

**ARTICLE**  
**9**  
**MISCELLANEOUS**  
**PROVISIONS**

Section 9.01. **Enforcement.**

A. **Against Owners.** Except to the extent otherwise expressly provided by this Section and Section 5.01A, any Owner or Owners, the Declarant, the Design Review Committee, or the MHCS D shall have the power independently to enforce any and all of the provisions now or hereafter imposed by this Declaration upon other Owners, or upon any Lot within the Community. Except to the extent otherwise expressly provided by this Section each Project Association shall also have the power to enforce any and all of the provisions of this Declaration against the Owners, Occupants, and Property that are also Owners, Occupants, and Property under the governing documents of the Project. Only the MHCS D, the Declarant, and the Design Review Committee may enforce the provisions of this Declaration against Commercial and Industrial property and the Owner or Owners of property within the Commercial and Industrial Area and only the Declarant or the MHCS D may enforce the provisions of this Declaration related to the Design Review Committee or the Design Guidelines.

B. **Nuisances.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by an Owner or Owners, as provided for in this Section.

C. **Cumulative Remedies.** Each remedy provided for in this Declaration is cumulative and not exclusive.

Section 9.02. **Subordinate Restrictions.** Subordinate Restrictions are expressly allowed by this Declaration for any purpose, including the formation of common interest developments within the Community as defined by California Civil Code Section 1351(c). Any Subordinate Restrictions shall be subject to this Declaration, which shall control in the case of any conflict. A Subordinate Restrictions may contain provisions more stringent than, or in addition to, the provisions of this Declaration. Builder Restrictions are Subordinate Restrictions.

Section 9.03. **Notices.** Any notice or other document permitted or required by this Declaration to be delivered, may be delivered either personally, by mail, or by a recognized national courier service or by facsimile or electronic mail (provided the recipient has agreed in writing to receive Notice by such methods and the delivery method provides for a confirmation of delivery). If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, first-class postage prepaid. If delivery is by courier, it shall be deemed delivered twenty-four (24) hours after a copy of same has been delivered to the courier service, prepaid for overnight delivery. If delivery is by facsimile or electric mail it shall be deemed delivered

when sent. Notice given by mail or by courier shall be addressed as follows: If to an Owner other than Declarant, then to any Lot within the Community owned by the Owner or at such other address given by the Owner to the MHCS D in writing; if to the Declarant or the Design Review Committee, to the address given by Declarant or the Design Review Committee in writing. Any person's or entity's address may be changed from time to time by such person or entity by Notice in writing, delivered to the MHCS D.

Section 9.04. **Nonwaiver.** The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien, or charge of this Declaration shall not constitute a waiver of any right to enforce any such provision or any other provision of this Declaration.

Section 9.05. **No Forfeiture.** No breach of any of the provisions of this Declaration shall cause any forfeiture of title or reversion or bestow any rights of re-entry whatsoever.

Section 9.06. **Attorneys' Fees.** Reasonable attorney's fees and costs may be awarded to the prevailing party in any action brought to enforce the provisions of this Declaration.

Section 9.07. **Construction.** All of the limitations, restrictions, covenants, and conditions of this Declaration shall be liberally construed, together, to promote and effectuate the beneficial operation of the Community.

Section 9.08. **Compliance with Law.** No provision of this Declaration shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or the Community.

Section 9.09. **Severability.** Notwithstanding other provisions in this Section, the limitations, restrictions, covenants, and conditions of this Declaration, shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, of any such limitations, restrictions, covenants, or conditions shall not affect the validity or enforceability of any other provision.

Section 9.10. **Number and Gender.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter, as the context requires.

Section 9.11. **Titles.** The table of contents and all titles used in this Declaration, including those of Articles and Sections, are intended solely for convenience of reference and the same shall not, nor shall any of them affect that which is set forth in such articles, sections, nor any of the terms or provisions of this Declaration. Any numbered or lettered subdivision of a Section is referred to as a "Section \_\_\_\_" and any indented portion of this Declaration which is unnumbered and unlettered shall be referred to as "Paragraph."

