

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
DEL LAGO  
TRACT NO. 32868  
LOS ANGELES COUNTY, CALIFORNIA

THIS DECLARATION, made this 25<sup>th</sup> day of March 1979, by  
PACIFIC MARINE INVESTMENT CORPORATION, A California  
Corporation, hereinafter referred to as "Declarant":

WITNESSETH:

WHEREAS, Declarant is the owner of the real property in the City of Long Beach, County of Los Angeles, State of California, described as:

Tract No. 32868 as shown on Map recorded in Book 915, Pages 85 to 90, both inclusive, of Miscellaneous Maps, records of Los Angeles County, California.

WHEREAS, Declarant has deemed it desirable to impose a general plan for the improvement and development of said tract and all of the property described herein and the adoption and establishment of covenants, conditions and restrictions upon said real property and each and every lot and portion thereof and upon the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of said tract; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the value, desirability and attractiveness of said tracts, pursuant to the provisions of this Declaration, to create a corporation to which should be delegated and assigned the powers of maintaining and administering the common area and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to; and

WHEREAS, DEL LAGO COMMUNITY ASSOCIATION, a non-profit corporation, (has been) (will be) incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid; and

WHEREAS, Declarant will convey title to all of said lots in said tract, subject to certain protective covenants, conditions and restrictions hereinafter set forth; NOW, Therefore, Declarant hereby covenants and agrees and declares that all of said lots and property described above shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of the whole tract and all of the property described herein and the owners thereof, their successors and assigns. These covenants, conditions, restrictions and easements shall run with the said real property and their successors and assigns. These covenants, conditions,

restrictions and easements shall run with the said real property and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof and shall inure to the benefit of each owner thereof and are imposed upon said real property and every part thereof as a servitude in favor of each and every 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, and are defined as follows:

Section 1. "Association" shall mean and refer to DEL LAGO COMMUNITY ASSOCIATION, a non-profit corporation, incorporated under the laws of the State of California, its successors and assigns.

Section 2. "Property" and "lots" shall mean and refer to all of the real property known as, described and included in Tract No. 32868 and any additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" and "Common Facilities" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. "Lot" shall mean and refer to a recorded lot within the existing property upon which there has been or will be constructed a single family residence, but shall not mean or include any common area lot nor public or private streets and alleys.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner (or equitable owner under a contract of sale), whether one or more persons or entities, of a fee simple title to or leasehold estate in any lot 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 7. "Declarant" shall mean and refer to the PACIFIC MARINE INVESTMENT CORPORATION, a California Corporation, its successors and assigns.

Section 8. "Deed of trust 11 shall mean the conveyance of lot or other portion of the property to secure the performance of an obligation.

Section 9. "Conveyance" shall mean and refer to conveyance of a fee simple or leasehold title to any lot.

Section 10. "Tract" shall mean and refer to Tract No. 32868.

Section 11. "Board" shall mean the Board of Directors of the Association.

## ARTICLE II

### MEMBERSHIP

Section 1. Membership. Every person or entity who is a record owner of a fee (or equitable owner under a contract of sale) or undivided fee interest in, or is the lessee off any lot which is subject by covenants or record or by lease 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 lots and all members in the Association, are not exclusive, as the member shall, in addition, be subject to the terms and provisions of the Articles of Incorporation and the By Laws of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the fee ownership or lease of any lot which is subject to assessment by the Association. Ownership or lease of such lot shall be the sole qualification for membership.

Section 2. Transfer. The membership held by any owner or lessee of a lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such lot or lease, and then only to the purchase or deed of trust holder of such lot or lease. 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 lot or lease should fail or refuse to transfer the membership registered in his name to the purchaser of such lot or lease, 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 (2) classes of voting membership:

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

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

- (a) When the total votes outstanding in the Class A membership equal 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.

All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles and By-Lays of the Association.

Section 4. Special Class A Voting Rights. Notwithstanding the provisions of this Article to the contrary, as long as a majority of the voting power of the Association resides in the subdivider, or as long as there are two outstanding classes of membership in the Association, at least twenty percent (20%) of the directors shall be elected solely by a majority vote of Class A members only. This requirement shall apply to the first election of the directors and each election thereafter. A director who has been elected solely by the votes of Class A Members only may be removed from office prior to the expiration of his term of office only by the vote of a simple majority of the voting power of Class A Members.

