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1979 SEP -5 AM 9 13

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

EL DORADO ESTATES

A PLANNED RESIDENTIAL DEVELOPMENT

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 AND RESERVATION OF EASEMENTS FOR  
EL DORADO ESTATES

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

EL DORADO ESTATES

THIS DECLARATION is made on this 23rd day of July, 1979, by CARL D. MORELAND and CHRISTINE A. MORELAND, TERRY L. MORELAND and PEGGY J. MORELAND, DOMINICK DiBETTA and BARBARA DiBETTA, CARL DANNY MORELAND and RITA FAYE MORELAND, WINFRED H. PROSSER and EILEEN D. PROSSER, MARILYN S. PROSSER, STEPHEN CHRISTOPHER MORELAND and PATRICIA MORELAND, DAVID AUSTIN and BRENDA AUSTIN, and MORELAND & SONS CONSTRUCTION, INC., a California corporation, hereinafter referred to as the "Grantors."

P R E A M B L E:

A. Grantors are the owners of certain real property ("Properties") in the County of Kern, State of California, more particularly described as follows:

Parcels 1, 2 and 3 of Parcel Map No. 5044, as per Map recorded April 6, 1979, in Book 22, Page 127, of Parcel Maps; Parcels 2, 3 and 4 of Parcel Map No. 4655, as per Map recorded June 16, 1978, in Book 21, Page 9, of Parcel Maps; Parcels 2, 3 and 4 of Parcel Map No. 3866, as per Map recorded July 5, 1977, in Book 18, Page 163, of Parcel Maps; Parcels 1, 2, 3 and 4 of Parcel Map No. 4968, as per Map recorded January 23, 1979, in Book 22, Page 56, of Parcel Maps; Parcels 2 and 4 of Parcel Map No. 3865, as per Map recorded July 5, 1977, in Book 18, Page 162, of Parcel Maps; and Parcels 1 and 2 of Parcel Map No. 4969, as per Map recorded January 23, 1979, in Book 22, Page 57, of Parcel Maps; all recorded in the Office of the Kern County Recorder, State of California.

B. The Grantors have deemed it desirable, for the efficient preservation of the values and amenities in the Properties, to create a corporation under the General Nonprofit Corporation Law of the State of California to which should be delegated and assigned the powers of owning, maintaining and administering the Common Area and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

C. The Grantors will cause such corporation, the Members of which shall be the respective Owners of Lots in the Properties, to be formed for the purpose of exercising such functions.

D. The Grantors hereby agree that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; shall inure to the benefit of and be binding upon the Grantors, each Owner, and their respective heirs, executors and administrators; and may be enforced by the Grantors, by any Owner, or by the Association (as hereinafter defined).

ARTICLE I  
DEFINITIONS

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Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

Section 1.01. "Articles" shall mean the Articles of Incorporation of the Association to be filed in the Office of the Secretary of State of the State of California, and as such Articles may be amended from time to time.

Section 1.02. "Assessment, Annual." "Annual Assessment" shall mean the annual charge against each Owner and his Lot representing a portion of the total ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Common Area which are to be paid uniformly and equally by each Owner to the Association, as provided herein.

Section 1.03. "Assessment, Special." "Special Assessment" shall mean a charge against a particular Owner and his Lot, directly attributable to that Owner, equal to the cost incurred by the Association for corrective action, pursuant to the provisions of this Declaration.

Section 1.04. "Assessment, Reconstruction." "Reconstruction Assessment" shall mean a charge against each Owner and his Lot representing a portion of the cost to the Association for reconstruction of any portion of the Improvements on the Common Area pursuant to the provisions of this Declaration.

Section 1.05. "Assessment, Capital Improvement." "Capital Improvement Assessment" shall mean a charge against each Owner and his Lot representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Area or Landscape Maintenance Areas which the Association may from time to time authorize, pursuant to the provisions of this Declaration.

Section 1.06. "Association" shall mean EL DORADO ESTATES HOMEOWNERS ASSOCIATION, a California nonprofit corporation (formed pursuant to the General Nonprofit Corporation Law of the State of California), its successors and assigns.

Section 1.07. "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.08. "Board" or "Board of Directors" shall mean the Board of Directors of the Association, elected in accordance with the By-Laws of the Association.

Section 1.09. "By-Laws" shall mean the By-Laws of the Association, as adopted by the Board, and as such By-Laws may be amended by the Members of the Association from time to time.

Section 1.10. "Common Area" shall mean all of the real property and Improvements, including without limitation landscape areas which are owned by the Association for the common use and enjoyment of all of the Owners. The Common Area shall include the 700-foot block wall along the entryway to the development and the landscaping to be placed along the block wall and in the island area in the access road, all of which is to be installed by Moreland & Sons Construction, Inc., the developer of the project. The Common Area to be so owned by the Association shall include that certain real property located in the County of Kern, State of California, described more particularly as follows:

- A. All that portion of Parcel 2 of Parcel Map No. 1355, as per Map recorded January 28, 1975, in Book 12, Page 122, of Parcel Maps, in the Office of the Kern County Recorder, State of California, described as follows:

Parcel 1: The West 30.00 feet thereof;

Parcel 2: The South 30.00 feet thereof;

Parcel 3: A triangular Parcel bounded on the West by the East line of Parcel 1 above, on the South by the North line of Parcel 2 above, and on the Northeast by an arc of a circle, concave to the Northeast, having a radius of 20 feet and tangent to the last mentioned East and North lines.

