for the First Phase of the Properties. Thereafter, the maximum Common Assessments shall be increased only in accordance with the following:

(i) The maximum Common Assessment may be increased by the Board without a vote of the Members in an amount no more than twenty percent (20%) above the maximum Common Assessment for the previous year.

(ii) The maximum Common Assessment may be increased more than twenty percent (20%) above the maximum Common Assessment for the previous year, only by the vote or written assent of a majority of the Members constituting a quorum at a meeting or election of the Association. For the purposes of this Section, a quorum means more than fifty percent (50%) of the voting power of the Association. Any meeting or election of the Association for the purposes of complying with this Section shall be conducted in accordance with the terms of Article IV of this Declaration and Section 7513 of the California Corporations Code.

(iii) The Board shall not in any year levy a Common Assessment in excess of the maximum Common Assessment as such maximum may be annually increased pursuant to this section. The levy of a Common Assessment less than the maximum Common Assessment in one (1) year shall not affect the Board's right to levy a Common Assessment in the amount of the maximum Common Assessment in subsequent years. If the Board shall levy a Common Assessment in an amount of less than the maximum for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser Common Assessment, the Board may, by majority vote, levy one or more supplemental Common Assessments. In no event shall the sum of the initial and supplemental Common Assessments for that year exceed the maximum Common Assessment.

(c) Budget Estimate. The Board shall cause to be prepared an annual operating statement reflecting income and expenditures of the Association for each fiscal year, and shall cause to be distributed a copy of such statement to each Member as provided in the

Bylaws. Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of each fiscal year, and subject to the provisions of Section 6.2, above, the Board shall prepare and distribute to each Member, a written, itemized pro forma operating budget which shall include all of the following:

(i) The estimated revenue and expenses of the Association on an accrual basis.

(ii) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5, which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) is of the amount determined for purposes of clause (i) of subparagraph (B).

(iii) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(iv) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain.

In calculating the Common Assessments of the Association for each fiscal year, the Board shall allo-

cate the estimated expenses of the Association equally against all Owners in the Properties.

(d) Commencement of Common Assessments. Common Assessments shall commence as to each Lot in any Phase (which may constitute only a portion of a phased Subdivision), upon the first day of the first month following the month in which escrow closes for the sale of the first Lot in the Phase in which such Lot is located. Each such Lot in such phase shall thenceforth be subject to a pro rata share of the then established Common Assessment for that Phase.

(e) Payment of Common Assessments. All Common Assessments shall be due and payable to the Association by the assessed Owners (including Declarant and any Participating Builders) during the fiscal year in monthly, or quarterly, or semi-annual installments, on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

(f) Excess Assessments. At the end of any fiscal year of the Association, the Members may determine that all excess funds over and above the amounts used for the operation of the Properties shall be retained by the Association and used to reduce the following years' Common Assessment. Notwithstanding anything in the Articles or Bylaws to the contrary, if prior to dissolution of the Association the Association has not obtained tax exempt status from both the federal and state government, then upon dissolution of the Association, any amounts remaining shall be distributed to or for the benefit of the Members proportionately.

Section 6.3. Capital Improvement Assessments: Subject to the provisions of Section 6.6, below, the Board may levy, in any fiscal year, a Capital Improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement upon the Association Property, including fixtures and personal property related thereto. All Capital Improvement Assessments must be fixed at a uniform rate for all Lots, and they may be collected on a monthly basis.

Section 6.4. Emergency Situations. The provisions of Subsections 6.2(b)(i), (ii) and (iii), above, shall not limit assessment increases necessary for emergency situations which, for purposes hereof, shall include: (a) an extraordinary expenses required by an order of a court; (b) an extraordinary expenses necessary to repair or maintain the Properties, or any part thereof, for which the Association is responsible where a threat to personal safety on the

Properties is discovered; (c) an extraordinary expense necessary to repair or maintain the Properties, or any part thereof, for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget pursuant to California Civil Code Section 1365; and (d) an extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the California Insurance Code.

Notwithstanding the foregoing, prior to the imposition or collection of an assessment under subsection (c), above, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

Section 6.5. Reconstruction Assessments: Subject to the provisions of Section 6.6, below, in the case of damage by fire or other casualty to the Association Maintenance Areas and any other Association Property, and provided the proceeds of any insurance payable by reason thereof shall be inadequate to pay for the entire cost of repair, replacement or reconstruction of such property, the Board may levy a Reconstruction Assessment to make good any deficiency on each Owner and his respective Lot in a proportion equal to the proportion in which such Owner is assessed Common Assessments. The collection of such Reconstruction Assessment shall be enforceable in the same manner as the collection of Common Assessments.

Section 6.6. Limitation on Assessments: The aggregate Capital Improvement Assessments collected in accordance with Section 6.3, above, and the Reconstruction Assessments collected in accordance with Section 6.5, above, in any fiscal year may not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, unless such excess shall have been approved by the vote or written assent of both a majority of the Members constituting a quorum at a meeting or election of the Association. For the purposes of this Section, a quorum means more than fifty percent (50%) of the voting power of the Association. Any meeting or election of the Association for the purposes of complying with this Section shall be conducted in accordance with the terms of Article IV of this Declaration and Section 7513 of the California Corporations Code.

Section 6.7. Special Assessments: A Special Assessment may be levied against and collected from a particular Owner and his Lot by a majority vote of the Board after Notice and Hearing, to reimburse the Association for certain

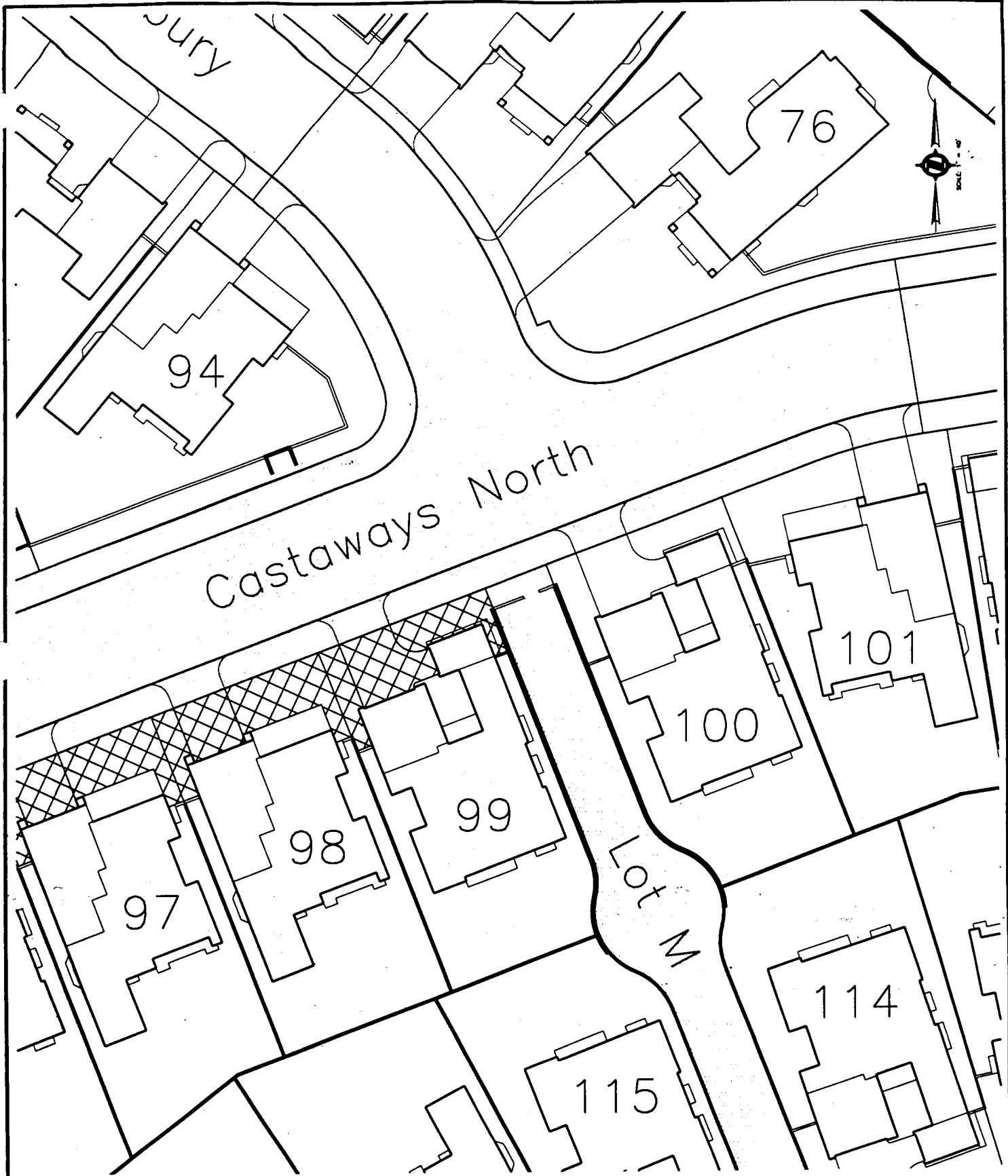
costs or expenses that have been incurred by the Association or Declarant with respect to bringing the Owner and his Lot into compliance with the terms of this Declaration or with respect to materials or services furnished to such Owner or his Lot at his request or on his behalf as may be provided herein.

