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**LAWYERS TITLE COMPANY**

WHEN RECORDED RETURN TO:

Robert O. Smylie, Esquire  
Robert Smylie & Associates  
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By Tom Davison  
Authorized Signature

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DECLARATION OF ESTABLISHMENT

OF

CONDITIONS, COVENANTS AND RESTRICTIONS

FOR

MONTAIRE

A Residential Planned Development

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**DECLARATION OF ESTABLISHMENT OF  
CONDITIONS, COVENANTS AND RESTRICTIONS  
FOR  
MONTAIRE**

THIS DECLARATION OF ESTABLISHMENT OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR MONTAIRE ("Declaration") is made by TRIMARK PACIFIC - INDIAN HILLS, LLC, a California limited liability company (the "Declarant"), being the owner of that certain real property subject to this Declaration, and hereinafter more particularly described.

**W I T N E S S E T H:**

WHEREAS, Declarant is the owner of the following real property located in the City of Simi Valley, County of Ventura, State of California (the "Properties"), more particularly described as:

Lots 18 through 35, inclusive, and Lots 97 through 103, inclusive, of Tract No. 4808, in the County of Ventura, State of California, as per Map filed in Book 125, Pages 9 through 17, inclusive, of Maps, in the Office of the County Recorder of said County; and

The development of the Properties is the first phase of a seven (7) phase planned development. The first phase is planned to be constructed on Lots 18 through 35, inclusive, and Lots 97 through 103, inclusive, of Tract No. 4808, and Special Easement Area Lots A through J, inclusive, of Tract No. 4808. Phase I will consist of twenty-five (25) residences and the following Special Easement Area facilities: private streets. Phase II will consist of twenty-nine (29) residences and no Common Area facilities. There is no guarantee that all phases will be completed, or that the number of Lots or the Common Area facilities and amenities will be developed as described above.

WHEREAS, it is the desire and intention of Declarant to sell and convey residential Lots within the Properties to various individuals subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens and charges between it and the purchasers or users of said Properties, as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above, is, and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and as-

signs, and shall inure to the benefit of each Owner thereof. The provisions of this Declaration shall be enforceable by any of the Owners of an interest in the real property above described, against any other Owner or Owners thereof, and shall also be enforceable by the Board of Directors of the Association, which shall be created for the purpose of governing this Project.

**ARTICLE 1**  
**DEFINITIONS**

Section 1.1 Terms. Whenever used in this Declaration, the following terms shall have the following meanings:

1.1.1 Annexation shall mean the addition of real property and all improvements thereto into the scheme created by this Declaration. Upon such annexation, the annexed property shall be governed by, and subject to each and every provision of this Declaration and any amendments thereto. The procedures for annexation of property are set forth in Article 15.

1.1.2 Articles shall mean and refer to the Articles of Incorporation of the Association as the same may be amended from time to time.

1.1.3 Association shall mean and refer to MONTAIRE HOMEOWNERS' ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

1.1.4 Association Maintenance Areas shall mean and refer to those areas within private Lots for which the Association has the obligation to maintain, repair and replace, including (a) the FMZ shown on Exhibit "A" hereto, and (b) the Berm/Slope Easement Areas shown on Exhibit "B" hereto.

1.1.5 Board or Board of Directors shall mean and refer to the governing body of said Association.

1.1.6 Bylaws shall mean the duly adopted Bylaws of the Association as the same may be amended from time to time.

1.1.7 Common Area shall mean all real property (including improvements thereon) owned by the Association for the common use and enjoyment of the Owners. There is no Common Area to be owned by the Association at the time of the conveyance of the first Lot.

The term Common Area shall include the Special Easement Area during that period of time prior to the Association's acquisition of fee title to the Special Easement Area, except where such an interpretation is in clear conflict with the provisions of Article 20 hereof, such as in regard to maintenance responsibility. All proposed Common Area (not including Special Easement Area) within any Phase Annexed to the Properties shall be conveyed to the Associa-

tion prior to or concurrently with the closing of the sale of the first Lot within such Phase.

1.1.8 Declarant shall mean and refer to TRIMARK PACIFIC - INDIAN HILLS, LLC, a California limited liability company, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped Lot from Declarant for the purpose of development and are designated by Declarant as the Declarant for the purpose hereof by a duly recorded written instrument.

1.1.9 Declaration shall mean and refer to this enabling Declaration of Establishment of Conditions, Covenants and Restrictions, as the same may be amended, changed or modified, from time to time.

1.1.10 Fuel Modification Zone. shall mean and refer to certain portions of the Lots which is located within the Fuel Modification Zone established from time to time by the County of Ventura in accordance with the requirements and ordinances of the County of Ventura and the County of Ventura Fire Protection District. For the affected Lots, the Fuel Modification Zone ("FMZ") is that portion of any Lot which has been designated by the County of Ventura as within the FMZ. The FMZ within Phase 1 of the Project is depicted on Exhibit "A" attached hereto and incorporated herein by this reference. The FMZ within future Phases of the Project shall be depicted on appropriate exhibits in the Notices of Annexation by which such Phases are annexed into the Project. The Association shall have the exclusive right and duty to maintain those portions of private Lots within the FMZ in accordance with all the requirements of the County of Ventura, and shall have reasonable rights of access, ingress and egress over the private Lots for such purposes. Such maintenance shall include brush clearance and weed abatement, and keeping the FMZ in a good, safe condition, at all times in compliance with such standards as may be adopted by the County of Ventura from time to time. In addition, the County of Ventura, and its agents and employees, shall have the right of access, ingress and egress, for the purpose of providing such maintenance in the event that the Association fails to perform such maintenance in accordance with such standards. No structures are permitted to be constructed or installed within the FMZ unless approved by the City of Simi Valley, the Fire District, and the Architectural Control Committee; provided, however, that the Association shall have the right and the obligation to maintain, repair, and replace the fences and/or walls to be located along the boundaries between the portions of Lots within the FMZ and the portions of Lots outside of the FMZ.

1.1.11 Institutional Lender shall mean a Mortgagee which is a bank, savings and loan association, established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.



1.1.12 Lot shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

1.1.13 Member shall mean an Owner with a membership in the Association.

1.1.14 Mortgage shall mean and refer to a deed of trust as well as a Mortgage.

1.1.15 Mortgagee shall mean a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust.

1.1.16 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.

1.1.17 Owner shall mean and refer to the record Owners, whether one (1) or more persons or entities, of fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

1.1.18 Phase shall mean one of the seven (7) phases of development of this residential planned development. Declarant intends to construct certain residential dwelling units and Common Area improvements according to a general plan of development submitted to the California Department of Real Estate.

1.1.18.1 Phase I shall refer to the Lots and Common Area within Tract No. 4808, hereinbefore described.

1.1.18.2 Phases II through V shall refer to the balance of the Lots and Common Area within Tract No. 4808.

1.1.19 Project shall mean the Properties and all improvements thereon.

1.1.20 Properties shall mean and refer to that certain real property located in Ventura County, California, hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association through the annexation procedures set forth in Article 15.

1.1.21 Special Easement Area shall mean and refer to those certain private streets, being Lots A, B, C, D, E, F, G, H, I and J of Tract No. 4808, as more particularly described in that certain Easement Grant Deed described in Article 20 hereof. Future Phases may include additional Special Easement Areas.

Section 1.2 Applicability of Terms. The aforesaid definitions shall be applicable to this Declaration and to any supplements or

amendments thereto (unless the context shall prohibit) recorded pursuant to the provisions of this Declaration.

**ARTICLE 2**  
**PROPERTY RIGHTS AND EASEMENTS**

Section 2.1 Title to the Common Area. Declarant hereby covenants for itself, its successors and assigns, that it will convey title to the Common Area to the Association, free and clear of all encumbrances and liens, except easements, covenants, conditions and reservations then of record, including those set forth in this Declaration. Said conveyance for each Phase shall be made to the Association prior to the conveyance of the first residential Lot in such Phase to an Owner.

Section 2.2 Owner's Easements of Enjoyment. Every Owner of a Lot shall have a right and easement of ingress, egress and of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every such Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its Rules and Regulations (as defined below) after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws, which notice satisfies the minimum requirements of Section 7341 of the California Corporations Code;

(b) The right of the Association to dedicate or transfer all or substantially all of its assets, including all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding any contrary provision in the Articles or Bylaws, so long as there is any Lot for which the Association is obligated to provide management, maintenance, preservation, or control, no such dedication or transfer shall be effective unless approved by the vote or written assent of sixty-six and two-thirds percent (66-2/3%) of both classes of Members of the Association, or following the conversion of Class B to Class A members, by the vote or written assent of sixty-six and two-thirds (66-2/3%) of the members of the Association, other than Declarant, and an instrument executed by both the President and Secretary of the Association affecting such dedication or transfer, has been recorded;

(c) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof, and with the assent of two-thirds (2/3) of each class of Members, to hypothecate any or all real or personal property owned by the Associa-

tion. After conversion of the Class B membership to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of members of the Association and (ii) for so long only as the Declarant holds or directly controls twenty-five percent (25%) or more of the voting power of Members of the Association, two-thirds (2/3) or more of the voting power of the Members of the Association other than Declarant;

(d) Subject to a concomitant obligation to restore, Declarant and its agents shall have:

(i) A non-exclusive easement over the Common Area for the purpose of making repairs to the Common Area or to the residences provided access thereto is otherwise not reasonably available;

(ii) The right to the non-exclusive use of the Common Area for the purpose of maintaining model homes, sales offices and signs reasonably necessary to market the Lots, for a period of not more than three (3) years after conveyance of the Common Area to the Association, or the sale of all residential Lots within the Properties, whichever is first to occur. The use of the Common Area by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association.

Section 2.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his rights of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot.

Section 2.4 Reciprocal Easements. Upon the annexation of additional land and improvements into the Project, as provided in Article 15, the Owners of Lots in the annexed areas shall have non-exclusive easements for ingress, egress, and recreational use over the Common Areas within the Project. Similarly, the Owners of Lots within the original scheme of this Declaration, including previously annexed areas, shall have non-exclusive easements for ingress, egress, and recreational use over the Common Areas of the newly annexed areas.

Section 2.5 Utility Easements. Declarant hereby grants, reserves, and establishes non-exclusive easements over, under, and through each and every Lot and the Common Area within the Project (the "Utility Easement Area") as necessary for the installation, operation and maintenance of underground utility conduits and lines for the sole purpose of providing utilities to such Lots.

2.5.1 Each Lot which obtains electrical power or other utilities through an underground utility conduit located within a Utility Easement Area of another Lot or Lots, is hereby granted and shall have the benefit of a non-exclusive easement through and under such Lot or Lots for the installation, operation and maintenance

nance of such conduit, and the utility lines therein, subject to the restrictions hereinafter set forth.

2.5.2 Each Lot containing a Utility Easement Area within which there lies an underground utility conduit and utility lines is hereby declared to be, and shall be conveyed subject to, a non-exclusive easement by reservation for the benefit of the Lot or Lots serviced by such conduit, and the utility lines therein, subject to the restrictions hereinafter set forth.

2.5.3 Said easements granted and reserved shall include incidental rights of installation, operation and maintenance subject to the following limitations:

(a) Repair and replacement of the utility lines within any such conduit shall be performed only at either end of the conduit;

(b) Excavation of any such conduit for any purpose is expressly prohibited except at either end thereof.

2.5.4 Declarant expressly reserves, for the benefit of the Association, nonexclusive easements on, over, across and through a four foot (4') wide strip along the frontage of each Lot and adjacent to the private streets in the Project, for the installation, construction, maintenance, repair and replacement of sign posts, monumentation, lighting, and similar improvements which may be located in such areas, in accordance with the provisions of this Declaration. Such easements over such portions of each Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

2.5.5 Declarant expressly reserves for the benefit of the Association the right of Declarant to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and sale of the Property. Such right of Declarant shall expire (i) with respect to any Phase of development, upon the close of escrow for the sale of all Lots in such Phase by Declarant, or (ii) with respect to all Phases, upon expiration of seven (7) years from the date of issuance by the DRE of the Final Subdivision Public Report for Phase 1.

2.5.6 The easements hereinabove described shall bind and inure to the benefit of Declarant's heirs, personal representatives, successors and assigns.

2.5.7 Subject easements shall be construed as covenants running with the land, or equitable servitudes as necessary to achieve Declarant's intent. Declarant hereby acknowledges that it is its express intent to subject each Lot within the Project which contains an underground utility conduit, as described hereinabove, to such restrictions, covenants, easements, and servitudes as are necessary to provide for the continued operation and existence of such utility conduit and utility lines.

## Section 2.6 Drainage Easements.

2.6.1 Each Owner whose Lot is served by a yard drain for surface water runoff and/or the drainage line therefor which crosses any adjacent Lot(s) is hereby granted a non-exclusive, perpetual easement, for the benefit of such Lot, on, over, under, along and across such adjacent Lot(s) for the purpose of constructing, maintaining, inspecting and repairing such drainage line.

2.6.2 Declarant expressly reserves, for its benefit and the benefit of the Association and each Owner of a Lot, nonexclusive easements on, over, across and through all Lots for surface water drainage and for the construction, installation, inspection, maintenance, repair and replacement of drainage lines and improvements, and subdrain lines, access ports, and the like, wherever same may be located, in accordance with the provisions of this Declaration. Such easements over such portions of each Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

Section 2.7 Special Easement Area. Declarant and the Association have entered into that certain Easement Grant Deed described in Article 20 hereof which Deed establishes nonexclusive easements on, over and across the Special Easement Area in favor of the Owners until conveyance of the Special Easement Area to the Association as described in more detail in the Easement Grant Deed and Article 20 hereof.

Section 2.8 Fuel Modification Zone Easements. Declarant hereby reserves for the benefit of the Association, and hereby grants to the Association, exclusive easements of access, ingress and egress for the purpose of maintaining, repairing and replacing any and all improvements located within the Fuel Modification Zone portions of the private Lots in the Project, including any irrigation systems, landscaping, and walls and/or fences separating the FMZ portion of Lots from the portions of Lots outside of the FMZ. Owners, their family, employees, agents, guests and invitees are prohibited from entering or using in any manner the FMZ located on their Lots or any other Lots in the Project, except as may be permitted in the Rules and Regulations of the Association and consistent with the requirements and restrictions of the County of Ventura. The Association shall have the exclusive right and duty to maintain those portions of private Lots within the FMZ in accordance with all the requirements of the County of Ventura.