### ARTICLE III

#### PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Members' Easements of Enjoyment. Every member shall have a right of enjoyment in and to the common area and such right shall be appurtenant to and shall pass with the title to every assessed lot, 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 common area.

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money (not in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written assent of a majority of the voting power of the Association residing in members other than subdivider) for the purpose of improving the common area and facilities and in aid thereof to mortgage said property, provided that the rights of such mortgages shall be subordinate to the rights of the members.

(d) The right of the Association to suspend the voting rights and right to use of the recreational facilities, if any, by a member for any period during which any assessment against his lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association, provided that any suspension of such voting rights or right to use the recreational facilities, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the By-Laws of the association.

(e) The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) nor more than sixty (60) days in advance, except for the

transfer of Sims Pond to a public agency which may be accomplished without vote of the members.

(f) The right of Declarant (and its sales agents and representatives) to the non-exclusive use of the common area and the facilities thereof, for display and exhibit purposes in connection with the sale of residential units within the tract, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than two (2) years after the conveyance of the common area to the Association (three [3] years if the project is erected in phases), or the sale of all the residential lots within the aforesaid real property, whichever is the earlier; 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 common areas or facilities thereof. The Declarant further reserves the right of continued access over and through the common areas for itself and its appointed representatives and contractors to complete construction of buildings and improvements and for the performance of necessary repair work during all phases of the project.

Section 2. Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the common area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

Section 3. Waiver of Use. No member may exempt himself from personal liability for assessments duly levied by the Association, nor release the lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the common area and the facilities thereon or by abandonment of his lot.

Section 4. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey to the Association the common areas in the property, free and clear of all trust deeds 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. Said conveyance shall be made to the Association prior to or concurrently with the conveyance of any improved lot in the existing property.

Section 5. Title to Sims Pond Preserve. The Declarant hereby covenants for itself, its successors and assigns, that it will convey to the Association Lot 127 of Tract No. 32868, free and clear of all trust deeds and monetary obligations, except current real property taxes and easements, covenants, conditions and reservations then of record, including those set forth in this Declaration. Lot 127 constitutes the northern portion of a wildlife preserve entitled "Sims Pond Preserve". The wildlife preserve has been created and established for the visual appreciation of all of the lot owners of the Tract and the general community at large. There shall be no public access to the wildlife preserve, but the wildlife habituating therein can be observed from a distance. No domestic animals shall be deposited or allowed into the preserve. The conveyance to the Association shall be made upon completion of the preserve by the Declarant, in accordance with the Precise Plan for the Construction and management of the Sims Pond Ecological Preserve, dated December, 1977, which plan has been adopted as Condition Number 1 to the California coastal Commission Permit 77/1778. Upon the written request of any public agency, the Association will immediately deed Lot 127 to such agency if the purpose of the written request is to consolidate Lot 127 with the remainder of the preserve. Prior to the deeding of Lot 127 to any public agency, the Association shall maintain, protect and preserve that portion of Sims Pond Preserve lying within Lot 127 in accordance with the contractual provisions between Declarant and the California Department of Fish and Game and any rules and regulations promulgated from said organization. The cost and expense of maintaining, protecting and preserving the Sims Pond Preserve shall be borne by the Association and included in the regular assessments or charges referred to in Article IV below. Until such time as Lot 127 is deeded to a public agency, it shall be deemed to be the duty and obligation of the Association and the Association shall have the power to obtain and contract for services for the preservation of the Sims Pond Preserve. If at any time the Association shall be dissolved, application shall be made to the Coastal Commission or successor agency for said approval of the maintenance program to be modified establishing alternative methods of maintenance of the Sims Pond Preserve.

Section 6. Special Use Permit. Attached hereto and made a part hereof is a copy of the Special Use Permit which was issued by the City of Long Beach and which permitted development of the Common Areas and lots. Any and all future owners of any lots shall be provided with a copy of this special permit and all rights and conditions that pertain thereto.

#### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned by it within the tract, and each owner of any lot in the tract, by acceptance of a deed or lease 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 charged on the land and shall be a continuing lien upon the lot 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 property 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. Attached hereto and made a part hereof is a copy of the Special Use Permit which was issued by the City of Long Beach and which permitted development of the Common Areas and lots. Any and all future owners of any lots shall be provided with a copy of this special permit and all rights and conditions that pertain thereto.

Section 3. Regular Assessments. Not later than sixty (60) days prior to the beginning of each fiscal year of the Association, the Board shall distribute to each member a proforma operating statement or budget for the forthcoming fiscal year which shall, among other things, estimate the total common expenses to be incurred for such fiscal year. The Board shall then determine the amount of the regular assessment to be paid by each member. Written notice of the annual regular assessments shall be sent to every member. Each member shall thereafter pay to the Association his regular assessment in installments as established by the Board. Each such installment shall be due and payable on a date established by the Board in a written notice sent to members. In the event the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all common expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the common expenses and determine the revised amount of regular assessments against each member, and the date or dates when due. After the Association's first fiscal year of operation, it shall not impose a regular assessment which is increased more than twenty percent (20%) over the amount of the regular assessment in the immediately preceding fiscal year, without the vote or written assent of a majority of the voting power of the association residing in members other than declarant. The Board shall also distribute to all members a balance sheet, as of an accounting date which is the

last day of the month closest in time to six months from the date of closing or the first sale of a lot in the subdivision, and an operating statement for the period from the date of the first closing to the said accounting date. The same shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the lot number and the name of the entity assessed. An annual report consisting of the following shall be distributed within 120 days after the close of the fiscal year:

- (a) A balance sheet as of the end of the fiscal year,
- (b) An operating (income) statement for the fiscal year,
- (c) A statement of changes in financial position for the fiscal year,
- (d) Any information required to be reported under Section 8322 of the Corporation Code. If the gross income for any year exceeds Seventy-Five Thousand Dollars (\$75,000.00), the annual report shall be prepared by an independent accountant. If the report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the regular assessments, the Association 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 replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of the voting power of the Association residing in members other than subdivider if it exceeds five percent (5%) of the budgeted gross expense of the Association for that fiscal year.

Section 5. Uniform Rate of Assessment. Both regular and special assessments shall be fixed at a uniform rate for all lots any may be collected on a monthly basis.

Section 6. Date of Commencement of Regular Assessments and Fixing Thereof. The regular assessments provided for herein shall commence as to all lots in each tract on the first day of the month following conveyance of the first lot by Declarant to an individual owner.

Section 7. 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, setting forth whether the regular and special assessments on a specified lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All properties dedicated to and accepted by a local public authority; and
- (b) The common area.

However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 9. Cable Television Service Assessment. In the event the Board elects to contract for cable television service, cable television service assessments shall be levied by the Board against the owners who have subscribed with the Association for such service. In such circumstances, the cable television service assessment shall commence as to such owner on the first day of the month following the month in which he so subscribes and shall continue against such owner and any subsequent transferee of his residence until the first day of the month following the month in which any such owner or transferee notifies the Board in writing that he no longer wishes to subscribe to such service, or the month in which the Board elects to cancel the Association's contract for cable television service.

Section 10. Condemnation and Damage or Destruction. In the event of condemnation, destruction, or extensive damage to any of the common areas or other interest of the Association, the award or insurance proceeds, if any, shall be used to restore, repair or reconstruct the areas or interest remaining after any taking by eminent domain or after the damage or destruction. Any excess proceeds after restoration, repair or reconstruction shall be the sole and separate property of the Association and shall be used to offset future assessments.