Parcel 4: A triangular Parcel bounded on the West by the East line of Parcel 1 above, on the North by the South line of the North 55.00 feet of Parcel 2 of said Parcel Map No. 1355, and on the Southeast by an arc of a circle, concave to the Southeast, having a radius of 20 feet and tangent to the last mentioned East and South lines.

- B. All that portion of Parcel 1 of Parcel Map No. 1355, as per Map recorded January 28, 1975, in Book 12, Page 122, of Parcel Maps, in the Office of the Kern County Recorder, State of California, described as follows:

Parcel 1: The East 30.00 feet thereof;

Parcel 2: The South 30.00 feet thereof;

Parcel 3: A triangular Parcel bounded on the East by the West line of Parcel 1 above, on the South by the North line of Parcel 2 above, and on the Northwest by an arc of a circle, concave to the Northwest, having a radius of 20 feet and tangent to the last mentioned West and North lines.

Parcel 4: A triangular Parcel bounded on the East by the West line of Parcel 1 above, on the North by the South line of the North 55.00 feet of Parcel 1 of said Parcel Map No. 1355, and on the Southwest by an arc of a circle, concave to the Southwest, having a radius of 20 feet and tangent to the last mentioned West and South lines.

It is understood that the Common Area consists of the real property over which an easement has been irrevocably dedicated to the public by two (2) grants dated June 13, 1977, and recorded in Book 5037, Pages 1008 through 1011, of the Official Records of Kern County, State of California.

Section 1.11. "Common Expenses" shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Area (including unpaid Special Assessments, Reconstruction Assessments, and Capital Improvement Assessments), including those costs not paid by the Owner responsible for payment; the costs of any commonly metered utilities and other commonly metered charges for the Properties; costs of management and administration of the Association, including but not limited to compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, gardening and other services benefiting the Common Area; the costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the Properties; the costs of bonding the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, or portions thereof; and the costs of any other item or items designated by the Association, for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners.

Section 1.12. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 1.13. "Deed of Trust" shall mean a mortgage or a deed of trust, as the case may be.

Section 1.14. "Dwelling Unit" shall mean a building located on a Lot designed and intended for use and occupancy as a residence by a single family.

Section 1.15. "Grantors" shall mean those Persons named at the beginning of this Declaration, their successors, and any Person to which they shall have assigned any rights hereunder by express written assignment.

Section 1.16. "Improvement" shall mean any structure or appurtenance thereto of every type and kind, including but not limited to buildings, outbuildings, walkways, sprinkler pipes, carports, open parking areas, recreational facilities, swimming pools, cabanas, open barbecues, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, antennae, hedges, wind-breaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 1.17. "Lot" shall mean any residential lot or parcel map of the Properties, with the exception of the Common Area.

Section 1.18. "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article VI, Section 6.01, hereof.

Section 1.19. "Manager" shall mean the Person appointed by the Association hereunder as its agent and delegated certain duties, powers or functions of the Association, as further provided in this Declaration and in the By-Laws.

Section 1.20. "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration.

Section 1.21. "Mortgage," "Mortgagee," "Mortgagor." "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot or other portion of the Properties to secure the performance of an obligation, which will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term "Mortgagee" shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a person or entity who mortgages his or her Lot to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

Section 1.22. "Notice and Hearing" shall mean written notice and a public hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense, in the manner further provided in the By-Laws.

Section 1.23. "Owner" shall mean the Person or Persons, including Grantor, holding fee simple interest of record to any Lot which is a part of the Properties, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article IX only, unless the context otherwise requires, "Owner" shall also include the family, guests, invitees, licensees and lessees of any Owner.

Section 1.24. "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.



Section 1.25. "Properties" shall mean all of the real property described in Paragraph A of the Preamble to this Declaration.

Section 1.26. "Record, "Recorded," "Filed" or "Recordation"" shall mean, with respect to any document, the recordation of such document in the Office of the County Recorder of the County of Kern, State of California.

Section 1.27. "Residence" shall mean a Unit intended for use by a single family.

Section 1.28. "Restrictions" shall mean this Declaration and the Rules and Regulations of the Association from time to time in effect.

Section 1.29. "Rules and Regulations" shall mean the rules and regulations adopted by the Board pursuant to the By-Laws, as such rules and regulations may be amended from time to time.

## ARTICLE II

### OWNERS' PROPERTY RIGHTS

Section 2.01. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(1) The right of the Association in accordance with the Articles, By-Laws and this Declaration, with the vote or written assent of two-thirds (2/3) of the voting power of each class of Members, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof.

(2) Subject to the provisions of Article XII of this Declaration, the right of the Association to dedicate, release, alienate or transfer the Common Area to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective unless an instrument, signed by Members entitled to cast at least two-thirds (2/3) of the voting power of the Association, agreeing to such dedication, release, alienation or transfer, has been recorded.

(3) The right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Properties, as the case may be, and not in accordance with such original design, finish or standard of construction only with the vote or written consent of the Owners holding seventy-five percent (75%) of the voting power of the Association.