Section 2.9 Berm/Slope Easement Areas. Declarant hereby reserves for the benefit of the Association, and hereby grants to the Association, exclusive easements of access, ingress and egress for the purpose of maintaining, repairing and replacing the slopes and berms located within certain private Lots in the Project, including any and all improvements located within the area containing the berms and/or slopes. The areas subject to this easement located in Phase 1 of the Project are shown and described in Exhibit "B" attached hereto and incorporated herein by this reference

("Berm/Slope Easement Areas"). The Association shall have the exclusive right and duty to maintain those portions of private Lots within the Berm/Slope Easement Areas, and to maintain, repair and replace all improvements located therein, including the irrigation systems, landscaping, drainage improvements, slope stabilization improvements, and the walls and/or fences separating the Berm/Slope Easement Areas from the portions of Lots outside of the Berm/Slope Easement Areas. Such maintenance shall include slope maintenance, brush clearance and weed abatement, and keeping the Berm/Slope Easement Areas in a good, safe condition, at all times in compliance with the standards of maintenance applicable to Common Areas. Owners, their family, employees, agents, guests and invitees are prohibited from altering the grade or irrigation of, or entering or using in any manner, the Berm/Slope Easement Areas located on their Lots or any other Lots in the Project. Notwithstanding any other provision in this Declaration to the contrary, Declarant, rather than the Association or individual Owners, shall be responsible for the maintenance, including payment of water costs, of the slopes within the Berm/Slope Easement Areas for a period of approximately one year, until establishment of the plantings therein and certification by Declarant's landscape architect of such establishment is accepted by the City of Simi Valley and the City releases Declarant from such obligation.

Section 2.10 Disclosure re Public Use Trail Easement. Each Owner, by acceptance and recordation of such Owner's deed to a Lot in the Project, hereby acknowledges and agrees that portions of the private Lots in the Project are subject to an easement to the Rancho Simi Recreation and Park District for a multipurpose public recreation trail, as shown and described on the recorded Tract Map for the Project, and that such Owners shall not obstruct or interfere with the use and enjoyment of such easement by the members of the public. The trail generally extends through portions of Lots 14 and 23.

Section 2.11 Disclosure re Lack of Space for Patios. Each Owner, by acceptance and recordation of such Owner's deed to a Lot in the Project, hereby acknowledges and agrees that certain of the Lots in the Project cannot accommodate the construction and installation of patios or other accessory structures due to the restriction of required setback of building structures from the rear boundary lines, and by the locations of the buildable area of such Lots.

Section 2.12 Simi Valley Recreation and Park District Access. Declarant hereby reserves and grants to the Simi Valley Recreation and Park District, for its use and the use of its employees and agents, a permanent non-exclusive easement of access, ingress and egress on, over an across the private streets in the Project and the Berm/Slope Easement Areas, "for purposes of park planning and archaeological investigation" and access to the property of the Park District located to the south of the Project, as required pursuant to Condition A-39 of the conditions of approval for the Project and Simi Valley Planning Commission Resolution 71-78.

Section 2.13 Right of Declarant to Modify Plan of Development. Declarant hereby reserves the right to modify, amend, change, or eliminate altogether, the seven (7) Phase plan of development hereinbefore described. Such right shall include, without limitation, the right to delete any and all subsequent Phases of development, and to divide the subsequent Phases into additional Phases. There is no guarantee by, or obligation of, Declarant to complete all seven (7) Phases of development or to annex same into the Properties. Any change or modification of the general plan of development shall, however, require the prior approval of the Department of Real Estate.

### ARTICLE 3

#### MEMBERSHIP AND VOTING RIGHTS IN HOMEOWNERS' ASSOCIATION

Section 3.1 Formation. Declarant has, at its sole expense, formed an incorporated homeowners' association known as the Montaire Homeowners' Association, a California nonprofit mutual benefit corporation (the "Association"). The Association shall be primarily responsible for the management and maintenance of the Common Area and Association Maintenance Areas and for the maintenance of the landscaping and other items as set forth in this Declaration.

Section 3.2 Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3.3 Voting Rights. The Association shall have two (2) classes of voting membership:

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

Class B. Class B Member shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) Two (2) years from the date of the first conveyance of a subdivision interest in the most recent Phase of the overall development; or

(b) Four (4) years from the date of the first conveyance of a subdivision interest in the first Phase of the overall development.

Any provision in the Articles, Bylaws, or this Declaration calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of the Declarant under any completion bond, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that there are two outstanding classes of membership. Any requirement elsewhere in the Articles of Incorporation, Bylaws, and Declaration, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, that the vote of Declarant shall be excluded in any such determination, shall be applicable only if there has been a conversion of Class B Members to Class A Members, and the same shall be read as requiring the vote of the prescribed percentage of the Class A members and the vote of the prescribed percentage of the Class A Members other than Declarant. The voting rights attributed to any given Lot in the Project as provided for herein, shall not vest until the assessments provided for hereinbelow have been levied by the Association as against said Lot.

**ARTICLE 4**  
**POWERS OF THE ASSOCIATION AND MEMBERSHIP MEETINGS**

Section 4.1 Powers of the Association. The Association, in its sole and absolute discretion, and as more fully set forth in its Bylaws, shall have the power to perform the following acts:

4.1.1 The Association shall have the sole and exclusive right and duty to manage, operate, control, repair, replace, or restore the Common Area, and Association Maintenance Areas, including, without limitation, all the improvements, trees, shrubbery, plants and grass, private streets, drives and walks, and storm drainage improvements, within the Common Area, and Association Maintenance Areas.

4.1.2 The Association shall have the right and power to levy and collect assessments.

4.1.3 The Association shall pay the taxes and assessments, if any, which may be levied by any governmental authority on the Common Area of the Project or any part thereof.

4.1.4 The Association shall maintain a bank account or accounts for funds coming under the control of the Association.

4.1.5 The Association shall have the right and power to adopt and enforce architectural guidelines ("Architectural Guidelines") for the Project.

4.1.6 The Association shall adopt rules and regulations ("Rules and Regulations") not inconsistent with the provisions of this Declaration, including, but not limited to, Rules and Regulations relating to the use of the Common Area and of the Project.



4.1.7 The Association shall have the right and power to enforce the provisions of this Declaration, and the Bylaws, Articles of Incorporation and Rules and Regulations of the Association; provided, however, nothing contained in this Section shall be construed to prohibit enforcement of same by any Owner.

4.1.8 The Association has the right and power to contract for and maintain fire, casualty, liability, worker's compensation, medical, hospital, and other insurance insuring Owners, members of the Board, and other persons.

4.1.9 The Association has the right and power to contract, provide and pay for (i) maintenance, utility, gardening and other services benefitting the Project; (ii) payment of persons necessary to accomplish the obligations of the Association; and (iii) legal and accounting services.

4.1.10 Notwithstanding any of the foregoing, the Association, acting through its Board, may not enter into any contract binding for a term longer than one (1) year from the effective date thereof without the vote or written consent of a majority of the voting power of the Members of the Association other than the Declarant, except as specifically authorized herein or in the Articles or Bylaws.

4.1.11 The Association has the right and power to contract for the purchase of tools, equipment, materials, supplies and other personal property and services for the maintenance and repair of the facilities and improvements of the Project.

4.1.12 The Association has the right and power to contract for and pay for reconstruction of any portion or portions of the Project damaged or destroyed.

4.1.13 The Association has the right and power to delegate its powers to others where such delegation is proper.

4.1.14 The Association has the right and power to prosecute or defend, and to perform any act reasonably necessary to resolve by alternative dispute resolution proceedings, under the name of the Association, any action affecting or relating to the Project or the personal property thereon, or any action in which all of the Owners have an interest in the subject matter of the action.

4.1.15 Subject to the vote or written consent therefor from sixty-six and two-thirds percent (66-2/3%) of the voting power of the membership, excluding the vote of the Declarant, the Association may borrow money, and may mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

4.1.16 The Association may do any and all things that a nonprofit mutual benefit corporation organized under the laws of the State of California may lawfully do, and generally may do and

perform any and all other acts which may be either necessary for, or incidental to, the exercise of any of the foregoing powers, and any other such powers as are granted to a corporation by the provisions of the laws of the State of California.

4.1.17 The Association may acquire by gift, purchase or otherwise own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage, or otherwise encumber, dedicate for public use, or otherwise dispose of real and/or personal property in connection with the business of the Association; provided, however, that the Association shall not acquire or sell any real or personal property having an individual or aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year by purchase or lease without first obtaining the vote or written consent therefor from a majority of the voting power of the membership, excluding the vote of the Declarant, except as is provided pursuant to the annexation of subsequent phases to this Project.

4.1.18 The Association shall have the right and power to suspend a Member's voting rights and the right to use the recreational facilities for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the Rules and Regulations of the Association, provided that any suspension of such voting rights or right to use the recreational facilities, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws of the Association.

4.1.18.1 The Association may not cause a forfeiture of an Owner's right to use and enjoy his Lot for failure of such Owner to comply with the provisions of this Declaration, or the Bylaws of the Association or the Rules and Regulations of the Association, except (1) by judgment of a court or decision arising out of arbitration, or (2) on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association, as set forth in Article 5 hereof.

4.1.19 The Association may take any and all lawful action which may be advisable, proper, authorized or permitted by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Project, or any portion thereof, and to do and perform any and all acts which may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

4.1.20 The Association may impose monetary penalties upon Owners as a disciplinary measure (1) for failure of an Owner to comply with the Bylaws, the Declaration or the Rules and Regulations of the Association, or (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of

damages to the Common Areas and facilities thereon, and Association Maintenance Areas, for which the Owner is allegedly responsible, or (3) to bring an Owner or its Lot into compliance with the Declaration, Bylaws, or Rules and Regulations of the Association.

4.1.21 In order to assure consistent landscaping and/or maintenance of the attractive appearance of landscaping throughout the Project, the Association shall have the right and power to assume responsibility for the installation, repair, replacement and/or maintenance of the landscaping within all or any portion of any Lot(s), and the costs thereof, subject to the written consent of the Owner thereof and to the granting to the Association of the necessary license(s) or easement(s) for such purposes. Assumption of such responsibilities by the Association shall not bar the later return of such responsibilities to the Owner(s) of such Lot(s), regardless of such Owner(s) consent.

Section 4.2 Fidelity Bond. The Association shall maintain a fidelity bond or insurance in an amount at least equal to the sum of three months' assessments on all Lots in the Project, which names the Association as obligee and insures against loss by reason of acts of members of the Board of Directors, officers and employees of the Association and any management agent and its employees, whether or not such persons are compensated for their services.

Section 4.3 Membership Meetings.

4.3.1 Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members but, except as otherwise provided by Law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. Any Member of the Association may attend meetings of the Board of Directors of the Association, except when the Board adjourns to executive session to consider litigation, matters that relate to the formation of contracts with third parties, Member discipline or personnel matters. Any matter discussed in executive session shall be generally noted in the minutes of the Board of Directors. In any matter relating to the discipline of a Member, the Board of Directors shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

4.3.2 The minutes, minutes proposed for adoption that are marked to indicate draft status or a summary of the minutes, of any meeting of the Board of Directors of the Association, other than an executive session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member of the Association upon

request and upon reimbursement of the Association's costs in making that distribution.

4.3.3 Members of the Association shall be notified in writing at the time that the Budget required in Section 6.2 below is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board of Directors and how and where those minutes may be obtained, and the cost of obtaining such copies.

## **ARTICLE 5 ASSESSMENTS**

Section 5.1 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of a Lot by acceptance of a grant deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) annual assessments or charges, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area, and Association Maintenance Areas, and (b) special assessments as provided in Section 5.4 below, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made, the lien to be effective upon recordation of a Notice of Delinquent Assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to an Owner's successors in title, unless expressly assumed by them.

Section 5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties, for the improvement and maintenance of the Common Area and Association Maintenance Areas, and the homes situated upon the Lots, and such other purposes as set forth in this Declaration and the Bylaws.

Section 5.3 Maximum Annual Assessment. Until January first of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for each Lot shall be as provided for in the budget approved by the California Department of Real Estate and disclosed in the Final Subdivision Public Report, for the particular Phase of the Project, and any amendments thereto. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area and Association Maintenance Areas that must be replaced

on a periodic basis, and such reserve shall be funded by annual assessments.

5.3.1 From and after January first of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January first of each year by the Board without a vote of the membership, provided that (i) any such increase shall not be more than twenty percent (20%) of the previous year's assessment, and (ii) the Board of Directors has complied with Section 6.2 below with respect to that fiscal year, including, but not limited to, the preparation and distribution of a pro forma operating budget to all members of the Association as provided in Section 6.2 below, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. Such annual assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

5.3.2 From and after January first of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount provided in subparagraph 5.3.1 by the vote or written assent of at least a majority of Owners in the Association constituting a quorum (as defined below), provided that the Board of Directors has prepared and distributed a pro forma operating budget to all members of the Association as provided in Section 6.2 below. For purposes of this Article 5, "quorum" means more than fifty percent (50%) of the Owners of the Association. The Association shall provide notice by first-class mail to each Owner of any increase in the regular assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

5.3.3 Said maximum assessment may be reduced by maintenance of subsidy agreements approved by the California Department of Real Estate and reflected in the Final Subdivision Public Report.

5.3.4 The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area and Association Maintenance Areas, including fixtures and personal property related thereto, or otherwise, provided that any such assessment for capital improvements to the Common Area and Association Maintenance Areas which total more than five percent (5%) of the budgeted gross expenses of

the Association for that fiscal year shall have the vote or written assent of a majority of the Owners constituting a quorum. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing the Member and his Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Rules and Regulations, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code, as set forth in the Bylaws. The above provisions requiring the requisite vote of the membership with respect to special assessments do not apply in the case where a monetary penalty is imposed against an Owner as a disciplinary measure by the Association for the following reasons: (1) for failure of an Owner to comply with the Declaration, Bylaws or Rules and Regulations, or (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to Common Areas and Association Maintenance Areas and facilities for which the Owner is allegedly responsible, or (3) to bring an Owner or its Lot into compliance with provisions of this Declaration, Articles of Incorporation, Bylaws, Rules and Regulations and any amendments thereto. The Association shall provide notice by first-class mail to each Owner of any increase in the special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 5.5 Notice and Quorum for Any Action Authorized Under Sections 5.3 and 5.4. Any action authorized under Sections 5.3 and 5.4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of each class of Members entitled to vote on such action. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is less than the requisite fifty-one percent (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting.

Section 5.6 Uniform Rate of Assessment. Both annual and special assessments, except as may be otherwise provided in Sections 5.4 and 12.3, shall be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

Section 5.7 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in

the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to the Owner of each Lot within the Project. All Lots within the real property annexed into the Project under the procedure hereinafter set forth in Article 15 shall be obligated to pay annual assessments to the Association as hereinbefore provided. The annual assessments shall automatically commence as to all Lots within the annexed areas on the first day of the first month following the conveyance of the first Lot within such annexed area to an Owner. The due dates for assessments shall be established by the Board of Directors.

