

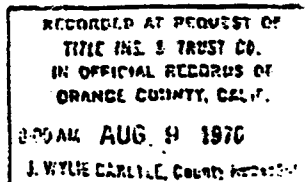
9805

WHEN RECORDED RETURN TO:

\$ 46.00

John D. Lusk & Son
P. O. Box C-19560
Irvine, California 92713

Attention: William R. Brasher



DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

TRACT NO. 8507

ORANGE COUNTY, CALIFORNIA

THIS DECLARATION is made this 2nd day of August, 1976,
by JOHN D. LUSK & SON, a California corporation, hereinafter referred to as
"Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of all the real property in the County of
Orange, State of California, described as:

Lot 2, Tract 8507, as shown on a map recorded
in Book 360, Pages 32 and 33, inclusive,
Miscellaneous Maps, Records of Orange County,
California, and Parcels 1 and 2, as shown on
Parcel Map, recorded in Book 79, Pages 32 and
33, inclusive, of Parcel Maps, Records of Orange
County, California.

WHEREAS, Declarant has deemed it desirable for the efficient preservation of
the value of said Lot 2 and Parcels 1 and 2 and any additional property which may be
annexed thereto pursuant to the provisions of this Declaration, to create a corporation
to which shall be delegated and assigned the powers of owning, maintaining and
administering the properties, and collecting and disbursing funds pursuant to the
assessments and charges hereinafter created and referred to; and

WHEREAS, Fairmont Hill Community Association, a non-profit corporation,
the members of which shall be respective owners of the condominiums and of the
condominiums in the additional properties which may be annexed pursuant to this

Declaration, has incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid; and

WHEREAS, Declarant will convey units in said condominiums, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth; and

WHEREAS, Declarant desires to establish by this Declaration, a plan for the individual ownership of the units of the condominiums consisting of the area and/or space contained in each of the units, membership in the Association and the co-ownership by the individual and separate owners thereof, as tenants in common, of certain real property which is hereinafter defined and referred to herein as the increment common area; and

WHEREAS, Declarant hereby establishes by this Declaration a plan for the ownership of the master common area by the Association;

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the property described above and such additions thereto as may hereafter be made pursuant to Article II hereof shall be held, sold, leased and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of all of the property described herein and the owners and lessees thereof, their successors and assigns. These covenants, conditions, restrictions and easements shall run with the above-described real property and shall be binding on all parties having or acquiring any right, title or interest in said real property or any part thereof and are imposed upon said real property and every part thereof as a servitude in favor of each and every lot and/or parcel thereof as the dominant tenement or tenements.

ARTICLE I

DEFINITIONS

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and also to any supplemental Declaration recorded pursuant to Article II hereof and are defined as follows:

Section 1. "Association" shall mean and refer to Fairmont Hill Community Association, a non-profit corporation, incorporated under the laws of the State of California.

Section 2. "Fairmont Hill" shall mean and refer to all that real property defined in Sections 4, 5 and 6 of this Article I.

Section 3. "Unit" in said property shall mean and refer to the elements of a condominium which are not owned in common with the other owners of other condominiums. The boundaries of a unit shall be as shown and defined on the Condominium Plan, that has been or will be filed, pursuant to Section 1351 of the California Civil Code, in the office of the County Recorder of Orange County. In interpreting deeds and plans, the existing physical boundaries of a unit reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries, rather than metes and bounds, or other description, expressed in the deed or plan, regardless of settling or lateral movement of buildings and regardless of minor variance between boundaries shown on the plan or in the deed and those of a building.

Section 4. "Master Common Area" shall mean and refer to Lot 2 of Tract 8507, County of Orange, State of California, as shown on a map recorded in Book 360, Pages 32 and 33, inclusive, Miscellaneous Maps, Records of Orange County, California.

Section 5. "First Increment Common Area" shall mean and refer to the entire area of Parcels 1 and 2, County of Orange, State of California, as shown on a Parcel Map recorded in Book 79, Pages 32 and 33, inclusive, of Parcel Maps, Records of Orange County, California, excepting those portions thereof which lie within the boundaries of any unit.

Section 6. "Subsequent Increment Common Areas" shall mean and refer to Parcel 3, County of Orange, State of California, as shown on a Parcel Map, recorded in Book 72, Pages 32&33, inclusive, of Parcel Maps, Records of Orange County, California, and the area shown in Exhibit "A", attached hereto and by this reference made a part hereof, which may be subsequently annexed to the Association pursuant to Article II of the Declaration, excepting those portions which lie within the boundaries of any unit.

Section 7. "Project" shall mean and refer to Lot 2 of Tract 8507 and Parcels 1 and 2, hereinabove described, including all structures and other

improvements thereon.

81184201752

Section 8. "Condominium" shall mean a condominium as defined in Section 83 of the California Civil Code, and shall be an estate in real property consisting of (a) a separate fee interest in the space within a unit, and (b) an undivided interest as a tenant in common in the first increment common area. Additionally, each owner of a condominium shall receive a membership in the Association and shall remain a member until such time as ownership ceases.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a condominium which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Declarant" shall mean and refer to John D. Lusk & Son, a California corporation, its successors and assigns.

Section 12. "Mortgage" shall mean the conveyance of any condominium or other portion of the property to secure the performance of an obligation.

Section 13. "Mortgagee" shall mean a person or entity to whom a mortgage is made; "Mortgagor" shall mean a person or entity who mortgages his or its property to another; i. e., the maker of a mortgage.

Section 14. Wherever the word "Deed of Trust" is used herein, it shall mean and be synonymous with the word "Mortgage", and the same may be used interchangeably with the same meaning; and likewise the word "Trustor" shall be synonymous with the word "Mortgagor"; and the word "Beneficiary" shall be synonymous with the word "Mortgagee".

Section 15. "Conveyance" shall mean and refer to conveyance of a fee simple title or lease of any part of the property.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTY

The real property described in Exhibit "A" and Parcel 3 as shown on a Parcel Map, Recorded in Book 79, Pages 32 & 33, inclusive, of Parcel Maps, Records of Orange County, California, may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

Section 1. Annexation Without Approval and Pursuant to General Plan. All or any part of the real property described in Exhibit "A" and Parcel 3 may be annexed to and become subject to this Declaration and subject to the jurisdiction and a part of the Association without the approval, assent or vote of the Association or its Members, provided and on condition that:

(a) Any annexation pursuant to this section shall be made prior to the expiration of the third anniversary of the original issuance of the most-recently-issued Public Report for any increment of the development.

(b) A Supplementary Declaration of Covenants, Conditions and Restrictions, as described hereinafter in Section 2 of this Article, covering said real property or any part thereof described in Exhibit "A", and Parcel 3 shall be executed by Declarant, its successors or assigns. The development of the additional property described in Exhibit "A" and Parcel 3 shall be in accordance with the general plan of development submitted to and approved by the Department of Real Estate of the State of California by Declarant in conjunction with the application of said Declaration for a Subdivision Public Report for the Project. Detailed plans for the development of said real property to be annexed shall be submitted to said Department of Real Estate simultaneously with the submission of the general plan of development. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of units in said real property shall automatically be Members of the Association.