A monetary penalty imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Property for which the Member or the Member's guests or tenants were responsible may become a lien against the Member's Lot enforceable by the sale of the Lot under Sections 2924, 2924b and 2924c. Except as provided above, a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the terms of this Declaration, may not be characterized or treated as an assessment which may become a lien against the Member's Lot enforceable by the sale of the Lot under California Civil Code Sections 2924, 2924b and 2924c.

Section 6.8. Late Charges and Interest: If any installment of an Assessment, whether Common, Special, Reconstruction or Capital Improvement, assessed to any Owner is not paid within fifteen (15) days after it is due, the Owner may be required by the Board to pay a late charge of Ten Dollars (\$10.00) or ten percent (10%) of the full Assessment, whichever is greater. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment, together with the reasonable costs of collection and late charges, not paid within thirty (30) days after the due date of such installment shall accrue interest at the annual percentage rate of twelve percent (12%).

Section 6.9. Waiver of Enjoyment: No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by any attempted waiver of enjoyment of the Association Maintenance Areas or any other Association Property and the facilities thereon or by abandonment of his Lot.

Section 6.10. Unpaid Assessments as Liens: Before the Association may place a lien upon the Lot of an Owner as provided herein, the Association shall notify such Owner in writing via certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorneys' fees, and the collection practices used by the Association, including the right of the Association to reasonable costs of collection. No action shall be brought to enforce any lien of any






SUBDIVIDER :



PREPARED BY :

**HUNSAKER & ASSOCIATES**  
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 Three Heights • Irvine, CA 92618 • P.O. Box 383-9710 • P.O. Box 383-0729

-  DENOTES HOA OWNED MAINTENANCE AREA
-  DENOTES HOA EASEMENT MAINTENANCE AREA
-  DENOTES EASEMENT FOR STREET TREE MAINTENANCE PURPOSES ONLY

**"UPPER CASTAWAYS"**

**EXHIBIT B** SHT 6 OF 6  
**PHASE 1A, TRACT 15012**  
 DATE PREPARED: 08/06/97

Assessment, whether Common, Special, Reconstruction or Capital Improvement, assessed to any Owner, until a Notice of Delinquent Assessment (hereinafter "Notice") has been recorded stating the amount of the Assessment or installment, as the case may be, the interest, late charges and costs which have accrued thereon, the legal description and street address of the Lot against which it has been assessed, the name of the record Owner thereof and the name and address of any trustee authorized by the Board to enforce the lien by non-judicial sale. Such Notice shall be signed and acknowledged by an officer of the Association, and mailed in the manner set forth in California Civil Code Section 2924(b) to all record Owners of the Lot no later than ten (10) calendar days after recordation. Such assessment lien shall be prior to any declaration of homestead recorded after the recording of this Declaration. The lien shall continue until fully paid or otherwise satisfied. When all amounts stated in the Notice and all other assessments and costs which may have then accrued have been fully paid or satisfied, a further notice releasing the lien shall be recorded, upon payment by the defaulting Owner of a reasonable fee, determined by the Board, to cover the costs of preparing and recording such release. Such lien may be foreclosed in the same manner as is provided in the laws of the State of California applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner provided by law. No action shall be brought by the Board or by its agent to foreclose the assessment lien or to proceed under any power of sale thereunder, until thirty (30) days have elapsed after the date that the Notice is recorded. A certificate executed and acknowledged by an officer or duly authorized agent of the Association stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon request at a reasonable fee, as determined by the Board, to cover the cost of furnishing such certificate. Each assessment shall be payable in the amount specified in the Notice, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association, the Board, the Members, or Declarant is not properly exercising its duties and powers as provided in this Declaration. Any payments towards amounts specified in the Notice shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.

Section 6.11. Mortgage Protection: Notwithstanding all other provisions hereof, no lien created under this Article VI nor any breach of this Declaration, nor the enforcement of any provision hereof or of any Notice of

Annexation hereto shall defeat or render invalid the rights of the Beneficiary under any recorded first deed of Trust upon a Lot made in good faith and for value; provided that after such Beneficiary or some other third party obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust, such Lot shall remain subject to this Declaration and the payment of all Assessments accruing subsequent to the date such Beneficiary or other Persons obtain title.

Section 6.12. Maintenance Funds: The Board shall establish no fewer than two (2) separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. Each of the Maintenance Funds shall be established as separate trust savings or trust checking accounts at a banking institution. The Maintenance Funds shall include: (a) an operating fund for current expenses of the Association ("Operating Fund"), and (b) an Association Maintenance Area reserve fund for replacements, painting and repairs of the landscaping, Improvements and all other Association Property, to the extent necessary under the provisions of this Declaration ("Common Area Reserve Fund"). The Board shall not commingle any amounts deposited into any of the Maintenance Funds with amounts deposited into any other Maintenance Fund.

All amounts deposited into the Operating Fund and the Common Area Reserve Fund must be used solely for the common benefit of all of the Members for purposes authorized by this Declaration, as may be amended from time to time. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all the Members, other than those purposes for which disbursements from the Common Area Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association earmarked for specified purposes authorized by this Declaration. The Common Area Reserve fund shall be funded by regularly scheduled monthly, quarterly, semi-annual or annual payments rather than by large Special Assessments.

Section 6.13. Amendments to Article VI: Amendments to this Article VI (but not this Section 6.13 which is covered by Section 11.2(b) of this Declaration and amendments to sections of other Articles which are referred to in this Article or which relate to this Article) shall

only be effective upon the vote or written consent of (a) Declarant, for so long as Declarant is a Class B Member of the Association, (b) the majority of all Members and (c) the majority of the votes of the Association not attributable to property owned by the Declarant and any Participating Builders.

Section 6.14. Exemption from Assessments: Owners shall be exempt from the payment of that portion of any Common Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a residential structure which is not complete at the time the Common Assessment commences. Such exemption may include: (a) roof replacement; (b) exterior maintenance; (c) walkway and carport lighting; (d) refuse disposal, if any; (e) cable television; (f) domestic water supplied to living units, if any; and (g) insurance on uncompleted structures. Any such exemption from the payment of Common Assessments shall terminate upon the earlier of the recordation of the notice of completion of the residential structure, occupation or use of a structural improvement which is a dwelling unit, or completion of all elements of the residential structure which the Association is obligated to maintain.

Owner shall be exempt from the payment of that portion of any Common Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility which at the time of the commencement of such Common Assessment is not complete. Any such exemption from the payment of Common Assessments shall terminate upon the earlier of the recordation of a notice of completion of the common facility or such time as the common facility is placed into use.

ARTICLE VII  
DAMAGE TO OR CONDEMNATION OF  
ASSOCIATION PROPERTIES

Section 7.1. Damages by Members: Each Member shall be liable to the Association for any damage to Association Property not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Member, or the persons deriving their right and easement of use and enjoyment of the Association Property from said Member, or of his respective Family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right, after Notice and Hearing, to charge a Special Assessment equal to the amount of such damage not covered by insurance together with the increase, if any, in the insurance premium directly attributable to the damage caused by such Member or the Persons for whom such Member may be liable as described above, and to impose

a fine upon such Member in accordance with Section 8.27, below. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary.

Section 7.2. Repair of Damage: In the case of damage by fire or other casualty to the Association Property, any insurance proceeds payable by reason thereof shall be paid to the Association, which thereupon shall contract to repair or replace all the Association Property so damaged. The Association shall levy a Reconstruction Assessment on all Members to make good any deficiency in accordance with Section 6.5, above.

If at any time all or any portion of the Association Property, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the holder or holders of fee title to such area, and their Mortgagees, as their interests may appear. Any such award shall be deposited in the Operating Fund. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceeding and shall, in its name alone, represent the interests of all Members.

Section 7.3. Sale by Unanimous Consent: If an action for condemnation of all or a portion of the Association Property is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and after written notice to at least sixty-seven percent (67%) of all first Mortgagees, the Association Property, or a portion of it, may be sold.

Section 7.4. Distribution of Proceeds of Sale or Condemnation Award: On a sale occurring under Section 7.3, above, or upon a taking through judgment of condemnation, the proceeds shall be retained in the general fund of the Association.

#### ARTICLE VIII GENERAL RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant set forth herein.

Section 8.1. Residential Areas: All property within a Residential Area shall be improved and used solely for

single-family residential use; provided, however, that this provision shall not preclude any Owner in the Properties from renting or leasing all of his Lot by means of a written lease or rental agreement subject to this Declaration. The Notice of Annexation recorded for a Residential Area shall designate such residential use for that area to be single-family residences, a Planned Development or a combination thereof.

Section 8.2. No Further Subdivision: No Lot or Association Maintenance Area may be further subdivided without the prior written approval of the Board; provided, however, that nothing in this section shall be deemed to prevent an Owner from, or require the approval of the Board for: (a) selling a Lot, or (b) transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property.