(4) The right of the Association to replace destroyed trees or other vegetation and to plant trees, shrubs and ground cover upon any portion of the Common Area.

Section 2.02. Easements for City Public Service Use. In addition to the foregoing easements over the Common Area, there shall be, and the Grantors hereby reserve and covenant for themselves and all future Owners within the Properties, easements for public services of the City of Bakersfield or County of Kern, including but not limited to the right of the police to enter upon any part of the Common Area for the purpose of enforcing the law.

Section 2.03. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and any facilities thereon or by abandonment of his Lot or any other property in the Properties.

Section 2.04. Title to Common Area. The Grantors hereby covenant for themselves, their successors and assigns, that they will convey to the Association fee simple title to the Common Area, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants and conditions then of record, including those set forth in this Declaration.

Section 2.05. Easements for Parking. The Association, through its officers, committees and agents, is hereby empowered to establish "parking" and "no parking" areas within the Common Area in accordance with Section 22658 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement on city streets, including the removal of any violating vehicles by those so empowered.

### ARTICLE III

#### MEMBERSHIP IN ASSOCIATION

Section 3.01. Membership. Every Owner of a Lot shall be a Member of the Association, and no Owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the Person to whom title to the Lot has been transferred; and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for membership in the Association.

Section 3.02. Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Member who has sold his Lot to a

contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association.

#### ARTICLE IV

##### VOTING RIGHTS

Each Owner shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership. When more than one Person holds such interest or interests in any Lot ("co-owners"), all such co-owners shall be Members and may attend any meetings of the Association; but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot, and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the By-Laws, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration, the Articles and By-Laws.

#### ARTICLE V

##### JURISDICTION OF ASSOCIATION

The Association, acting through the Board, shall also have:

(1) The power and duty to maintain, repair and otherwise manage the Common Area and all facilities, Improvements and landscaping thereon in accordance with the provisions of Article VI and Article VIII of this Declaration.

(2) The power and duty to maintain any private sewer systems within the Common Area and any private storm drains or drainage facilities within the Common Area.

(3) The power and duty to obtain, for the benefit of the Properties, all commonly metered water, gas and elec-

tric services, and shall have the power but not the duty to provide for refuse collection and cable or master television service (if any), as necessary.

(4) The power and duty to grant easements, rights of way, or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.

(5) The power and duty to maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and the By-Laws of the Association.

(6) The power but not the duty to employ or contract with a professional Manager to perform all or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees. Any such management agreement, or any agreement providing for services by Grantors to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days' written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not less than ninety (90) days' written notice.

(7) The power but not the duty, after Notice and Hearing, without being liable to any Owner, to enter upon any Lot for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration. The cost of such enforcement shall be a Special Assessment, and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added at the option of the Board of Directors to the amounts specially assessed against such Owner.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.01. Creation of the Lien and Personal Obligation of Assessments. The Grantors, for each Lot owned within the Properties, hereby covenant, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association (1) Annual Assessments, (2) Capital Improvement Assessments, (3) Special Assessments, and (4) Reconstruction Assessments, as such assessments are made pursuant to this Declaration; and such assessments shall be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. 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 property at the time when the assessment fell due. Subject to the provisions of this Declaration protecting first Mortgagees, the personal obligation for the delinquent assessments shall pass to the successors-in-title of such Owner. The Board of Directors shall establish no fewer than two (2) separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the per-

formance of functions by the Association under the provisions of this Declaration. The two (2) required Maintenance Funds shall be for the deposit of the two (2) portions of the Annual Assessment, and shall be: (1) an Operating Fund for current expenses of the Association, and (2) a Common Area Reserve Fund for replacements, painting and repairs (which would not reasonably be expected to recur on an annual or less frequent basis) of the Common Area to the extent necessary under the provisions of this Declaration. In the event the Board makes Capital Improvement Assessments, Special Assessments, or Reconstruction Assessments, it shall establish a separate Maintenance Fund for the deposit of the proceeds of each such assessment. The Board shall not commingle any amounts deposited into any of the Maintenance Funds with one another.

Section 6.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the operation, improvement and maintenance of the Common Area as provided herein. Disbursements from the Common Area Reserve Fund shall be made by the Board of Directors only for the specific purposes specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Common Area Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any Assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Association Maintenance Funds by the Association, so long as the amounts deposited into any such Fund are earmarked for specified purposes authorized by this Declaration.

Section 6.03. Annual Assessments. Annual Assessments shall include, and the Association shall acquire and pay for out of the applicable funds derived from said Annual Assessments, the following:

(1) Water, electrical, lighting and other necessary utility services for the Common Area.

(2) Maintenance and repair of streets and parking areas lying within the Common Area.

(3) Landscape planting and maintenance by the Association of all landscaping and planted areas within the Common Area, including irrigation and lighting.

(4) Fire and casualty insurance with extended coverage as provided herein, covering the full insurable replacement cost of the Common Area Improvements.

(5) Liability insurance, as provided herein, insuring the Association against any liability to the public or to any Owner, their invitees or tenants, incident to their occupation and use of the Common Area, with limits of liability to be set by the Board of Directors of the Association, such limits and coverage to be reviewed at least annually by the Association and increased or decreased in its discretion; and such errors and omissions and Directors and officers liability insurance as the Board deems appropriate pursuant to Article XI.