## ARTICLE V

### NON-PAYMENT OF ASSESSMENTS

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 the sum to be determined by the Association, but not to exceed \$10.00 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 rate of ten percent (10%) per annum, 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 thereof, to foreclose the lien (provided for in Section 1 of Article IV hereof) against the lot, 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 attorney's 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 lot, and a copy thereof is recorded by the Association in the office of the County Recorder in which the properties are located; said notice of claim must recite a good and sufficient legal description of any such lot, the record owner or reputed owner thereof, the amount claimed (which shall include interest on the unpaid assessment at the rate of ten percent (10%) per annum, plus reasonable attorney's 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. Said assessment lien may be enforced by sale by the Association, its attorney or any other person authorized by the Board to make the sale after failure of the owner to make the payments specified in the notice of sale provided for above is to be conducted in accordance with the provisions of Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h, of the Civil Code of the State of California as said statutes may from time to time be amended, 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, through its duly authorized agents, shall have the power to bid on the residence, using Association funds, or funds borrowed for such purpose, at the 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, but not to exceed \$24.00, 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-hereunder 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 lot subject to a monetary lien created by the provision hereof shall be subject to the lien of a first deed of trust; (1) the foreclosure of any lien created by or impair the lien of such deed of trust and (2) the foreclosure of the lien of the first deed of trust 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 shall be subordinate to the lien of the deed of trust, with the foreclosure-purchaser taking title free of the lien hereof for all said charges that have accrued up to the time of the foreclosure but, subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure.

## ARTICLE VI

### ARCHITECTURAL CONTROL

Section 1. Architectural Approval. No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein, including patio covers and antennas, 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 3 hereof. Furthermore, the harmony of all exterior colors is vital to the overall appearance of the tract and, therefore, no change in the exterior color of any residence may be made without the consent of the Architectural Committee. In the event said Committee, or its designated representatives, fails to approve or disapprove such design and location or color within thirty (30) days after said plans and specifications have

been submitted to it (or sample of the new color), approval will not be required, and this Article will be deemed to have been fully complied with.

Section 2. Landscaping Approval. No trees, bushes, shrubs or plants which at maturity and without clipping or pruning thereof would exceed the height of the dwelling house on any lot shall be planted or emplaced until the plans and specifications for the placement of any such trees, bushes, shrubs or plants have been submitted to and approved in writing by the Architectural Committee provided for in Section 3 hereof as to the preservation of the natural view and esthetic beauty which each lot is intended to enjoy. Said plans, as submitted, shall show in detail the proposed elevations and locations of said trees, bushes, shrubs or plants, including the location and elevation of same in relation to all other lots subject to these restrictions. Approval of said plans by the Architectural Committee may be withheld if in the reasonable opinion of the Committee, the view of any lot would be impeded by the location of such tree, bush, shrub or plant, or in any other manner. In any event, the Architectural Committee shall have the right to require any member to remove, trim, top or prune any tree or shrub which, in the reasonable belief of the Architectural Committee, impedes or detracts from the view of any lot.

Section 3. 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) Five (5) years from the date of recording of this Declaration; or (b) ninety percent (90%) of the lots in Tract No. 32868 have been conveyed, whichever shall first occur. From and after such time or event, as the case may be, the Architectural committee shall be appointed by the Board of Directors of the Association and shall be composed of three (3) but not more than five (5) representatives who must be members of the Association. In the event of the death or resignation of any member 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. Notwithstanding the foregoing, commencing one (1) year following the first conveyance by Declarant, the Board shall have the right but not the obligation to appoint one (1) person to the Architectural Committee.

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 lots 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. Nonliability for Approval of Plans. Plans and specifications are not approved for engineering design and, by approving such plans and specifications, neither the Architectural Committee, the members thereof, the Association, the members, the Board nor Declarant assume liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications.

## ARTICLE VII

### 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) Own, maintain and otherwise manage all of the Common Areas and facilities, improvements and landscaping thereon, and all other property acquired by the Association. The foregoing includes, but is not limited to, ownership operation and maintenance of access streets, sanitary sewer system, storm drain system, gas and water system and street lighting system.
- (b) Pay any real and personal property taxes and other charges assessed against the Common Area.
- (c) Have the authority to obtain, for the benefit of all of the Common Areas, all water, gas and electric services and refuse collection.
- (d) Grant easements where necessary for utilities and sewer facilities over the Common Areas to serve the Common Areas and the lots.
- (e) Maintain and keep in force public liability insurance protecting the Association and its members and guests against liability for bodily injury and property damage regarding all Common Areas (including the obtaining of workmen's compensation where applicable) during and after construction.

(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 party 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 an amount to be determined by the Board of Directors of the Association.

(h) Have a duty to landscape and maintain the landscaping upon the slopes, and the lot perimeter walls in Article XI areas.

(i) Have a duty to maintain all drainage facilities and easements owned by the Association.

(j) Contract for cable television service 'for the benefit of the owners who have subscribed for such service.