Section 8.3. Improvement, Landscaping and Alterations: Except as set forth in Article X, hereof, without the prior approval of the Architectural Committee as provided in Article IX hereof, there shall be no excavation, construction, alteration or landscaping on any part of the Properties, other than minor repairs or rebuilding pursuant to Section 8.4 or Section 9.9. There shall be no violation of the setback or sideyard requirements of the local governmental authority. Within ninety (90) days after the conveyance of a Lot to an Owner, the Owner shall install landscaping and irrigation upon the front yard of his Lot and the side yard on the street side of any corner Lot. Within one hundred eighty (180) days after the conveyance of a Lot to an Owner, the Owner shall install landscaping and irrigation upon the side and back yards of his Lot. In the event of default by an Owner in the performance of this section, Declarant or the Association shall have the right to enter upon said Lot and remove any weeds, plants, rubbish, debris, objects or materials and do all things necessary to place the Lot in a neat and orderly condition, including, but not limited to, the installation of lawns and landscaping on yards and slope areas. Any expenses shall constitute Special Assessments, and payment therefor shall become due and payable from the Owner of said Lot to the Association within ten (10) days after written demand therefor.

Section 8.4. Exterior Maintenance and Repair; Owner's Obligations: Each Improvement shall at all times be kept in good condition and repair. All landscaping, including, but not limited to, lawns, hedges, shrubs and, except as provided below, trees, shall be periodically trimmed and pruned so as to be maintained in a neat, clean, safe and attractive manner and so as not to unreasonably obstruct the view of adjacent Owners; provided, the reasonableness or

unreasonableness of any such obstruction shall be determined solely by the Architectural Committee. Except as specifically provided below, each Owner shall be responsible for maintaining all trees placed by Declarant in the front yard of any Owner's Lot adjacent to the street ("Street Trees"), but excluding any Street Trees within the parkway (the landscaped area, if any, between the sidewalk and the street). Such maintenance shall include the irrigation of such Street Trees and the replacement of any such Street Trees if required for any purpose other than the improper pruning or trimming thereof by the Association. Notwithstanding the foregoing, the Association shall be responsible for the pruning and trimming of any Street Trees placed by the Declarant in the front yard of any Owner's Lot and the maintenance of that portion of any landscaping including, without limitation, any Street Trees, within the parkway of any street contiguous to such Owner's Lot. Each Owner shall be responsible for maintaining the interior surface of any perimeter wall or fence bordering such Owner's Lot and the cleaning of the interior and exterior surfaces of any Plexiglas or glass thereon. The maintenance obligation of the Owners shall exclude the exterior and top surfaces of such perimeter wall and the sides and exterior surfaces of the pickets of any picket fence bordering such Owner's Lot and, except as provided above, any Plexiglas, glass, steel or wrought iron on such perimeter wall.

In the event that any Owner shall permit any Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition affecting a neighboring Lot, the Board, after consulting with the Architectural Committee, and after affording the Owner of such property Notice and Hearing, shall have the right but not the obligation to correct such condition, and to enter upon such owner's Lot, or such Association Property for the purpose of doing so, and such Owner, as the case may be, shall promptly reimburse the Association for the cost thereof. Such cost shall be a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in the Declaration. The Owner of the offending property shall be personally liable, and his property may be subject to a mechanic's lien, for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Common Assessments.

Section 8.5. Antennae: No exterior radio antenna, television antenna, "C.B." antenna, "satellite dish" or other antenna of any type shall be erected or maintained on

any of the Properties, except by Declarant or the Association. Any satellite dish erected on the Properties shall be adequately screened through fencing, landscaping or by other appropriate means in order to mitigate potential scenic impacts and all radio and television antennas and satellite dishes shall be placed so as not to project above the roof eaves in conformance with San Juan Municipal Code Section 9-3.609.

Section 8.6. Signs: No sign, poster, billboard, advertising device or other display of any kind shall be displayed so as to be visible from outside the Properties, except (a) such signs as may be used by Declarant or Participating Builders in connection with the development of the Properties and sale of Lots, or (b) one sign of reasonable and customary dimensions as may be displayed on or from any Improvement on any Lot in a Residential Area advertising the sale or lease of such Lot, provided such sign shall not be attached to the exterior of any Improvements on any Lot in a manner which requires fasteners to be embedded in any manner in such exterior.

Section 8.7. Window Coverings: Windows shall be non-glaring and non-reflective. No window in any Residence shall be covered with aluminum foil or other reflective material and, unless approved by the Architectural Committee in accordance with Section 9.2, below, no exterior surface of any window covering shall bear any design or any color other than white or beige.

Section 8.8. Unsightly Articles: No unsightly articles shall be permitted to remain on any Lot so as to be visible from any public street or from any part of the Properties. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in such covered, sanitary containers or other areas as may be provided by the Association.

Section 8.9. Utility Areas: All utility and storage areas and all laundry rooms, including all areas in which clothing or other laundry is hung to dry, must be completely covered and enclosed from view from the neighboring parts of the Properties.

Section 8.10. Nuisances: No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Properties, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, offensive or detrimental from any public street or to any other part of the properties in the vicinity thereof or to their occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Properties so as to be offensive or detrimental to any other part of the Properties

in the vicinity thereof or to their occupants. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoke-emitting vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably disturb Owners in neighboring parts of the Properties shall be located, used or placed on any portion of the Properties.

Section 8.11. Animals: No insects, reptiles, birds or animals of any kind shall be raised, bred or kept, on the Properties except that a total combination of three (3) dogs, cats or birds may be kept and provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any other provision of this Declaration and such limitations as may be set forth in the Rules and Regulations. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to other Owners. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash being held by a person capable of controlling the animal. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Association Maintenance Areas or other Association Properties, if any.

Section 8.12. No Hazardous Activities: No activities shall be conducted, nor shall any Improvements be constructed, on any part of the Properties which are or might be unsafe or hazardous to any Person or Lot in any other part of the Properties.

Section 8.13. No Temporary Structures: No tent or shack or other temporary building, Improvement or structure shall be placed upon any portion of the Properties.

Section 8.14. No Mining and Drilling: No portion of the Properties shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 8.15. Insurance Rates: Nothing shall be done or kept in the Properties which will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done or kept in the

Properties which would result in the cancellation of insurance on any Association Property or which would be in violation of any law.

Section 8.16. Drainage: There shall be no interference with the established drainage pattern over any part of the Properties so as to affect any real property inside or outside of the Properties. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time the overall grading of any part of the Properties is completed by Declarant, which may include drainage from the Association Properties over any Lot or Association Maintenance Areas in the Properties.

Section 8.17. Water and Sewer Systems: No individual water supply system, water softener system or sewage disposal system shall be permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water district and any applicable governmental health authority having jurisdiction.

Section 8.18. Parking; Garages: No trailer, motor home, truck in excess of one (1) ton, camper, boat or van of eighteen (18) feet or more in length, or any vehicle with advertising on it other than an automobile shall be kept or maintained anywhere on the Properties in such a manner as to be visible from other parts of the Properties. No vehicle or boat shall be constructed or repaired upon any property or street (public or private) in such a manner as to be visible from any other parts of the Properties. All other vehicles must be parked within the Owner's garage; provided, in the event the number of vehicles owned by any Owner exceeds the number of vehicles for which such Owner's garage was designed to accommodate, the excess vehicles may be parked in such Owner's driveway. No Owner shall be permitted at any time to park or otherwise maintain a vehicle of any kind on the streets within the Properties or in areas designated as visitor parking. Garage doors must remain closed at all times except when vehicles are entering or leaving the garage. For purposes of this Section, "parking" shall be defined as leaving a vehicle unattended for a period in excess of one (1) hour.

Section 8.19. Maintenance and Control of Association Maintenance Areas: The Association Maintenance Areas shall be maintained for streets, recreational facilities, slope maintenance, erosion control and landscaping purposes primarily, and no Improvements other than streets, recreational facilities, landscaping, fences, sprinklers, other similar amenities incidental to such purposes as constructed by Declarant, and public or private utility lines or facilities which do not interfere with slope maintenance use, shall be erected or maintained thereon.

As each Phase in the Properties is developed by Declarant or by a Participating Builder, Declarant covenants for itself, its successors and assigns that it will convey, or cause to be conveyed to the Association, an easement over, or title to, any Association Maintenance Areas within that Phase, prior to or concurrently with the Close of Escrow for the sale to an Owner of the first Lot, as the case may be, in that Phase.

In the event that the Association Maintenance Areas, or any part thereof, are conveyed to the Association, the Association thereafter shall own such Association Maintenance Areas and shall manage and continuously maintain such Association Maintenance Areas. The Association shall have the right to assess the Owners for the reasonable cost of maintaining such Association Maintenance 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 subsequent to the notice of assessment lien document creating the assessment lien.

Section 8.20. Party Walls and Fences. Each wall or fence which is built as a part of the original construction of the homes upon the Annexed Land and placed between the Lots shall constitute a party wall; and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any and all construction, addition, modification, decoration, redecoration or reconstruction of a party wall shall be subject to those provisions of this Declaration concerning architectural control. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it and, if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one arbitrator, and such

arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Section 8.21 Post Tension Slabs. By acceptance of the Deed to the Lot, each Owner acknowledges and understands that due to certain underlying expansive soil conditions, his Residence has been built using a post-tension concrete system ("System"). The System involves placing steel cables under high tension in the concrete slab foundation located beneath the Residence. Any attempt to alter or pierce the foundation and/or slab (for example, saw cutting, drilling, or installation of subterranean improvements such as new plumbing or a floor safe) could damage the integrity of the System and/or cause serious personal injury or property damage. Each Owner, by acceptance of the Deed to his Lot, hereby agrees that Declarant shall not be responsible for any damage or injury resulting from the alteration of the slab or foundation of the Owner's residence by the Owner or any employee, agent, family member or representative of the Owner. Each Owner, by acceptance of the Deed to his Lot, hereby agrees to hold Declarant and all partners, subsidiaries and affiliated companies of Declarant, and all of the officers, employees, directors and agents of any of them, free of liability from damages arising from Owner's attempt to alter or pierce the foundation and/or slab and any costs, expenses or charges in connection therewith, such as, but not limited to, attorneys' fees and court costs and costs incurred by reason of injury to property or injury to persons caused by any modification or alteration of such post tension slabs. Additionally, said expansive soil condition should be taken into consideration before the construction or installment by an Owner (or any of the Owner's contractors or agents) of patios, pools, spas, or any other improvements within Owner's Lot.