(6) Worker's compensation insurance to the extent necessary to comply with any applicable laws, medical payments insurance, and any other insurance deemed necessary by the Board of Directors of the Association.

(7) Standard fidelity bonds covering all members of the Board of Directors of the Association and other employees of the Association as and in an amount determined by the Board of Directors, but not less than two (2) times the sum of the Annual and Special Assessments of the Association.

(8) Painting, maintenance, repair and replacement of any buildings, equipment, road surfaces, landscaping and lighting in, on and of the Common Area, as the Board of Directors of the Association shall determine is necessary and proper.

(9) Any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of this Declaration or by law or which, in the opinion of the Association's Board of Directors, shall be necessary or proper for the operation and maintenance of the Common Area or for the enforcement of these restrictions.

Section 6.04. Basis of Maximum Annual Assessment. Until the first day of 1980, the maximum Annual Assessment under Article VI shall be Four Hundred Twenty Dollars (\$420.00) per annum for improved Lots and Two Hundred Ten Dollars (\$210.00) for unimproved Lots.

(1) From and after January 1, 1980, the maximum Annual Assessment may be increased by the Board, above the maximum Annual Assessment for the previous year, without a vote of the membership and effective no sooner than the first day of each fiscal year, in an amount no more than the greater of (a) twenty percent (20%), or (b) the percentage by which the U. S. Bureau of Labor Statistics, Los Angeles-Long Beach-Anaheim, Consumer Price Index for All Urban Consumers has increased as of the date of the increase over the level of the Index as of the date the Annual Assessment was last established.

(2) From and after January 1, 1980, the maximum Annual Assessment may be increased above the greater of (a) twenty percent (20%), or (b) said percentage by which the Index has so increased, by the vote or written assent of fifty-one percent (51%) of the Members.

(3) The Board of Directors may fix an Annual Assessment at any amount not in excess of the maximum.

Section 6.05. Capital Improvement and Reconstruction Assessments. In addition to the Annual Assessments authorized above, the Board of Directors of the Association may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction 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 or other such addition upon the Common Area, including fixtures and personal property related thereto; provided that, whenever the aggregate Capital Improvement Assessments in any fiscal year exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, such excess shall require the vote or written assent of a majority of the voting power of each class of Members.

Section 6.06. Notice and Quorum for any Action Authorized Under Sections 6.04 and 6.05. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 6.04 and 6.05 shall be sent to all Members not less than ten (10) days, nor more than sixty (60) days, in advance of the meeting. At such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all votes shall constitute a quorum.

Section 6.07. Uniform Rate of Assessment. Annual Assessments, Capital Improvement Assessments, and Reconstruction Assessments provided for in this Article VI must be fixed at two (2) uniform rates for all Lots within the Properties, one uniform rate for improved Lots and one uniform rate for unimproved Lots, and the assessments for unimproved Lots must always be maintained at exactly fifty percent (50%) of the assessments for improved Lots. For purposes of this Section,

an "Improved Lot" shall mean a Lot upon which any work of improvement for a Residence has been commenced. However, notwithstanding the foregoing provision, the Association may, subject to the provisions of Section 8.03 of Article VIII, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agent.

Section 6.07. Date of Commencement of Annual Assessments. The Annual Assessments provided for herein shall commence immediately upon recordation of this Declaration. Written notice of any change in the amount of any Annual Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change.

The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Common Area Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each Member, and to each first Mortgagee who has filed a written request for copies of the same with the Board of Directors, in the manner provided in the By-Laws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the membership of the Association a written, itemized estimate (budget) of what the income and Common Expenses of the Association will be during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Common Area Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Maintenance Fund).

Each Annual Assessment shall constitute an aggregate of separate assessments for each of the Association Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Common Area Reserve Fund, the Operating Fund, and any other Association Maintenance Fund established by the Association. If the estimated sums prove inadequate for any reason, including non-payment of any Owner's Annual Assessment, the Board may, at any time, levy supplemental Annual Assessments, subject to the provisions of Section 6.04 of this Article, for any of the Association Maintenance Funds which shall be assessed equally against the Owner of each Lot in the Properties, subject to the maximum increase provided in Section 6.04.

Each payment of all or a portion of the Annual Assessment may be paid by the Owner to the Association in one check or payment, or in separate checks, as payments attributable to deposits into specified Maintenance Funds. In the event that any installment of an Annual Assessment payment is less than the amount assessed, and the payment does not specify the Association Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Common Area Reserve Fund.

At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the project, any amounts remaining in any of the funds shall be distributed proportionately to or for the benefit of the Members as provided in the Articles and this Declaration.

Section 6.09. Collection of Annual Assessments. From and after the first day of the first month following the recordation of this

Declaration, the Board of Directors shall fix and collect, monthly or by-monthly, but no less frequently, from each Member his pro rata share of the Annual Assessments. Annual Assessments for fractions of any month involved shall be prorated.