Section 5.8 Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Lot from the time the assessment is levied. With respect to each assessment not received by the Association within fifteen (15) days after its due date, the Board may, at its election, require the Owner to pay a late charge in a sum to be determined by the Board, but not to exceed ten percent (10%) or Ten Dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent assessment, but it shall not eliminate or supersede any charges imposed on prior delinquent assessments. If any such assessment is not paid within thirty (30) days after the date said assessment is due, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay same, and in addition thereto, or in lieu thereof, after the expiration of thirty (30) days following recordation thereof, may foreclose the lien provided herein below against the Lot.

5.8.1 Any assessment not received by the Association within fifteen (15) days after the due date shall be delinquent. Before the Association may place a lien upon the Lot of an Owner as provided herein, the Association shall notify such Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement which indicates the principal amount owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. The amount of any such delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties, as provided for in this Declaration, shall be and become a lien on the Lot against which the assessment is levied when the Association causes to be recorded a Notice of Delinquent Assessment (herein the "Notice") in the office of the County Recorder of the County in which the Lot is located. The Notice shall describe the amount of such delinquent assessment or installment and such other charges thereon as may be authorized by this Declaration, a legal description of the Lot against which the same has been assessed, the name of the Owner, and, if the lien is to be enforced by the power of sale under nonjudicial foreclosure proceedings, the name

and address of the trustee authorized by the Association to enforce the lien by sale. Such Notice shall be signed by the president or vice-president, and the secretary or assistant secretary of the Association or any employee or agent of the Association authorized to do so by the Board and shall be mailed in the manner set forth in Civil Code Section 2924b to all record owners of the Owner's interest in the Lot no later than ten (10) calendar days after recordation. Unless the Board considers the immediate recording of the Notice to be in the best interests of the Association, the Notice shall not be recorded until fifteen (15) calendar days after the Association has delivered the above-described required written notice of default. Any payments received by the Association on account of such a debt shall first be applied to the principal amount owed, and only after the principal amount owed is paid in full shall such payments be applied to interest or collection expenses. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

5.8.2 The Board may, after the expiration of thirty (30) days following recordation thereof, enforce any assessment lien provided for in Section 5.8 hereinabove, by filing an action for judicial foreclosure or, if the Notice contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code Section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h that apply to nonjudicial foreclosures of Mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of the California Civil Code. The Association may bid on the Lot at the sale, and may hold, lease, mortgage, and convey the acquired Lot. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien, and on receipt of a written request by the Owner, a Notice of Rescission of the Declaration of Default and Demand for Sale. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

5.8.3 Pursuant to California Civil Code section 1367(b), 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 Common Areas, and Association Maintenance Areas, and facilities for which the Owner or the Owner's guests or tenants were responsible may become a lien against the Owner's Lot enforceable by the sale of the interest under Sections 2924, 2924(b) and 2924(c) of the California Civil Code. Except as provided in Civil Code Section 1367(b), a monetary penalty imposed by the Association as a disciplinary measure for failure of an



Owner to comply, or to bring an Owner or his/her Lot into compliance, with this Declaration, or the Articles, Bylaws, or Rules and Regulations of the Association, except for the late payment of assessments, shall not be characterized nor treated as an assessment which may become a lien against the Owner's Lot enforceable by the sale of the Lot pursuant to California Civil Code sections 2924, 2924(b) and 2924(c). The provisions of this Section govern monetary penalties, and do not apply to assessments or special assessments. This Section shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

5.8.4 In addition to the lien power described hereinabove, each Owner vests in the Association or its assigns, the right and power to bring all actions at law against such Owner or other Owners for the collection of delinquent assessments. In lieu of bringing an action at law to collect delinquent assessments, the Association may submit the matter to arbitration pursuant to the Rules of the American Arbitration Association. The decision of the arbitrator on such delinquent assessment shall be binding on both the Association and the delinquent Owner and may be enforced in any court of competent jurisdiction. The fee to initiate such arbitration shall be paid by the Association and shall be recoverable as part of the arbitration award, in addition to the late charges and interest on the delinquent assessment as provided above.

Section 5.9 Policies for Assessment Collection. The Board of Directors shall annually distribute within sixty (60) days prior to the beginning of the fiscal year a statement of the Association's policies and practices for enforcing its remedies against Members for defaults in the payment of annual and special assessments, including the recording and foreclosing of liens against Members' Lots.

Section 5.10 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage or any conveyance in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of Record or other purchaser of a Lot obtains title to the same as a result of foreclosure or conveyance in lieu thereof, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed

to be common expenses collectible from all of the Lots including such acquirer, his successors and assigns.

Section 5.11 Estoppel Certificate. The Association shall furnish or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.12 Personal Liability of Owner. No Member may exempt himself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Lot owned by him from the liens and charges hereof by waiver of the use and enjoyment of the Common Area and facilities thereon, or by abandonment of his Lot.

Section 5.13- Exempt Property. All Properties dedicated to and accepted by a local public authority, and all Properties owned by a charitable nonprofit organization exempt from taxation by the laws of the State of California, shall be exempt from the assessments created herein. However, no real property or improvements devoted to dwelling use shall be exempt from said assessments.

Section 5.14 Assessment Limitation Not Applicable. The limitation on percentage increases of annual assessments shall not limit assessment increases by the Board for the following emergency situations:

- (a) An extraordinary expense required by an order of court;
- (b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered; or
- (c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro-forma operating budget pursuant to Article 6 hereof. However, prior to the imposition or collection of an assessment under this subparagraph (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolutions shall be distributed to the members with the notice of assessment.

Section 5.15 Association Statement at Transfer of Title. At the request of any Owner transferring title to such Owner's Lot, the Association shall provide (i) a true statement in writing from an authorized representative of the Association as to the amount of

the Association's current regular and special assessments and fees, as well as any assessments levied upon the Owner's Lot which are unpaid on the date of the statement, and (ii) any change in the Association's current regular and special assessments and fees which have been approved by the Association's Board of Directors, but have not become due and payable as of the date disclosure is provided pursuant to this Section.

Section 5.16 Exemption from Assessments to Common Areas. Notwithstanding any other provisions of this Declaration, Declarant or any other Owner shall not be obligated to pay any portion of any assessments, which is for the purpose of defraying expenses and establishing reserves directly attributable to the existence and use of a Common Area improvement that is not complete at the time assessments commence. Any such exemption for the payment of assessments shall be in effect only until a Notice of Completion of the Common Area improvement has been recorded or the Common Area improvement has been placed into use, whichever shall first occur.

## ARTICLE 6 ACCOUNTINGS

Section 6.1 Books and Records. The Association shall maintain books of account of all its receipts and expenditures. Each Owner shall be entitled at reasonable times to inspect the books of the Association, and to have such books examined at such Owner's expense by an attorney or an accountant representing such Owner, and may make excerpts or copies of such books or portions thereof, and each such Owner, at his own expense, shall have the right to have such books independently audited by an accountant.

6.1.1 Commencing not later than ninety (90) days after the close of escrow for the sale of the first Lot, copies of the documents listed below, as soon as readily obtainable, shall be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the listed documents shall apply to any documents obtained by Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (a) the conveyance of the last Lot covered by a subdivision public report or (b) three years after the expiration of the most recent public report, on the Project:

(1) The recorded subdivision map or maps for the Project.

(2) The deeds and easements executed by Declarant conveying the common area or other interest to the Association, to the extent applicable.

(3) The recorded Declaration, including all amendments and annexations thereto.

- (4) The Association's bylaws and all amendments thereto.
- (5) The Association's filed Articles of Incorporation, if any, and all amendments thereto.
- (6) All Architectural Guidelines and all other rules regulating the use of an Owner's interest in the Project or use of the common area which have been promulgated by the Association.
- (7) 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 restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.
- (8) All notice of completion certificates issued for common area improvements (other than residential structures).
- (9) Any bond or other security device in which the Association is the beneficiary.
- (10) Any written warranty being transferred to the Association for common area equipment, fixtures or improvements.
- (11) Any insurance policy procured for the benefit of the Association, the Board or the common area.
- (12) Any lease or contract to which the Association is a party.
- (13) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, of the Board, and of committees of the Board.
- (14) Any instrument referred to in Business and Professions Code Section 11018.6(d) but not described above which establishes or defines common, mutual or reciprocal rights or responsibilities of Members.

6.1.2 Commencing not later than ninety (90) days after the annexation of additional Phases to the Project, copies of those documents listed above, which are applicable to that Phase, shall, as soon as readily obtainable, be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the listed documents shall apply to any documents obtained by Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (a) the conveyance of the last Lot covered by a subdivision public report or (b) three years after the expiration of the most recent public report, on the Project.

Section 6.2      Budget.

6.2.1 Except as provided in Section 6.2.2, a pro forma operating statement ("Budget") for each fiscal year shall be prepared and distributed to each Owner not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year. The Budget shall contain the following information:

(a) The estimated revenue and expenses of the Association for the upcoming fiscal year on an accrual basis;

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 6.2.4 below, which shall be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component within the Common Area and Association Maintenance Areas;

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

A. The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components within the Common Area and Association Maintenance Areas;

B. The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components within the Common Area and Association Maintenance Areas;

(iii) The percentage that the amount determined for purposes of clause B. of subparagraph (ii) above is of the amount determined for purposes of clause A. of subparagraph (ii) above;

(c) A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component within the Common Area and Association Maintenance Areas or to provide adequate reserves therefor;

(d) A general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas and Association Maintenance Areas and facilities for which the Association is responsible.

6.2.2 In its sole discretion, and in lieu of the procedure set forth in Section 6.2, the Board of Directors may elect to distribute a written summary of the Budget ("Summary") to all Owners not less than forty-five (45) days nor more than sixty (60) days before the beginning of the fiscal year. In addition to the Summary, the Board of Directors shall include a written Notice, in

at least 10 point bold type on the front page of the Summary stating that: a) the Budget is available for review at a location within the Project or at the office of the management company for the Association; and b) upon the written request of an Owner, the Association shall mail one copy of the Budget to an Owner. Such Budget shall be mailed at the Association's expense by pre-paid first class mail and shall be delivered within five (5) days from the date of the receipt of such Owner's written request.

6.2.3 The summary of the Association's reserves disclosed pursuant to paragraph 6.2.1 shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

6.2.4 At least once every three (3) years the Board of Directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Project if the current replacement value of the major components within the Common Area and Association Maintenance Areas which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half ( $\frac{1}{2}$ ) of the gross Budget of the Association which excludes the Association's reserve account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The study required hereunder shall at a minimum include:

(a) Identification of the major components within the Common Area and Association Maintenance Areas which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(b) Identification of the probable remaining useful life of the components identified in Section 6.2.4(a) as of the date of the study;

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Section 6.2.4(a) during and at the end of its useful life;

(d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

6.2.5 As used in this Article, "reserve accounts" means moneys that the Association's Board of Directors has identified for use to defray the future repair or replacement of, or additions to,

those major components which the Association is obligated to maintain.

6.2.6 As used in this Article, "reserve account requirements" means the estimated funds which the Association's Board of Directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

Section 6.3 Initial Financial Report. A balance sheet, as of the accounting date which is the last day of the month closest in time to six (6) months from the date of the closing of the first sale of a Lot in the Project, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed within sixty (60) days after the accounting date. The operating statement shall include a schedule of assessments received and receivable, identified by the number of the Lot and the name of the record Owner so assessed.

Section 6.4 Annual Report. An annual report consisting of the following shall be distributed to each Owner within one hundred twenty (120) days after the close of the fiscal year:

- (a) A balance sheet as of the end of the fiscal year;
- (b) An operating (income) statement for the fiscal year;
- (c) A statement of changes in financial position for the fiscal year;
- (d) Any information required to be reported under Section 8322 of the Corporations Code; and
- (e) A review of the annual report for the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy, (hereinafter "Independent Accountant"), for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000).

6.4.1 A statement of policies and procedures employed by the Board of Directors to enforce the collection of delinquent assessments.

Section 6.5 Independent Preparation. Ordinarily the annual report referred to in Section 6.4 above shall be prepared by an Independent Accountant for each fiscal year.

Section 6.6 Copy of Financial Statement To Prospective Buyers. Within ten (10) days of receipt of any written request therefor, the Board of Directors shall furnish any Owner or prospective Owner with a copy of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, as amended to date, together with a copy of the Association's most recent annual

financial report as described in Section 6.4 hereof, and a true statement of any delinquent assessments, penalties, late charges, attorneys' fees or other charges under this Declaration on such Owner's Lot as of the date the statement is issued. The Board of Directors may charge a reasonable fee for providing such documents and reports not to exceed the reasonable cost to prepare and reproduce same.

Section 6.7 Association Officer Statement. If the report referred to in Section 6.5 above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the report was prepared without audit from the books and records of the Association.

Section 6.8 Association's Policies and Practices Statement. A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its Members shall be annually delivered to the Members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

Section 6.9 Reconciliation of Accounts. The Board of Directors shall do the following not less frequently than quarterly:

(a) Cause a current reconciliation of the Association's operating accounts to be made and review the same;

(b) Cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget;

(d) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and

(e) Review an income and expense statement for the Association's operating and reserve accounts.

Section 6.10 Reserve Account.

6.10.1 Withdrawal of funds from the Association's reserve account shall require the signatures of either: (1) two members of the Board of Directors, or (2) one member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors.

6.10.2 The Board of Directors shall not expend funds designated as reserve funds for any purpose other than:

(a) the repair, restoration, replacement, or maintenance of major components which the Association is obligated to repair,



restore, replace or maintain and for which the reserve fund was established, or

(b) litigation involving the purposes set forth in (a) above.

6.10.3 Notwithstanding Section 6.10.2 above, the Board:

(a) may authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short term cash flow requirements or other expenses, provided that the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve account.

(b) shall cause the transferred funds to be restored to the reserve account within one (1) year of the date of initial transfer; however, the governing body may, upon making a documented finding that a temporary delay of restoration of the funds to the reserve account would be in the best interests of the development, temporarily delay the restoration until such time it reasonably determines to be necessary.

(c) shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits specified in (b) above. Any such special assessments shall be subject to the five percent (5%) limitation specified in Section 5.4 above. The Board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve account to pay for litigation, the Board shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of the expenses related to litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

Section 6.11 Transfer of Title. The Board of Directors shall not impose or collect any assessment, penalty or fee in connection with the transfer of title or any other interest except the Board of Directors' actual costs to change its records and the fee for providing documents pursuant to Section 6.6.