Section 8.22. View. Each Owner, by acceptance of a deed or other conveyance of a Lot, acknowledges that any construction or improvement by Declarant, the Association, or any other Owner, or any owner of any other property may change, impair, obstruct, or otherwise affect any view that such Owner may have enjoyed at the time of the purchase of his Lot. This Declaration does not contain any provisions intended to protect any view or guaranty that any views that an Owner may have enjoyed will not be impaired or obstructed in the future by changes to other property. Each Owner further acknowledges that any rights acquired do not include the preservation of any view and further consents to such obstruction and/or impairment. No representations or warranties of any kind, express or implied, have been given by Declarant, or its officers, employees, partners, subsidiaries, affiliated companies or directors and agents of any of them in connection with the preservation of views and each Owner agrees to hold Declarant, and all of such officers, employees, partners, subsidiaries, affiliated

companies and directors and agents of any of them, free of liability from such damages, costs, expenses or charges incurred in connection therewith, such as, but not limited to, attorneys' fees and court costs and costs arising from any changes, obstruction or impairment of the view from such Owner's Lot.

Section 8.23. Violation of Law: Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures herein set forth.

Section 8.24. Violation of Restrictions: There shall be no violation of this Declaration, including, without limitation, the Rules and Regulations, once adopted by the Board after Notice and Hearing. If any Member, his family, guest, or any licensee, lessee or invitee violates this Declaration, the Board may impose upon such Owner, in addition to any Special Assessment as provided in Section 6.7, above, a fine ("Fine") in an amount not to exceed One Hundred Dollars (\$100.00) for each violation. The maximum amount of the Fine may be increased by action of the Board, in the Board's sole discretion, in an amount no more than ten percent (10%) above the maximum Fine for the previous fiscal year. No Fine may be imposed by the Board until Notice and Hearing are afforded to the affected Member.

#### ARTICLE IX ARCHITECTURAL COMMITTEE

Section 9.1. Members of Committee: The Architectural Committee shall consist of five (5) members, the initial members of which shall be chosen by the Declarant, and who shall hold office until the election of the first Board of Directors by the Members. Thereafter, the Architectural Committee members shall be chosen as follows:

(a) By Declarant. Declarant shall have the right to appoint a majority of the members of the Architectural Committee until the earliest to occur of the following:

(i) At such time as the close of escrow for the sale to the public by Declarant and any Participating Builders of at least one hundred seven (107) Lots in the real property constituting the Annexed Land and the Annexable Area as of the date of Recordation of this Declaration; or

(ii) On the fifth (5th) anniversary following the original issuance of the final public report issued by the California Department of Real Estate for the First Phase.

Declarant's appointees to the Committee need not be Members.

(b) By the Board. The Board shall have the right to appoint such members of the Architectural Committee which Declarant is not authorized to appoint until such time as Declarant's rights of appointment shall have expired, and thereafter the Board shall have the right to appoint and remove all members of the Architectural Committee. Architectural Committee members appointed by the Board shall be Members and serve for a term of one (1) year or until their respective successors are appointed.

(c) Removal. Members of the Architectural Committee may be removed at any time without cause by the Person appointing such member as provided herein.

(d) Notice of Appointment. Whenever an Architectural Committee member is appointed or removed while both Declarant and the Board have rights of appointment, written notice of such appointment or removal shall given by the appointing party to the other party.

Section 9.2. Review of Plans and Specifications:  
The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee as follows:

(a) Criteria for Approval. The Architectural Committee shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness or attractiveness of the Association Maintenance Areas or the enjoyment thereof by the Members, and that the upkeep and maintenance therefor will not become a burden on the Association.

(b) Conditions of Approval. The Architectural Committee may condition its approval of proposals or plans and specifications for any Improvement (i) on such changes therein as it deems appropriate, (ii) upon the agreement by the Person (referred to in this Section 9.2 as "applicant") submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement, or (iii) upon the agreement of the applicant to reimburse the Association for the cost of such maintenance, or all three, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted.

(c) Rules and Guidelines. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval which may require a fee to accompany each application for approval, or include additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of such fee shall be uniform, or that it may be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alterations, or additions contemplated. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plan submitted for approval.

(d) Notice of Decision. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee to the applicant at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any application submitted pursuant to this Section 9.2 shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Committee shall have been transmitted to the applicant within forty-five (45) days after the date of receipt by the Architectural Committee of all required materials.

(e) Submission by Declarant and Participating Builder. Declarant need not seek approval of the Architectural Committee with respect to its activities until Close of Escrow for the sale of the last Lot in

the Properties from Declarant (i) to a Participating Builder or (ii) to a member of the public pursuant to a Final Subdivision Public Report issued by the California Department of Real Estate. All Participating Builders must seek such approval in the manner herein provided until Declarant has lost the power to appoint a majority of the members of the Architectural Committee. After Declarant has lost the power to appoint a majority of the members of the Architectural Committee, the Participating Builders need not seek approval of the Architectural Committee with respect to its new construction activities until Close of Escrow for the sale of the last Lot owned by such Participating Builder to a member of the public.

Section 9.3. Meetings of the Architectural Committee: The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time by resolution unanimously adopted in writing designate an Architectural Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties on behalf of the Architectural Committee, except the granting of variances pursuant to Section 9.8. In the absence of such designation, the vote of a majority of the members of the Architectural Committee, or the written consent of a majority of the members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

Section 9.4. No Waiver of Future Approvals: The approval of the Architectural Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 9.5. Compensation of Members: The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

Section 9.6. Corrections of Defects: Inspection of work and correction of defects therein shall proceed as follows:

(a) Inspection. The Architectural Committee or its duly authorized representative may at any time inspect any Improvement for which approval of plans is required under this Article IX; provided, however, that

the Architectural Committee's right of inspection of Improvements for which plans have been submitted and approved shall terminate sixty (60) days after such work or Improvement shall have been completed and the respective Owner shall have given written notice to the Committee of such completion. The Architectural Committee's rights of inspection shall not terminate pursuant to this subsection in the event that plans for the work of Improvement have not previously been submitted to and approved by the Architectural Committee. If, as a result of such inspection, the Architectural Committee finds that such Improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Architectural Committee, it shall notify the Owner in writing of failure to comply with this Article IX within sixty (60) days from the inspection, specifying the particulars of noncompliance. The Owner shall remedy such noncompliance or remove the same within a period of not more than forty-five (45) days from the date that notice of the Architectural Committee ruling is given to the Owner. The Architectural Committee shall have the authority to require the Owner to take such action as it deems necessary to remedy the noncompliance.

(b) Failure to Remedy or Remove. If the Owner does not comply with the Architectural Committee ruling within such 45-day period, the Architectural Committee, at its option, may peacefully remove the noncomplying Improvement or otherwise peacefully remedy the noncompliance, and the Owner shall reimburse the Architectural Committee, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Architectural Committee, the Board shall levy a Special Assessment against such Owner for reimbursement as provided in this Declaration. Upon failure to pay such Special Assessment when due the Board may record a Notice of Delinquent Assessment in the Office of the County Recorder of Orange County. The right of the Architectural Committee to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Architectural Committee and the Association may have at law, in equity or in this Declaration.

(c) Failure to Notify Deemed Approval. If for any reason the Architectural Committee fails to notify the Owner of any noncompliance with previously submitted and approved plans within sixty (60) days after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

Section 9.7. Nonliability of Architectural Committee Member: Neither the Architectural Committee, nor any member of the Architectural Committee, nor the Architectural Committee's duly authorized representative shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Architectural Committee's approval or disapproval shall be based solely on the considerations set forth in this Article IX and the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 9.8. Variances: The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Notice of Annexation, including restrictions upon height, size, floor area, or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least a majority of all of the members of the Architectural Committee, and shall become effective upon Recordation in the Office of the County Recorder of Orange County. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including, but not limited to, zoning ordinances and Lot set-back lines or requirements imposed by any governmental authority.

Section 9.9. Solar Heating Equipment: Notwithstanding any other provisions of this Declaration concerning

approval of plans and specifications by the Architectural Committee, the installation of any solar heating equipment which meets all applicable zoning regulations, the Uniform Building Code, all associated ordinances and regulations and any reasonable requirements of the Architectural Committee is hereby deemed to have been approved by the Architectural Committee.

Section 9.10. Amendment to Article IX: So long as Declarant owns any portion of the Properties, this Declaration cannot be amended or modified to change or eliminate the provision of this Article IX without the prior written approval of Declarant, and any attempt to do so shall be null and void.

