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DEC 16 1977 AT 8 A.M.

V. DENNIS WARDLE  
CLERK-RECORDER  
SAN BERNARDINO COUNTY, CALIF.

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date hereinafter set forth by MATREYEK HOMES, INC., a California corporation (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property located in the unincorporated area of the County of San Bernardino, State of California, which is more particularly described as follows:

Lots 1 to 20, inclusive, 25 to 46, inclusive, and 121 of Tract No. 9236, in the City of Upland, County of San Bernardino, State of California, as per map filed in Book 133, pages 42 to 47, inclusive, of Maps, in the office of the County Recorder of said County.

NOW, THEREFORE, Declarant hereby declares that all of said real property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property and which shall be binding on all parties having any right, title or interest in said real property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. The "articles" shall mean the articles

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of incorporation of the Association, as said articles may be amended from time to time.

Section 2. The "Association" shall mean UPLAND NORTH HILLS HOMEOWNERS ASSOCIATION, a California nonprofit corporation, its successors and assigns.

Section 3. The "board" shall mean the board of directors of the Association.

Section 4. The "by-laws" shall mean the by-laws of the Association, as such by-laws may be amended from time to time.

Section 5. The "common area" shall mean all real property, including all improvements thereon, owned from time to time by the Association for the common use and enjoyment of the owners. The common area to be owned by the Association prior to the closing of the first lot sale in the first phase of development is described as follows: Lot 121 of Tract No. 9236, in the City of Upland, County of San Bernardino, State of California, as per map filed in Book 133, pages 42 to 47, inclusive, of Maps, in the office of the County Recorder of said County. The common area (other than those portions thereof comprising private streets) shall be available for use only by owners and occupants within the properties and their guests and invitees. Nothing herein or in any other instrument shall be construed as a dedication for public use of all or any portion of the common area.

Section 6. The "Declarant" shall mean MATREYEK HOMES, INC., a California corporation, its successors and assigns, if such successors and assigns should acquire more than one undeveloped lot for the purpose of development.

Section 7. A "lot" shall mean any numbered plot of land shown upon any recorded subdivision map of the properties (defined below) with the exception of the common area.

Section 8. A "member" shall mean every person or entity who holds membership in the Association.

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Section 9. A "mortgage" shall mean a mortgage or deed of trust encumbering a lot or other portion of the properties. A "mortgage" shall also mean an installment sales contract as to a lot or other portion of the properties entered into under and pursuant to Article 3, Chapter 5, Division 4 of the California Military and Veterans Code whereunder The Department of Veterans Affairs of the State of California ("DVA") is Seller (a "Cal-Vet" contract). The term "mortgagee" shall include the beneficiary under a deed of trust and the DVA under a Cal-Vet contract.

Section 10. An "owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to 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. The purchaser of a lot from the DVA under a recorded Cal-Vet contract shall be an owner.

Section 11. The "properties" shall mean and refer to the real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 12. A "phase of development" shall mean all of the real property and improvements thereon made subject hereto by the recordation of a separate and distinct declaration of annexation, excepting that the first phase of development shall mean and refer to all of the real property and improvements thereon made subject hereto by the initial recordation hereof.

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ARTICLE II

ANNEXATION

Section 1. Annexation With Consent of Membership.

Additional residential property and common area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members.

Section 2. Annexation Without Consent Of Membership.

Notwithstanding Section 1, last, additional land within the area described in Exhibit "A" attached hereto and made a part hereof may be annexed by Declarant without the consent of members within four (4) years of the date of this instrument provided that the United States Department of Housing and Urban Development ("FHA") and the California Department of Real Estate determine that the annexation is in accord with the general development plan heretofore approved by them.

Section 3. Declaration Of Annexation. Annexations

shall be accomplished by the recordation of a declaration of annexation in the Official Records of San Bernardino County executed by the record owners of the property to be annexed. If the annexation is made pursuant to Section 1, above, there shall also be attached thereto the written consents of members or a certificate of the Secretary of the Association stating that said consents were duly obtained. A declaration of annexation may contain such complementary additions and modifications to this Declaration as may be necessary to reflect the different character, if any, of the real property being annexed. In no event, however, shall such declaration of annexation revoke, modify or add to the covenants and agreements established by this Declaration with regard to any real property previously subject to this Declaration. Upon recordation of

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a declaration of annexation, the real property described therein shall become subject to the provisions of this Declaration and the jurisdiction of the Association, and assessments shall commence as to the annexed real property as provided in Section 1 of Article V hereof.