Section 6.10. Purchaser's Liability for Assessments. Upon any voluntary or involuntary conveyance of a Lot, the new Owner ("Purchaser") shall be jointly and severally liable with the previous Owner ("Seller") for all unpaid assessments levied by the Board of Directors against the Seller for his share of the Common Expenses up to the time the grant or conveyance was recorded, without prejudice to the right of the Purchaser to collect from the Seller therefor. However, any such Purchaser shall be entitled to a statement from the Board of Directors or the Management Agent of the Association, as the case may be, setting forth the amount of the unpaid assessments against the Seller due the Association; and such Purchaser shall not be liable for, nor shall the Lot conveyed by liable for, any unpaid assessments levied by the Board against the Seller in excess of the amount set forth in the statement; provided, however, that the Purchaser shall be liable for any such assessment becoming due after the date of any such statement. Notwithstanding the foregoing, any first Mortgagee or other Purchaser for value who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, shall not be liable for unpaid assessments or charges against the mortgaged Lot which accrue prior to the time such Mortgagee acquires title to that Lot.

Section 6.11. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

- (1) All Properties dedicated to and accepted by a local public authority; and
- (2) The Common Area.

## ARTICLE VII

### EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION

Section 7.01. Delinquency and Acceleration. Any installment of an assessment provided for in this Declaration shall become delinquent if not paid on the due date as established by the Board of Directors of the Association. With respect to each installment of an assessment not paid within thirty (30) days after its due date, the Board may, at its election, require the delinquent Owner to pay a late charge of not to exceed Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent installment, whichever is greater, together with interest at the maximum rate permitted by law on such delinquent sums, calculated from the date of delinquency to and including the date full payment is received by the Association. If any installment of an Annual Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice to the Owner and to each first Mortgagee of a Lot which has requested a copy of the notice. Such notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Annual Assessment for the then current fiscal year and sale of the Lot. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the nonexistence of a default or any defense of the Owner to acceleration and sale. If the delinquent installments of the Annual Assessment and any charges thereon are not paid in full on or before the date specified in the notice,



the Board at its option may declare all of the unpaid balance of the Annual Assessment for the then current fiscal year, attributable to that Owner and his Lot, to be immediately due and payable without further demand, and may enforce the collection of the full Annual Assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 7.02. Notice of Lien. The Board of Directors may cause to be recorded in the Office of the County Recorder of Kern County a Notice of Assessment ("Notice of Lien") securing the payment of any assessment or installment thereof levied by the Association against any Owner as provided in Section 1356 of the Civil Code. Such Notice of Lien shall state the amount of such assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and recording such Notice of Lien, the expenses of collection in connection with any delinquent installments, reasonable attorneys' fees, a sufficient description of the Lot against which the same has been assessed, the name and address of the Association, and the name of the Owner thereof. Such Notice of Lien shall be signed by an authorized representative of the Association. Upon payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board of Directors shall cause to be recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of such amount claimed. The Board of Directors may demand and receive from the applicable Owner a reasonable charge for the preparation and recordation of such Notice of Release before recording the same. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon such Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

Section 7.03. Liens, Enforcement. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective Lot prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or Deed of Trust with first priority or seniority over other Mortgages or Deeds of Trust) made in good faith and for value and recorded prior to the date on which the lien became effective, subject to the provisions of Article VI, Section 6.10, and Article XII of the Declaration. Notwithstanding the foregoing, any assessment lien provided for hereunder shall be prior and superior to any declaration of homestead recorded after the recordation of this Declaration. Said lien shall become effective upon recordation of the Notice of Lien in the manner provided in Section 7.02 of this Article VII. Such lien shall relate only to the individual Lot against which the Assessment was levied, and not to the Properties as a whole. It shall be the duty of the Board of Directors to enforce the collection of any amounts due under this Declaration by one or more of the alternative means of relief afforded by this Declaration. Such lien may be enforced by sale of the Lot by the Association, its attorney, or other persons authorized to make the sale, after failure of the Owner to pay an assessment, or installment thereof, as provided herein. Such sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any manner permitted by law; and the Grantors hereby confer a power of sale on the Association for the private foreclosure of any lien created pursuant to this Declaration. An action may be brought to foreclose the lien of the Association by the Board, or by any Owner if the Board fails or refuses to act, after the expiration of at least thirty (30) days from the date on which the Notice of Lien was recorded, provided that at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the Owner affected thereby, and subject to the provisions of Section 7.01 of this Article VII in the event that the Board accelerates the due date of any Annual Assessment

installments. In any such foreclosure, the Owner shall be required to pay a reasonable rental for the Lot, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Association, through its agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit in law or equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

#### ARTICLE VIII

##### MAINTENANCE AND REPAIR OBLIGATIONS

Section 8.01. Maintenance Obligations of Owners. It shall be the duty of each Owner, at his sole cost and expense, to maintain, repair, replace and restore areas subject to his exclusive control in a neat, sanitary and attractive condition. Areas subject to the exclusive control of an Owner shall be deemed to include, without limitation, the interior and exterior portions of the Owner's Dwelling Unit and the landscaping and yard areas of the Lot, and any driveway and walks located on the Owner's Lot. In the event that any Owner shall permit any Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained, so as to create a dangerous, obstructed, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Board shall have either the right to seek any remedies at law or in equity which it may have or the right, but not the duty, after Notice and Hearing, to enter upon such Owner's Lot to make such repairs or to perform such maintenance; and the cost thereof shall be charged to the Owner. Said cost shall be a Special Assessment, and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration.