Section 2. Additional Annexation. All or any part of the real property described in Exhibit "B", attached hereto and by this reference made a part hereof, may be annexed to and become subject to this Declaration and subject to the jurisdiction and a part of the association without the approval, assent or vote of the Association or its Members;

provided and on condition that, it takes place within the time limits set forth in Section 1(a) above and the Declarant has demonstrated to the satisfaction of the Department of Real Estate of the State of California that the proposed annexation will not result in the overburdening of the common interests either by way of insufficient facilities to accommodate the total number of proposed Owners within the area contained in Exhibit "B" and Fairmont Hill or by way of substantially increasing the Association budget.

Notwithstanding the above, the area or any part thereof described in Exhibit "B" may be annexed to and become a part of this Declaration and subject to the jurisdiction and a part of the Association upon the vote or written assent of not less than $66 \frac{2}{3}$ of the total votes residing in Members of the Association, specifically excluding the vote of Declarant.

Section 3. Supplementary Declarations. The addition authorized under the foregoing section shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the additional property, which shall extend to the plan of this Declaration to such property.

Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, merger or consolidation revoke, modify or add to the covenants established by this Declaration within the existing property, except as hereinafter otherwise provided.

The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of said real property described subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of said units in said real property shall automatically be Members of the Association.

Section 4. Upon a merger or consolidation of the Association with another association, as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the existing property, together with the covenants and restrictions established upon any other property, as one plan.

ARTICLE III

MEMBERSHIP

Section 1. Membership. Every person or entity owning a fee or undivided fee interest in any Condominium which is subject by these covenants to assessment by the Association, shall be a Member of the Association.

The terms and provisions set forth in this Declaration, which are binding upon all Owners of all Condominiums and all Members in the Association, are not exclusive as both the Member and the Condominium owned by the Member shall, in addition, be subject to the terms and provisions of the Articles of Incorporation and the By-Laws

of the Association. Membership shall be appurtenant to and may not be separated from the fee interest of any Condominium which is subject to assessment by the Association. Fee interest of such Condominium shall be the sole qualification for membership.

Section 2. Transfer. The membership held by any Owner of a Condominium shall not be transferred, pledged or alienated in any way except upon the sale to the purchaser of such Condominium or upon the encumbrance to the Deed of Trust holder of such Condominium. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in his name to the purchaser of such Condominium, the Association shall have the right to record the transfer upon the books of the Association.

Section 3. Voting Rights. The Association shall have two classes of membership.

Class A. Class A Members shall be all those Owners as defined in Article I, Section 10 above with the exception of Declarant. Class A Members shall be entitled to one vote for each Condominium in which they hold the interest required for membership by Section 1 above. When more than one person holds such interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Condominium.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Condominium in which it holds the interest required for membership by Section 1 above, provided that Class B membership shall cease and be converted to Class A membership on the happening of the earlier of the following:

- (a) When the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership; or
- (b) The second anniversary of the original issuance of the most-recently-issued Public Report for any increment of the development.
- (c) The expiration of four (4) years from the date hereof.

ARTICLE IV

PROPERTY RIGHTS IN THE UNITS AND COMMON AREAS

Section 1. Title to the Units. The Declarant hereby covenants for itself, its successors and assigns that it will convey fee title to the Units free and clear of all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and easements, conditions and reservations then of record including those set forth in this Declaration.

Section 2. Title to the First Increment Common Area. The undivided interest in the First Increment Common Area hereby established and which shall be conveyed with each respective Unit is as follows:

<u>Unit Number</u>	<u>Undivided Interest</u>
1	1/64
2	1/64
3	1/64
through	
63	1/64
64	1/64

The above respective undivided interests are hereby established and are to be conveyed with the respective Units as indicated above, cannot be changed and said Declarant, its successors and assigns, and grantees, covenant and agree that the undivided interests in the First Increment Common Area and the fee titles to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

Section 3. Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the First Increment Common Area and Master Common Area including, but not limited to, a right of access, an easement for parking purposes, and easements for utilities, sewage, and drainage and such easements shall be appurtenant to and shall pass with the title to every assessed Condominium, subject to the following provisions:

- (a) The right of the Association to limit the number of guests of Members;

- (b) The right of the Association to establish uniform rules and regulations pertaining to the use of the First Increment Common Area and Master Common Area and the recreational facilities thereon;
- (c) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility under its control;
- (d) The right of the Association to suspend the voting rights and right to use the Master Common Area by a Member for any period during which any assessment against his Condominium remains unpaid and delinquent; and for a period not to exceed thirty (30) days from any single infraction of the rules and regulations of the Association, provided that any suspension of such voting rights or right to use the Master Common Area, 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 By-Laws of the Association.

Section 4. Delegation of Use. Any Member may delegate in accordance with the By-Laws, his right of enjoyment to the First Increment Common Area and/or Master Common Area and facilities thereon to his family, tenants, or contract purchasers who reside on the property and invitees.

Section 5. Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by the Association, nor release the Condominium owned by him from the liens and charges hereof by waiver of the use and enjoyment of the First Increment Common Area and/or Master Common Area and the facilities thereon or by abandonment of his Unit.

Section 6. Declarant's Use. The right of Declarant (its sales agents and representatives) its successors and assigns to the non-exclusive use of the First Increment Common Area and/or Master Common Area and the facilities thereon, for display and exhibit purposes in connection with the sale of its Condominiums in Fairmont Hill, which right Declarant hereby reserves; provided, however, that such use will not be for a period of more than seven (7) years after the conveyance of the first Condominium; or longer than it takes Declarant to sell all Condominiums in

Fairmont Hill, whichever is sooner; provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise restrict the Members in their use and enjoyment of the First Increment Common Area and/or Master Common Area or facilities thereon.

Section 7. Additional Provisions Relating to Common Area. The Declarant, its successors, assigns and all future owners of the Condominiums, by their acceptance of their respective deeds, covenant and agree as follows:

- (a) That the First Increment Common Area and/or any Subsequent Increment Common Areas shall remain undivided; and no Owner shall bring any action for partition, except in accordance with Section 752(b) of the California Code of Civil Procedure, it being agreed that this restriction is necessary in order to preserve the rights of Owners with respect to the operation and management of Fairmont Hill.
- (b) That if any portion of the First Increment Common Area and/or Subsequent Increment Common Areas encroaches upon the Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall, and does exist. In the event any structure is partially or totally destroyed, and then rebuilt, the Owners of the Condominiums agree that minor encroachment of parts of the First Increment Common Area and/or Subsequent Increment Common Areas due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist.
- (c) That the First Increment Common Area and/or Subsequent Increment Common Areas are and shall always be subject to easements for minor encroachments thereon of the Unit and that a non-exclusive easement for ingress, egress and support through the First Increment Common Area and/or Subsequent Increment Common Areas is appurtenant to each Unit and the First Increment Common Area and/or Subsequent Increment Common Area are subject to such easements.
- (d) That the Master Common Area, the First Increment Common Area and/or any Subsequent Increment Common Area are and shall always be subject to an easement for installation, maintenance, repair and replacement of any

Community Antenna Television System transmission lines and other facilities related thereto.

(c) That the Association shall have the responsibility and duty to manage and maintain the Master Common Area, the First Increment Common Area and/or Subsequent Increment Common Areas and improvements thereon, and such maintenance shall be of a high quality so as to keep Fairmont Hill in a first-class condition and in a good state of repair.

ARTICLE V

PRIVATE STREET AREAS

Section 1. Designation and Classification of Private Street Areas. All areas designated as private streets on any condominium plan now of record or hereafter recorded and covering property located within Fairmont Hill shall be improved and maintained for private street purposes only.