Section 4. No Obligation To Annex. Notwithstanding any provisions of this Declaration expressly or impliedly to the contrary, Declarant shall have no obligation whatsoever to annex any real property hereto including, without limitation, the real property described in Exhibit "A."

ARTICLE III

EASEMENTS AND PROPERTY RIGHTS

Section 1. Easements Of Enjoyment Over Common Area; Limitations. Every owner shall have a non-severable right and easement of ingress and egress and of use and enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following:

(a) the right of the Association to charge reasonable admission and other fees for the use of any unassigned storage spaces and parking spaces, if any;

(b) the right of the Association to suspend the voting rights and right to use any recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after reasonable written notice and an opportunity for a hearing before the board;

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(c) 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, provided, however, no such dedication or transfer shall be effective unless an instrument, signed by two-thirds (2/3) of each class of members and all first mortgagees, agreeing to such dedication or transfer has been recorded;

(d) the right of Declarant or its representatives, agents or designees to enter upon the common area and any of the lots for purposes of construction of the properties and future annexations thereto (including utility installations) and for purposes of making repairs and remedying construction defects; and provided, there shall be no entry by the Declarant, its representatives, agents, or designees onto any lot or into any dwelling unit without the owner's consent, which consent shall not be unreasonably withheld;

(e) the right of Declarant and its representatives, agents or designees to use the common area and the improvements constructed thereon during the "sales period" for display, exhibit and sales purposes, including, but not limited to, maintenance of one or more sales offices, and, for purposes of this Declaration, the "sales period" is defined as that certain period commencing with the date of this Declaration and ending four (4) years thereafter; and

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(f) the right of the Association to grant easements over, across and under the common area for utilities and similar or related purposes.

Section 2. Delegation Of Use. Any owner may delegate his right of enjoyment to the common area to the members of his family, his tenants, or contract purchasers who reside on such owner's lot provided any persons to whom such rights are delegated shall be subject to all provisions of this Declaration, the articles, by-laws, Association rules, if any, and any board resolutions.

Section 3. Easements In Favor Of Lots Over Adjoining Lots And Common Area. Each owner of a lot is hereby granted appurtenant easements over adjoining lots and the common area so as:

(a) to enable the owner or occupant of such lot to maintain encroachments and valid easements for same so long as such encroachments shall exist in the event any improvements of such lot encroach upon adjoining lots or common area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the properties.

(b) to enable the owner or occupant of such lot to enter upon any adjoining lot and the common area, and the improvements constructed thereon, for purposes of abating any condition therein threatening his lot or the improvements constructed upon his lot, which right of entry shall be immediate in the event of an emergency;

(c) to enable the owner or occupant of such

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lot to maintain the established drainage pattern (hereafter defined) over his lot; and

(d) to enable the owner or occupant of such lot to maintain all utility services for his lot which are available to other lots within the properties including cable television.

Section 4. Easements Re Maintenance, Upkeep, Landscaping And Pest Control Of Lots In Favor Of The Association.

The Association is hereby granted an easement and right (but not an obligation) to enable it to cause its respective representatives, agents and designees to enter upon and gain access to each lot for purposes of inspecting the upkeep, maintenance, landscaping and planting thereof in order to determine whether same is in conformance with the requirements of Sections 17 and 18 of Article VIII hereof and also in order to determine whether any problems exist in respect to the presence of or control of pests (including insects) or infestations which are or might be damaging to the landscaping and planting on such lot or elsewhere within the properties. In the event an owner of any lot in the properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the board, the Association, after approval by two-thirds (2/3) vote of the board, shall have the right through its agents and employees to enter upon said lot and take such measures as may be appropriate under the circumstances including, but not limited to, the performing of upkeep or maintenance, the planting of grass, plants, shrubs, or trees, or the removal thereof, and/or spraying or chemically treating the landscaping or planting of such lot. The cost

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of such maintenance shall be added to and become part of the assessment to which such lot is subject. Prior to the entry onto a lot by the Association for the maintenance purposes described herein, the owner or occupant of such lot shall be given notice of the alleged maintenance deficiency and a reasonable amount of time to eliminate the maintenance deficiency.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every record owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot. Ownership of a lot shall be the sole qualification for membership.