Section 8.02. Maintenance Obligations of Association. No improvement, excavation or work which in any way alters the Common Area from its existing state on the date such area is conveyed by the Grantors to the Association, or a purchaser of a Lot, shall be made or done by any person other than the Association or its authorized agents. Subject to the provisions of Section 8.03 of this Article and Section 6.02 of Article VI, the Association shall maintain or provide for the maintenance of all of the Common Area and all improvements thereon, including all landscaping and private irrigation systems, sewers and storm drains, and all private streets and parking areas and commonly metered utilities, and the Common Area facilities and Improvements, in good order and repair. Each Owner shall maintain, repair and replace the landscaping located on his individual Lot. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in their judgment to be appropriate.

Section 8.03. Damage to Common Area by Owners. The foregoing maintenance, repairs or replacements within the Common Area arising out of or caused by the willful or negligent act of the Owner, his family, guests or invitees shall be done at said Owner's expense or, after Notice and Hearing, a Special Assessment therefor shall be made by the Board against his Lot.

Section 8.04. Damage and Destruction Affecting Dwelling Units-- Duty to Rebuild. If all or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or Dwelling Unit to rebuild, repair or

reconstruct said Dwelling Unit in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 8.05. Time Limitation. The Owner or Owners of any damaged Lot or Dwelling Unit shall be obligated to proceed with all due diligence hereunder to repair or reconstruct the damaged Property.

ARTICLE IX  
USE RESTRICTIONS

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

Section 9.01. Drainage. There shall be no interference with the established drainage pattern over any Lot within the Properties, unless an adequate alternative provision is made for proper drainage. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Grantors, which may include drainage from the Common Area over any Lot or Lots in the Properties.

Section 9.02. Violation of Governing Instruments. There shall be no violation of the restrictions of this Declaration or of the rules and regulations of the Association adopted in accordance with the provisions of the By-Laws. If any Owner, his family, guest, licensee, lessee or invitee violates any such restrictions, the Board may impose a reasonable Special Assessment upon such Owner for each violation, and may suspend the voting privileges of such Owner as further provided in the By-Laws. Such Special Assessment shall be collectible in the same manner as Annual Assessments hereunder; but the Board shall give such Owner Notice and Hearing before invoking any such Special Assessment or suspension.

ARTICLE X  
DAMAGE, DESTRUCTION OR CONDEMNATION OF COMMON AREA

Damage to, destruction of, or condemnation of all or any portion of the Common Area shall be handled in the following manner:

- (1) In the event of damage or destruction to the Common Area, and the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.
- (2) If the insurance proceeds are within Ten Thousand Dollars (\$10,000.00) or less of being sufficient to effect total restoration to the Common Area, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed; and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners, in accordance with the provisions of Article VI, Section 6.05, of this Declaration.
- (3) If the insurance proceeds are insufficient by more than Ten Thousand Dollars (\$10,000.00) to effect total restoration to the Common Area, then by written consent or vote of a majority of the voting power of the Association the Members shall determine whether (a) to rebuild and restore in substantially the same manner as the Improvements existed prior to dam-

age and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Lots, (b) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of Ten Thousand Dollars (\$10,000.00), and which is assessable equally to all Owners, but which is less expensive than replacing these Improvements in substantially the same manner as they existed prior to being damaged, or (c) subject to the provisions of Article XII, to not rebuild and to distribute the available insurance proceeds equally to the Owners and Mortgagees of the Lots as their interests may appear.

(4) Each Member shall be liable to the Association for any damage to the Common Area not fully reimbursed to the Association by insurance proceeds which may be sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult. The Association reserves the right, acting through the Board, after Notice and Hearing, to (a) determine whether any claim shall be made upon the insurance maintained by the Association, and (b) charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Member or the Persons for whom such Member may be liable as described herein. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. After Notice and Hearing, the cost of correcting such damage, to the extent not reimbursed to the Association by insurance, shall be a Special Assessment against the Lot, and may be collected as provided herein for the collection of Annual Assessments.

(5) If at any time all or any portion of the Common Area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. Any such award payable to the Association shall be deposited in the Operating Fund. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

## ARTICLE XI

### INSURANCE

#### Section 11.01. Casualty Insurance on Insurable Common Area.

The Association shall keep all insurable Improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association against loss or damage by fire, and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Annual Assessments made by the Association.

Section 11.02. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area Improvements, the Association shall repair or replace the same from the insurance proceeds available, or distribute such insurance proceeds, subject to the provisions of Article X of this Declaration. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Annual Assessments made against such Lot Owners, in accordance with the provisions of Article VI, Section 6.05, and Article X of this Declaration.