ARTICLE 7  
ARCHITECTURAL CONTROL COMMITTEE

Section 7.1 Submissions and Approvals Required. No building, fence, wall, stable or other structure, landscaping or improvement (collectively "Improvement") shall be commenced, erected, placed or altered upon any Lot until the location and full, complete and legible plans and specifications, in form acceptable to the Board or the Architectural Control Committee, showing the nature, kind, shape, height and materials, including the color scheme, have been submitted by personal delivery or certified mail, return receipt requested, to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee appointed by the Board of Directors and composed of three (3) or more, but not to exceed five (5) representatives. The architectural committee may designate an agent (i.e. an architect) for the purpose of assisting in the review of such location, plans and specifications or other requests and may charge the Owner making a submission its reasonable costs of such agent's review. Approval shall be by majority vote of the Board or its designated committee. In the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other requests within thirty (30) days after receipt of the submission thereof to it of a complete application with all required documents in acceptable form, then such approval will not be required; provided that any structure or Improvement so erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Properties. Grade, level or drainage characteristics of the Lot or any portion thereof, shall not be altered without the prior written consent of the Board or its designated committee. This approval requirement shall not apply to the original construction of Declarant. Each Owner shall be responsible for obtaining all necessary approvals or permits from applicable governmental entities or agencies and shall comply with all laws, codes and regulations concerning the construction of any such Improvement.

Section 7.2 Appointment of Architectural Committee. Declarant may appoint all of the original members of the architectural committee and all replacements until the first anniversary of the original issuance of the Final Subdivision Public Report for the Project. Thereafter, Declarant may appoint a majority of the members of the architectural committee until ninety percent (90%) of the Lots in the Project have been sold or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the Project, whichever first occurs. After one year from the date of the original issuance of the Final Subdivision Public Report for the Project, the Board of Directors of the Association shall have the power to appoint one member to the architectural committee until ninety percent (90%) of the Lots in the Project have been sold or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for

the Project, whichever first occurs. Thereafter, the Board of Directors of the Association shall have the power to appoint all of the members of the architectural committee. Members appointed to the architectural committee need not be Members of the Association.

Section 7.3 Views. In granting or denying the architectural approvals required hereunder, the architectural committee shall consider the effect of any Improvement on the views of adjacent Lots. No vegetation or other obstruction shall be approved in any location of such height as to unreasonably obstruct the view from any other Lot in the vicinity thereof; nor will any vegetation be allowed to grow to such a height or density as to unreasonably obstruct such views. In the event of a dispute between Owners as to the obstruction of a view from a Lot, such dispute shall be submitted to the architectural committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the architectural committee, be removed or otherwise altered to the satisfaction of the architectural committee, by the Owner upon whose Lot said obstruction is located. If said Owner fails to take such action as required, the Association, architectural committee, or their authorized agents or employees, may, but is not obligated to, enter upon such Lot, rectify the condition, and charge such Owner the cost thereof. Declarant makes no assurance whatsoever concerning the impact on views of any construction of Improvements by anyone after completion of Declarant's original construction, whether such construction is approved by the architectural committee or constructed on property contiguous to the Properties.

Section 7.4 Fences and Walls. Each Owner shall construct and maintain fences and walls along the side and rear perimeters of his Lot. Such fences and walls shall be built so as to straddle the boundary lines of a Lot, and only one fence or wall shall be constructed on the boundary lines of adjoining Lots. Each Owner shall obtain all necessary permits for such construction and shall comply with all local laws and ordinances in connection with such construction. The cost of construction and maintenance of the fences and walls shall be borne by the Owner thereof, except that the cost of construction and maintenance for fences and walls which straddle boundary lines of adjoining Lots shall be borne equally by such adjoining Lots as required by California Civil Code Section 841. In the event any Owner fails to maintain the fences and walls as required hereunder, then the Association or the Architectural Control Committee may, after due notice to the Owner involved and opportunity to be heard, shall have the right of access to such Owner's Lot to conduct such maintenance as may be necessary and said Owner shall be liable for all costs incurred by the party conducting such activities.

7.4.1 The Association shall have the right and the obligation to maintain, repair and replace the walls and/or fences separating the FMZ portion of any Lot from the portion of such Lot not within the FMZ, as described in Section 2.8 above.

7.4.2 The Association shall have the right and the obligation to maintain, repair and replace the walls and/or fences located along the boundary of the Berm/Slope Easement Area within individual Lots, as described in Section 2.9 above.

7.4.3 Notwithstanding any other provision in this Declaration to the contrary, the Association shall be responsible for the maintenance, repair and replacement of all wrought iron fencing installed by Declarant in the Project, and for the maintenance of the surface of block walls (including the "view wall") facing outward from any Lot, and the individual Owners shall be responsible for the maintenance of the inward facing surface of such of block walls (including the "view wall"), except for any wrought iron portion thereof.

Section 7.5 Non-Liability of Architectural Committee Members. Neither Declarant, the Association, the Board or the architectural committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the architectural committee. The architectural committee's approval or disapproval of a submission shall be based solely on the consideration set forth in this Article, and in such rules and regulations as may be promulgated by the architectural committee, and the architectural committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

## ARTICLE 8

### USE RESTRICTIONS AND OBLIGATIONS OF OWNERS

Section 8.1 Leasing of Lots. Any Owner may lease his Lot subject to the following:

8.1.1 No Owner shall be permitted to lease his Lot for transient or hotel purposes.

8.1.2 No Owner may lease less than the entire Lot.

8.1.3 Any lease agreement is required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Bylaws and any Rules and Regulations adopted by the Association and that any failure by the lessee to comply with the terms of such documents shall constitute a default under the lease.

8.1.4 All leases are required to be in writing and copies shall be submitted to the Association.

Section 8.2 Use Restrictions. In addition to all other covenants contained herein, the use and enjoyment of the Properties and each Lot therein shall be subject to the following:

8.2.1 No Lot shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors or assigns, may use any Lot or Lots in the Project owned by Declarant for a model home site or sites and display and sales office until the last Lot is sold by Declarant or seven (7) years following the date of the sale of the first Lot in the Project, whichever shall first occur. No tent, shack, trailer, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

8.2.2 No part of the Project shall ever be used or caused to be used directly, or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes. However, the provisions of this Section shall not preclude professional and administrative occupations within the Project, or other reasonable business activity, which have no signs or other external evidence thereof, for so long as such occupations are in conformance with all applicable governmental ordinances, are merely incidental to the use of the Lot as a residential home, and do not in any manner disturb other occupants or generate pedestrian traffic, deliveries or other nuisance.

8.2.3 No sign or billboard of any kind shall be displayed by any Owner on any portion of the Project or Lot, except one sign of reasonable size, advertising that the particular Lot is for sale or rent, or except by Declarant in connection with initial sales of the Lots, during the sales period set forth in Section 8.2.1, hereinabove.

8.2.4 No noxious or offensive activity shall be carried on in any Lot or any part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot or which shall in any way increase the rate of insurance.

8.2.5 Except as hereinafter provided, no automobile or other motor vehicle repair shall be permitted within the Project except entirely within a garage of a residence. Under no circumstances shall such vehicle repair be permitted on any street or driveway within the Project, except in the event of an emergency. No trailer, camper, boat, recreational vehicle, or similar equipment or inoperative automobile shall be permitted to remain upon the Project unless placed and maintained entirely within a Lot and obscured from the view of the adjoining Lots and streets. The foregoing restriction shall not be deemed to prevent washing and polishing of such motor vehicle, boat, trailer, camper or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing. The Board shall establish

reasonable rules and regulations to permit and regulate temporary parking of commercial vehicles, such as delivery trucks, for unloading and loading purposes.

8.2.6 No garage shall be used for residential or storage purposes or any other purpose which would restrict the parking of the maximum number of automobiles or other motor vehicles for which such garage was designed to accommodate, at any time. However, in case an Owner's garage cannot accommodate all of such Owner's vehicles, such Owner may park the Owner's vehicles on the private driveway of such Owner's Lot. Temporary loading and unloading and guest parking within private driveways shall be permitted. Conversion of any garage to another use is prohibited without the prior approval of the Architectural Control Committee. Any such conversion may also constitute a "major modification" of the Project and require prior review and approval by the Planning Commission of the City of Simi Valley, in addition to the other approvals such conversion would require.

8.2.7 On street parking throughout the Project is strictly limited to such areas and such times as may be permitted under the Rules and Regulations adopted by the Board. On street parking is prohibited on that side of the street adjacent to the street frontages of Lots 1, 2, 3, 4, 11, 12, 19, 20, 21, 22, 30, 31, 55, 136, 137, and 138; the side yard lot lines of Lots 1, 10, 19, 40, 51, 85, 86, and 90; and the rear yard lot lines of Lot 90.

8.2.8 An Owner may keep and maintain in his Lot domesticated pets such as dogs, cats or other usual and ordinary household pets, not to exceed two (2) in number and provided that such pets shall not be allowed in the Common Area, Association Maintenance Areas or recreational areas except as may be permitted by the Rules and Regulations which may be promulgated from time to time by the Board. Except as hereinabove provided, no animals, livestock, birds or poultry shall be brought within the Project or kept in any Lot thereof. Owners keeping pets shall be accountable to the other Owners for the acts of such pets, and should any Owner be unable to control barking or other noise or acts of his pets which disturb his neighbors, he shall be required to remove such pet from the Project. No dog will be allowed on the Common Area or recreational areas without being supervised. Any Owner (including such Owner's family, guests and invitees) who maintains any pet, animal, reptile, livestock or other living creature of any kind, within the Project, whether in compliance with this Declaration and the Rules and Regulations or otherwise, shall indemnify, defend and hold the Association harmless from and against any damages, claims, causes of action or losses of any kind or nature, including reasonable attorney's fees and costs, incurred by the Association as a result of any alleged damage or injury caused by such living creature to the Association, to its property, to the Common Area, to the Association Maintenance Areas, or to the Members, their family, guests or invitees, or their property.

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

8.2.10 All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, wood-piles, storage areas, machinery and equipment shall be prohibited within the Project unless obscured from the view of adjoining Lots and streets.

8.2.11 No roof mounted or other externally mounted radio and/or television antenna systems, shall be permitted within the Project; provided, however, that an antenna or satellite dish that has a diameter or diagonal measurement of thirty-six inches (36") or less and is not visible from any street or Common Area, may be permitted subject to and only after application to and approval by the Architectural Control Committee. Each Owner may maintain individual radio or television antennae systems if located entirely within such Owner's dwelling and if such system is not visible from other Lots or the Common Area, and provided that such system does not interfere with radio and television reception of other Owners within the Project.

8.2.12 Easements for surface water drainage and for installation and maintenance of utilities, sewer pipelines and facilities and drainage facilities over, under and across each of the Lots, and all pipelines and other facilities located and to be located in said easements, are reserved for the benefit of the Declarant, the Association, and the other Lots within the Project, where such facilities are installed and as may be shown on the recorded Maps of the Project. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of the flow of drainage channels, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or a utility is responsible. In addition, all sewer pipelines and other sewer facilities located or to be located within public roads, streets and highways abutting each of the Lots are reserved.

8.2.13 Each Owner of a Lot has the responsibility and duty to maintain the appearance and integrity of his Lot and of all slope areas and drainage devices located within his Lot.

8.2.14 Each grantee of a Lot within the Project covenants for himself, his heirs, successors and assigns, that he will permit free access by Owners of adjacent or adjoining Lots and by the Association, its agents and employees, to all slope areas or drainageways located on his Lot, which affect said adjacent or adjoining Lots, which access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for Lots other than the Lot on which the slope or drainageway is located.

8.2.15 Each grantee of a Lot within the Project covenants for himself, his heirs, successors and assigns, that he will not in any way interfere with the established drainage patterns or create erosion or sliding problems over his Lot from adjoining or other Lots within the Project, and that he will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot. For the purposes hereof, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Project was completed by Declarant.

8.2.16 Except as otherwise provided herein, each grantee of a Lot within the Project shall maintain the slopes within his Lot at the slope and pitch fixed by the finished grading thereof, including watering and planting of the slopes. Within slope areas no structure, planting, or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope areas of each Lot and all improvements thereto shall be maintained continuously by the Owner of the Lot, except for those slope areas and/or improvements for which the Association, a public authority or utility company is responsible. Declarant shall, for a period of one (1) year following sale and deed of any particular Lot have the right but not the obligation to enter upon the said Lot and alter or maintain the slope areas. An easement of reasonable access for said purpose is reserved to Declarant, and the purchaser, by the acceptance of a deed from Declarant, shall take title subject to such easement for said period of one (1) year.

8.2.17 Conveyance of a substantial number of the Lots is essential to the establishment and welfare of said Project as a residential community. In order that all work necessary to complete the Project and establish a substantially occupied residential community be completed as rapidly as possible, no Owner shall and nothing in this Declaration shall be understood or construed to:

8.2.17.1 Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines such work to be reasonably necessary or advisable in connection with the completion of the Project; or



8.2.17.2 Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part or parts of said property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing the Project as a residential community and disposing of the same by sale, lease, or otherwise.

8.2.17.3 Declarant, in exercising its rights hereunder, shall not unreasonably interfere with the Members' use of the Common Area.

8.2.18 All structures and improvements within the Project shall at all times be maintained by their respective Owners in a clean, first-class and properly painted condition.

8.2.19 No Owner or the Association shall permit trees, shrubs, hedges or any other vegetation to shade, block or interfere with the solar access of any solar collector or other solar absorption device on any Lot, including the Lot on which the vegetation is also located.

#### ARTICLE 9 SCOPE OF ENFORCEMENT

Section 9.1 Enforcement. The Declarant, the Association and any Owner shall have the right, but not the obligation, to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association or any Owner to enforce any covenants or restrictions herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of the value of the Project and (ii) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be. Each remedy provided for in this Declaration shall be cumulative and not exclusive. The result of or condition caused by any violation of any of the provisions of this Declaration is and shall be a nuisance, and every remedy in law or equity now or hereafter available against public or private nuisance may be exercised by any person affected thereby. Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of such Lot. In the event the Association or any Owner(s), should commence litigation to enforce any of the provisions of this Declaration, that party, if he should prevail, shall be entitled to have judgment against and recover from any defendant in such

litigation, such attorneys' fees (other than nominal) as the court may adjudge reasonable and proper. Each Owner shall have a right of action against the Association for any failure of the Association to comply with the provisions of the Declaration, Articles of Incorporation, Bylaws, or Rules and Regulations of the Association.