ARTICLE X  
RIGHTS OF DECLARANT

It is acknowledged that the First Phase is a portion of a larger parcel of land which Declarant is causing to be developed into a planned community known as Castaways. Declarant, in cooperation with the City of Newport Beach, has created a master plan for its development whereby modern town master planning objectives may be realized for the common good and enhancement of property values within the community. In furtherance thereof, Declarant, for itself and its successors and assigns, reserves the following rights and easements, with the right to convey to others:

(a) Easements over the Properties for the installation and maintenance of electric, telephone, cable television, water, gas, and sanitary sewer lines and drainage facilities.

(b) Easements over any Association Maintenance Area for construction, display, maintenance, sales, and exhibit purposes in connection with the construction, development and sale or lease of the Properties or any portion thereof; provided, however, that the exercise of such easements by Declarant shall not unreasonably interfere with the reasonable use and enjoyment of the Properties by the Owners. Until the sale of all portions of the Properties owned by Declarant, Declarant shall have the right to use any of the Lots owned by it as model home sites and any Association Maintenance Area as incidental parking.

(c) The right of Declarant (and its agents, employees and representatives) to enter on any portion of the Properties to construct improvements on the Properties or upon any adjacent land which may be annexed to the Properties and which is annexed into the Properties and to make repairs and remedy construction defects if such entry shall not unreasonably interfere

with the use of any occupied Lot; provided, however, that the Declarant shall be responsible for the timely repair of any damage caused to any Association Maintenance Area or Lot by the Declarant (and its agents, employees and representatives) in exercising this right.

(d) For itself and for the benefit of the Association, easements of access, use, maintenance and repair over any areas of the Properties through which irrigation water lines and other equipment have been or will be placed.

(e) The right of free access by Declarant, the Association and Owners of adjacent Lots to slopes or drainage ways located on any Owner's property when such access is required for the maintenance or permanent stabilization of said slopes, or maintenance of such drainage facility or for the protection and use of property other than the Lot on which the slope or drainage way is located.

(f) For itself and for the benefit of the Owners and the Association, an easement on, over, across and under those portions of the Properties which are necessary for the Declarant, the Association and/or the Owners to fulfill their maintenance and other obligations under this Declaration.

(g) The right of Declarant to subdivide or resubdivide any portion of the Properties, or to complete excavation and grading and construction of Improvements to and on any portion of the Properties owned by Declarant, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Properties so long as any Lot in the Properties remains unsold.

(h) Each Owner by accepting a deed to a Lot hereby acknowledges that any construction by Declarant, Association or any Participating Builder may impair the view of such Owner and hereby consents to such impairment.

(i) This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Lot by a purchaser from Declarant to establish on that Lot, as the case may be, additional licenses, easements, reservations and rights of way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Properties, subject to the rights of the Veterans Administration and the Federal Housing

Administration to approve such grants as provided herein in the event that they are insuring or guaranteeing a loan on any Lot on the Properties.

(j) The rights, or any portion of the rights of Declarant hereunder and elsewhere in this Declaration, may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in any portion of the Properties, by an express written assignment recorded in the Office of the County Recorder.

(k) So long as Declarant owns any portion of the Properties, this Declaration cannot be amended or modified to change or eliminate the easements and other rights reserved herein to Declarant without the prior written approval of Declarant, and any attempt to do so shall be null and void.

#### ARTICLE XI MISCELLANEOUS

Section 11.1. Term: The covenants, conditions and restrictions of this Declaration as they may be amended from time to time, shall run until December 31, 2045, unless a written instrument executed by the Members holding at least seventy-five percent (75%) of the voting power of the Association has been recorded within one (1) year prior to such date agreeing to terminate such restrictions in whole or in part, and such written instrument is recorded with the Orange County Recorder. After December 31, 2045, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless extinguished by a written instrument executed by the Members holding at least seventy-five percent (75%) of the voting power of the Association, and such written instrument is recorded with the Orange County Recorder.

Section 11.2. Amendment: Subject to the terms of Section 11.6, below, this Declaration shall be amended in accordance with the following:

(a) By Declarant and Participating Builders. Until the Close of Escrow for the sale of any portion of the Properties to a Participating Builder, the provisions of this Declaration may be amended or terminated by recordation of a written instrument signed only by Declarant setting forth such amendment or termination. Following Close of Escrow for the sale of any portion of the Properties to a Participating Builder but prior to the sale of a Lot to a member of the public in accordance with a Final Subdivision Public Report issued by the California Department of Real Estate, the provisions of this Declaration may be

amended or terminated by recordation of a written instrument signed by Declarant and each Participating Builder setting forth such amendment or termination.

(b) By Owners. Except Paragraph D of the Preamble hereto, Sections 3.1, 5.5 and 8.6, and Articles IX and X (which provisions may not be amended without the written consent of Declarant only so long as Declarant owns a Lot in the Properties), the provisions of this Declaration, other than Article VI and this Section 11.2, may be amended by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying that such amendment has been approved by the vote or written assent of the Members holding at least fifty-one percent (51%) of the total voting power of the Association and at least fifty-one percent (51%) of the voting power of the Association excluding votes attributable to property owned by Declarant and any Participating Builders, and such an amendment shall be effective upon its recordation with the County Recorder. Any amendment to Section 6.13 or to this Section 11.2 shall require the vote or written assent of the Members holding at least sixty-seven percent (67%) of the voting power of the Association and a majority of the voting power of the Association, excluding the votes attributable to property owned by Declarant or any Participating Builders, and Declarant, for so long as Declarant is a Class B Member.

Section 11.3. Mortgage Protection: Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid the rights of the Beneficiary under any Deed of Trust upon a Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such Deed of Trust such Lot shall remain subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMC") and the Federal National Mortgage Association ("FNMA") to participate in the financing of the sale of Lots within the Properties, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC, FNMA, GNMA, VA and FHA, conflict with any other provisions of this Declaration or any other of this Declaration, these added restrictions shall control:

(a) Notice of Default. Each first Mortgagee of a Mortgage encumbering any Lot, upon filing a written request for notification with the Board, is entitled to written notification from the Association of any

default by the Mortgagor of such Lot, in the performance of such Mortgagor's obligations under this Declaration, the Articles or the Bylaws (collectively referred to as the "Project Documents"), which default is not cured within sixty (60) days after the Association learns of such default.

(b) Right of First Refusal. Every Owner, including every first Mortgagee of a Mortgage encumbering any Lot, which obtains title to such Lot, pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal."

(c) Foreclosure. Each first Mortgagee of a Mortgage encumbering any Lot, which obtains title to such Lot, pursuant to judicial foreclosure or the powers provided in such Mortgage, shall take title to such Lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued prior to the time such holder acquires title to such Lot.

(d) Mortgagee Approval. Except as provided by statute in case of condemnation or substantial loss, unless at least sixty-seven percent (67%) of the first Mortgagees (based upon one vote for each Mortgage owned) or sixty-seven percent (67%) of the Members other than Declarant and any Participating Builders have given their prior written approval, neither the Association or the Owners shall:

(i) Subject to any provisions of the California General Non-profit Corporation Law to the contrary, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property or the Improvements thereon which are owned, directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause);

(ii) Change the method of determining obligations, assessments, dues or other charges which may be levied against any Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) By act or omission, dissolve this Association, terminate the Project, or change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architec-

tural design or the exterior appearance of the dwelling units on the Lots, the exterior maintenance of the dwelling units on the Lots, the maintenance of the Association Property and any Improvements thereon, including, but not limited to, walks, fences and driveways, or the upkeep of lawns and plantings on the Properties;

(iv) Fail to maintain Fire and Extended Coverage on insurable Association Property on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost);

(v) Use hazard insurance proceeds for losses to any Association Property for other than the repair, replacement or reconstruction of such Association Property;

(vi) Change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(vii) Terminate professional management and assume self-management of the Association;

(viii) Amend a material provision of this Declaration, the Bylaws or the Articles; for purposes herein, the term "material provision" shall mean and refer to those provisions affecting the following:

(aa) The fundamental purpose for which the project was created (such as a change from residential use to a different use);

(bb) Voting;

(cc) Assessments, assessment liens, and subordination thereof;

(dd) The reserve for maintenance, repair and replacement of Association Property and Association Maintenance Area;

(ee) Property maintenance obligations;

(ff) Casualty and liability insurance;

(gg) Reconstruction in the event of damage or destruction;

(hh) Rights to use the Association Property or Association Maintenance Areas;

(ii) Rights to annex additional property; and

(jj) Any provision, which by its terms, is specifically for the benefit of first Mortgagees, or specifically confers rights on first Mortgagees.

(e) Books, Records and Notice of Meetings. First Mortgagees, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours, (ii) require from the Association the submission of audited annual financial reports and other financial data, (iii) receive written notice of all meetings of the Owners, (iv) designate in writing a representative to attend all such meetings.

(f) Notice to Mortgagees. All first Mortgagees shall be given (i) thirty (30) days written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the properties following a decision of the Owners to assume self-management of the Properties; and (ii) immediate written notice as soon as the Board receives notice or otherwise learns of any damage to other Association Property whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00), and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Properties.

(g) Defaults. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Property and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for such property in case of lapse of a policy, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(h) Professional Management. The Board shall contract for professional management of the Properties

with a professional Manager. The agreement between the Association and its agent for such professional management shall provide that the management contract may be terminated by either party thereto, without cause, and without payment of a termination fee, upon ninety (90) days written notice, and the term of such contract shall not exceed three (3) years.

