

ARTICLE 2 DEFINITIONS

Section 2.01. **Application of Definitions.** Unless the context otherwise requires, the following terms used in this Declaration shall have the meanings set forth in this Article, to be equally applicable to both the singular and plural forms of such terms. Any term or phrase not defined in this Article, but shown in quotes within parentheses in another provision of this Declaration, shall have the meaning set forth in such provision. The capitalization of the first letter of any term, other than proper names, used in this Declaration, indicates that such term is defined in this Declaration.

Section 2.02. **Assessment; Remedial Assessment.** "Assessment" means either: (i) a Remedial Assessment, as authorized in Section 5.03; or (ii) a monetary penalty, as authorized by Section 5.02, and the late charges and interest and costs related to such assessments authorized by Sections 5.02 and 5.03.

Section 2.03. **Builder.** "Builder" means, for the purposes of this Declaration, an Owner who has acquired any of the following: (i) five (5) or more Residential Lots, held at the same time; (ii) a Residential Lot or Lots designated for a Project, but in the case of this Subsection (ii), the Owner is a Builder only as to such Lot or Lots; (iii) a person or entity who is required to obtain a Public Report to sell Lots owned by it in the Community to the public; or (iv) an Owner building or preparing to build commercial or industrial Improvements, including apartments. An Owner, for the purposes of this definition, includes any persons or entities affiliated with Owner, owned in common with Owner, or acting in a common purpose with Owner. Declarant is not a Builder. The term "Builder" also includes any person or entity which builds or constructs an Improvement to be dedicated to the MHCS D. The term "Lot," for the purposes of Subsections (i) through (iii) of this Section, includes only Residential Area Lots.

Section 2.04. **Commercial and Industrial Area.** "Commercial and Industrial Area" means an area designated on a general, master or specific plan adopted by the County as community general commercial, general commercial, office, limited industrial, general industrial, or actually improved with commercial or industrial Improvements, including areas designated as Office Area, Town Center Area, Community Commercial Area, Village Commercial Area, and areas zoned P-F.

Section 2.05. **Community.** The term "Community" means the real property subject to this Declaration including, after annexation, any real property annexed in any Declaration of Annexation, together with all Improvements on or to such real property.

Section 2.06. **County.** "County" means the County of San Joaquin, a political subdivision of the State of California.

Section 2.07. **Declarant.** "Declarant" means Trimark Communities, a California limited liability company, and any successors or assigns who are assigned in writing all or part of Declarant's powers and responsibilities for all or part of the Community, and who accept such powers and responsibilities in writing, in accordance with Section 9.12. Declarant also

means a Mortgagee who succeeds to all or substantially all of a Declarant's then interest in the Community through foreclosure of its security interest or by a deed in lieu of foreclosure.

Section 2.08. **Declaration.** "Declaration" means this document, including the limitations, restrictions, covenants, and conditions set forth in this Declaration and in any amendments to this document, and in any Declaration of Annexation.

Section 2.09. **Declaration of Annexation.** "Declaration of Annexation" means a declaration annexing property to this Community pursuant to the Section entitled "Annexation."

Section 2.10. **Design Review Committee.** "Design Review Committee," or "DRC," means the Design Review Committee established pursuant to Article 6.

Section 2.11. **Design Guidelines.** "Design Guidelines" means the rules adopted by the Design Review Committee as such Guidelines may be amended or repealed by the Design Review Committee from time to time. Design Guidelines includes the manuals adopted as part of the Design Guidelines which provide detailed architectural and design requirements for each area of the Community as such manuals may be amended from time to time.

Section 2.12. **Development Declaration.** "Development Declaration" means one or more Subordinate Restrictions that may be Recorded against all or parts of the Community for the purpose of controlling the Improvements and work to be performed by Builders.

Section 2.13. **Governing Documents.** "Governing Documents" means this Declaration, any Declaration of Annexation and Supplemental Declaration and the Design Guidelines.

Section 2.14. **Guarantor.** "Guarantor" means a government agency, a government chartered corporation, or an insurance company that has insured or guaranteed a First Mortgage.

Section 2.15. **Improvements.** "Improvements" means all physical improvements to real property and includes, without limitation: (i) buildings, out-buildings, sheds and storage buildings; (ii) roads, driveways, walkways, and parking areas; (iii) fences, gates, walls, sound walls, and retaining walls; (iv) stairs, decks, hedges, windbreaks; (v) poles, antennae and signs; (vi) man-made lakes, watercourses and canals, pumps, fountains, aerators, bridges, dams, swimming pools and spas, tennis courts, sports equipment, including basketball standards, and recreational structures; (vii) solar energy installations, lighting and lighting fixtures, trash enclosures and mail and newspaper boxes and slots; (viii) mechanical, utility and communication installations, whether above or underground; (ix) landscaping, private parks and play areas, entry and other monuments and signs; and (x) any work, structure and excavation of any kind, whether temporary or permanent, and anything that is deemed to be a "work of improvement" as defined in California Civil Code Section 3106. The term "Improvements" does not include improvements constructed by or for a governmental entity or dedicated for public purposes.