**ARTICLE 10**  
**DAMAGE TO LOTS AND COMMON AREAS**

Section 10.1 Repairs. In the event that an Owner fails to maintain or repair his Lot or the improvements thereon or otherwise comply with the provisions of this Declaration, the Bylaws or the Rules and Regulations, the Association, or their agents or employees shall have the right, but not the obligation, to bring the Lot into compliance with the provisions of this Declaration and the cost incurred therefor shall be assessed to that Owner as a special assessment as set forth in this Declaration.

Section 10.2 Damage to Common Areas. In the event the need for repair of the Common Area or Association Maintenance Areas is caused through the willful or negligent acts of a Member or his guests or invitees, the Association, or their agents or employees shall have the right, but not the obligation, to make such repairs and the liability of the Member and the cost of repair shall be assessed to that Member as a special assessment as set forth in this Declaration.

**ARTICLE 11**  
**INSURANCE**

Section 11.1 Liability/Property Insurance. A master or blanket public liability and property damage insurance policy covering the Common Area shall be purchased by the Board of Directors as promptly as possible following its election and shall be maintained in force at all times, the premium thereon to be paid out of the monies collected from the assessments. The minimum amount of coverage shall be Two Million Dollars (\$2,000,000) combined single limit liability for bodily injury to any one person, or property damage for any one occurrence; if written on the new occurrence form, coverage shall be Two Million Dollars (\$2,000,000) in the aggregate and Two Million Dollars (\$2,000,000) per occurrence; provided, however, that if the Project consists of more than 100 separate interests, such coverage shall be at least Three Million Dollars (\$3,000,000.00) per occurrence. The policy shall name the Association and all Owners as insureds, including Declarant, during such time as Declarant shall remain the Owner of one or more Lots. The manager, if any, shall also be a named insured on such policy, during such time as his agency shall continue. The insurance shall also contain a cross-liability endorsement to cover negligent injury by one Owner to another, if reasonably available. The Association shall prepare and distribute to all Members a summary of the Association's property, general liability, and earthquake

and flood insurance policies, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy: (a) the name of the insurer, (b) the type of insurance, (c) the policy limits of the insurance, and (d) the amount of deductibles, if any. The Association shall, as soon as reasonably practical, notify the Members by first-class mail if any of the policies described in this paragraph have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described in this paragraph, the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent that any of the information required to be disclosed pursuant to this paragraph is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Members. The summary distributed pursuant to this paragraph shall contain in at least 10-point boldface type, the statement required by Civil Code Section 1365(e)(4).

Section 11.2 Hazard Insurance. The Board of Directors shall purchase a master or blanket policy of all-risk or named peril (fire, extended coverage, vandalism and malicious mischief) insurance issued by a Qualified Insurer, as defined herein, providing coverage equal to one hundred percent (100%) of the current replacement cost of all Common Area improvements to the Project then subject to assessments under Article 5 of the Declaration (including all service and mechanical equipment in the Project). "Qualified Insurer" means any insurance company having a Best's Insurance Reports rating of (a) a B general policyholder's rating and a III financial size category, or (b) an A general policyholder's rating and a II financial size category, and licensed in the State of California. Said insurance policy shall contain an earthquake damage endorsement having a deductible not in excess of five percent (5%) of the current replacement cost of the Common Area improvements to the Project then subject to assessments under this Declaration and any amendments thereto; provided, however, that if the Board determines that coverage with such deductible amount is not reasonably available, the Board shall obtain coverage with the minimum deductible amount available at a cost deemed to be in the best interests of the Members. Replacement cost may exclude land, foundations, excavation, and other items normally excluded from coverage. All hazard insurance required to be maintained by the Board hereunder shall be maintained strictly in accordance with the provisions contained in the FFLMC Seller/Service Guide. The premiums for said insurance policy shall be paid by the Board out of the monies collected from the assessments. The policy may also contain an agreed amount endorsement, a special form endorsement, and a clause to permit cash settlement covering the full value of the improvements in the event of partial destruction and a decision not to rebuild. The policy shall name as insureds all Owners and

Declarant, so long as Declarant is the Owner of any Lot within the Project, and all Mortgagees of record, as their respective interests may appear. The proportionate interest of each Owner in any insurance proceeds in relation to the other Owners, shall be based upon a ratio of each Lot's "fair market value" to the "fair market value" of the entire Project. The "fair market value" in both instances, shall be determined by an independent appraiser. In the event that the insurer under said hazard insurance policy shall cease to be licensed in the State of California, or shall cease to be approved by the Federal Home Loan Mortgage Corporation (so long as insurers continue to be so approved), the Association shall exercise its best efforts to obtain from another Qualified Insurer, a replacement hazard policy comparable to the prior hazard policy, including all required endorsements.

11.2.1 Personal property of a Lot Owner and additional fixtures added by a Lot Owner should be insured separately by the Lot Owner.

Section 11.3 Individual Coverage. If available, underlying coverage for individual Lots shall be written as part of or in conjunction with, said master policy where necessary to protect individual lenders. If such coverage is not available, each Owner shall purchase, at his own expense, and maintain fire and hazard insurance coverage as may be required by his individual lender. Any such underlying coverage shall contain a replacement cost endorsement, and to the extent available, such other endorsements as may be a part of the master policy. Such insurance shall also contain a loss-payable endorsement to the Mortgagees of individual Lots, as their interests shall appear.

Section 11.4 Board as Trustee. All insurance proceeds payable pursuant to Section 11.2 of this Article and subject to the rights of Mortgagees under Section 11.7 hereof shall be paid to the lending institutions holding first Mortgages on Lots within the Project, to the extent of their interests therein, and shall be applied only to the repair and restoration of the damaged premises or to the reduction of the aggregate principal amounts of the mortgage loans secured by such damaged or destroyed premises. Insurance proceeds shall be paid out in accordance with Article 12. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work, as provided in Article 12 hereof.

Section 11.5 Other Insurance. The Board may purchase and maintain in force at all times, demolition insurance in adequate amounts to cover demolition in the event of destruction and a decision not to rebuild. The premium therefor shall be paid out of the monies collected from the assessments. Such policy, if purchased, shall contain a determinable demolition clause or similar clause, to allow for the coverage of the cost of demolition in the event of destruction and a decision not to rebuild. The Board of Directors shall also purchase and maintain Worker's Compensation Insurance to the extent that the same shall be required by law for

employees of the Association. The Board of Directors may also purchase and maintain insurance on commonly owned personal property and such other insurance as it deems necessary, the premium thereof to be paid out of the monies collected from the assessments, including, but not limited to, umbrella or excess liability coverage.

Section 11.6 Owners' Other Insurance. An Owner may carry such additional personal liability and property damage insurance respecting individual Lots as he may desire. Each Owner whose Lot contains any of the Association Maintenance Areas shall carry and maintain property damage insurance insuring the improvements, if any, within such Association Maintenance Areas, in such limit amounts as may be approved by the Board from time to time. Any funds received by an Owner in settlement of a claim for damage to the Association Maintenance Areas shall be promptly used only for repair and replacement of improvements in the Association Maintenance Areas, except as the Board may otherwise agree.

Section 11.7 Right of Mortgagees. With respect to insurance coverage under Sections 11.2 and 11.3 hereof, any Mortgagee of record shall have the option to apply insurance proceeds payable to it to reduce the obligation secured by the Mortgage.

Section 11.8 Annual Review. The Board shall review the insurance carried by the Association at least annually for the purpose of determining the amount of the casualty and property insurance referred to in Section 11.1 above. The Board shall obtain current appraisal of the full replacement value of the improvements in the Common Area and of the Lots, except for foundations and footings, without deduction for depreciation, and in the Association Maintenance Areas, by a qualified independent insurance appraiser, prior to each such annual review.

## ARTICLE 12 DESTRUCTION OF IMPROVEMENTS

Section 12.1 Proceeds Greater Than Eighty-Five Percent (85%) of Cost to Repair. In the event of total or partial destruction of the improvements in the Common Area and if the available proceeds of the insurance carried pursuant to Article 11 are sufficient to cover not less than eighty-five (85%) percent of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless, within ninety (90) days from the date of such destruction, seventy-five (75%) percent of each class of membership present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred twenty (120) days from the date of said destruction, a certificate declaring the intention of the Association to rebuild.

Section 12.2 Proceeds Less Than Eighty-Five Percent (85%) of Cost to Repair. If the proceeds of such insurance are less than eighty-five (85%) percent of the cost of reconstruction, such reconstruction may, nevertheless, take place, if within ninety (90) days from the date of said destruction, at least sixty-six and two-thirds percent (66-2/3%) of each class of membership elect to rebuild.

Section 12.3 Additional Contributions From Owner. If the Association determines to rebuild, pursuant to either Sections 12.1 or 12.2, each Owner shall be obligated to contribute such funds as shall be necessary to pay his proportionate share of the cost of reconstruction over and above the insurance proceeds, and the proportionate share of each Owner shall be based upon the ratio of the fair market value of his Lot to the fair market value of all the Lots. In the event of failure or refusal by any Owner to pay his proportionate share, after notice to him, should such failure or refusal continue for a period of sixty (60) days, the Board of Directors may levy a special assessment against such Owner, which may be enforced under the lien provisions, hereinbefore contained.

Section 12.4 Association to Contract for Rebuilding. If the Owners determine to rebuild, the Board of Directors shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest bidder. The Board of Directors shall have the authority to enter into a written contract with said contractor for such reconstruction and the insurance proceeds held by the Board shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible date.

Section 12.5 Insufficient Vote to Rebuild. If the vote of the Owners shall be insufficient to authorize rebuilding, either pursuant to Sections 12.1 or 12.2 above, the following shall apply:

12.5.1 Any insurance proceeds available for such rebuilding shall be distributed among the Owners and their individual lenders by the Board, as their respective interests may appear. The proportionate interests of each Owner in said proceeds in relation to other Owners shall be based upon a ratio of each Lot's "fair market value," just prior to destruction. "Fair market value" shall be determined by an independent appraiser.

12.5.2 The Board shall have the duty, within one hundred twenty (120) days of the date of such loss, to execute, acknowledge and record a certificate setting forth the determination of the Association not to rebuild, and shall promptly cause to be prepared and filed, such revised maps and other documents as may be necessary to show the conversion of the Common Area to the status of unimproved land.

Section 12.6 Revival of Right to Partition. Upon recordation of such certificate, referred to in Section 12.5.2, above, the right

of any Owner to partition his Lot through legal action, shall forthwith revive.

Section 12.7 Arbitration. In the event of a dispute among the Owners, with respect to the provisions of this Article, any Owner may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the Members of the Board and all Owners as promptly as possible after reference to arbitration is made, giving all Owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon all Owners. The arbitrator may include in his decision an award for costs and/or attorneys' fees against any one or more of the parties to the arbitration.

### ARTICLE 13 MORTGAGEE PROTECTION

Section 13.1 Mortgagee Protection. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Lots in the Project, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control):

13.1.1 No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

13.1.2 Each holder of a first Mortgage encumbering any Lot is entitled upon request to timely 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 Bylaws or Rules and Regulations of the Association which is not cured within sixty (60) days. Any Institutional Lender holding a first Mortgage on any Lot within the Project shall be entitled to prior written notice of certain proposed actions of the Association as hereinafter set forth in Sections 13.1.5.1 through 13.1.5.8, inclusive, provided that such Institutional Lender furnishes the Association with a written request for notice which request sets forth the particular Institutional Lender's mailing address and identifies the Lot on which it holds an encumbrance.

13.1.3 Each holder of a first Mortgage encumbering any Lot which obtains title to such Lot pursuant to: (a) remedies provided in such Mortgage, or (b) by accepting a deed (or assignment) in

lieu of foreclosure in the event of default by a Mortgagor, shall be exempt from any "right of first refusal," if any, contained in the Declaration or the Bylaws of the Association. Further, any such "right of first refusal" shall not impair the rights of a first Mortgagee or interfere with a subsequent sale or lease of a Lot so acquired by the Mortgagee.

13.1.4 Each holder of a first Mortgage or third party foreclosure purchaser which obtains title to a Lot pursuant to foreclosure of the first Mortgage, shall take the Lot free of any claim for unpaid dues, assessments or charges against the Lot which accrue prior to the time such holder obtains title to such Lot (except for claims for a share of such assessments or charges resulting from a reallocation of such dues, assessments or charges among all Lots, including the mortgaged Lot). The lien assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed upon a Lot subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or trustee sale. Such sale or transfer shall not release such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

13.1.5 Unless at least two-thirds (2/3) of the Institutional Lenders holding a first Mortgage on a Lot within the Project (based upon one vote for each first Mortgage owned), or at least two-thirds (2/3) of the Owners (other than the Declarant) have given their prior written approval, the Association and its Members shall not be entitled to:

13.1.5.1 By act or omission, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Area and Association Maintenance Areas, party walks or common fences and driveways, or the upkeep of lawns and plantings in the Project;

13.1.5.2 Change the pro rata interest or obligations of any Lot for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

13.1.5.3 Partition or subdivide any Lot;

13.1.5.4 By act or omission, seek to abandon, subdivide, encumber, sell or transfer the Common Area or partition the Common Area except as provided for herein. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Area and the Project shall not be deemed a transfer within the meaning of this clause;

13.1.5.5 Use hazard insurance proceeds for losses to an Common Area for other than repair, replacement or reconstruction of



such Common Area, except as provided by statute in case of substantial damage to the Common Area of the Project;

13.1.5.6 Fail to maintain fire and extended coverage on insurable planned development common property within the Project on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

13.1.5.7 Effectuate any decision of the Association to terminate professional management and assume self management of the Project; and

13.1.5.8 Amend any part of this Article 13.

13.1.6 First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

13.1.7 The annual assessments shall include an adequate reserve fund for maintenance, repair and replacement of the improvements to the Common Area and Association Maintenance Areas and those portions thereof that must be replaced on a periodic basis, and shall be payable in annual assessments rather than by special assessments.

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

13.1.9 In the event of substantial damage to or destruction of any Lot or any element of the Common Area or possible condemnation or eminent domain procedure, the Institutional Lender under any first Mortgage on a Lot is entitled to timely written notice of any such damage, destruction or proposed acquisition and no provision in the Bylaws, nor in this Declaration shall be interpreted to entitle any Owner or any other party to priority over any first Mortgagee with respect to the distribution to such Owner of any insurance proceeds or condemnation awards for losses to, or a taking of, Lots and/or Common Areas.