Section 2. Classes. The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners with the exception of Declarant. Each class A member shall be entitled to one (1) vote for each lot owned. When more than one person owns an 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 (except in the case of cumulative voting as provided in the by-laws).

Class B. The class B member shall be Declarant who shall be entitled to three (3) votes for each lot owned (except in the case of cumulative voting as provided in the by-laws). The class B membership shall cease and be converted to class A membership upon the occurrence of whichever of the following is first in time:

(a) when the total votes outstanding in the class A membership equals the total votes outstanding in the class B membership, or

(b) when two years have elapsed from and after the date of the issuance of the latest original California Department of Real Estate Final Subdivision Public Report for a phase of development, or

(c) December 31, 1981.

#### ARTICLE V

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Commencement Of Assessments. As to each phase of development with common area, the payment of assessments shall commence therein upon the first day of the month following conveyance of the common area within such phase of development to the Association. As to each phase of development without common area, the payment of assessments shall commence therein upon the first day of the month following conveyance of the first lot within such phase of development to a purchaser thereof other than a person or entity falling within the definition of "Declarant."

Section 2. Creation Of The Lien and Personal Obligation For Assessments. Declarant, for each lot owned within the properties subject to assessments hereby covenants, and each owner of any lot by acceptance of a deed therefor whether or not it shall be so expressed in such deed is deemed to covenant and agree, to pay to the Association regular assessments and special assessments, such assessments to be established and collected as herein provided. The regular and special assessments, together with interest, costs and

reasonable attorneys' fees, shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the owner of such lot at the time the assessment fell due. The personal obligation for delinquent assessments against such lot shall not pass to such owner's successors in title unless expressly assumed by them.

Section 3. Purpose Of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents within the properties and to promote the improvement and maintenance of the lots and common area as herein described.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual regular assessment per lot shall be \$600.00, which is \$50.00 per lot per month.

(a) From and after January 1 of the year following conveyance of the first lot to an owner, the maximum annual regular assessment may be increased by the board by not more than 5% above the maximum annual regular assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year following conveyance of a lot to an owner, the

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maximum annual regular assessment may be increased above 5% by a vote of fifty-one percent (51%) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The board may fix the regular assessment at an amount not in excess of the maximum.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of 51% of each class of members. The board may in its discretion, prorate any special assessment in equal installments over the remaining months of the assessment year in question or collect the same in its entirety forthwith.

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Section 6. Notice And Quorum For Any Action Authorized

Under Sections 4 And 5. Any action authorized under Sections 4 or 5 shall be taken at a meeting called for such purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At any such meeting a quorum shall be constituted if members who are present thereat hold not less than fifty-one percent (51%) of the total voting rights of each class of members. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. If the proposed action is favored by a majority of the votes cast at any such meeting at which a quorum is present, but such votes are less than the requisite number thereof, as set forth above, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by a duly elected and acting officer of the Association not later than thirty (30) days from the date of such meeting.

Section 7. Uniform Rate Of Assessment. Both regular and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 8. Fixing of Assessment; Due Dates; Certificate. The board shall cause a budget to be prepared and distributed to members not less than sixty (60) days prior to the beginning of each fiscal year wherein the amount of the regular assessment against each lot shall be specified and wherein the due dates for the payment of installments thereof as established by the board shall likewise be specified. The board shall, upon demand, and for a reasonable charge, furnish a certificate signed

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by an officer of the Association setting forth whether the assessments or installments thereof on a specified lot have been paid, and a properly executed certificate of the Association as to the status of assessments on such lot shall be binding upon the Association as of the date of its issuance.