Section 2. Access. Sidewalks, pedestrian crossings, speed control devices, parking areas and private or public utilities may be constructed and maintained on, through, under or across any private street areas, provided that none of the foregoing shall materially affect the access provided by the private street areas at a time other than during the construction thereof.

Section 3. Non-Exclusive Private Street Easements. Each Owner within Fairmont Hill and the area shown in Exhibit "B",

shall have appurtenant thereto a non-exclusive easement for pedestrian and vehicular ingress, egress, travel and private street purposes, over, across and through each private street area as shown on any condominium plan, reservation or grant of easement, now or hereafter recorded and affecting areas within Fairmont Hill and the property shown in Exhibit "B", such reciprocal non-exclusive easements have been or shall be specifically located by and upon recordation

of the condominium plan, reservation or grant of easement showing the location of the private street areas thereon; such reciprocal non-exclusive easements shall be for the benefit of the respective Owners within Fairmont Hill and the property shown in Exhibit "B", their successors, assigns, guests, servants, licensees and invitees.

The non-exclusive private street easements are subject to:

- (a) The right of Declarant, its successors and assigns for purposes of development, at any time, and from time to time to terminate the said non-exclusive private street easements as to any portion of Fairmont Hill and the property shown in Exhibit "B" not previously placed under development, which are affected by such instrument;
- (b) Any and all Association restrictions from time to time promulgated and in effect.
- (c) Such other matters as may be specified elsewhere herein or in any supplemental Declaration.
- (d) The easements reserved pursuant to the provisions of this Article V may be granted at any time prior to twenty-one (21) years after the death of the individuals who have signed this Declaration (and their issue who are in being as of the date hereof).

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Condominium owned by it within the Project, hereby covenants and each Owner of any Condominium which becomes subject to the jurisdiction of the Association, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association; (1) regular assessments or charges, and (2) special assessments for capital improvements; such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided,

shall be a charge on the real property and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association and, in particular, for the improvements and maintenance in a first-class condition of the Master Common Area, the First Increment Common Area and/or Subsequent Increment Common Areas, services and facilities devoted and related to these purposes and to the extent provided for herein of the Units situated in Fairmont Hill. Further, the purpose of the assessments shall not only be for the benefit of each of the Owners of the Condominiums but shall also run in favor of the City of Yorba Linda as well as for the benefit of the property and of each person having an interest therein.

Section 3. First Increment Common Area Regular Assessments. The First Increment Common Area regular assessments shall be as follows:

(a) Until January 1 of the year immediately following conveyance of the first Condominium to an Owner, the maximum regular assessments shall not exceed \$ 43.13 per Condominium per month.

(b) From and after January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum monthly assessment may be increased effective January 1 of each year by the Board of Directors of the Association without a vote of the membership provided that any such increase shall not be more than ten percent (10%) of the previous year's assessment. Such monthly assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

(c) From and after January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum regular assessment may be increased by the Board of Directors of the Association in an amount greater than provided for in subsection (b) hereof for the next succeeding twelve (12) calendar months, and at the end of each such period, for each succeeding period of twelve (12) months, provided that any such change shall have the assent of two-thirds (2/3) of the votes of both Class A Members and Class B Members (as long as Class B membership remains in effect) of the First Increment Common Area voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The limitations hereof shall not apply to any change undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) After consideration of current maintenance costs and future needs for the First Increment Common Area, the Members of the First Increment Common Area may fix the regular monthly assessment at a lesser amount than provided for above.

(e) The First Increment Common Area assessments shall be fixed at a uniform rate for all Condominiums within said First Increment.

Section 4. Master Common Area Regular Assessments. The Master Common

Area regular assessments shall be as follows:

- (a) Until January 1 of the year immediately following conveyance of the first Condominium to an Owner, the maximum regular assessment shall not exceed \$ 19.82 per Condominium per month.
- (b) From and after January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum monthly assessment may be increased effective January 1 of each year by the Board of Directors of the Association without a vote of the membership provided

that any such increase shall not be more than ten percent (10%) of the previous year's assessment. Such monthly assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

(c) From and after January 1 of the year immediately following the conveyance of the first Condominium to an Owner, the maximum regular assessment may be increased by the Board of Directors of the Association in an amount greater than provided for in subsection (b) hereof for the next succeeding twelve (12) calendar months, and at the end of each such period, for each succeeding period of twelve (12) months, provided that any such change shall have the assent of two-thirds (2/3) of the votes of both Class A Members and Class B Members (as long as Class B membership remains in effect) voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The limitations hereof shall not apply to any change undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) After consideration of current maintenance costs and future needs of the Association, the Association may fix the regular monthly assessment at a lesser amount than provided for above.

(e) The Master Common Area assessments shall be fixed at a uniform rate for all Condominiums within the Association.

Section 5. Special Assessments for Capital Improvements. In addition to the regular assessments pursuant to Sections 3 and 4 of this Article VI, the Board of Directors may levy in any calendar year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement within the First Increment Common Area and/or the Master Common Area, including

the necessary fixtures and personal property related thereto, provided that any such assessment in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall have the assent of at least a majority of the applicable voting power, excluding, however, the vote of the Declarant or his successor in interest to the votes for unsold Condominiums then owned by the Declarant or his successor in interest.

Section 6. Subsequent Increment Common Area Assessments. Upon the annexation of any Subsequent Increment Common Area, regular and special assessments applicable to said Subsequent Increment Common Area shall be fixed and collected in the same manner as provided for in the First Increment Common Area.

Section 7. Uniform Rate of Collection. The First Increment Common Area or any annexed Subsequent Increment Common Area and the Master Common Area regular and special assessments may be combined and collected on a monthly basis and shall be fixed at a uniform rate for all Condominiums within the Association.

Section 8. Date of Commencement of Regular Assessments. Both the First Increment Common Area and Master Common Area regular assessments provided for herein, shall commence as to all Units in Parcels 1 and 2, including the Declarant's unsold Units, on the first day of the month following the close of escrow of the first purchaser to purchase a Condominium within said First Increment. Regular assessments for Subsequent Increment Common Areas and the Master Common Area for the Units within the additional properties annexed pursuant to Article II herein, shall commence for each Subsequent Increment Common Area on the first day of the month following the close of escrow of the first purchaser to purchase a Condominium within said Subsequent Increment.

Section 9. Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an

officer of the Association, settling forth whether the regular and special assessments on a specified Unit have been paid and the amount of the delinquency, if any. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Exempt Property. All property dedicated to and accepted by a local public authority shall be exempt from the assessments created herein.

Section 11. Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by the Association, nor release the Unit owned by him from the liens and charges hereof, by abandonment of his Unit.

ARTICLE VII

NON-PAYMENT OF ASSESSMENT

Section 1. Delinquency. Any assessment provided for in this Declaration which is not paid when due shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed \$5.00 per each delinquent assessment. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the then legal rate, and the Association may, at its option, bring an action at law against the Owner personally obligated to pay the same or, upon compliance with the notice provisions set forth in Section 2 hereof, to foreclose the lien (provided for in Section 1 of Article VI hereof), against the Condominium, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and, in the event a judgment is obtained, such judgment shall include said interest and a reasonable attorneys' fee, together with the costs of action. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent assessments.