13.1.10 Any agreement for professional management of the Project, or any other contract providing for services by the Declarant shall provide for termination by either party without cause or payment of a termination fee upon thirty (30) days' written notice, and that the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods.

13.1.11 The Association shall, upon the request of any Institutional Lender under a first Mortgage on a Lot: (i) give written notice of all meetings of the Association and permit the Institutional Lender to designate a representative to attend all such meetings, and (ii) transmit to such Institutional Lender an

annual audited financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project.

13.1.12 No breach of any of the foregoing covenants shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but in the event that any one or more of these covenants shall be violated, the Declarant, its successors and assigns, or the Association, or any Owner may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation, and/or to recover damages; provided, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said Lot or any part thereof. Said covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

13.1.13 First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all first Mortgagees and upon request of any first Mortgagee the Association shall execute and deliver to such first Mortgagee a separate written Agreement embodying this provision.

#### **ARTICLE 14** **AMENDMENTS**

Section 14.1 Amendments. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by at least seventy-five percent (75%) of the voting power of each class of Members of the Association, which amendment shall become effective upon the recording thereof by the Office of the County Recorder of Ventura County, California. After the conversion of Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by (i) at least seventy-five percent (75%) of the total voting power of the Association, and (ii) at least seventy-five percent (75%) of the voting power of the Association other than Declarant. In no event shall the percentage of the voting power necessary to amend a specific provision of this Declaration be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any amendment of this Declaration which would defeat the obligation of the Association to maintain the Common Areas and facilities as described in Article 4 hereof, must receive the written approval of the California Department of Real Estate prior to the recordation thereof.

Section 14.2 Effectiveness of Amendment. From and after its effective date, each amendment made pursuant to the preceding paragraph shall be as effective as to all Lots within the Project, the Owners thereof and their successors in interest.

Section 14.3 Petition the Superior Court. Nothing in this Declaration shall restrict the ability of any Owner at any time to petition the Superior Court in the county in which the Project is located to amend this Declaration as provided under California Civil Code Section 1356.

**ARTICLE 15**  
**ANNEXATION**

Section 15.1 Annexation of Additional Property by Declarant. All or portions of the additional real property described in Section 1.1.16 hereof may be annexed into the Project by the Declarant without the consent of the Members of the Association, provided, however, that the Commissioner of the Department of Real Estate makes the following determinations:

(a) That the proposed annexation will not result in an overburdening of the Common Areas;

(b) That the proposed annexation will not result in a substantial increase in the assessments of the existing Lots which was not disclosed in the Final Subdivision Public Report under which the existing Owners purchased their respective Lots;

(c) That the real property and the total number of residential units proposed to be annexed were adequately identified; and

(d) That Declarant executes a written commitment concurrently with the closing of escrow for the first sale of a Lot in the annexed property to pay to the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed property necessitated by, or arising out of the use and occupancy of Lots under a rental program conducted by Declarant which has been in effect for a period of at least one (1) year as of the date of closing of the escrows for the first sale of a Lot in the annexed property.

Section 15.2 Annexation of Additional Property by Association. Upon approval in writing by the Association, pursuant to the vote of at least two-thirds (2/3) of a majority of the voting power of its Members or the written assent of such Members, excluding the voting power or written assent of Declarant, the Owner of any real property who desires to add such property to the scheme of this Declaration and to subject same to the jurisdiction of the Association, may file of record a Notice of Annexation which shall extend the scheme of this Declaration to such property.

Section 15.3 Annexation Procedure. The annexation of additional real property authorized under Sections 15.1 and 15.2 shall be made by filing of record a Notice of Annexation, or similar instrument, covering said additional real property, which Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional real property. The Notice of Annexation may contain such complementary additions to and modifications of the covenants set forth in this Declaration as are necessary to reflect the different character, if any, of the annexed property and which are not inconsistent with the general scheme of this Declaration. Except as set forth in this Section, no Notice of Annexation shall add, delete, revoke, modify or otherwise alter the covenants set forth in this Declaration.

Section 15.4 Obligations of Annexed Property. The obligation of Owners in the annexed property to pay assessments levied by the Association and the right of such Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Lot by Declarant in that particular Phase of development.

Section 15.5 De-Annexation. Declarant hereby reserves the right to de-annex any Lot or Lots within the Project and to delete said Lot or Lots from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that the de-annexation shall be made prior to the closing date of the sale of the first Lot in the annexed property within the Project.

## ARTICLE 16 PARTY WALLS

Section 16.1 Rights and Duties. The rights and duties of the Owners of Lots with respect to party walls shall be governed by the following:

16.1.1 Each wall which is constructed as a part of the original construction and located between separate Lots, shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall jointly assume the burdens and share the cost of reasonable maintenance and repair in proportion to such use. Each Lot shall be subject to an easement for that portion of the party wall which is necessary for support, and each such Owner shall be liable for all property damage due to negligence or willful acts or omissions in connection with such wall.

16.1.2 If any such party wall is damaged or destroyed through the act of one of the adjoining Owners, any member of his family, a guest, agent (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, the Owner responsible for the damage or destruction thereon shall be required to make any and all necessary repairs thereto, without cost to the adjoining Owner.

16.1.3 If any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, or family (including, but not limited to, earthquake damage), each adjoining Owner shall be required to make any and all necessary repairs thereto at their joint and equal expense.

16.1.4 Any Owner proposing to modify, make additions to, or rebuild his Lot in any manner which requires the extension or alteration of any party wall, shall be required to first obtain the written consent of the adjoining Owner. He must also comply with all dictates of this Declaration which may be relevant.

16.1.5 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

16.1.6 In the event of a dispute between Owners with respect to the repair of a party wall or with respect to the sharing of the cost thereof, the matter shall be submitted to the Board for resolution upon the written request of either Owner. Any decision of the Board of Directors shall be final and conclusive upon the parties.

#### ARTICLE 17

#### COVENANTS IN FAVOR OF LOCAL JURISDICTION

Section 17.1 Local Jurisdiction. The local governmental entity with primary jurisdiction over this residential planned development is the City of Simi Valley, a municipal corporation in the State of California. The Association shall, at all times, abide by all City ordinances, statutes and resolutions as well as the laws of the State of California.

Section 17.2 Special Covenants. The following covenants shall be binding upon the Association and all Members in favor of the City of Simi Valley:

17.2.1 The Association shall at all times provide for the maintenance of all open areas, parkway areas, and landscaping, sidewalks, courtyards and private streets and drives, and storm drainage improvements, within the Common Area, and of the Association Maintenance Areas.

17.2.2 Recreational vehicles, including, but not limited to, boats, motor homes, trailers, dune buggies and jeeps, shall not be stored, parked, or maintained within the Properties unless they are the principal source of transportation for their respective owners and stored entirely within a garage. The Association shall have the right to enforce this provision through any means available either at law, or in equity, including, but not limited to, the power to tow violators away, and to assess towing charges to the Owner/violator as special assessments.

17.2.3 The Association hereby requests that the City of Simi Valley enforce traffic and parking regulations on the streets within the Project pursuant to California Vehicle Code Section 21107.5.

17.2.4 Written notice of any proposed amendment to this Declaration shall be given to the City Attorney of the City of Simi Valley prior to the enactment thereof. The City of Simi Valley shall have the right to veto any proposed amendment within a reasonable time after receiving such notice.

**ARTICLE 18**  
**GENERAL PROVISIONS**

Section 18.1 Extension of Declaration. The provisions of this Declaration shall run with the land and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least sixty-six and two-thirds percent (66-2/3%) of the then Owners of Lots, has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

Section 18.2 Encroachment Easement. In the event any improvement to a Lot encroaches upon the Common Area as a result of the initial construction, or as the result of repair, shifting, settlement or movement of any portion thereof, an easement for the encroachment and for the maintenance of same, shall exist so long as the encroachment exists. Further, each Owner within the Properties is hereby granted an easement over all adjoining Lots for the purpose of accommodating any minor encroachment, due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhand, architectural or other appendants for so long as any such encroachment continues to exist.

Section 18.3 Ownership Interest. An ownership interest in a Lot within the Project may pass from the estate of a deceased person to more than one person; provided, however, that only one living individual shall be entitled to have membership privileges in the Association derived from such ownership.

Section 18.4 Severability. In the event any limitation, restriction, condition, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 18.5 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community.

Section 18.6 Termination of Declarant's Obligations. In the event Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 18.7 Number, Gender. The singular shall include the plural and the plural the singular unless the context requires to the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 18.8 Non-Liability of Declarant. Each Owner, by acceptance of a deed, shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision thereof having been held to be unenforceable in whole or in part.

Section 18.9 Grantees Subject to this Declaration. Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

Section 18.10 Bonded Obligations. In the event that improvements to the Project (including the Special Easement Area) have not been completed prior to the issuance of the Final Subdivision Public Report for the Project, and the Association is obligee under a bond or other security (hereinafter "Bond") to secure performance of the commitment of the Declarant to complete such improvements, the following provisions shall apply:

18.10.1 The Board of Directors shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

18.10.2 In the event that the Board of Directors determines not to initiate action to enforce the obligations under the Bond or in the event the Board fails to consider and vote on such question

as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total voting power of the Association.

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

18.10.4 The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any Bond in favor of the Association upon completion of the improvements.

#### ARTICLE 19 DISPUTE MECHANISM

Section 19.1 Disputes Re Damage To Property. Not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for alleged damage to the Common Area, alleged damage to the Lots that the Association is obligated to maintain or repair (including, in particular, Association Maintenance Areas), or alleged damage to the Lots that arises out of, or is integrally related, to damage to the Common Area or Lots that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil actions, that are available to address the problems, and (c) the time and place of the meeting. If the Association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the Association may give the foregoing notice not later than thirty (30) days after the filing of the action.

Section 19.2 Disputes Re Construction Or Design Defects.

19.2.1 Before the Association commences any action for damages against Declarant based upon a claim for defects in the design or construction of the Project, all of the requirements of the Subsections 19.2.2 through 19.2.7, shall be met, except as otherwise provided in this Section.



19.2.2 The Association shall give written notice (herein, the "Notice") to the Declarant against whom the claim is made. The Notice shall include: (a) a preliminary list of defects, (b) a summary of the results of a survey or questionnaire, if any was conducted or distributed to Owners to determine the nature and extent of alleged defects, (c) either a summary of the results of testing conducted to determine the nature and extent of alleged defects or the actual test results, if this testing has been conducted. The Notice shall, upon delivery thereof to Declarant, commence a period of time not to exceed ninety (90) days, unless the Association and Declarant agree to a longer period, during which the Association and Declarant shall either, in accordance with the requirements of this Section, attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution. Except as provided in this Section and notwithstanding any other provision of law, the Notice shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the damages claimed, whether named in the Notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by the Association and the Declarant. At any time, Declarant may give written notice to cancel the tolling of the statute of limitations provided in this Section. Upon delivery of this written cancellation notice, the Association shall be relieved of any further obligations to satisfy the requirements of this Subsection 19.2.2 and Subsections 19.2.3 through 19.2.5. The tolling of all applicable statutes of limitations shall cease sixty (60) days after the written notice of cancellation by Declarant is delivered to the Association.

19.2.3 Within twenty-five (25) days after the date the Association delivers the Notice, Declarant may request in writing to meet and confer with the Board, and to inspect the Project and conduct testing, including testing that may cause physical damage to property in the Project, in order to evaluate the claim. If Declarant does not make a timely request to meet and confer with the Board, or to conduct an inspection and testing, the Association shall be relieved of any further obligations to satisfy the requirements of this Subsection 19.2.3 and Subsections 19.2.4 and 19.2.5. Unless Declarant and the Association otherwise agree, the meeting shall take place no later than ten (10) days from the date of Declarant's written request, at a mutually agreeable time and place. The meeting shall be subject to Civil Code Section 1363.05(b). The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the Association and Declarant consent to their admission. The meeting shall be for the purpose of discussing: (a) the nature and extent of the claimed defects, (b) proposed methods of repair, to the extent there is sufficient information, (c) proposals for submitting the dispute to alternative dispute resolution, and (d) requests from Declarant to inspect the Project and conduct testing. If Declarant requests, in writing, to meet and confer with the Board, as provided above, Declarant shall deliver the Notice provided by the Association to any insurer that has issued a policy

to Declarant which imposes upon the insurer a duty to defend the insured or indemnify the insured for losses resulting from the alleged defects identified in the Notice. The delivery of the Notice by the Declarant shall, upon receipt, impose upon that insurer any obligation which would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages. Declarant shall inform the Association when Declarant delivered Notice to each insurer.

19.2.4 If the Association conducted inspection and testing prior to the date it sent the written Notice to Declarant, the Association shall, at the earliest practicable date after the meeting held pursuant to Subsection 19.2.3, make available for inspection and testing at least those areas inspected or tested by the Association. Such Declarant inspection and testing shall be completed within fifteen (15) days after the date the Association makes these areas available for inspection and testing, unless the Association and Declarant agree to a longer period. If Declarant does not timely complete the inspection and testing, the Association shall be relieved of any further obligations to satisfy the requirements of this Subsection 19.2.4. The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the Association prior to sending the notice, shall be set by agreement of the Association and Declarant. Declarant shall pay all costs of inspection and testing that is requested by Declarant, shall restore the property to the condition which existed immediately prior to the testing, and shall indemnify the Association and Owner of the Lot for any damages resulting from the testing. Interior inspections of occupied Lots and destructive testing of any interior of a Lot shall be conducted in accordance with the governing documents of the Association, unless otherwise agreed to by the Owner of the Lot. If the governing documents of the Association do not provide for inspection or testing of Lots, this inspection or testing shall be conducted in a manner and at a time agreed to by the Owner of the Lot. The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this Subsection.

19.2.5 Within thirty (30) days after the completion of inspection and testing, or within thirty (30) days after a meeting held pursuant to Subsection 19.2.3 if no inspection and testing has been conducted pursuant to Subsection 19.2.4, Declarant shall submit to the Association: (a) a request to meet with the Board to discuss a written settlement offer, (b) a written settlement offer, and a concise explanation of the specific reasons for the terms of the offer (the offer may include an offer to submit the dispute to alternative dispute resolution), (c) a statement that Declarant has access to sufficient funds to satisfy the conditions of the settlement offer, and (d) a summary of the results of testing conducted for the purpose of determining the nature and extent of defects, if this testing has been conducted, unless the Association provided Declarant with actual test results pursuant to Subsection 19.2.2,

in which case Declarant shall provide the Association with actual test results. If Declarant does not timely submit the items required by this Subsection, the Association shall be relieved of any further obligations to satisfy the requirements of this Subsection 19.2.5 only. No less than ten (10) days after Declarant submits the items required by this Subsection, Declarant and the Board shall meet and confer about Declarant's settlement offer, including any offer to submit the dispute to alternative dispute resolution.