Section 9. Effect Of Nonpayment Of Assessments; Remedies Of the Association. Any assessment made in accordance with this Declaration shall be a debt of the owner of a lot at the time the assessment is made. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot. Any assessment not paid within thirty (30) days after the due date shall be delinquent. The amount of any such delinquent assessment plus any other charges thereon as provided for in this Declaration, shall be and become a lien upon the lot when the Association causes to be recorded with the County Recorder of San Bernardino County, a Notice of Delinquent Assessment, which shall state the amount of such delinquent assessment and such other charges thereon as may be authorized by this Declaration, a description of the lot against which the same has been assessed, and the name of the record owner thereof. Such notice shall be signed by the President, or Vice-President, and the Secretary, or Assistant Secretary, of the Association. Upon payment of such delinquent assessment and charges in connection with which such notice has been so recorded, or other

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satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. Such assessment lien shall be prior to all other liens recorded subsequent to the recordation of such Notice of Delinquent Assessment, except that the lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or deed in lieu of foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Unless sooner satisfied and released or the enforcement thereof initiated as hereafter provided such assessment lien shall expire and be of no further force or effect one year from the date of recordation of the Notice of Delinquent Assessment. The one-year period may be extended by the Association for not to exceed one additional year by recording a written extension thereof. Such assessment lien may be enforced by sale by the Association, its attorney or other person authorized to make the sale, after failure of the owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Sections 2924, 2924b, 2924c of the Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association shall have power to purchase the lot at foreclosure sale and to hold, lease, mortgage and convey the same. The foreclosure of such assessment lien shall be subject to, and shall not affect, the lien of any first mortgage.

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Section 10. Exempt Property. The common area and any portion of the properties owned by any public entity or authority shall be exempt from assessments; provided, however, this exemption shall not apply to any such property devoted to dwelling use.

## ARTICLE VI

### ARCHITECTURAL CONTROL

Section 1. Committee. Architectural control of the properties shall be vested in the board who may appoint an architectural committee (hereinafter referred to as the "committee") which shall consist of three (3) persons, none of whom shall be required to be an architect, or to meet any other particular qualifications except as set forth in Section 2, next.

Section 2. Membership. The board shall have the sole right to appoint members to, and to fill vacancies on, the committee. Any person, including a member of the board, may be appointed to the committee. Members of the committee shall be appointed by the board and shall serve for terms of three (3) years; provided, however, said members may be removed from the committee by the board without cause. In case of the death, resignation or removal of any member of the committee appointed by the board, the board shall appoint a successor to serve for the unexpired term of such member. The foregoing notwithstanding, the right of the board to appoint non-members to the committee shall only exist at any time during which Declarant is owner of at least ten percent (10%) of the lots then within the properties.

Section 3. Duties. It shall be the duty of the committee to consider and act upon any and all proposals or



plans submitted to it by the board or pursuant to the terms hereof to insure that any improvements constructed on the properties by anyone other than the Declarant conform to plans approved by the committee and conform to architectural rules and landscaping and planting standards for lots adopted by the owners, and to perform other duties imposed upon it by this Declaration. Notwithstanding anything contained in this Declaration expressly or impliedly to the contrary, no building, fence, wall or other structure or improvement shall be constructed or placed upon the properties by anyone other than Declarant, nor shall any exterior decoration, addition, change or alteration (including changes in drainage patterns) be made in, on or to the properties, or any part thereof, by anyone other than Declarant, until the plans and specifications showing the nature, shape, dimensions, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of design and location in relation to surrounding improvements and topography by the committee. The committee may, in its own name and on behalf of the Association, exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of improvements on the properties or any portion thereof. In the event said board or the committee, 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. At any time when no architectural committee is in existence, the board shall act in its place and stead.

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Section 4. Meetings. The committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the members, at a meeting or otherwise, shall constitute the act of the committee. The committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the committee shall not receive any compensation for services rendered.

Section 5. Architectural Rules. The committee may, from time to time, recommend to the members the adoption, amendment and repeal of rules and regulations to be known as "architectural rules," and if same are approved by a majority of each class of members same shall be deemed adopted, amended or repealed, as appropriate. The architectural rules shall interpret this Declaration by setting forth the standards and procedures for committee review and the guidelines for decoration, design and placement of improvements.

Section 6. Waiver. The approval of the committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, drawings, specifications or other matters subsequently submitted for approval.