Section 2. Notice of Lien. No action shall be brought to foreclose said

assessment lien or to proceed under the power of sale herein provided less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Condominium, and a copy thereof is recorded by the Association in the office of the County Recorder of Orange County, California; said notice of claim must recite a good and sufficient legal description of any such Condominium, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment at the legal rate, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

Section 3. Foreclosure Sale. Any such sale provided for above is to be conducted in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code of the State of California, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association, after the vote of at least a majority of the voting power, excluding the vote of the Declarant, may, through its duly authorized agents, have the power to bid on the Condominiums at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

Section 5. Cumulative Remedies. The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6. Subordination of Assessment Liens. If any Condominium subject to a monetary lien created by any provision hereof shall be subject to the lien of a first mortgage or deed of trust: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such mortgage or deed of trust; and (2) the foreclosure of the lien of such mortgage or deed of trust or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien hereof, except that the lien hereof for said charges as shall have accrued up to the foreclosure or the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage or deed of trust, with the foreclosure-purchaser or deed-in-lieu grantee taking title free of the lien hereof for all said charges that have accrued up to the time of the foreclosure or deed given in lieu of foreclosure, but subject to the lien hereof for all assessments and charges that shall accrue subsequent to the foreclosure or deed given in lieu of foreclosure.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Architectural Approval. No building, fence, wall or other structure shall be commenced, erected or maintained upon Fairmont Hill, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee provided for in Section 2 hereof. In the event said Committee, or its designated representatives, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided that any applicable local ordinances have been complied with and approvals from the local agencies have been obtained.

Section 2. Appointment of Architectural Committee. The Declarant shall initially appoint the Architectural Committee, consisting of not less than three (3) members who shall remain in office until: (a) three (3) years from the date of recording of this Declaration; or (b) ninety percent (90%) of the Condominiums in Fairmont Hill have

been conveyed, whichever shall first occur, except that after one (1) year from the date of the sale of the first Condominium in Fairmont Hill, the Board of Directors shall have the power to appoint one member to the Architectural Committee. From and after such time or event and without any further notice thereof, the Architectural Committee shall be composed of the Board of Directors of the Association or by three (3) or more representatives appointed by the Board of Directors; who shall be members of the Association. In the event of the death or resignation of any member of the Committee prior to the time when the Board of Directors of the Association is vested with authority, the Declarant shall have the right to appoint such member's successor.

Section 3. Architectural Fee. The Architectural Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to Section 1 above, payable at the time such plans and specifications are so submitted. The amount of such fee shall not exceed the cost of making such examination, including the cost of any architect's or engineer's fees incurred in connection therewith.

Section 4. General Provisions. The members of such Committee shall not be entitled to any compensation for services performed pursuant to this covenant. The powers and duties of such Committee shall cease on and after forty (40) years from the date of the recording of this Declaration. Thereafter, the approval described in this covenant shall not be required unless, prior to said date and effective thereon, a written instrument shall be executed and duly recorded by the then record owners of a majority of the units of Fairmont Hill appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by said Committee. Said representatives may be the members of the Board of Directors of the Association.

Section 5. Inapplicable to Declarant. Declarant need not seek or obtain Architectural Committee approval of any improvement constructed or placed by Declarant on any property in Fairmont Hill owned by Declarant.

ARTICLE IX

EXEMPTION OF RESTRICTIONS

Section 1. Declarant. Nothing in these restrictions shall limit the right of

the Declarant to complete excavation, grading and construction of improvements to any property within Fairmont Hill owned by Declarant, or to alter the foregoing or to construct additional improvements as Declarant from time to time deems in its sole and absolute discretion advisable in the course of development of Fairmont Hill for so long as any Condominium in Fairmont Hill remains unsold, or to use any structure in Fairmont Hill as a real estate sales office. So long as any Condominium in Fairmont Hill remains unsold, and so long as Declarant owns any portion of Fairmont Hill, Declarant shall have the right to make reasonable use of any and all Common Areas within Fairmont Hill for ingress, egress, sales, development and construction purposes, including but not limited to, the use of all of the areas within Fairmont Hill now or hereafter classified as Private Street Areas for ingress, egress and travel for any and all reasonable purposes, which shall include without limitation, those purposes incidental to construction, development and/or sale of Condominiums within Fairmont Hill or any portion thereof.

ARTICLE X

DUTIES AND POWERS OF THE ASSOCIATION

Section 1. Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) Maintain and otherwise manage all of the Master Common Area, First Increment Common Area and Subsequent Increment Common Areas and all facilities, improvements and landscaping thereon, and all property that may be acquired by the Association.
- (b) Maintain the exterior of the Condominiums in the manner and subject to the limitations set forth in Section 3 of this Article.
- (c) To have the authority to pay all taxes and assessments that may be levied or imposed by public authority upon properties owned or controlled by this Association.
- (d) Have the authority to obtain, for the benefit of all of the Condominiums,

all water, gas and electric service and refuse collection.

(e) Grant easements where necessary for utilities and sewer facilities over the common area to serve the Master Common Area, the First Increment Common Area and/or Subsequent Increment Common Areas and the Condominiums.

(f) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association.

(g) Have the power to establish and maintain a working capital and contingency fund in accordance with Article VI.

Section 2. Insurance. The Association shall have the duty to purchase, carry and at all times maintain in force, insurance covering the Master Common Area, the First Increment Common Area and/or Subsequent Increment Common Areas and all improvements thereon for the interest of all Owners and their mortgages as their interests may appear, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for said common areas similar in construction; provided, however, that the Association shall not be obligated to insure any Unit or personal property therein. Such insurance to be obtained by the Association shall include, but need not be limited to:

- (a) Insurance against loss or damage by fire, hazards covered by a standard extended coverage endorsement, and vandalism in an amount which shall be equal to the maximum insurable replacement value.
- (b) Comprehensive public liability insurance, in such limits as the Association deems necessary.
- (c) Workman's Compensation Insurance as the Association deems necessary.
- (d) Flood hazard insurance pursuant to the National Flood Insurance Act, as amended, if applicable.

(e) Any other insurance deemed necessary by the Association.

The insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to the Association. Premiums for all insurance carried by the Association is a common expense included in the assessments made by the Association. Fire and extended coverage insurance proceeds shall be used by the Association as hereinafter provided.

Section 3. Maintenance of Condominiums.

(a) The Association shall provide exterior maintenance of each Unit in a Condominium which is subject to assessment under Article VI hereof, only as follows: paint, maintain and repair and replace (if required because of normal wear, tear or deterioration) roofs, gutters, downspouts and exterior building surfaces, including fences, and maintain the landscaping (including the trees, shrubs, grass and walks) and private streets within the Master Common Area, the First Increment Common Area and/or Subsequent Increment Common Areas.

(b) Such exterior maintenance shall not include: glass surfaces; landscaping within any private patio areas of each Condominium; patio covers or other additions built or maintained within any private patio areas by an Owner and repairs or replacements arising out of or caused by the willful or negligent act of the Owner, his family, guests or invitees, or caused by any perils not covered by the aforementioned fire insurance policy with the standard extended coverage endorsement thereon. Such excluded items shall be the responsibility of each Condominium owner; provided, however, that if an Owner shall fail to maintain or make the repairs or replacements which are the responsibility of such Owner, as provided above, then upon vote of a majority of the Board of Directors, and after not less than thirty (30) days' notice to the Owner, the Association shall have the right (but not the obligation) to enter the Condominium and provide such maintenance or make such repairs or replacements, and the cost thereof shall be

added to the next assessment chargeable to such Condominium and shall be payable to the Association by the Owner of such Condominium.