Section 11.03. Waiver of Subrogation. All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of: (1) any defense based on coinsurance; (2) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (3) any invalidity, other adverse effect, or defense on account of any breach of warranty or condition caused by the Association, any Owner, or any tenant of any Owner, or arising from any act, neglect or omission of any named insured or the respective agents, contractors and employees of any insured; (4) any rights of the insurer to repair, rebuild or replace and, in the event any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured or the fair market value thereof; and (5) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, the Grantors, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 11.04. Liability and Other Insurance. The Association shall have the power and duty to, and shall, obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem desirable, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association may also obtain, through the Board, worker's compensation insurance, and other liability insurance as it may deem desirable, insuring each Lot Owner and the Association, Board of Directors, and Manager from liability in connection with the Common Area, the premiums for which are a Common Expense included in the Annual Assessments made against the Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds, and other insurance as it deems advisable, insuring the Board, the officers of the Association, and the Manager against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the requirements for planned unit developments established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of which is a Mortgagee or an Owner of a Lot in the Properties, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA and FHLMC, as applicable.

MORTGAGEE PROTECTION CLAUSE

Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA"), and the Federal National Mortgage Association ("FNMA") to participate in the financing of the sale of Lots within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(1) Each first Mortgagee of a Mortgage encumbering any Lot, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association, or the By-Laws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.

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

(3) Each first Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims of unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the Mortgagee.

(4) Unless at least seventy-five percent (75%) of first Mortgagees (based upon one (1) vote for each Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall:

(a) Subject to California nonprofit corporation law to the contrary, by act or omission, seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Area and the Improvements thereon which are owned by the Association;

(The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association as provided in this Declaration shall not be deemed a transfer within the meaning of this clause.)

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

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Dwelling Units, the maintenance of the exterior walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(d) Fail to maintain Fire and Extended Coverage on insurable Common Area property on a current re-

placement cost basis in an amount as near as possible to one hundred percent (100%) of the insurance value (based on current replacement cost); or

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

(5) First Mortgagees, upon written request, shall have the right to (a) examine the books and records of the Association during normal business hours, (b) require from the Association the submission of annual financial reports and other financial data, (c) receive written notice of all meetings of the Members, and (d) designate in writing a representative to attend all such meetings.

(6) All first Mortgagees who have filed a written request for such notice with the Board shall be given (a) thirty (30) days' written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles of Incorporation or By-Laws of the Association and prior to the effective date of any termination of any agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties; and (b) immediate notice following any damage to the Common Area whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00), and as soon as the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Properties.

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

(8) The Common Area Reserve Fund described in Article VI of this Declaration must be funded by regular scheduled monthly, quarterly, semi-annual or annual payments, rather than by large Special Assessments.

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

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the FHLMC, the FNMA, or the GNMA, or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Lots with Dwelling Units thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their Dwelling Units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

## ARTICLE XIII

GENERAL PROVISIONS

Section 13.01. Enforcement. This Declaration, the Articles of Incorporation, and the By-Laws may be enforced by the Association as follows:

(1) Breach of any of the covenants contained in the Declaration or the By-Laws, and the continuation of any such breach, may be enjoined, abated or remedied by appropriate legal proceedings by any Owner, including the Grantors, by the Association, or by the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection, and court costs.

(2) The result of every act or omission whereby any of the covenants contained in this Declaration or the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance; and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors-in-interest.

(3) The remedies herein provided for breach of the covenants contained in this Declaration, or in the By-Laws, shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(4) The failure of the Association to enforce any of the covenants contained in this Declaration, or in the By-Laws, shall not constitute a waiver of the right to enforce the same thereafter.

(5) A breach of the covenants, conditions or restrictions contained in this Declaration, or in the By-Laws, shall not affect or impair the lien or charge of any bona fide first Mortgage or Deed of Trust made in good faith and for value on any residential Lot or the improvements thereon; provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

Section 13.02. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.03. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which



time said covenants, conditions, reservation of easements, equitable servitudes, and restrictions shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded in the public records, Kern County, California, meeting the requirements of an amendment to this Declaration as set forth in Section 13.05 of this Article XIII.

Section 13.04. Interpretation. 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 and for the maintenance of the Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 13.05. Amendments. This Declaration may be amended only by the affirmative vote or written consent of not less than seventy-five percent (75%) of the voting power of the Members; provided, however, that the prior written approval of at least seventy-five percent (75%) of all first Mortgagees must also be obtained before Article XII may be amended. Any supplement or amendment to this Declaration must be signed by at least two (2) officers of the Association, indicating that the requisite approvals have been obtained; and such amendment or supplement must be recorded in the Office of the Kern County Recorder.

Section 13.06. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 13.07. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot, or other portion of the Properties, does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 13.08. Notices. Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one or more co-owners of a Lot, or to any general partner of a partnership owning a Lot, shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been fur-

nished, to the street address of such Lot. Such notice shall be deemed delivered forty-eight (48) hours after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors, in which case the notice provisions of the By-Laws of the Association shall control. Any notice to be given to the Association may be delivered personally to any Member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

Section 13.09. No Representation or Warranties. No representations or warranties of any kind, express or implied, have been given or made by the Grantors or their agents or employees in connection with the Properties or any portion of the Properties, or any Improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration.