Section 2.16. **Lot.** "Lot" means (i) any lot or parcel within the Community; and (ii) any Project Unit not otherwise a Lot as defined in (i) located within the Community. "Lot," when used with a number or letter or other specific limitation, refers to the specific Lot so designated on the subdivision or parcel map specifically referenced. Upon the splitting of a Lot or the consolidation of Lots or the adjustment of any Lot's boundaries, "Lot" shall refer to the resulting Lots or parcels. A Lot shall be deemed to include any immediately adjacent area over which the Owner of the Lot has an appurtenant easement that allows such Owner's exclusive use or such Owner's exclusive use subject only to a use for utilities, drainage, roof overhangs or for the maintenance of adjoining Improvements, or any of these uses. Any Lot subject to such an exclusive easement shall be deemed to exclude the easement area. A Lot shall be deemed to include the rights to use any alley which is appurtenant to such Lot. "Lot," when not used with a specific number or letter of other specification limitation, means any of the Lots within the Community. "Lot" includes all Improvements on or to such Lots or parcels.

Section 2.17. **Map.** "Map" means that certain Subdivision Map entitled "Tract 2924 Mountain House Neighborhood 'F' Large Lot" and filed for Record on October 31, 2001, in Book 36 of Maps and Plats, at Page 54, Records of San Joaquin County. The term "Map" shall also refer to any subdivision map or parcel map subdividing property annexed to the Community unless the reference specifically excludes such annexed property.

Section 2.18. **Mortgage; Mortgagee; Institutional Lender.** "Mortgage" means a Security Device which constitutes a lien of first priority against any Lot and also means a Security Device securing a loan made in whole or in part for the original development or construction of the Community if secured in whole or in part by any portion of the Community.

For purposes of this Section, the fact that a lien of a Security Device is inferior to mechanics' liens or to tax liens, easements, declaration of covenants, conditions and restrictions, and similar limited interests does not deprive such lien of "first priority" within the meaning of this Section. "Mortgagee" means any Institutional Lender which is a Secured Party which holds a Mortgage as defined in this Section, and includes any assignee, in whole or in part, of such a First Mortgage and any Guarantor. "**Institutional Lender**" means any company or entity that is in the business of making real property loans or that is regulated by or chartered for that purpose under federal or state laws. "Institutional Lender" includes, without limitation, any bank, savings and loan association, savings bank, insurance company, mortgage broker, credit union, pension or profit sharing trust fund, or a federally chartered corporation or a government agency that is either a lender or that purchases or insures mortgages.

Section 2.19. **Mountain House Community Services District.** "Mountain House Community Services District" or "MHCS D" means the Mountain House Community Services District, a political subdivision of the State of California, or any governmental entity, including a municipality, which succeeds to its powers and duties.

Section 2.20. **Multifamily Residential Area.** "Multifamily Residential Area" means

an area within the Residential Area designated for or improved with one or more residential multi-unit buildings, and any accessory Improvements, whether or not the buildings are part of a Project.

Section 2.21. **Notice.** "Notice means a notice delivered in accordance with Section 9.03, entitled "Notices".

Section 2.22. **Occupant.** "Occupant" means any natural person properly and permanently residing in a residential Unit pursuant to the Governing Documents, whether as an Owner, tenant, or as a member of an Owner's or tenant's family.

Section 2.23. **Office Area.** "Office Area" are areas designated for office buildings in a master or specific plan adopted by the County by a Declaration of Annexation or Supplemental Declaration, or actually improved with office buildings.

Section 2.24. **Owner.** "Owner" means any person or entity, including Declarant holding all or any undivided part of the fee title to a Lot, except as otherwise provided in this Section. The MHCS D and other governmental entities shall not be considered an owner as to any property owned and used for governmental purposes. Such fee interest must be an interest that would be disclosed by a search of title in the office of the recorder of the County, except that a purchaser under an executory installment land sales contract is an Owner whether or not such interest is shown of Record. A Secured Party is not an Owner. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. A person or entity is not an Owner due to: (i) community property or other marital rights where the person asserting such rights is not shown of Record as an Owner; (ii) rights of adverse possession not adjudicated and shown of Record by a judgment or court order; or (iii) other equitable rights where the person asserting such rights is not shown of Record as an Owner.

Section 2.25. **Phase.** "Phase" means the real property described in Exhibit "A." "Phase" also means property annexed to the Community by any Declaration of Annexation ("Subsequent Phases"). If a Declaration of Annexation designates property as being a Phase that would not otherwise be a Phase by this definition, the property so designated shall be a Phase. The use of the term "Phase" is primarily for convenience of reference and does not necessarily mean Subsequent Phases will be added to the Community. The term "Phase," as defined in this Section, is not necessarily a phase for Public Report or for subdivision map or parcel map purposes.

Section 2.26. **Primary Unit.** "Primary Unit" means the larger residential Unit located on a Single Family Residential Lot, with a Second Unit on the same Lot.