(c) Subject to the above-mentioned provisions of Section 3, the Association shall have the obligation to promptly repair or restore at its expense all damage or destruction covered by insurance held by the Association for the Owners.

(d) No Owner shall, at his expense or otherwise, make any alteration, addition or modification to the exterior of his Unit, or build or construct any fence, obstruction or improvement of any kind or character on or connected to or adjacent to his individual Unit, or in any part or portion of any of the First Increment Common Area and/or Subsequent Increment Common Areas herein defined and described, without the prior written approval of the Architectural Committee hereinbefore referred to.

With respect to the installation of awnings, sunshades and other minor installation to any individual Unit, the prior written approval of the Architectural Committee shall also be required, and the discretion of the Architectural Committee shall be exercised with a view to promoting uniformity in such minor installations and thereby enhancing the attractiveness of Fairmont Hill as a whole.

Section 4. Access at Reasonable Hours. For the purpose of performance of the exterior maintenance, reconstruction and emergency repairs, the Association's agents or employees shall have the right, after reasonable notice to the Owner, unless in an emergency where there is insufficient time for said notice, to enter any Unit or upon any portion of the First Increment Common Area and/or Subsequent Increment Common Areas at reasonable hours to effectuate such maintenance, reconstruction and/or emergency repairs.

Section 5. Control and Maintenance of Master Common Area. The Association, prior to the close of the first escrow of the first Condominium in Fairmont Hill, shall receive fee title to the Master Common Area with all improvements completed thereon. Thereafter, the Association shall be solely responsible for the maintenance, repair and replacement of all improvements within and upon said Master Common Area.

ARTICLE XI

UTILITIES

Section 1. The rights and duties of the Owners of Condominiums within Fairmont Hill with respect to sanitary sewer and water, electricity, gas and telephone lines and facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone lines are installed within Fairmont Hill, which connections or any portion thereof lie in or upon Condominiums owned by other than the Owner of a Condominium served by said connections, the Owners of any Condominium served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Condominiums or to have the utility companies enter upon the Condominiums within Fairmont Hill in or upon which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

(b) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone lines are installed within Fairmont Hill, which connections serve more than one Condominium, the Owner of each Condominium served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Condominium.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners, addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

Section 2. Easements over Fairmont Hill for the installation and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities and for drainage facilities as shown on any recorded map of Fairmont Hill, are hereby reserved by Declarant, together with the right to grant and transfer the same.

ARTICLE XII

USE RESTRICTIONS

In addition to all other covenants contained herein, the use of Fairmont Hill and each Condominium therein is subject to the following:

Section 1. There are stairways and balconies located within the First Increment Common Area and/or Subsequent Increment Common Areas that are attached to or are adjoining each Unit. Said stairways and balconies shall be for the exclusive use of the Owners of the Units to which they adjoin or are attached. The stairways and balconies shall be maintained in a clean and orderly manner by the particular Owners set forth above.

Section 2. None of the Condominiums shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Project other than a row or townhouse used as a single-family dwelling, and no such building shall substantially deviate from the original plans and specifications as set forth as part of the aforementioned Condominium Plan referred to in Article I, Section 3.

Section 3. No part of Fairmont Hill shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes, except Declarant, its successors or assigns, may use a part of Fairmont Hill for a model home site, display and sales office during the construction and sales period of its Condominiums.

Section 4. No sign or billboard of any kind shall be displayed to the public view on any portion of Fairmont Hill except one sign for each Unit, of not more than

eighteen (18) inches by twenty-four (24) inches, advertising the property for sale or rent, or except signs used by Declarant, its successors or assigns, to advertise the sale of its Condominiums.

Section 5. No noxious or offensive activity shall be carried on upon any part of Fairmont Hill, 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' respective Unit, or which shall in any way increase the rate of insurance.

Section 6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any Condominium at any time as a residence, either temporarily or permanently. No trailer, camper, boat or similar equipment shall be permitted to remain upon any portion of Fairmont Hill, unless placed or maintained on or in a Unit or unless approval is first obtained from the Declarant until the sale of the final Condominium in Fairmont Hill and thereafter approved by the Board of Directors.

Section 7. A portion of the Master Common Area, the First Increment Common Area and/or Subsequent Increment Common Areas consists of private streets, roads and open parking areas. Parking of automobiles and other motor driven vehicles shall be prohibited on said private streets, roads and open parking areas except where specifically designated by the Declarant until the sale of the final Condominium in Fairmont Hill and thereafter as designated by the Board of Directors. However, in no case shall any repairs to any automobile or other motor driven vehicle be made while the same shall be parked on any of said private streets, roads or open parking areas, except in the case of strict emergency. The Declarant and then the Board of Directors as set forth above shall have the authority to establish speed limits and to tow away and store any vehicle operated or parked in violation of the above restrictions, whether said vehicle shall belong to an Owner or a member of his family or to any relative, guest or invitee of any Owner. Charges for such towing and storage shall be assessed against any Owner who shall violate such restrictions, and also against

any Owner whose family member, relatives, guests or invitees may violate the same, and such assessment may be enforced against the property interest of said Owner or Owners in the same manner as provided in Article VI hereof relative to liens for non-payment of assessments.

Section 8. No animals, livestock or poultry of any kind, shall be raised, bred or kept upon Fairmont Hill, except that dogs, cats or other household pets may be kept within a Unit, provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept in Fairmont Hill which result in an annoyance or are obnoxious to residents in the vicinity.

Section 9. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted upon Fairmont Hill, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface or within five hundred (500) feet below the surface of Fairmont Hill. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon Fairmont Hill.

Section 10. All rubbish, trash and garbage shall be regularly removed from Fairmont Hill, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited unless obscured from view of adjoining Condominiums and streets by a fence or appropriate screen approved by the Architectural Committee. All unenclosed portions of Units and all trash areas located within the Master Common Area, the First Increment Common Area and/or Subsequent Increment Common Areas shall be maintained in a clean and orderly manner.

Section 11. No alteration to or modification of the radio and/or television antenna system, as developed by the Declarant, shall be made by any Owner and no Owner shall be permitted to construct and/or use and operate his own external radio and/or television antenna.

Section 12. Those Owners having a common wall separating their Units shall equally have the right to the use of such wall, except that each shall have the exclusive

right to use of the interior surface of said wall on his side. Neither Owner shall use any portion of the wall so as to interfere with the use and enjoyment of the other Owner. In the event that any portion of such a wall, except the interior surface of one side, is damaged or injured from any cause, other than the act or negligence of either of the adjoining Owners, it shall be repaired or rebuilt at the joint expense of such adjoining Owner.

ARTICLE XIII.

DAMAGE OR DESTRUCTION OF COMMON AREAS

Section 1. Partial or Total Destruction. In the event of partial or total destruction, damage or failure of any portion of the Common Areas and/or improvements thereon, it shall be the duty and obligation of the Association to restore, replace and/or reconstruct said Common Areas and improvements in the manner, condition and according to the procedures set forth hereinbelow:

(a) The Board of Directors shall have the duty and obligation, in accordance with these restrictions and the By-Laws of the Association, to contract for the repair, restoration and/or reconstruction of the Common Areas with reputable contractors, engineers, soils engineers and geologists and shall take all steps necessary to assure the commencement and completion of such reconstruction, restoration and/or replacement at the earliest possible date.