Section 13.10. Nonliability and Indemnification. No right or power conferred on the Board of Directors by virtue of this Declaration, or by the Articles or By-Laws, shall be construed as a duty, obligation or disability charged upon the Board of Directors or upon any member thereof; and except for injuries arising out of their malicious acts, no member of the Board shall be liable to any Person for his decisions or failure to act in making decisions as a member of the Board. The Association shall pay all expenses incurred by, and satisfy any judgment or fine rendered or levied against, any Person who is or has been a Director, officer, employee or committee member of the Association in any action brought by a third party against such Person or the Association (whether or not the Association is joined as a party defendant) to impose a liability or penalty on such Person while a Director, officer, employee or committee member, provided that the Board determines in good faith that such Director, officer, employee or committee member was acting in good faith within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interests of the Association or its Members. Payments include amounts paid and expenses incurred in settling any such action or threatened action. This provision shall be construed to provide for such payments and indemnification to the fullest extent permitted by the provisions of the applicable laws.

Section 13.11. Execution of Declaration. This Declaration shall be effective when it has been executed by Grantors owning at least seventy-five percent (75%) of the Properties described in Paragraph A of the Preamble hereof; and this Declaration shall thereafter be fully operative and binding as to the Grantors who have executed it and as to their respective portions of the Properties.

THIS DECLARATION has been executed as of the date first written above.

Grantors:

James L. Moreland  
Christine A. Moreland  
Katherine Moreland  
Patricia Moreland  
Loggy Moreland  
Carl D. Moreland

Stephen C. Moreland  
James Moreland  
Winifred K. Prosser  
Eileen D. Prosser  
Marilyn Prosser

MORELAND & SONS CONSTRUCTION, INC.,  
a California corporation

By James L. Moreland  
BY Don Moreland

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF KERN )

800-5226 PAGE 1166

On 24th of July, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Terry L. Moreland, known to me to be the President, and Dan Moreland, known to me to be the Secretary, of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Suzette Rene Davis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF KERN )

On \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, and \_\_\_\_\_, known to me to be the \_\_\_\_\_, of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

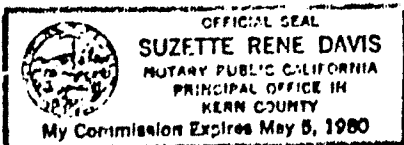
Suzette Rene Davis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Kern )

On July 24, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Terry Moreland, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Suzette Rene Davis  
Notary Public in and for said State

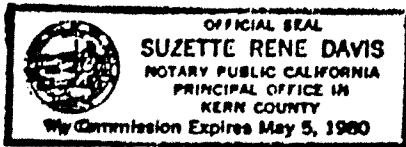


STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Kern )

BOOK 5226 PAGE 1167

On 23rd of July, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Christina A. Moreland, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

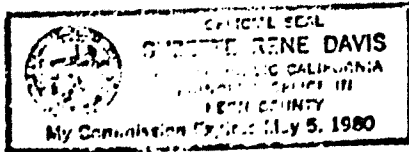


Suzette Rene Davis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Kern )

On 24th of July, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Rita F. Moreland, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

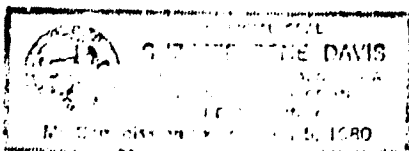


Suzette Rene Davis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Kern )

On 24th of July, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Patricia Moreland, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.



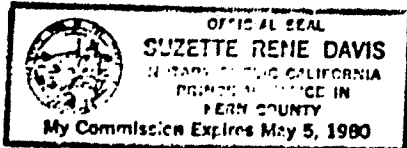
Suzette Rene Davis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Kern )

BOOK 5226 PAGE 1168

On 24th of July, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Peggy Moreland, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

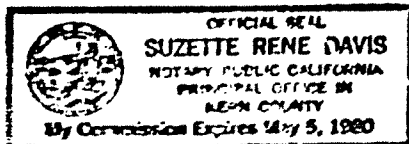


Suzette Rene Davis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Kern )

On 24th of July, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Carl Moreland, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

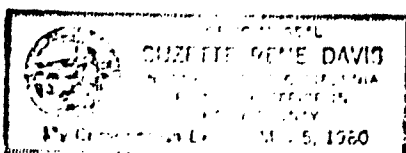


Suzette Rene Davis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Kern )

On 24th of July, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Stephen C. Moreland, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

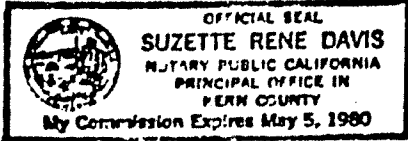


Suzette Rene Davis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 )  
COUNTY OF Kern ) ss.

On 24th of July, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Dan Moreland, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

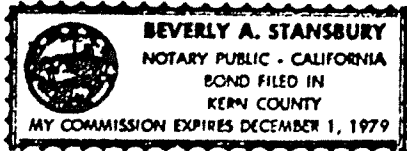


Suzette Rene Davis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 )  
COUNTY OF KERN ) ss.

On August 31, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Winifred H. Prosser and Eileen D. Prosser, known to me to be the persons whose names <sup>are</sup> subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

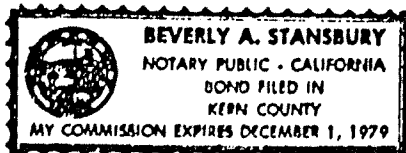


Beverly A. Stansbury  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 )  
COUNTY OF KERN ) ss.

On August 31, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Marilyn S. Prosser, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.



Beverly A. Stansbury  
Notary Public in and for said State