Section 7. Liability. Neither the committee nor any member thereof shall be liable to the Association, any owner, or to any other party, for any damage, loss or preju-

dice suffered or claimed on account of the approval or disapproval of any plans, drawings, specifications, or other matters, or the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; provided that with respect to the liability of a member, such member has acted in good faith on the basis of actual knowledge possessed by him.

## ARTICLE VII

### AUTHORITY OF ASSOCIATION

Section 1. Specific Authority. The Association, for the benefit of the lots and the owners, shall acquire, provide and pay for out of the maintenance fund hereinafove provided for:

- (a) Water, gas, electricity, refuse collection, other necessary utility services, maintenance, repair and replacement of landscaping and any facilities of the common area;
- (b) Irrigation and landscaping of the parkway improvements which abut the properties and which are located along the westerly side of Mountain Avenue (said real property being owned by the City of Upland, California) until such time, if ever, when such irrigation and landscaping shall be assumed by said City;
- (c) Refuse collection for the lots (if the Association elects to contract for such service);
- (d) A policy or policies of fire insurance, with extended coverage endorsement, for the full insurable replacement value of the improvements of common area, or such other fire and casualty insurance as the Association shall determine which gives substantially equal or greater protection;
- (e) A policy or policies (with cross-liability endorsement) insuring the Association, its agents, guests and invitees and the owners against liability to the public or to the owners, their guests and

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invitees incident to the ownership or use of the common area, in an amount not less than One Million Dollars (\$1,000,000.00) single limit for each occurrence, and One Hundred Thousand Dollars (\$100,000.00) for property damage for each such occurrence;

(f) Workmen's Compensation insurance to the extent necessary to comply with any applicable law;

(g) Fidelity bonds in an amount equal to one hundred and fifty percent (150%) of the Association's annual assessments plus reserves which names the Association as obligee and insures against misuse or misappropriation of Association funds by directors, officers and employees of the Association, whether compensated or not, and any management agent and his employees;

(h) Directors and officers errors and omissions insurance (if the Association elects to obtain such coverage); and

(i) As to the common area, any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes (including taxes assessed on the common area), or assessments which, in the opinion of the board, shall be necessary, required, or proper.

Section 2. Periodic Review Of Insurance. All insurance and bonds obtained by the Association shall be reviewed at intervals of not less than two (2) years as to adequacy of coverage and amount.

Section 3. Willful Or Negligent Upkeep By Owner.  
In the event that the need for maintenance or repair of the common area is caused through the willful or negligent act of

any owner, his family, guests or invitees, and same is not covered by insurance, then, to the extent permitted by California law, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such owner's lot is subject.

Section 4. Approval Of Certain Transactions. Notwithstanding anything to the contrary set forth in this Article VII, the Association shall not enter into any service contract for a term in excess of one year except with the approval of fifty-one percent (51%) of each class of members.

Section 5. Delegation Of Powers. The Association acting by and through the board shall have the authority to delegate its powers, duties and responsibilities to committees or employees, including a managing agent.

Section 6. Association Rules. The Association acting by and through the board shall have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (herein sometimes referred to as the "Association rules"). The Association rules shall govern with respect to the conduct within the properties of, and the use of the common area by, an owner, the family members of an owner, or by any guest, invitee, contract purchaser, lessee or renter of an owner, or their respective family members, guests or invitees; provided, however, that the Association rules shall not be inconsistent with or materially alter any other provisions of this Declaration, the articles or by-laws. A copy of the Association rules as the same may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each owner and a copy shall be posted in a conspicuous place within the properties. In the event of any conflict between any such Association rules, and any other provisions of this Declaration,

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or the articles or by-laws, the provisions of the Association rules shall be deemed to be superseded by the provisions of this Declaration, the articles or the by-laws to the extent of any such inconsistency.

#### ARTICLE VIII

##### USE RESTRICTIONS

Section 1. Residential Use. Lots shall be used for residential purposes only, provided, however, that lots owned by Declarant may be used by Declarant, or its designees during the sales period (as defined in Article III, Section 1(e) herein) as models, sales offices, temporary parking areas and construction offices for the purpose of developing, improving and selling lots within the properties and for the purpose of developing, improving and selling any real property or portions thereof owned by Declarant or its designees and situated in the vicinity of the properties. In connection with the maintenance and use of such models, Declarant or its designees shall have the right to remodel, renovate, alter or otherwise improve same without the consent of the board or the architectural committee or any other person or entity, any provisions of this Declaration to the contrary notwithstanding. Nothing herein shall prevent an owner from leasing or renting his lot, provided, however, any lessee or renter thereof shall abide by and be subject to all terms and provisions of this Declaration, the articles, by-laws, Association rules and board resolutions, if any.