(b) Prior to repair, restoration and/or reconstruction of the Common Areas, the Board shall have plans and specifications prepared, and shall obtain at least two (2) bids, and the plans and specifications shall be subject to approval by the Architectural Committee; provided, however, that the Board of Directors shall be obligated to immediately repair, restore or reconstruct any said destruction, damage or failure which may require such action in order to avoid further damage to the Common Areas.

(c) The Board of Directors shall have the right and power to borrow money and levy special assessments against all Owners in accordance with the provisions of Article VI, Section 5 herein, and each Owner shall be obligated to pay an equal share of said special assessment.

ARTICLE XIV

CONDEMNATION

Section 1. Sale By Unanimous Consent. In the event that an action for condemnation of all or a portion of Fairmont Hill is proposed or threatened by any governmental agency having the right of eminent domain, then, upon unanimous written consent of all of the Owners, Fairmont Hill or such portion thereof may be sold.

Section 2. Distribution of Proceeds of Sale. Upon a sale occurring as described in Section 1 hereof, the proceeds resulting therefrom shall be distributed to the Owner or Owners and their Mortgagees of each Condominium as their respective interests may appear.

Section 3. Distribution of Condemnation Award. In the event Fairmont Hill, or such portion thereof, is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees.

Section 4. Revival of Right to Partition. Upon a sale or taking pursuant hereto which renders more than fifty percent (50%) of the Units in Fairmont Hill uninhabitable, the right of any Owner to partition through legal action shall forthwith revive.

ARTICLE XV

PROTECTION OF MORTGAGES

Section 1. Amendment. No amendment to this Declaration shall affect the rights of any Mortgagee under Mortgage made in good faith and for value and recorded prior to the recordation of any such amendment, unless said Mortgagee shall either join in the execution of such amendment or shall approve the same in writing as part of such amendment.

Section 2. Subordination. Any lien granted or claimed under provisions of this Declaration, is expressly made subject and subordinate to the rights of any Mortgage encumbering all or a portion of Fairmont Hill, or any Condominium therein, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee thereto thereof, shall expressly subordinate his interest in writing, to such lien.

Section 3. Notice of Default to Mortgagees. In the event that any Owner of a Condominium is in default under any provision of this Declaration, or under any provision of the By-Laws or the rules and regulations adopted by the Association which default is not cured within thirty (30) days of written notice thereof to such Owner, the Association shall, if a written request for notice is on file with the Association, give to the Mortgagee of such Owner, written notice of such default and of the fact that said thirty (30) day period has expired.

Section 4. Effect of Breach Hereof. No breach of any provision of this Declaration, nor the enforcement of any lien provisions herein, shall defeat or render invalid, the lien of any Mortgage made in good faith and for value, but all of said Declaration shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise.

Section 5. Foreclosure. If any Condominium is encumbered by a Mortgage or Deed of Trust made in good faith and for value, the foreclosure of any lien created by any provision in this Declaration for assessments or installments thereof, shall not operate to affect or impair the lien of such Mortgage. Upon foreclosure of such Mortgage, or the acceptance of a deed-in-lieu or assignment-in-lieu of the foreclosure by the Mortgagee, the lien thereof for assessments or installments, as shall have accrued up to the time of foreclosure or the acceptance of a deed-in-lieu or assignment-in-lieu thereof shall be subordinate to the lien of such Mortgage with the foreclosure-purchaser or deed-in-lieu-grantee or assignment-in-lieu-assignee taking title to such Condominium free of the lien thereof for such assessments or installments, as shall have accrued up to the time of the foreclosure sale or the delivery of the deed-in-lieu or assignment-in-lieu of the foreclosure and shall only be obligated to pay assessments or other charges levied or assessed by the Association subsequent to said

time.

ARTICLE XVI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, any Owner or the City of Yorba Linda, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association, any Owner or the City of Yorba Linda to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. 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 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the property included within Fairmont Hill and shall inure to the benefit of and shall be enforceable by the Association, the Owner of any Condominium subject to this Declaration or the City of Yorba Linda, 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 said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners of the Condominiums, has been recorded within a reasonable time, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a row or townhouse condominium residential community as set forth in the aforementioned Condominium Plan and for the maintenance of the Master Common Area, the First Increment Common Area and/or Subsequent Increment Common Areas. The Article and section headings have been inserted for convenience

only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. This Declaration of Covenants, Conditions and Restrictions may be amended only by an affirmative vote of not less than seventy-five percent (75%) of both Class A Members and Class B Members (as long as Class B membership remains in effect), and, further, this amendment provision shall not be amended to allow amendments by vote of less than seventy-five percent (75%) of the Members.

Section 6. Encroachment Easement. Each Condominium within Fairmont Hill is hereby declared to have an easement over all adjoining Condominiums for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the wilful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Condominium agree that minor encroachments over adjoining Condominiums shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 7. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

Section 8. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every result and may be exercised by the City of Yorba Linda, the Architectural Committee, the Association, or any other

Owner of a Condominium within Fairmont Hill. Such remedy shall be deemed cumulative and not exclusive.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first above written.

JOHN D. LUSK & SON, a California corporation

By: [Signature] President

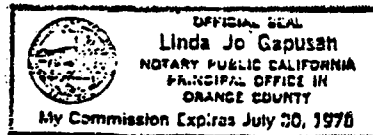
By: [Signature] Secretary

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

On August 2, 1976 before me, the undersigned, a Notary Public in and for said State, personally appeared William D. Lusk, known to me to be the President and Kathryn L. Lenz, 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.

[Signature]
Linda Jo Gapusan



LEGAL DESCRIPTION

21.793 Acre Parcel
Fourplexes

1118421784

1 All that portion of the land of Samuel Kraemer, as shown
2 on a map thereof recorded in Book 2, Page 21, Record of Surveys,
3 in the office of the County Recorder of Orange County, California,
4 in the Rancho Canon de Santa Ana, County of Orange, State of
5 California, described as follows:

6 Beginning at the most southeasterly corner of that certain
7 parcel of land conveyed to Rolling View Estate Venture by Frank
8 Joseph Michael Waters III and described in deed recorded March 23,
9 1970 in Book 9244, Page 643 records of Orange County, California,
10 said corner also being the southeast corner of Tract No. 7208 as
11 shown on a map recorded in Book 276, Pages 49 and 50 of
12 Miscellaneous Maps, records of said Orange County; thence North
13 52°09'07" East, along the northeasterly extension of the south-
14 easterly boundary of said Tract No. 7208, a distance of 10.00
15 feet; thence South 37°50'53" East, at right angles to last said
16 course, a distance of 493.10 feet to the beginning of a tangent
17 curve concave southwesterly and having a radius of 1800.00 feet;
18 thence southeasterly 511.06 feet along the arc of said curve through
19 a central angle of 16°16'03" to a point on a tangent line; thence
20 South 21°34'50" East, along said tangent line, a distance of
21 363.00 feet to the true point of beginning; thence continuing
22 South 21°34'50" East, a distance of 590.82 feet to the beginning
23 of a tangent curve concave northeasterly and having a radius of
24 1800.00 feet; thence southeasterly along the arc of said curve,
25 through a central of 3°11'56", a distance of 100.50 feet to a
26 point on said curve, a radial line to said point bears South
27 65°13'14" West; thence South 60°20'00" West, 74.21 feet to the
28 beginning of a tangent curve, concave southeasterly and easterly
29 and having a radius of 500.00 feet; thence southwesterly and
30 southerly 769.60 feet along the arc of said curve through a central
31 angle of 88°11'21" to a point on a tangent line; thence South
32 27°51'21" East, along said tangent line, a distance of 109.59 feet