(i) Fidelity Bond. The Board shall secure and cause to be maintained in force at all times a fidelity bond for any person or entity handling funds of the Association, including, but not limited to, employees of the professional Manager.

(j) Leases. Any agreement for the leasing or rental of a Lot shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, the Articles and the Bylaws. All such agreements shall be in writing and shall provide that any failure by the lessee to comply with the terms of this Declaration, the Articles and the Bylaws shall be a default under the agreement.

(k) Agreements for Financing. In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Lots with dwelling units thereon. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

Section 11.4. Notices: Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 11.5. Enforcement and Non-Waiver:

(a) Right of Enforcement. Except as otherwise expressly provided herein, Declarant, the Board and any Owner of any Lot shall have the right to enforce any or all of the provisions of this Declaration or any other Governing Documents against any property within the

Properties and the Owners thereof. Such right shall include an action for damages, as well as an action to enjoin any violation of the Declaration or any other Governing Documents.

(b) Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by Declarant or the Association or any Owner or Owners of Lots within the Properties. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board or a duly authorized agent of any of them, may enforce by self-help any of the provisions of this Declaration, and only if such self-help is preceded by reasonable Notice and Hearing.

(c) Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Properties is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth in this Declaration.

(d) Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive. The Association may, at its option, without waiving the right to enforce its lien against the Lot, bring a suit at law to enforce each assessment obligation.

(e) Non-Waiver. The failure to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of this Declaration.

(f) Attorneys' Fees. Any judgment rendered in any action or proceeding hereunder shall include a sum for attorneys' fees in such amount as the Court may deem reasonable in favor of the prevailing party, as well as the amount of delinquent payment (if applicable), interest thereon, late charges (if any) and court costs.

Section 11.6. FHA/VA Approval: As long as Declarant or a Participating Builder has effective voting control of the Association, and provided they are insuring or guaranteeing loans, as the case may be, on a portion of the Properties, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation or deannexation of

additional real property to the Properties pursuant to Article III of this Declaration; dedication of the Association Maintenance Area to any public agency; grants of additional easements, rights-of-way, or licenses by Declarant in the Properties; establishment of additional reservations by Declarant in the Properties; amendment of this Declaration; and mergers or consolidations of the Association.

Section 11.7. Interpretation:

(a) Restrictions Construed Together. All of the provisions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Properties as set forth in the Preamble to this Declaration. This Declaration shall be construed and governed by the laws of the State of California.

(b) Restrictions Severable. Notwithstanding the provisions of the foregoing subparagraph (a), each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(d) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

(e) Declaration to Control. Notwithstanding any provision in this Declaration to the contrary, in the event of any conflict between this Declaration and the Articles, Bylaws, or the Association Rules and Regulations, if any, this Declaration shall control.

Section 11.8. Reservation of Easements: Declarant expressly reserves for the benefit of all Properties reciprocal easements for access, ingress and egress for all Owners to and from their respective Lots, for installation and repair of utility services; for encroachments of Improvements constructed by Declarant for drainage of water over, across and upon adjacent Lots and Association Property resulting from the normal use of adjoining Lots or Association Property, and for necessary maintenance and repair of any Improvement. Such easements may be used by

Declarant, its successors, purchasers, the Association, and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot or the Association Property.

Section 11.9. No Representations or Warranties: No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties, or any Improvement thereon, its physical conditions, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a Planned Development, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the California Department of Real Estate, the County, the City, the VA, the FHA, the FHLMC, the FNMA, the GNMA or any other government agency.

Section 11.10. Special Provision for Enforcement of Certain Bonded Obligations: In the event that (a) any Improvements on any Association Maintenance Area located on any phase of development of the Properties are not completed, prior to the issuance of a Final Subdivision Public Report for that phase by the DRE, and (b) the Association is obliged under a bond or other arrangement ("Bond") required by the DRE to secure performance of the commitment of Declarant to complete the Improvements, the following provisions of this section will be applicable:

(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 such Improvement for which a Notice of Completion has not been filed, within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has been given an extension in writing for the completion of any such Improvement, the Board shall be directed to consider and vote on the aforesaid question, if a Notice of Completion has not been filed, within thirty (30) days after the expiration of the extension.


(b) A special meeting of Members, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such

a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. A vote of a majority of the voting power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

IN WITNESS WHEREOF, Declarant has executed this Declarant of Covenants, Conditions, Restrictions and Reservation of Easements as of the date first above written.

TAYLOR WOODROW HOMES, INC.,  
a California corporation,

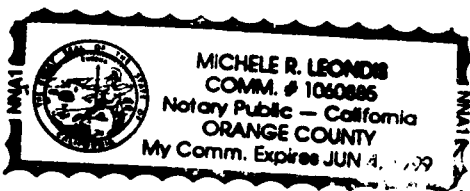
By:   
Its: Tom Redwitz-Vice President

By:   
Its: Bob Liewer-Assistant Secretary

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF ORANGE )

On August 13, 1997, before me, Michele R. Leondis, personally appeared Tom Redwitz and Bob Liewer, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



*Michele R. Leondis*  
Notary Public in and for Said County  
and State

LIST OF EXHIBITS

Exhibit A	Annexable Area
Exhibit B	Association Maintenance Areas

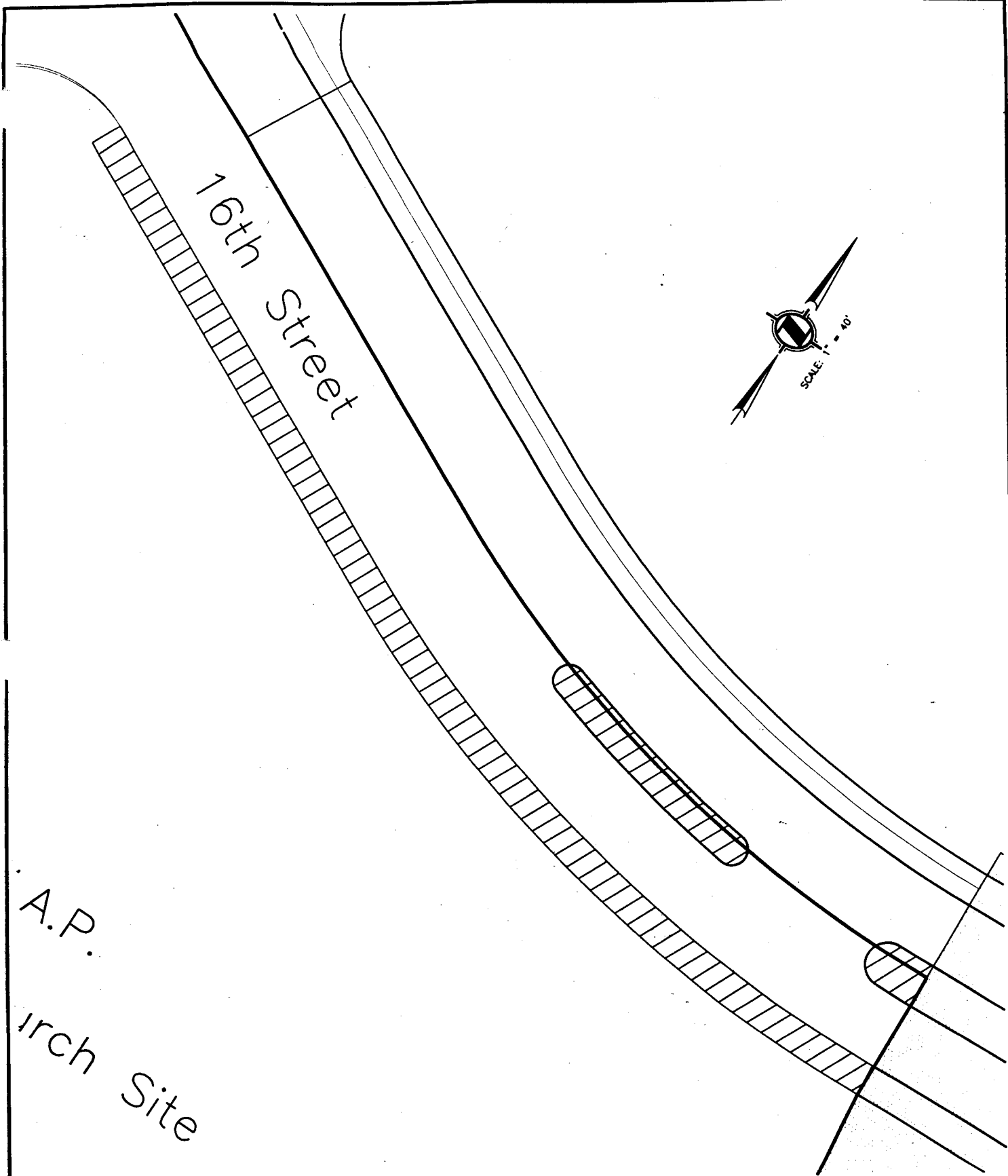
**EXHIBIT "A"**

**Annexable Area**

LOTS 1 THROUGH 20, INCLUSIVE, 23 THROUGH 94, INCLUSIVE, 100 THROUGH 117, INCLUSIVE, AND LETTERED LOTS B, D, E, F, H, I, J, N, O, P, Q, T AND U OF TRACT NO. 15012 SHOWN ON AMENDED MAP NO. 1 FILED IN BOOK 753, PAGES 23 TO 32, INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