Section 9.12. **Assignment by Declarant.** Declarant may assign its powers and

responsibilities in whole or in part in connection with its sale or transfer of all or part of the Community and may make a collateral assignment of its powers and responsibilities to an Institutional Lender in connection with any loan or loans made to such a lender and secured by all or any part of the property within the Community . Any assignment and any acceptance of part or all of Declarant's powers and responsibilities for all or a portion of the Community shall be Recorded. Each assignee under any such assignment, except under a collateral assignment, shall agree to accept the duties and obligations of Declarant under this Declaration, and may exercise the rights of Declarant provided by this Declaration for the area assigned, but no general power, such as the power to annex property to the Community or to appoint members of the Design Review Committee, shall be assigned other than as part of a transfer of the majority of the remaining portion of the Community owned by the Declarant. No such assignee including a collateral assignee shall be liable for any act or omission of a prior Declarant unless those liabilities are assumed by such assignee in writing.

**Section 9.13. Riparian and Other Water Rights.** All rights to use water from Old River or other natural sources of water, including all riparian rights appurtenant to the Community shall remain appurtenant to each parcel of land with the Community even though severed from the source of the water, to the same extent as though the ownership of the land had at all time continued in Declarant. Such rights to use water are reserved by Declarant and may be used by Declarant or by the MHCS D with the written consent of Declarant, for the purpose of providing water for all or any portion of the Community.

**Section 9.14. Notice of Agricultural Activities.** EACH OWNER AND OCCUPANT OF THE COMMUNITY IS PUT ON NOTICE THAT THERE ARE AGRICULTURAL OPERATIONS EXISTING IN THE VICINITY OF THE COMMUNITY. THERE MAY BE NOISE, DUST, ODORS, AGRICULTURAL BURNING AND SMOKE, THE SPRAYING OF PESTICIDES AND FERTILIZERS, AND OTHER CONDITIONS CREATED BY AGRICULTURAL OPERATIONS. EACH OWNER AND OCCUPANT IS ALSO PUT ON NOTICE THAT, AS PROVIDED BY CALIFORNIA CIVIL CODE SECTION 3482.5, NORMAL AGRICULTURAL ACTIVITIES ARE NOT CONSIDERED A NUISANCE EXCEPT AS OTHERWISE PROVIDED BY THAT SECTION.

**Section 9.15. Notice of Construction Activities.** EACH OWNER AND OCCUPANT OF THE COMMUNITY IS PUT ON NOTICE THAT THERE WILL BE ONGOING CONSTRUCTION ACTIVITIES IN THE COMMUNITY AND IN THE VICINITY OF THE COMMUNITY. SUCH ACTIVITIES MAY CAUSE NOISE, VIBRATION, DUST AND THE USE OF STREETS FOR CONSTRUCTION EQUIPMENT, TRUCKS AND TRANSPORTATION FOR CONSTRUCTION WORKERS AND SUPPLIES.

**Section 9.16. Notice of Airport and Aircraft Activities.** EACH OWNER AND OCCUPANT OF THE COMMUNITY IS PUT ON NOTICE THAT THERE IS A GENERAL

AVIATION AIRPORT LOCATED IN BYRON, CALIFORNIA, APPROXIMATELY FIVE (5) MILES FROM THE COMMUNITY. AIRCRAFT MAY APPROACH THE AIRPORT FOR LANDINGS AND EXIT THE AIRPORT ON TAKEOFF OVER PORTIONS OF THE COMMUNITY WHICH MAY CREATE AIRCRAFT NOISE AND VIBRATION ON THE GROUND.

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

TRIMARK COMMUNITIES, LLC  
a California limited liability company

By: BHL of California, Inc.,  
A California corporation, its Managing Member

By\_\_\_\_\_

Its\_\_\_\_\_