19.2.6 At any time after the Notice is delivered to Declarant, the Association and Declarant may agree in writing to modify or excuse any of the time periods or other obligations imposed by this Section. Except for the notice required pursuant to Subsection 19.2.7, all notices, requests, statements, or other communications required pursuant to this Section shall be delivered either by first-class registered or certified mail, return receipt requested, or in any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the Code of Civil Procedure.

19.2.7 If the Board rejects a settlement offer presented at the meeting held pursuant to Subsection 19.2.5, the Board shall comply with the requirements of Subsection 19.2.7.1 below. If the Association is relieved of its obligations to satisfy the requirements of Subsections 19.2.1 through 19.2.5, before all those requirements are satisfied, the Association shall comply with the requirements of Subsection 19.2.7.2 below. Under no circumstances shall the Association be required to comply with both Subsections 19.2.7.1 and 19.2.7.2.

19.2.7.1 If the Board rejects a settlement offer presented at the meeting held pursuant to Subsection 19.2.5, the Board shall hold a meeting of the Association, not less than fifteen (15) days before the Association commences an action for damages against Declarant. No less than fifteen (15) days before this meeting is held, a written notice shall be sent to each member of the Association specifying all of the following: (a) that a meeting will take place to discuss problems that may lead to the filing of a civil action against Declarant, and the time and place of such meeting, (b) the options that are available to address the problems, including the filing of a civil action, (c) the complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the Board pursuant to Subsection 19.2.5, received from Declarant and of any offer by Declarant to submit the dispute to alternative dispute resolution, (d) the preliminary list of alleged defects provided by the Association to Declarant in the Notice and a list of any other documents provided by the Association to Declarant pursuant to Subsection 19.2.2, and information about where and when Members may inspect those documents. Declarant shall pay all expenses attributable to sending the settlement offer and any offer for alternative dispute resolution to all Members. Declarant shall also pay the expense of holding the meeting not to exceed three dollars (\$3.00) per Member.

The discussions at the meeting and the contents of the notice and the items required to be specified in the notice of such meeting, are privileged communications and shall not be admissible in evidence in any civil action, unless the Association consents to their admission. Compliance with this Subsection 19.2.7.1 shall excuse the Association from satisfying the requirements of Section 19.1 above.

19.2.7.2 If the Association is relieved of its obligations to satisfy the requirements of Subsections 19.2.1 through 19.2.5, before all those requirements have been satisfied, the Association may commence an action for damages against Declarant (30) days after sending a written notice to each Member specifying: (a) the preliminary list of alleged defects provided by the Association to Declarant in the Notice, a list of any other documents provided by the Association to Declarant pursuant to Subsection 19.2.2, and information about where and when Members may inspect those documents, (b) the options, including civil actions, that are available to address the problems, (c) a statement that if five percent (5%) of the Members request a special meeting of the Members to discuss the matter within fifteen (15) days of the date such notice is mailed or delivered to the Members, a meeting of the Members shall be held, unless governing documents of the Association provide for a different procedure for calling a special meeting of the Members, in which case, the statement shall inform the Members of that procedure, (d) compliance with this Subsection 19.2.7.2 shall excuse the Association from satisfying the requirements of Section 19.1 above.

19.2.8 The only method of seeking judicial relief for the failure of the Association to comply with this Section 19.2 shall be the assertion, as provided for in this Subsection, of a procedural deficiency to an action for damages by the Association against Declarant after such an action has been filed. A verified application asserting such a procedural deficiency shall be filed with the court no later than ninety (90) days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist. Upon the verified application of the Association or Declarant alleging substantial noncompliance with this Section 19.2, the court shall schedule a hearing within 21 days of the application to determine whether the Association or Declarant has substantially complied with this Section 19.2. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court. If the court finds that the Association did not substantially comply with this Section 19.2, the court shall stay the action for up to ninety (90) days to allow the association to establish substantial compliance. The court shall set a hearing within (90) days to determine substantial compliance by the Association. At any time, the court may, for good cause shown, extend the period of the stay upon application of the Association. If, within the time set by the court pursuant to this Subsection, the Association has not established that it has substantially complied with this Section 19.2, the court shall determine if, in the interest of justice, the action should be dismissed

without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the Association's failure to substantially comply with this Section 19.2. In determining the appropriate remedy, the court shall consider the extent to which Declarant has complied with this Section 19.2. If the alleged noncompliance of either Declarant or the Association resulted from the unreasonable withholding of consent for inspection or testing by an Owner, it shall not be considered substantial noncompliance, provided that the party alleged to be out of compliance did not encourage the withholding of consent. If the court finds that Declarant did not pay all of the costs of inspection and testing pursuant to Subsection 19.2.4, or that Declarant did not pay its required share of the costs of holding the meeting and of all expenses attributable to sending the settlement offer pursuant to Subsection 19.2.7.1, the court shall order Declarant to pay any such deficiencies within thirty (30) days, with interest, and any additional remedy which the court determines, in the interest of justice, should be fashioned.

Section 19.3 Use of Damage Award Amounts. Any and all amounts awarded to a claimant on account of a claimed construction or design defect in the Project, or damage suffered as a result thereof, shall be expended by such claimant for the attorney fees and costs of the proceeding and the repair, rehabilitation, or remediation of the claimed defect or damage.

Section 19.4 Judicial Reference. It is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes arising under this Declaration, based upon which litigation is filed, shall be resolved by judicial reference under California law. Accordingly, except as otherwise expressly provided in this Declaration (such as with respect to collection of delinquent assessments), any dispute between the Association or any Owner(s) and the Declarant or other developer of the Project, or between the Association and any Owner, with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to the Properties, including, without limitation, any claim arising out of any alleged latent or patent construction or design defect in the Project or any part thereof, any judicial determination to be made under California Civil Code Section 1375(h), or for alleged damage to the Common Area, alleged damage to the Lots that the Association is obligated to maintain or repair, or any alleged damage to the Lots that arises out of, or is integrally related, to damage to the Common Area or Lots that the Association is obligated to maintain or repair, shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1. Notwithstanding any other provision of this Declaration, this Section shall not be amended without the written consent of Declarant. In the event litigation is filed based upon any such dispute, the following shall apply:

19.4.1 The proceeding shall be brought and held in the County in which the Properties are located, unless the parties agree to an alternative venue.

19.4.2 The parties shall use the procedures adopted by JAMS/ENDISPUTE ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties).

19.4.3 The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

19.4.4 The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon to the court. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction in accordance with California Code of Civil Procedure Sections 638 and 640.

19.4.5 The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy, other than punitive damages.

19.4.6 The referee may require one or more pre-hearing conferences.

19.4.7 The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

19.4.8 A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

19.4.9 The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

19.4.10 The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

19.4.11 The parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditions resolution of the dispute.

19.4.12 The costs of such proceeding, including the fees of a referee, shall be borne equally by the parties to the dispute.

19.4.13 The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the

parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and accept that they are waiving their right to a jury trial.

Section 19.5 Disputes Relating To Enforcement Of Governing Documents. In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of the governing documents of the Association, the parties shall comply with the provisions of California Civil Code Section 1354(b) through (j), prior to filing of any civil action.

## ARTICLE 20

### SPECIAL EASEMENT AREA; PERMITTED USES AND RESTRICTIONS

Section 20.1 Conveyance of Special Easement Area and Easement. Declarant and the Association have entered into an Easement Grant Deed recorded in the Ventura County Recorder's Office, which Deed provides in part that (i) Declarant shall convey fee title to the Lots A, B, C, D, E, F, G, H, I, and J of Tract No. 4808 (the "Special Easement Area") to the Association free and clear of any lien or encumbrance, upon the earlier of September 1, 2001, or the date on which the first Lot within Phase 7 of the Project has been conveyed to an Owner. Until such conveyance of the Special Easement Area to the Association, Declarant reserves unto itself and grants to all Owners a nonexclusive easement for use and enjoyment of the Special Easement Area, including ingress, egress and access on, over and across the Special Easement Area. Declarant shall maintain the Special Easement Area until conveyance of fee title thereto to the Association, at which time the Association shall be solely responsible for the maintenance therefor. However, if Declarant fails to maintain the Special Easement Area prior to conveyance thereof to the Association, the Association shall have the right to maintain the Special Easement Area and seek reimbursement therefor from Declarant. Future Phases may include additional Special Easements Areas.

Section 20.2 Use Rights and Restrictions. Except as otherwise provided in this Declaration or in a Notice of Annexation or Easement Grant Deed, the Special Easement Area consist of the private streets and appurtenant and related improvements and facilities in the Project, and shall be solely and exclusively used for such purposes by and for the Association and the residents of the Project and their guests. To accomplish these objectives, the Special Easement Area and Project are hereby declared to be subject to the following limitations and restrictions:

20.2.1 Subject to the restrictions contained in this Declaration, all Owners shall have the right to enter upon or into the Special Easement Area.

20.2.2 Except as expressly allowed by this Declaration or the Rules and Regulations, no signs of any kind shall be erected or maintained on or in the Special Easement Area without the prior written approval of the Architectural Control Committee established under Article 7 hereof. Furthermore, other than improvements installed by Declarant, no structure or improvement of any kind shall be constructed or maintained on or in the Special Easement Area without the prior written consent of said Architectural Control Committee. The Architectural Control Committee shall only allow landscaping within such areas provided it conforms to the Architectural Control Committee's design requirements, as may be adopted, and provided no regrading is performed within such area.

20.2.3 Owners whose Lots abut the Special Easement Area shall install and maintain landscaping improvements in their front, side and rear yards facing the Special Easement Area, within one hundred eighty (180) days of recordation of the conveyance of their Lot from Declarant, provided that the plan for the installation of such improvements has first been approved in writing by the Architectural Control Committee as provided in Article 7 above. Said improvements shall be maintained by such Owners continuously to present a pleasing and attractive appearance. Landscaping improvements, once installed in accordance with approved plans, shall not be materially altered or changed without the prior written consent of said Architectural Control Committee.

20.2.4 No weeds, rubbish, debris, chemical substances, organic or inorganic materials shall be permitted to accumulate or remain in or on the Special Easement Area or on any Lot abutting such areas so as to render such areas unsanitary, unsightly or noxious in any way, nor shall any such materials, substances or pollutants be permitted to enter the Special Easement Area. Should any Owner maintain his Lot or portion thereof for which he is responsible in violation of this Section, the Association shall have the right to enter upon such Lot and correct the conditions which violate this Section and shall not be liable to any Owner in trespass or otherwise for such entry. Further, the reasonable cost of such corrective measure shall forthwith upon demand be reimbursed to the Association by the Owner whose property is involved.

20.2.5 In order that the integrity, beauty and aesthetic qualities of the Special Easement Area may be preserved, said Special Easement Area must be maintained in a sanitary and sightly condition. Upon conveyance of the Special Easement Area to the Association, the Association shall undertake, by virtue of this Declaration, on behalf of itself, and its successors and assigns, to reasonably maintain the Special Easement Area for the benefit of all Owners within the Project. Until conveyance of the Special Easement Area to the Association, Declarant shall be obligated to



fulfill the Association duties and be entitled to the Association's rights created under this Article 20.

IN WITNESS WHEREOF, the undersigned hereunto executed this Declaration this 20<sup>th</sup> day of JANUARY, 1999.

"DECLARANT" TRIMARK PACIFIC - INDIAN HILLS, LLC,  
a California limited liability company

By: TPH LLC, a California limited liability company  
Its Managing Member

By: Trimark Ventures, Inc.,  
a California corporation  
Its Managing Member

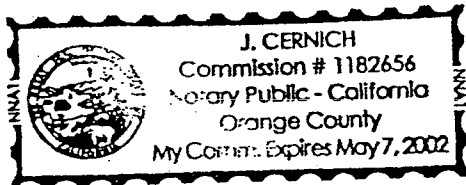
By: [Signature]  
Its: Vice President

ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Orange )

On 1/20/99, before me, J. Cernich, Notary Public,  
personally appeared Gayden E. Hester 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 signatures 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.



[Signature]  
NOTARY PUBLIC

SUBORDINATION AGREEMENT

The undersigned, HOUSING CAPITAL COMPANY, a Minnesota Partnership, Beneficiary under that certain Deed of Trust recorded January 29, 1998, as Instrument No. 98-011069, Official Records, Ventura County, California, does hereby consent to each and all of the provisions contained in the within instrument, the Declaration of Establishment of Conditions, Covenants and Restrictions for Montaire, and all amendments and annexations thereto and does hereby agree that the lien and charge of said Deed of Trust shall be, and is hereby made, subordinate to, junior to and subject to said within instrument and all amendments and annexations thereto and the entire effect thereof.

Date: Jan. 25, 1999

BENEFICIARY:

HOUSING CAPITAL COMPANY,  
a Minnesota Partnership

By: [Signature]  
Its: J.M.J.

By: [Signature]  
Its: W.P.