**EXHIBIT "B"**

**Association Maintenance Areas**

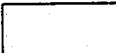




SUBDIVIDER :



PREPARED BY :

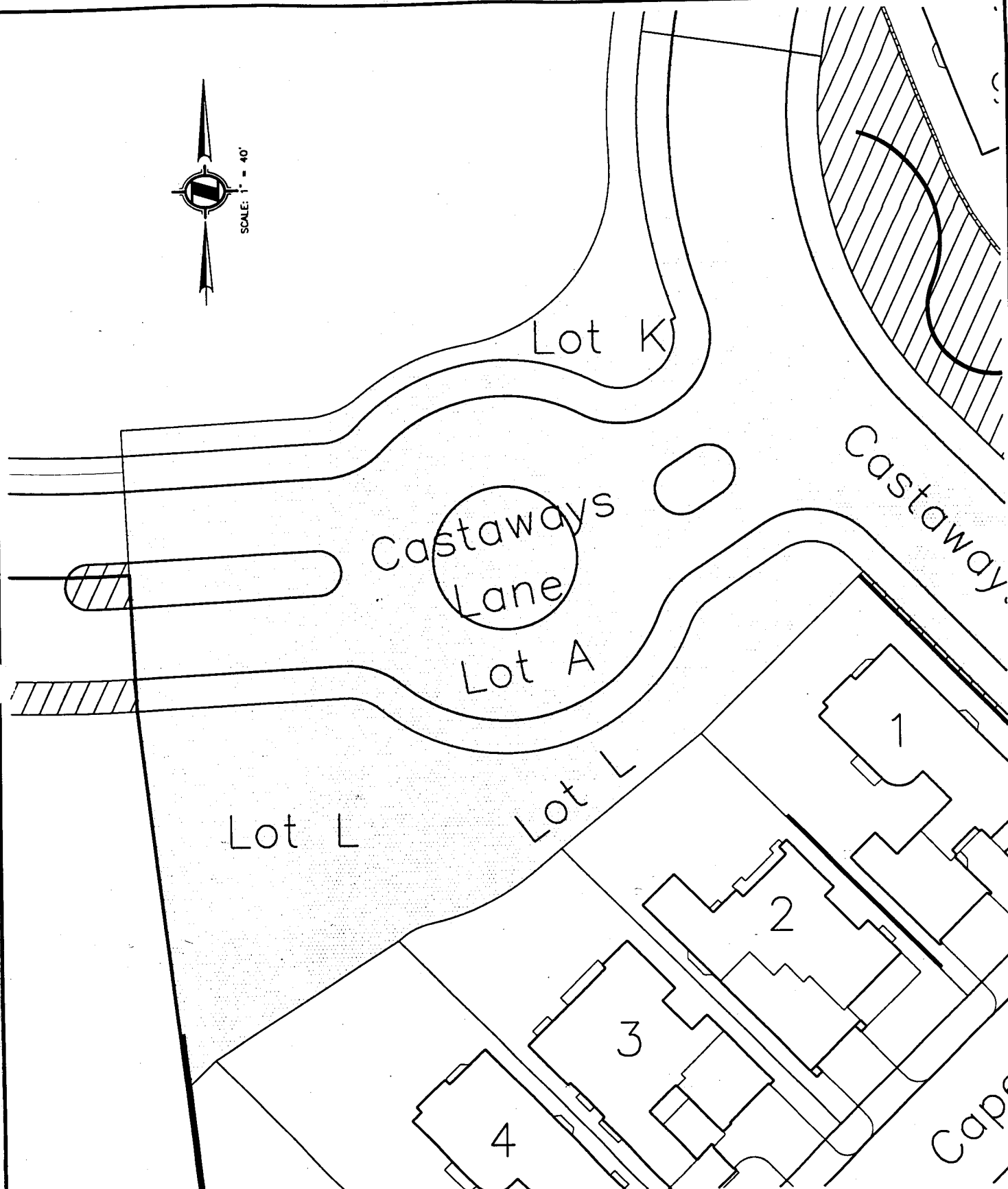
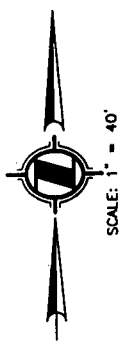


-  DENOTES HOA OWNED MAINTENANCE AREA
-  DENOTES HOA EASEMENT MAINTENANCE AREA
-  DENOTES EASEMENT FOR STREET TREE MAINTENANCE PURPOSES ONLY

**"UPPER CASTAWAYS"**

**EXHIBIT B** SHT 1 OF 6  
**PHASE 1A, TRACT 15012**

DATE PREPARED: 08/06/97


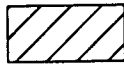



SUBDIVIDER :



PREPARED BY :

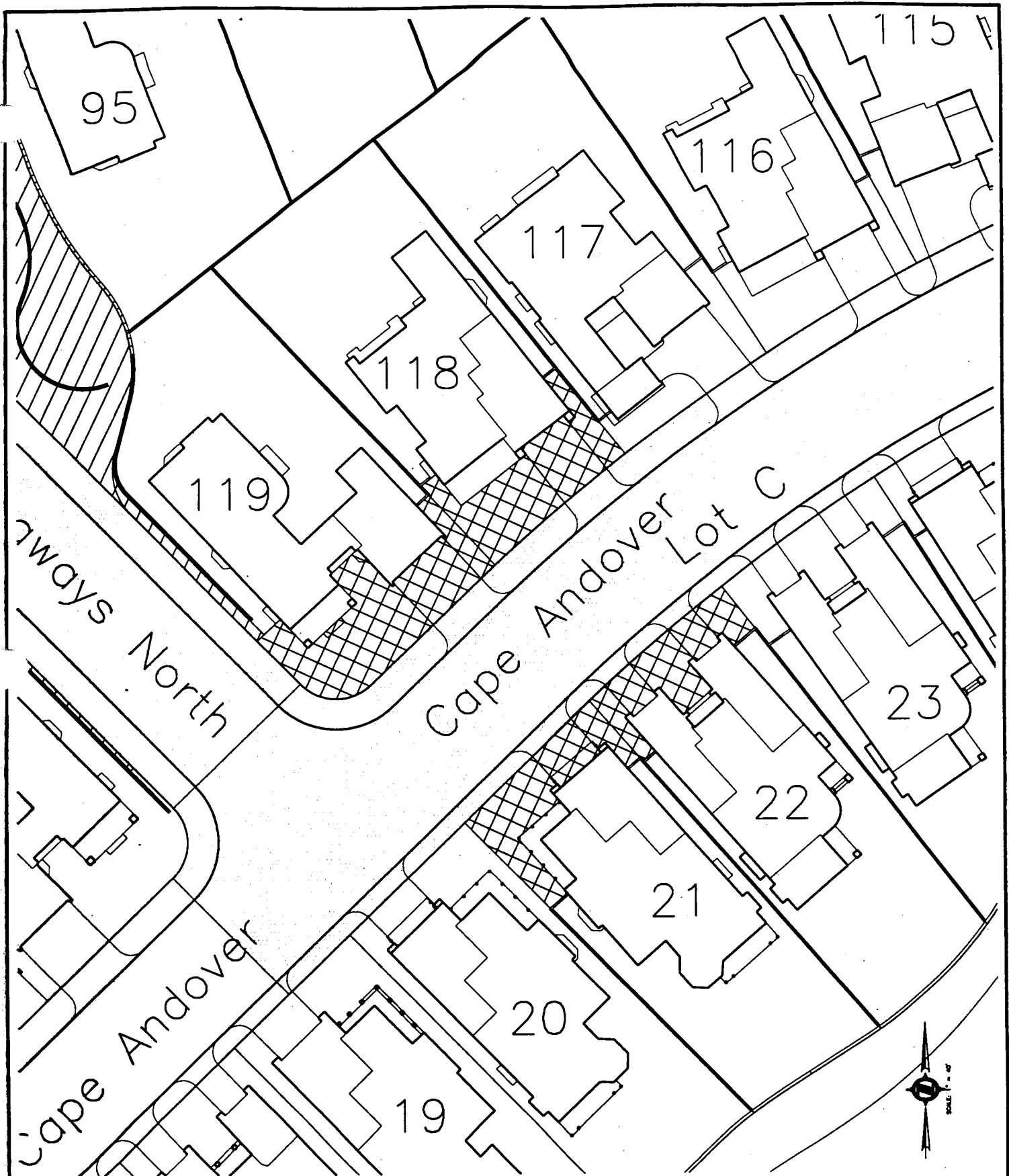
**HUNSAKER & ASSOCIATES**  
IRVINE, INC.  
PLANNING • ENGINEERING • SURVEYING  
Three Hughes • Irvine, CA 92618 • POC: 714 853-9710 • FAX: 714 853-9720

-  DENOTES HOA OWNED MAINTENANCE AREA
-  DENOTES HOA EASEMENT MAINTENANCE AREA
-  DENOTES EASEMENT FOR STREET TREE MAINTENANCE PURPOSES ONLY