1 to a point on a non-tangent curve concave northwesterly and having;
2 a radius of 2794.93 feet, a radial line through said point on
3 said curve bears South 33°26'00" East, said curve also being the
4 centerline of Esperanza Road, 40.00 feet wide; thence south-
5 westerly along the arc of said curve through a central angle of
6 10°03'33", a distance of 490.96 feet to a point, said point being
7 the beginning of a compound curve concave northwesterly and having
8 a radius of 5659.65 feet, a radial line through said point bears
9 South 23°22'07" West; thence southwesterly along the arc of said
10 compound curve through a central angle of 2°51'37", a distance
11 of 282.54 feet to a point on the southerly extension of the
12 easterly boundary of Tract No. 7413 as shown on a map recorded in
13 Book 301, Pages 17, 18 and 19 of Miscellaneous Maps, records of
14 Orange County; thence North 0°57'57" East, along said extension
15 and said easterly boundary, a distance of 874.76 feet to the
16 northeast corner of said Tract No. 7413; thence along the northerly
17 boundary of said Tract No. 7413 the following bearings and
18 distances: South 84°52'30" West 458.38 feet; thence North
19 66°43'13" West, a distance of 379.00 feet; thence North 77°42'45"
20 West, a distance of 120.00 feet; thence North 12°17'15" East, a
21 distance of 180.00 feet; thence North 23°16'47" East, a distance
22 of 120.00 feet; thence South 66°43'13" East, a distance of 120.00
23 feet; thence North 23°16'47" East, a distance of 125.00 feet;
24 thence North 51°51'47" East, a distance of 230.00 feet; thence
25 South 69°29'13" East, a distance of 170.00 feet; thence North
26 88°10'47" East, a distance of 220.00 feet; thence South 38°44'38"
27 East, a distance of 134.00 feet to the northwest corner of Lot 2
28 of Tract No. 8507, as shown on a map recorded in Book 360, Pages
29 32 and 33 of Miscellaneous Maps, records of said Orange County;
30 thence North 79°03'42" East along the northerly line of said
31 Tract No. 8507, a distance of 219.10 feet to an angle point on
32 said northerly line; thence South 85°39'04" East, along said

11184201785

1 northerly line, a distance of 20.00 feet to the most easterly
2 corner of said Lot 2 of Tract No. 8507, last described course
3 being radial to a curve concave westerly and having a radius of
4 250.00 feet; thence northerly along the arc of said curve, through
5 a central angle of 25°45'02", a distance of 112.36 feet to a point
6 on a tangent line; thence North 21°24'06" West, along said
7 tangent line, a distance of 224.30 feet; thence North 78°00'00"
8 East, a distance of 75.92 feet to the beginning of a tangent
9 curve concave southerly and having a radius of 300.00 feet;
10 thence easterly along the arc of said curve through a central
11 angle of 12°00'00", a distance of 62.83 feet to a point on a
12 tangent line; thence due east, along said tangent line, a distance
13 of 195.00 feet to the beginning of a tangent curve concave
14 northerly and having a radius of 310.00 feet; thence easterly
15 along the arc of said curve through a central angle of 21°34'50",
16 a distance of 116.76 feet to a point on a tangent line; thence
17 North 68°25'10" East, along said tangent line, a distance of
18 86.00 feet terminating at the true point of beginning.

19 EXCEPTING THEREFROM:

20 Beginning at the most southeasterly corner of that certain
21 parcel of land conveyed to Rolling View Estate Venture by Frank
22 Joseph Michael Waters III and described in deed recorded March
23 23, 1970 in Book 9244, Page 643, records of Orange County,
24 California, said corner also being the southeast corner of Tract
25 No. 7208 as shown on a map recorded in Book 276, Pages 49 and 50
26 of Miscellaneous Maps, records of said Orange County; thence
27 North 52°09'07" East, along the northeasterly extension of the
28 southeasterly boundary of said Tract No. 7208, a distance of
29 10.00 feet; thence South 37°50'53" East, at right angles to last
30 said course, a distance of 493.10 feet to the beginning of a
31 tangent curve concave southwesterly and having a radius of 1800.00
32 feet; thence southeasterly along the arc of said curve through a

118421787

1 central angle of $16^{\circ}16'03''$, a distance of 511.06 feet to a point
2 on a tangent line; thence South $21^{\circ}34'50''$ East, along said tangent
3 line, a distance of 308.00 feet to the beginning of a tangent
4 curve concave westerly and having a radius of 1200.00 feet; thence
5 southerly along the arc of said curve through a central angle of
6 $18^{\circ}11'42''$, a distance of 381.08 feet to a point on said curve,
7 a radial line to said point bears North $86^{\circ}36'52''$ East, said point
8 being the true point of beginning; thence continuing southerly
9 along the arc of said curve through a central angle of $16^{\circ}41'29''$,
10 a distance of 349.58 feet to a point on a tangent line; thence
11 South $13^{\circ}18'21''$ West, a distance of 111.49 feet to a point on a
12 non-tangent curve, concave southeasterly and having a radius of
13 500.00 feet, a radial line to said point bears North $52^{\circ}04'27''$
14 West; thence northeasterly 211.05 feet along the arc of said
15 curve through a central angle of $21^{\circ}59'17''$ to a point on a non-
16 tangent line, a radial line to said point bears North $30^{\circ}05'10''$
17 West; thence North $17^{\circ}23'49''$ East, along said non-tangent line,
18 34.98 feet to a point on a non-tangent curve concave northeasterly
19 and having a radius of 1860.00 feet, a radial line to said point
20 bears South $67^{\circ}20'55''$ West; thence northwesterly 34.76 feet along
21 the arc of said curve through a central angle of $1^{\circ}04'15''$ to a
22 point on a tangent line; thence North $21^{\circ}34'50''$ West along said
23 tangent line, 271.12 feet to the true point of beginning.
24 (Containing 0.650 acres).

25 ALSO EXCEPTING THEREFROM:

26 All of Tract No. 8507 as shown on a map recorded in Book
27 360, Pages 32 and 33 of Miscellaneous Maps, records of said Orange
28 County, California (said Tract No. 8507 contains 11.949 acres).
29
30
31

32 December 8, 1975

LEGAL DESCRIPTION

49.751 Acre Parcel
Duplexes

11184201786

1 All that portion of the land of Samuel Kraemer, as shown
2 on a map thereof recorded in Book 2, Page 21, Record of Surveys,
3 in the office of the County Recorder of Orange County, California,
4 in the Rancho Canon de Santa Ana, County of Orange, State of
5 California, described as follows:

6 Beginning at the most southeasterly corner of that
7 certain parcel of land conveyed to Rolling View Estate Venture
8 by Frank Joseph Michael Waters III and described in deed recorded
9 March 23, 1970 in Book 9244, Page 643 records of Orange County,
10 California, said corner also being the southeast corner of
11 Tract No. 7208 as shown on a map recorded in Book 276, Pages
12 49 and 50 of Miscellaneous Maps, records of said Orange County:
13 thence North 52°09'07" East, along the northeasterly extension
14 of the southeasterly boundary of said Tract No. 7208, a distance
15 of 10.00 feet; thence South 37°50'53" East, at right angles to
16 last said course, a distance of 493.10 feet to the beginning
17 of a tangent curve concave southwesterly and having a radius of
18 1800.00 feet; thence southeasterly 511.06 feet along the arc of
19 said curve through a central angle of 16°16'03" to a point on
20 a tangent line; thence South 21°34'50" East, along said tangent
21 line, a distance of 953.82 feet to the beginning of a tangent
22 curve concave northeasterly and having a radius of 1800.00 feet;
23 thence southeasterly along the arc of said curve, through a
24 central angle of 3°11'56", a distance of 100.50 feet to a point
25 on said curve, a radial line to said point bears South 65°13'14"
26 West; thence South 60°20'00" West, 74.21 feet to the beginning of
27 a tangent curve, concave southeasterly and easterly and having a
28 radius of 500.00 feet; thence southwesterly and southerly 769.60
29 feet along the arc of said curve through a central angle of
30 88°11'21" to a point on a tangent line; thence South 27°51'21"
31 East, along said tangent line, a distance of 109.59 feet to a
32 point on a non-tangent curve concave northwesterly and having a

111842N1700

1 radius of 2794.93 feet, a radial line through said point on said
2 curve bears South 33°26'00" East, said curve also being the
3 centerline of Esperanza Road, 40.00 feet wide; thence south-
4 westerly along the arc of said curve through a central angle of
5 10°03'53", a distance of 490.96 feet to a point, said point being
6 the beginning of a compound curve concave northwesterly and
7 having a radius of 5659.65 feet, a radial line through said point
8 bears South 23°22'07" West; thence southwesterly along the arc
9 of said compound curve through a central angle of 2°51'37", a
10 distance of 282.54 feet to a point on the southerly extension of
11 the easterly boundary of Tract No. 7413 as shown on a map recorded
12 in Book 301, Pages 17, 18 and 19 of Miscellaneous Maps, records
13 of Orange County; thence North 0°57'57" East, along said
14 extension and said easterly boundary, a distance of 874.76 feet to
15 the northeast corner of said Tract No. 7413; thence along the
16 northerly boundary of said Tract No. 7413 the following bearings
17 and distances: South 84°52'30" West 458.38 feet; thence North
18 66°43'13" West, a distance of 379.00 feet; thence North 77°42'45"
19 West, a distance of 278.92 feet; thence South 83°01'29" West, a
20 distance of 214.94 feet; thence North 88°01'19" West, a distance
21 of 285.49 feet to the northwest corner of said Tract No. 7413;
22 thence North 1°21'55" West, along the easterly boundary of Tract
23 No. 5776 as shown on a map recorded in Book 209, Pages 3 and 4 of
24 Miscellaneous Maps, records of Orange County, a distance of 613.43
25 feet, more or less, to the southwesterly corner of Tract No. 7204
26 as shown on a map recorded in Book 272, Pages 1 and 2 of
27 Miscellaneous Maps, records of Orange County; thence North
28 88°36'15" East, along the southerly lines of Lots 44, 43 and 42 of
29 said Tract No. 7204, a distance of 305.30 feet, more or less, to
30 the southeasterly corner of Lot 42 of said Tract No. 7204; thence
31 North 1°23'45" West, along the easterly line of Lots 42, 41, 40
32 and 39 of said Tract No. 7204, a distance of 343.00 feet; thence

411842M1790

1 North 88°36'15" East, along the southerly lines of Lots 37, 36 and
2 35 of said Tract No. 7204, a distance of 100.00 feet; thence
3 North 58°34'56" East, along the southeasterly line of Lots 35, 34,
4 33 and 32 of said Tract No. 7204, a distance of 298.50 feet;
5 thence North 42°43'51" East, along the southeasterly lines of Lots
6 31, 30 and 29, a distance of 287.31 feet; thence along the south-
7 easterly boundary of Tract No. 7208 as shown on a map recorded in
8 Book 276, Pages 49 and 50 of Miscellaneous Maps, records of Orange
9 County, the following bearings and distances: North 51°19'40"
10 East, a distance of 216.00 feet; thence North 22°42'59" East, a
11 distance of 90.01 feet; thence North 52°09'07" East, a distance of
12 600.00 feet terminating at the true point of beginning.

13 EXCEPTING THE FOLLOWING:

14 Beginning at the most southeasterly corner of that certain
15 parcel of land conveyed to Rolling View Estate Venture by Frank
16 Joseph Michael Waters III and described in deed recorded March 23,
17 1970 in Book 9244, Page 643 records of Orange County, California,
18 said corner also being the southeast corner of Tract No. 7208 as
19 shown on a map recorded in Book 276, Pages 49 and 50 of
20 Miscellaneous Maps, records of said Orange County; thence North
21 52°09'07" East, along the northeasterly extension of the south-
22 easterly boundary of said Tract No. 7208, a distance of 10.00
23 feet; thence South 37°50'53" East, at right angles to last said
24 course, a distance of 493.10 feet to the beginning of a tangent
25 curve concave southwesterly and having a radius of 1800.00 feet;
26 thence southeasterly 511.06 feet along the arc of said curve
27 through a central angle of 16°16'03" to a point on a tangent line;
28 thence South 21°34'50" East, along said tangent line, a distance
29 of 363.00 feet to the true point of beginning; thence continuing
30 South 21°34'50" East, a distance of 590.82 feet to the beginning
31 of a tangent curve concave northeasterly and having a radius of
32 1800.00 feet; thence southeasterly along the arc of said curve,

W11842M1792

1 South 69°29'13" East, a distance of 170.00 feet; thence North
2 88°10'47" East, a distance of 220.00 feet; thence South 38°44'38"
3 East, a distance of 134.00 feet to the northwest corner of Lot 2
4 of Tract No. 8507, as shown on a map recorded in Book 360, Pages
5 32 and 33 of Miscellaneous Maps, records of said Orange County;
6 thence North 79°03'42" East along the northerly line of said Tract
7 No. 8507, a distance of 219.10 feet to an angle point on said
8 northerly line; thence South 85°39'04" East, along said northerly
9 line a distance of 20.00 feet to the most easterly corner of said
10 Lot 2 of Tract No. 8507, last described course being radial to
11 a curve concave westerly and having a radius of 250.00 feet;
12 thence northerly along the arc of said curve, through a central
13 angle of 25°45'02", a distance of 112.36 feet to a point on a
14 tangent line; thence North 21°24'06" West, along said tangent line,
15 a distance of 224.30 feet; thence North 78°00'00" East, a distance
16 of 75.92 feet to the beginning of a tangent curve, concave
17 southerly and having a radius of 300.00 feet; thence easterly
18 along the arc of said curve, through a central angle of 12°00'00",
19 a distance of 62.83 feet to a point on a tangent line; thence due
20 east, along said tangent line, a distance of 195.00 feet to the
21 beginning of a tangent curve, concave northerly and having a
22 radius of 310.00 feet; thence easterly along the arc of said
23 curve, through a central angle of 21°34'50", a distance of 116.76
24 feet to a point on a tangent line; thence North 68°25'10" East,
25 along said tangent line, a distance of 86.00 feet terminating at
26 the true point of beginning (said exception contains 34.392 acres).

27
28
29
30 December 8, 1975
31
32