(k) Conduct elections for Officers of the Board and filling of vacancies except for a vacancy created by the removal of a board member.

Section 2. General Limitations and Restrictions on the Powers of the Board. In addition to the limitations and restrictions enumerated in the Articles and By-Laws or elsewhere provided for herein, and without limiting the generality thereof, the Board shall be prohibited from taking any of the following action without the approval of a majority of the voting power of the Association residing in members other than Declarant:

(a) Enter contracts for materials or services which have a term in excess of one (1) year, with the following exceptions:

(i) A management contract, the terms of which have been approved by the FRA or VA;

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and

(iii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the applicable policy permits short rate cancellation by the insured.

(b) Incur aggregate expenditures for capital improvements to the common areas in any fiscal year in excess of five percent (5%) of the estimated common expenses for the fiscal year as set forth in the Sections entitled "Regular Assessments" and "Special Assessments for Capital Improvements" of the Article hereof entitled "Covenant for Maintenance Assessments".

(c) Sell any real or personal property of t Association with an aggregate fair market value in excess of five percent (5%) of said estimated common expenses during any fiscal year.

(d) Pay compensation to directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

## ARTICLE VIII

### EASEMENTS

Section 1. The rights and duties of the owners of lots within the properties with respect to sanitary sewer and water, electricity, gas and telephone and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone and cable television lines or drainage facilities are installed within the pro parties, which connections, lines or facilities, or any portion thereof, lie in or upon lots owned by the Association or others than the owner of a lot served by said connections, the owners of any lot served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the lots within the properties in or upon which said connections, lines or facilities, 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 or cable television lines or drainage facilities are installed within the properties, which connections serve more than one lot, the owner of each lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his lot.

Section 2. Easements over the lots and common areas for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities are hereby reserved by Declarant, together with the right to grant and transfer the same.

Section 3. In this Tract No. 32868, certain exterior walls of residences or garages will be or may be built right on the property line (i.e., zero set-back). There is hereby reserved over each lot adjoining the lot upon which such exterior wall has been built ("servient tenement") and hereby granted for the benefit of and appurtenant to the lot upon which such exterior wall has been built ("dominant tenement") an easement for the following purposes subject to the following provisions:

(a) The dominant tenement shall have the right, at all reasonable times and upon adequate reasonable notice, to enter upon the servient tenement in order to perform necessary repairs and exterior painting relating to the exterior wall on the dominant tenement

(b) On those lots in Tract 32868 wherein exterior walls or residences or garages are built right on the property line, the dominant tenement may encroach upon the air space of the servient tenement for roof overhangs not to exceed six inches (6") and for additional water gutter overhangs not to exceed an additional four inches (4")

(c) The dominant tenement may not make any changes, additions or alterations to the exterior walls facing the servient tenement, nor may the dominant tenement hang upon such walls any exterior decor items or repaint such exterior walls in colors different from the original color without the written consent of the servient tenement.

(d) The servient tenement shall not attach any object to any exterior wall belonging to the dominant tenement or materially disturb the grades adjacent to each wall.

(e) The dominant tenement, as a condition to the exercise of its rights of access provided for herein, shall indemnify and hold harmless the servient tenement from damage to shrubs, plants, flowers, trees, lawns, sprinklers, hose bibs, lawn furniture and other landscaping directly resulting from the exercise of such right.

Section 4. There is hereby reserved over all lots in the Tract the right to emplace on, under or across said property transmission lines and other facilities for a community antenna television system or similar cable system and the right to enter upon the property to service, maintain, repair, reconstruct and replace said lines or facilities; provided, however, that the exercise of such rights does not unreasonably interfere with the owner's reasonable use and enjoyment of said lot.

## ARTICLE IX

### USE RESTRICTIONS

Section 1. All lots in the Tract shall be known and described as residential lots and shall be used for no purpose other than residential purposes, save and except the lots owned by the Community Association, i.e., the community area lots on which there will be placed landscaping, streets and recreational facilities. No buildings shall be erected, altered, placed or permitted to remain on any such residential lot other than a building used as a single family dwelling.

Section 2. No part of the properties 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 nonresidential purposes, except Declarant, its successors or assigns, may use the properties for a model home site and display and sales office during the construction and sales period.