Section 2. Commercial Use. Excepting as otherwise expressly provided in this Declaration, no part of the properties shall ever be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, vending, or other such non-residential purpose. The foregoing notwith-

standing, nothing in this Section 2 shall be construed as prohibiting the installation and maintenance of vending and similar machines on specified portions of the common area if approved by the board.

Section 3. Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon the properties, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of the properties 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, natural gas or other hydrocarbons or asphaltum shall be erected, maintained or permitted upon the properties.

Section 4. Offensive Conduct; Nuisances. No noxious or offensive activities shall be carried on, upon, or within the properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the residents of the properties, or which shall in any way interfere with the quiet enjoyment of owners or occupants of lots. In connection with the foregoing, no loudspeaker or sound amplification system shall be used so as to produce sounds audible beyond the boundaries of the lot of the owner or occupant using same. Unless otherwise permitted by the board, no owner shall serve food or beverages, cook, barbeque, or engage in similar activities within the common area excepting those portions thereof expressly designated by the board therefor, if any. Nothing in this Section 4 shall be construed as prohibiting the installation

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and maintenance of alarm systems of all kinds.

Section 5. Parking Restrictions; Use Of Garages.

Unless otherwise expressly permitted herein or by the board, no automobile, motorized vehicle, motorcycle, bicycle, boat, camper, trailer or recreational vehicle shall be parked or left on any property subject to this Declaration other than on or within a driveway, garage, carport or portion of the common area expressly designated therefor by the board, if

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any. The temporary parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association rules. Garages and carports, if any, shall be used for parking and storage only and shall not be converted for living or recreational activities. Garage doors, if any, shall remain closed at all times excepting when entering or exiting or when the garage is being repaired or maintained.

Section 6. Signs. No sign of any kind shall be displayed to the public view on or from any lot or on or from the common area without the approval of the architectural committee, excepting such signs as may be used by the Declarant or its designees during the sales period for the purpose of developing, selling and improving lots within the properties and for the purpose of developing, selling and improving real property owned by Declarant or its designees and situated in the vicinity of the properties. Notwithstanding the foregoing, one sign of customary and reasonable dimensions advertising a lot for sale or rent may be placed within each lot by the owner thereof or his agent.

Section 7. Antennae, External Fixtures, Etc. Except as otherwise consented to in writing by the board, no external television poles or television antennae shall be permitted. No external radio poles, radio antennae, flag poles, clotheslines or other external fixtures other than those originally installed by Declarant or approved by the architectural committee, and any replacements thereof, shall be constructed, erected or maintained on or within any lot or the common area. The foregoing shall not be construed as prohibiting the maintenance of television poles or television antennae within enclosed portions of residential structures, including attics. No external wiring, insulation, air-conditioning or other external machinery or equipment other than that originally installed by Declarant or approved by the architectural committee, and any replacements thereof, shall be constructed, erected or maintained on any lot or the common area.

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Section 8. Fences, Etc. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be constructed, erected or maintained on any lot or elsewhere within the properties except by Declarant and except those which are installed in accordance with the original construction of the properties, and any replacements thereof, or those which are approved by the architectural committee, and any replacements thereof.

Section 9. Animals. No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in or on any lot or elsewhere within the properties except that domestic dogs, cats, fish, and birds inside bird cages, may be kept as household pets within any lot, provided they are not kept, bred or raised therein for commercial purposes, or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall be deemed to limit the total number of all dogs, cats and birds to two (2) per lot. The board shall have the right to prohibit maintenance of any animal which constitutes, in the sole and exclusive opinion of the board, a nuisance to any other owner. Each person bringing or keeping a pet upon the properties shall, to the extent permitted under California law, be absolutely liable to each and all other owners, their family members, guests, invitees, lessees, renters and contract purchasers, and their respective family members, guests, and invitees for any damage to persons or property caused by any pet brought upon or kept upon the properties by such person or by members of his family, his guests or invitees.