ACKNOWLEDGMENT

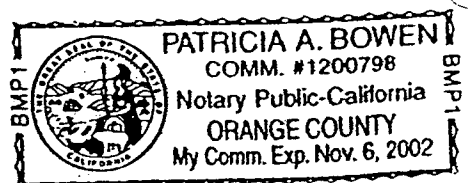
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

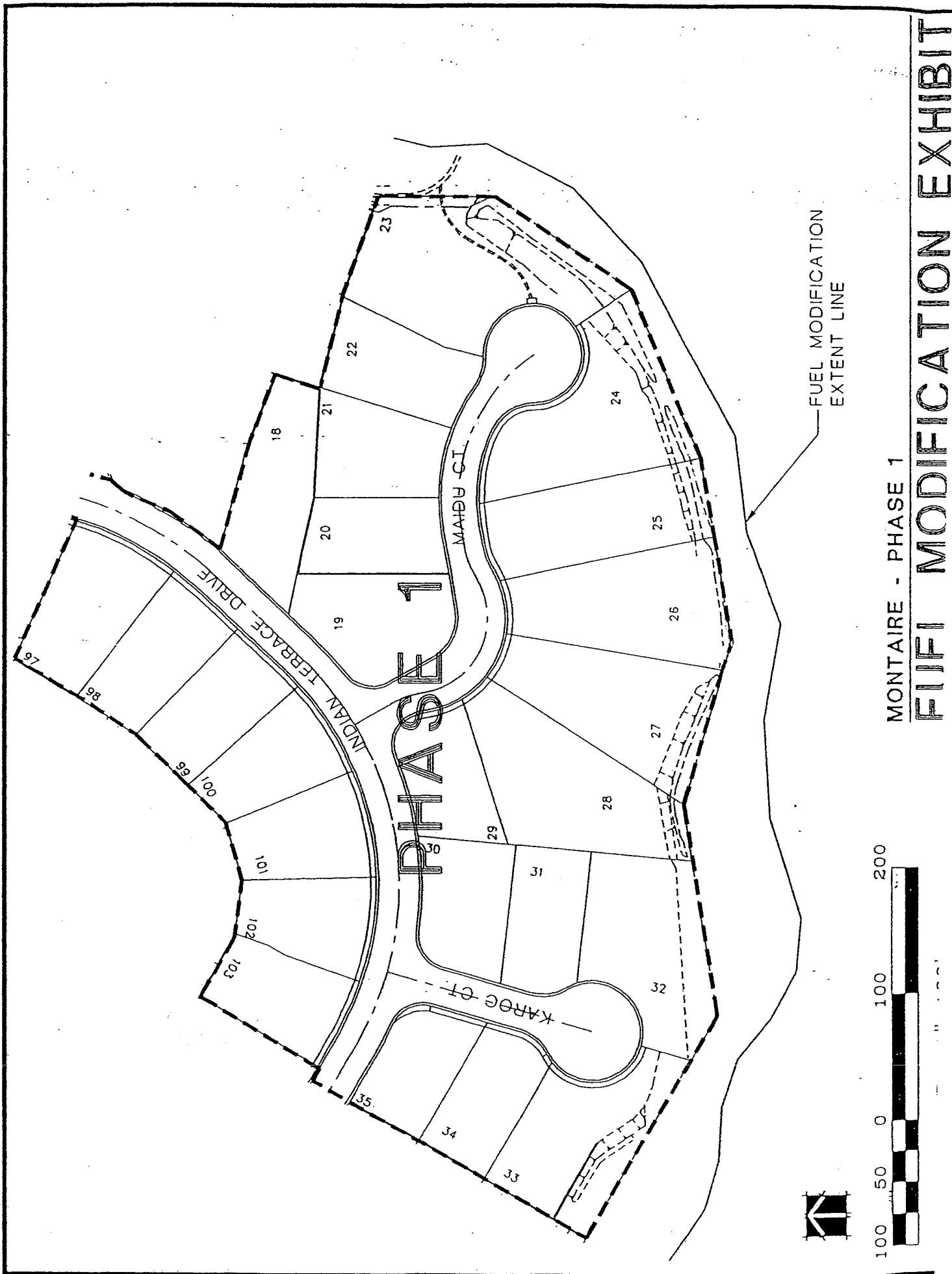
On JANUARY 25, 1999, before me, PATRICIA A. BOWEN, personally appeared JAN M. JEWELL AND WILLIAM WELLS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures 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.

~~RECEIVED  
JAN 25 1998  
HOUSING CAPITAL COMPANY~~

[Signature]  
NOTARY PUBLIC



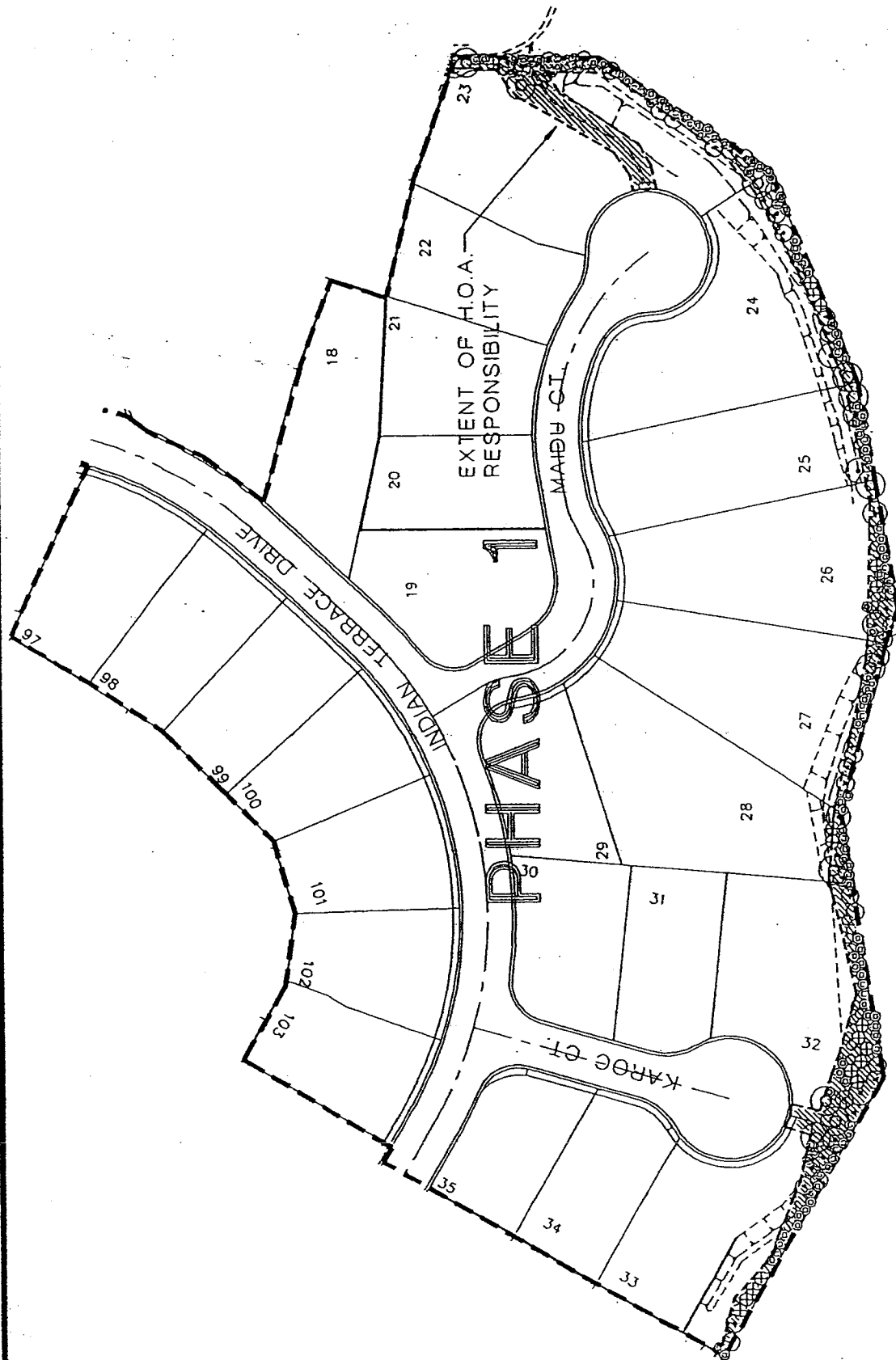


FUEL MODIFICATION  
EXTENT LINE

MONTAIRE - PHASE 1

FIJI MODIFICATION EXHIBIT





MONTAIRE PHASE 1

H O A RESPONSIBILITY EXHIBIT



100 50 0 100 200



RECORDING REQUESTED BY:  
**LAWYERS TITLE COMPANY-81**

We do hereby certify this to be a  
true copy of the document recorded  
February 22, 19 99  
as instrument number 99-032169  
in the office of the County Recorder  
of Ventura County.  
**LAWYERS TITLE COMPANY**

WHEN RECORDED RETURN TO:

Robert O. Smylie, Esquire  
Robert Smylie & Associates  
2049 Century Park East, Suite 2050  
Los Angeles, California 90067

By Tom Dawson  
Authorized Signature

\*\*\*\*\*  
FIRST AMENDMENT TO DECLARATION OF ESTABLISHMENT  
OF CONDITIONS, COVENANTS AND RESTRICTIONS  
FOR MONTAIRE

THIS FIRST AMENDMENT TO DECLARATION OF ESTABLISHMENT OF  
CONDITIONS, COVENANTS AND RESTRICTIONS FOR MONTAIRE ("Amendment"),  
is made by TRIMARK PACIFIC - INDIAN HILLS, LLC, a California  
limited liability company ("Declarant"), to amend that certain  
Declaration of Establishment of Conditions, Covenants and Restric-  
tions for Montaire ("Declaration"), recorded on January 28, 1999,  
as Instrument No. 99-016418, in the Office of the County Recorder  
of the Ventura County, State of California, with respect to the  
following:

RECITALS

A. Declarant is the owner of that certain real property  
subject to the Declaration and legally described as:

Lots 18 through 35, inclusive, and Lots 97 through 103,  
inclusive, of Tract No. 4808, in the County of Ventura, State  
of California, as per Map filed in Book 125, Pages 9 through  
17, inclusive, of Maps, in the Office of the County Recorder  
of said County

B. The Declarant desires to amend the Declaration in order to  
change the name of the Association as required by the California  
Secretary of State, and to clarify the responsibility for mainte-  
nance of certain fences in the project; and

C. Declarant constitutes one hundred percent (100%) of the  
Members of the Association and has the power and authority to amend  
the Declaration pursuant to the provisions of Article 14 thereof.

NOW, THEREFORE, Declarant hereby declares that said  
Declaration shall be and is hereby amended and modified as herein-

after provided.

Section 1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. Definition of Terms. All capitalized terms used herein shall have the meanings as provided in the Declaration.

Section 3. Amendment of Declaration.

(a) Sections 1.1.13 and 3.1 of the Declaration are hereby amended to correct the name of the Association, as stated therein, to be: "MONTAIRE COMMUNITY HOMEOWNERS' ASSOCIATION, a California nonprofit mutual benefit corporation".

(b) The first sentence of Section 7.4 of the Declaration, entitled "Fences and Walls", is hereby amended to read as follows: "Each Owner shall construct and maintain fences and walls along the side and rear perimeters of his Lot, except those portions thereof within the FMZ or the Berm/Slope Easement Areas."

Section 4. Effectiveness of Declaration. Except as amended herein, all other provisions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its hand and seal this 18<sup>th</sup> day of February, 1999.

DECLARANT: TRIMARK PACIFIC - INDIAN HILLS, LLC,  
a California limited liability company

By: TPH LLC, a California limited liability company  
Its Managing Member

By: Trimark Ventures, Inc.,  
a California corporation  
Its Managing Member

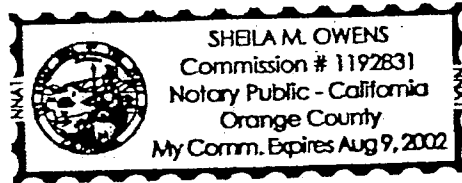
By: [Signature]  
Its: Vice President

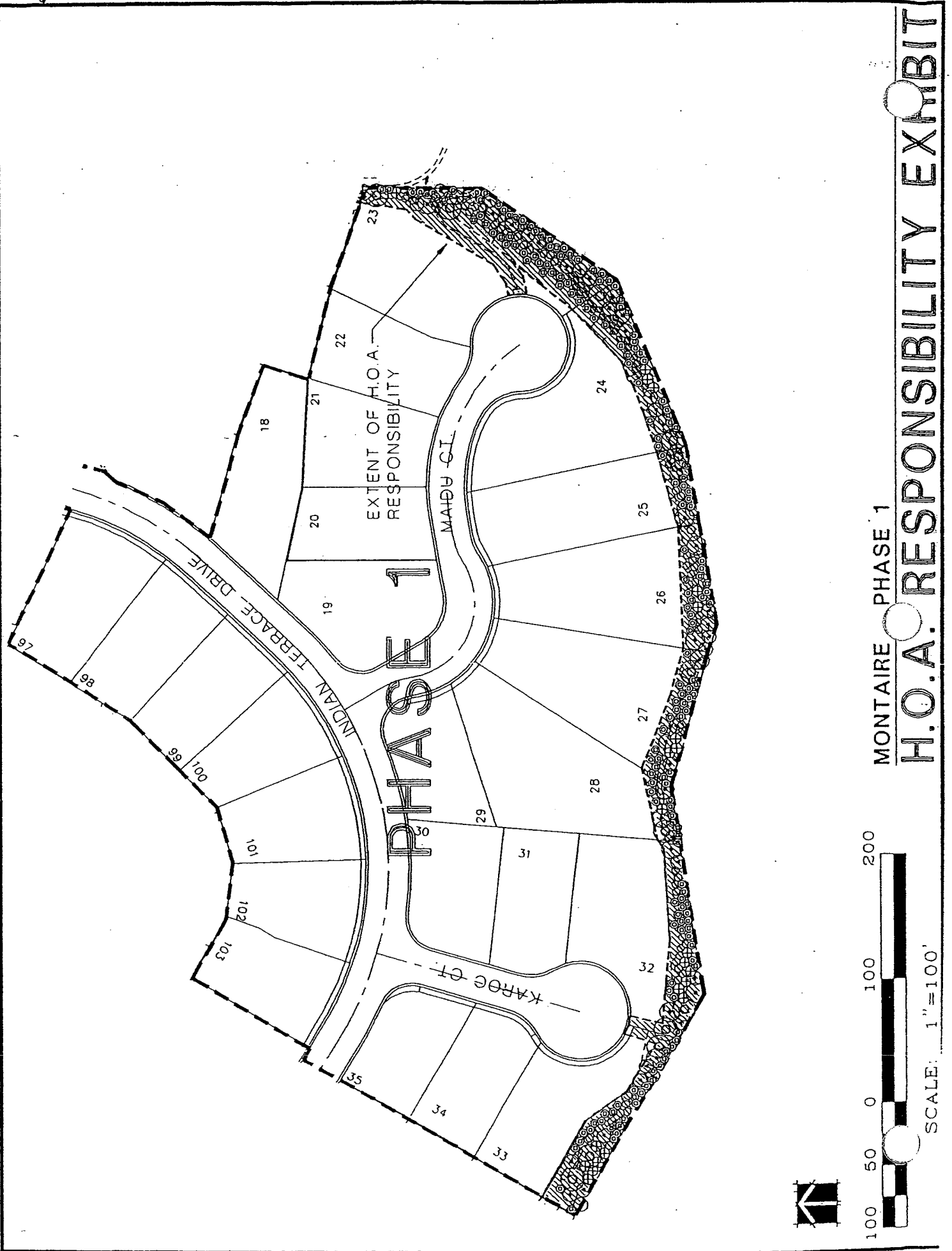
STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE ) ss.

On 2/18/99, before me, SHEILA M. OWENS,  
personally appeared STEPHEN E. HESTER, 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 signatures 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.

Sheila M. Owens  
NOTARY PUBLIC





MONTAIRE PHASE 1

H.O.A. RESPONSIBILITY EXHIBIT



SCALE: 1"=100'