Section 3 No sign or billboard of any kind shall be displayed to the public view on any portion of the properties or any lot, except one sign for each building site, 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 property during the construction and sales period.

Section 4. No noxious or offensive trade or activity shall be carried on upon any lot or any part of the properties, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners of his respective dwelling unit, or which shall in any way increase the rate of insurance.

Section 5. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out-building shall be used on any lot at any time as a residence, either temporarily or permanently. No trailer, camper, boat or similar equipment shall be permitted to remain upon any property within the properties, unless placed or maintained within an enclosed garage or carport. No open carport shall be used for the storage of any item, object or vehicle other than an automobile.

Section 6. No animals, livestock or poultry of any kind, shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept on the lots, 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 on the properties which result in an annoyance or are obnoxious to residents in the vicinity.

Section 7. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon the surface of any lot or within five hundred (500) feet below the surface of the properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 8. All rubbish, trash and garbage shall be regularly removed from the properties, and shall not be allowed to accumulate thereon. All clothes lines, refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any lot, unless obscured from view of adjoining lots and streets, by a fence or appropriate screen.

Section 9. No dwelling shall be erected on any lot in the Tract wherein the square footage of the ground floor exceeds sixty percent (60%) of the total square footage of the entire lot. However, the overhang of any building may be an additional ten percent (10%) of the total square footage of the lot so that a building with overhang shall not exceed seventy percent (70%) of the total square footage of the lot.

Section 10. No fence, wall or hedge exceeding six (6) feet in height shall be erected or permitted on any boundary line adjacent to any green belt area.

Section 11. No building shall be erected on any lot which exceeds thirty-five (35) feet in height.

Section 12 No television, radio, or other electric antenna or device of any type shall be erected, constructed, placed or permitted to remain on any of the lots or houses or buildings constructed on the lots in said Tract unless and until the same shall have been approved in writing by the Architectural Committee and the Board of Directors of the Association.

Section 13. The repainting or coloring of any and all solid walls of buildings located within five (5) feet of any adjacent lots within said tract shall be subject to the approval in writing of the Architectural Committee and the Board of Directors of the Association and no such coloring or repainting shall be performed without said prior written approval.

Section 14. All open lattice work and trellises situated on any of the buildings located within said Tract are hereby declared to be an architectural feature and shall not be covered, removed or enclosed at any time without the prior written approval of the Architectural Committee.

Section 15. All solid walls of buildings located within five (5) feet of the property line shall not have their integrity changed or broken at any time but shall be maintained in their original state.

Section 16. All fences and walls constructed on any lot other than on the perimeter of a lot shall be composed of the same materials of which fences on the perimeter shall be composed, as set forth hereinbefore.

Section 17. All drainage of water from any lot and the improvements thereon shall drain or flow as set forth below:

(a) Any such water may drain or flow into adjacent streets and shall not be allowed to drain or flow upon adjoining lots unless an easement for such purpose is granted.

(b) All slopes or terraces on any lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner or the successor in interest of an owner, shall have the right to enforce by proceedings 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, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessments liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any owner to enforce any covenant, condition 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, conditions 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 in this Declaration shall run with and bind the lots and shall inure to the benefit of and be enforceable by the Association or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time 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 lots, has been recorded, 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 residential community or tract and for the maintenance of common recreational facilities and 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 the affirmative assent or vote of not less than seventy-five percent (75%) of the owners and a majority of the votes of the voting members other than Declarant and, further, this amendment provision shall not be amended to allow amendments by the assent or vote of less than seventy-five percent (75%) of the owners; provided, however, that Article V,

Section 6 and Article X, Section 6 shall not be amended without the consent of the lien holder under any first deed of trust. Any modification or amendments to the Declaration of Covenants, Conditions and Restrictions which would affect the procedure for the maintenance of any improvements to common areas shall also be approved by the Planning Director and County Council, and such approval shall be recorded prior to the effective date of modification or amendment. Any amendment or modification must be properly recorded.

Section 6. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale, or otherwise.

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 materially violated in whole or in part, is hereby declared to be and constitute 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 the Architectural Committee, the Association, or any other land owner in the tracts. Such remedy shall be deemed cumulative and not exclusive.