### "UPPER CASTAWAYS"

**EXHIBIT B** SHT 2 OF 6  
**PHASE 1A, TRACT 15012**

DATE PREPARED: 08/06/97

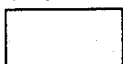


SUBDIVIDER :



PREPARED BY :

**HUNSAKER & ASSOCIATES**  
IRVINE, INC.  
PLANNING • ENGINEERING • SURVEYING  
Three Hughes • Irvine, CA 92618 • Pk 0740 563-1070 • Fx 0740 563-0799



DENOTES HOA OWNED  
MAINTENANCE AREA



DENOTES HOA EASEMENT  
MAINTENANCE AREA

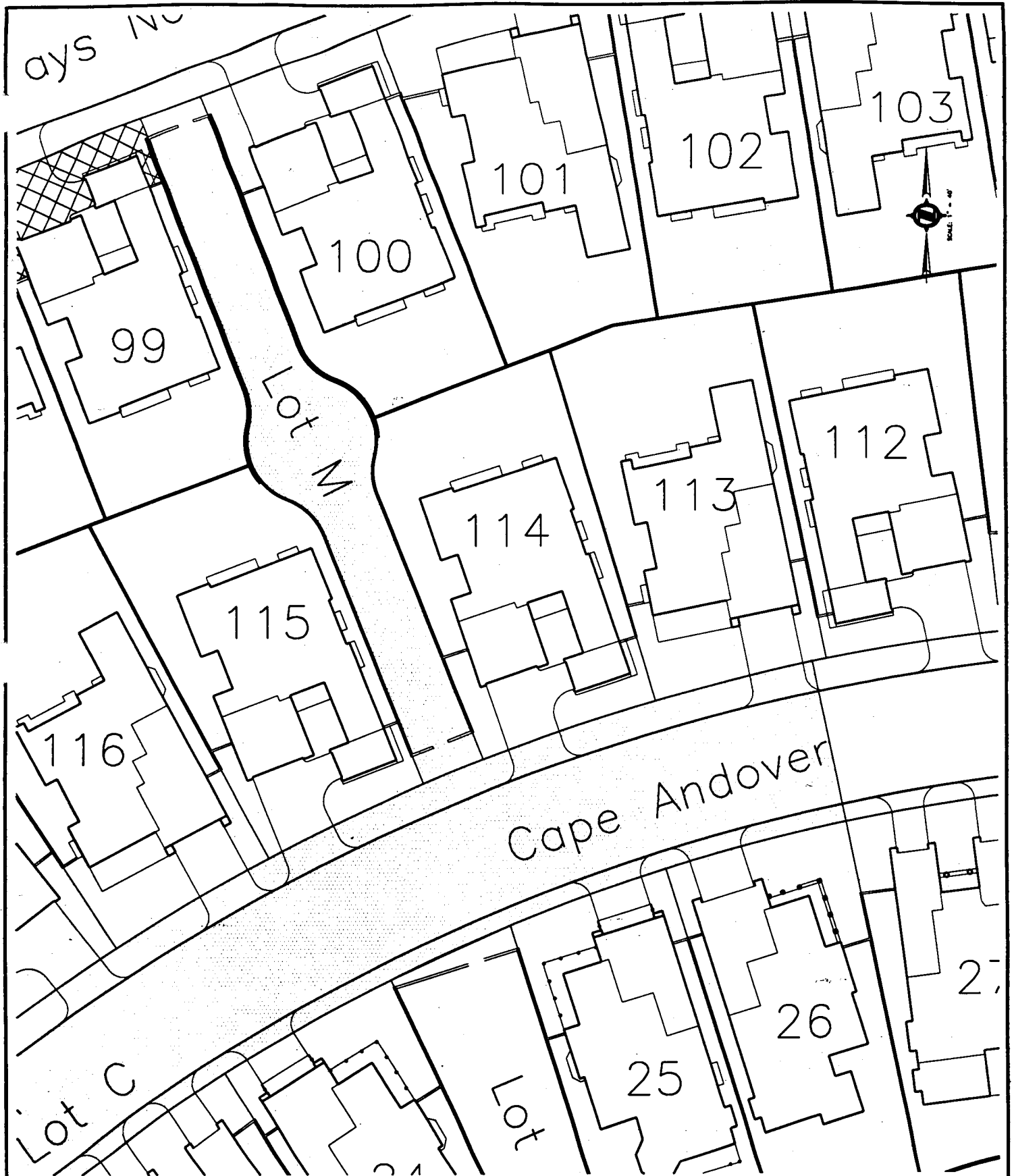


DENOTES EASEMENT FOR  
STREET TREE MAINTENANCE  
PURPOSES ONLY

**"UPPER CASTAWAYS"**

**EXHIBIT B** SHT 3 OF 6  
**PHASE 1A, TRACT 15012**

DATE PREPARED: 08/06/97

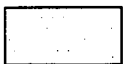


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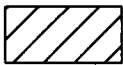


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DENOTES HOA OWNED MAINTENANCE AREA



DENOTES HOA EASEMENT MAINTENANCE AREA



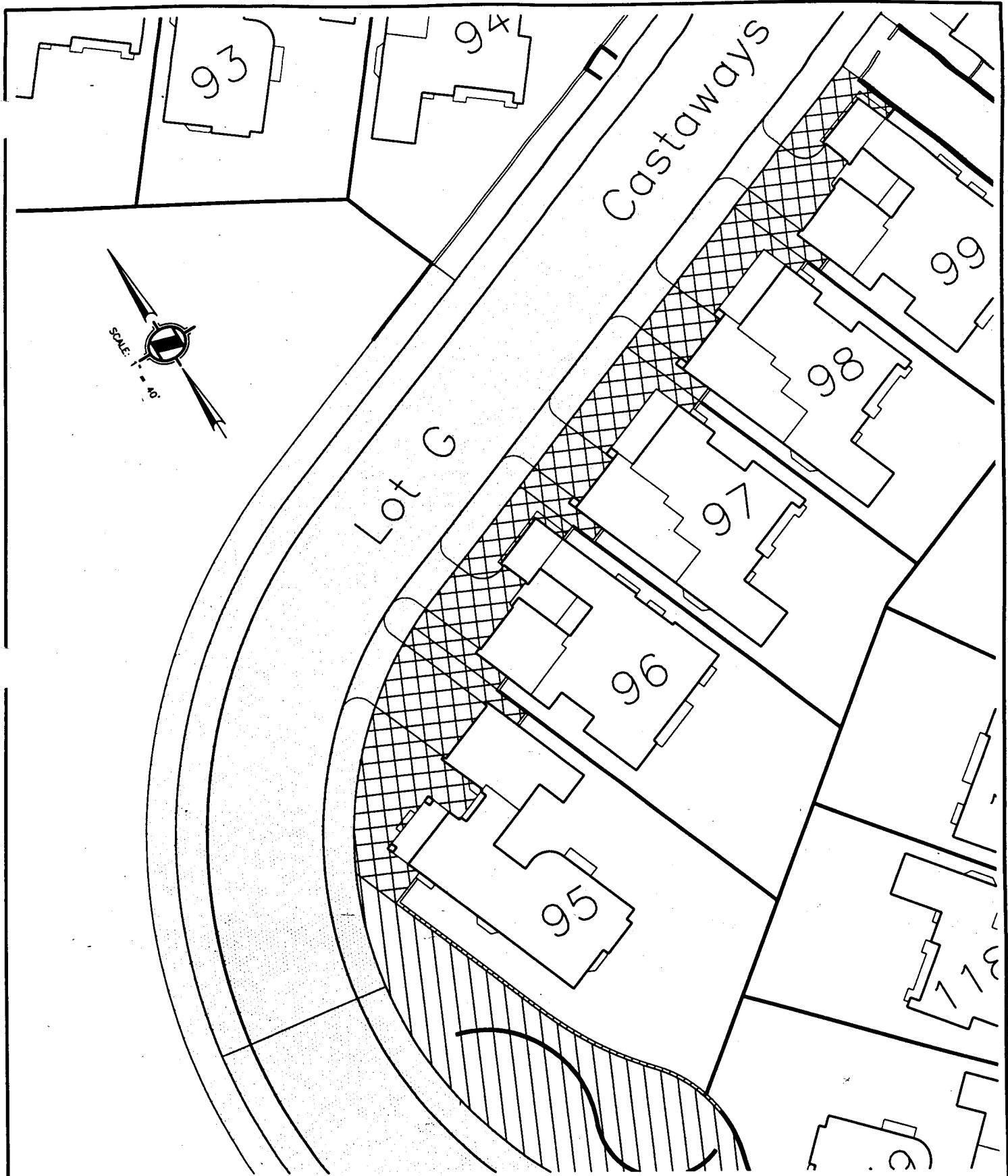
DENOTES EASEMENT FOR STREET TREE MAINTENANCE PURPOSES ONLY

**"UPPER CASTAWAYS"**

**EXHIBIT B** SHT 4 OF 6

**PHASE 1A, TRACT 15012**

DATE PREPARED: 08/06/97



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DENOTES HOA OWNED MAINTENANCE AREA



DENOTES HOA EASEMENT MAINTENANCE AREA



DENOTES EASEMENT FOR STREET TREE MAINTENANCE PURPOSES ONLY

**"UPPER CASTAWAYS"**

**EXHIBIT B** SHT 5 OF 6  
**PHASE 1A, TRACT 15012**

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