Section 2.27. **Project.** "Project" means any condominium project, planned development, or any other common interest development as defined in Civil Code Section 1351(c) located within the Community which comprises two (2) or more separate interests ("Project Units") and

a common area ("Project Common Area") jointly owned or controlled by the owners of such Project Units or by a Project Association.

Section 2.28. **Project Association.** "Project Association" means a Project's "association" as "association" is defined in Section 1351(a) of the California Civil Code.

Section 2.29. **Project Board.** "Project Board" means the board of directors or other governing body of a Project Association.

Section 2.30. **Project Common Area.** "Project Common Area" means the real property within a Project which is Common Area as "common area" is defined by Section 1351(b) of the California Civil Code either jointly owned or controlled by Owners of Project Units within such Project or by the Project Association.

Section 2.31. **Project Unit.** "Project Unit" means the improved separate interests within a Project, as defined in Section 1351(e) of the California Civil Code including, without limitation: (i) units of a condominium project; and (ii) the individual lots within a planned development that are not Project Common Area.

Section 2.32. **Public Report.** "Public Report" means each final subdivision public report issued by the California Real Estate Commissioner, pursuant to Section 11018 of the California Business and Professions Code, authorizing the sale of Lots within the Community.

Section 2.33. **Residential Area; Residential Lots.** "Residential Area" means the Single Family Residential Area and the Multifamily Residential Area. "Residential Lots" means Lots designed and sized for single family houses, duplexes and triplexes, or residential condominiums located in the Residential Area.

Section 2.34. **Record; Recorded; Recordation.** "Record," "Recorded," or "Recordation" mean, with respect to any document, the recording of the document in the Office of the Recorder of the County.

Section 2.35. **Review Entity.** "Review Entity" means the person or entity which has the power to grant approval to an Owner to construct, reconstruct or alter an Improvement as provided in Section 6.01B.

Section 2.36. **Rules.** "Rules" mean the rules adopted by the MHCS D, pursuant to Section 5.07, from time-to-time in effect.

Section 2.37. **Second Unit.** "Second Unit" means a residential Unit located on the same Lot as a Primary Unit and either attached or detached from the primary Unit and which is clearly subordinate in size to the Primary Unit. Second Units do not include mobile homes. Second Units may not be subdivided from the Primary Unit.

Section 2.38. **Security Device; Secured Party.** "Security Device" means a mortgage,

deed of trust, or executory installment land sale contract, given for value, which constitutes a lien against any Lot. "Secured Party" means any mortgagee, beneficiary under a deed of trust, or seller under an executory installment land sales contract who holds a "Security Device" as defined in this Section.

Section 2.39. **Setback.** "Setback" means the distance between a house or other Improvement on a Lot and the closest point on the boundary of such Lot. Any Setback requirement established in any subdivision map or deed executed by Declarant, or by any project map or plan approved by the government agency having jurisdiction, or by this Declaration, for any dwelling house or other Improvement, shall be the minimum Setback for such house or other Improvement.

Section 2.40. **Single Family Residential Area.** "Single Family Residential Area" means an area within the Residential Area that is not part of the Multifamily Residential Area and which is designated for or actually used for Single Family detached Units. Lots with Second Units are part of the Single Family Residential Area.

Section 2.41. **Soundwall.** "Soundwall" means a masonry wall or a fence designed to control traffic noise located between a Lot and an adjacent street.

Section 2.42. **Subordinate Restrictions.** "Subordinate Restrictions" means a declaration of Covenants, Conditions and Restrictions recorded following this Declaration or otherwise subordinate to this Declaration and covering in whole or in part the Community, including declarations as defined by Section 1351(h) of the California Civil Code for Projects within the Community. Subordinate Restrictions are governed by the provisions of Section 9.02.

Section 2.43. **Supplemental Declaration.** "Supplemental Declaration" means a declaration executed by Declarant and Recorded following this Declaration which may cover all or any part of the Community. A Supplemental Declaration may be used to designate Neighborhoods, Community Use Areas or to perform any act the Declarant is authorized to perform by this Declaration.

Section 2.44. **Unit; House.** "Unit" means the improvements located on each residential Lot comprising a single-family residential dwelling and appurtenances whether the dwelling is detached or part of a multi-unit building. The term "Unit" also includes Project Units unless the context excludes that interpretation. A Unit contains living facilities, including provision for sleeping, eating, cooking, and sanitation for one (1) family or living group. A "**House**" is a detached Unit which may be a Primary Unit.

Section 2.45. **Use Area** "Use Area" means the use areas defined in Section 4.03.

Section 2.46. **Village.** "Village" means a separate Residential Area within the Community designated as such on a master or specific plan adopted by the County or any governmental entity, including a municipality, which succeeds to its power and duties or

designated by one or more Declarations of Annexation or Supplemental Declarations. In some plans and subdivision maps, including the Map, adopted prior to the date of this Declaration the term “Neighborhood” may be used to designate a Village.