Section 9. Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment reasonable attorneys' fees and costs of such suit.

Section 10. Election and Removal of Directors. The owners shall vote for the election or removal of the Board of Directors of the Association. Each owner entitled to vote in any election for a Director may cumulate his votes and give one candidate a number of votes equal to the number of Directors to be elected, or distribute his votes on the same principle among as many candidates as he sees fit. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be deemed elected. All voting at elections shall be by secret written ballot.

The entire Board of Directors of the Association or any individual Director may be removed by a vote of the owners holding a majority of the outstanding memberships entitled to vote at an election of Directors. However, unless the Board is removed, an individual Director shall not be removed unless the affirmative votes for his removal exceed or at least equal to the minimum number of votes required to elect a Director under cumulative voting procedures. If any Director is removed in the manner authorized above, a new Director may only be elected by a vote of the membership as stated above.

Section 11. Marsh and Wildlife Habitat. Except as to express references contained herein, the provisions of this document shall not apply to Lot 126 of Tract No. 32868, nor shall the owner or any successor owner of said Lot be bound by the provisions hereof.

Section 12. Enforcement of Bonded Obligations. When common area improvements which are included in the subdivision offering have not been completed prior to the issuance of the public report and the subdivision owners' association (hereafter Association) is obligee under a bond or other arrangement (hereafter Bond) to secure performance of the commitment of the subdivider to complete the improvements, the covenants, conditions and restrictions for the subdivision shall include at least the following substantive and procedural provisions relative to the initiation of action to enforce the obligations of the subdivider and the surety under the Bond:

(1) The governing body of the Association shall be directed to consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any common area improvement, the governing body shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

(2) A special meeting of the members for the purpose of voting to override a decision by the governing body not to initiate action to enforce the obligations under the Bond or on the failure of the governing body to consider and vote on the question. The meeting shall be required to be held not less than 15 days nor more than 30 days after receipt by the governing body of a petition for such a meeting signed by members representing a prescribed

percentage of not less than 5% nor more than 10% of the total voting power of the Association.

(3) A vote by members of the Association other than the subdivider at the special meeting called for the purpose set forth in (2) above.

(4) A vote of the majority of the voting power of the Association residing in members other than the subdivider to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the governing body shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

## ARTICLE XI

### WALLED COMMUNITY

Section 1. Definition. Tract No. 32868 or a portion thereof will be a walled community. Walled community is hereby defined to mean that all or a portion of the homes located thereon will be completely surrounded by a perimeter wall which will be homogenous as to composition and appearance (except for certain variations in the height). These walls, where originally installed, must remain in place, unmodified and unaltered, throughout the duration of the term of this Declaration. The owner of each Lot is responsible for maintaining the perimeter wall surrounding said Lot and, in the event a perimeter wall bisects two Lots, then the cost of maintaining and repairing same shall be borne equally by both owners unless the damage or destruction is caused by the negligence of the owner of one of the Lots, in which case said owner shall be responsible for the repairing of same.

Section 2. Perimeter Walls not on Boundary Line of Lot. The perimeter walls of various Lots in the Tract encroach into the common area. Notwithstanding anything contained in this Declaration to the contrary, said encroachment is hereby authorized and any portion of the common area which lies inside of said perimeter wall shall be available for the exclusive use of the owner of each of said Lots. Regarding certain other Lots in the Tract, the perimeter walls of said Lots are set back so that same are not on the boundary line of the Lot. In such cases, the common areas appear to encroach upon said Lot. In such event, the Homeowners Association shall maintain those portions of said Lots lying exterior of the perimeter walls and the cost of same shall be deemed a proper expense for the regular assessments or charges noted in Article IV hereof. Said areas shall likewise be deemed quasi common areas available for

the non-exclusive use of all Lot owners upon the same terms and conditions as contained herein for the common areas. Notwithstanding anything contained to the contrary in Article VII hereof, it shall be the duty of the Association to maintain and otherwise manage all of the areas lying outside of the perimeter walls, whether or not same are common areas deeded to the Association or are quasi common areas as defined herein.

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

PACIFIC MARINE INVESTMENT CORPORATION

by: John D. Bates, President

by: Ralph Horowitz, Secretary

March 26, 1980

Witness: Harold J. Brown, Notary Public California