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Section 10. Restricted Use Of Recreation Vehicles, Etc. No boat, truck, trailer, camper or recreational vehicle shall be used as a living area while parked in the properties; provided, however, trailers or temporary structures for use

incidental to the initial construction of the properties or the initial sales of lots or incidental to the initial construction of property owned by Declarant or Declarant's designees and situated in the vicinity of the properties or the initial sales therein may be maintained by Declarant or Declarant's designees within the properties during the sales period, but shall be promptly removed upon expiration thereof.

Section 11. Trash Containers. Trash, garbage or other waste shall be kept only in sanitary containers customarily used therefor placed in locations approved by the board. No owner of a lot shall permit or cause any trash or refuse to accumulate or be kept on any portion of the properties other than in such containers.

Section 12. Clotheslines And Storage. No clotheslines, refuse containers, or storage or clothes drying areas shall be maintained on any lot in a location visible from adjoining lots or the common area, except as may be permitted by the board. No lumber, metals, machinery, equipment or building materials shall be kept, stored, or allowed to accumulate on any lot or the common area except building or other materials to be used in connection with the construction, alteration or improvement undertaken by Declarant during the sales period or elsewhere approved in accordance with the terms of this Declaration. Personal property belonging to the Association may be stored within those portions of the common area designated therefor by the board, if any.

Section 13. Window Coverings. Windows may only be covered by drapes or shades, and may not be painted or covered by foil, cardboard or other similar materials except with the prior approval of the architectural committee. Drapes

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and shades shall conform to any architectural rules adopted respecting same, if any.

Section 14. Exterior Alterations And Changes. Excepting as to alterations and modifications made by Declarant, no owner shall at his expense or otherwise make any alterations, modifications or changes (including color and material changes) to the exterior of the buildings, fences, railings, walls or other improvements constructed on his lot, or change the landscaping, planting, grade or drainage pattern of his lot, without the prior approval of the architectural committee.

Section 15. Compliance With Laws, Etc. Nothing shall be done or kept in any lot or in the common area which might increase the rate of, or cause the cancellation of, any insurance coverage on any of the lots or the common area without the prior consent of the board. No owner shall permit anything to be done or kept on his lot which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. No owner shall allow furniture, furnishings or other personalty belonging to such owner to remain within any portion of any common area except as may be permitted by the board

Section 16. Drainage. Each owner of a lot in the properties agrees that he will either: (i) refrain from interference with the established drainage pattern over his lot from adjoining or other lots or parcels in the properties, or (ii) subject to approval of the architectural committee, make adequate provision for proper drainage from any such other lot or parcel over his lot. For the purposes of this Declaration, the "established drainage pattern" is defined as the

drainage pattern established at the time the overall grading of that portion of the properties in which such owner's lot is situated was completed.

Section 17. Upkeep Of Lot. Subject to the provisions of Article XIII hereof, each owner or occupant is required to keep and maintain all areas and the exterior of all improvements located on his lot in an attractive, clean, sightly and wholesome condition at all times, and to take all necessary steps to prevent erosion from occurring to his lot. Each owner shall carry fire and extended coverage insurance on the improvements constructed upon his lot.

Section 18. Landscaping. Subject to the provisions of Article XIII hereof, all landscaping and plantings on each lot shall be installed, kept and maintained by the owner or occupant thereof in accordance with standards therefor established by the Association.

Section 19. Vending Of Liquor Or Other Alcoholic Beverages. No liquor or other alcoholic beverages of any kind shall be sold on any lot.

Section 20. Temporary Residential Structures. No tents, shacks, trailers, garage or outbuilding shall at any time be used on any lot as a residence, either temporarily or permanently; nor shall any residence of a temporary character be constructed, placed or erected on any lot.

Section 21. Storage Of Materials, Junk, Trash and Manure, Etc. The storage of or accumulation of junk, trash, manure and other offensive or noxious materials on any lot is specifically prohibited. No burning on any lot shall be permitted except in fireplaces or barbecues, if any.

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ARTICLE IX

DAMAGE TO, OR DESTRUCTION OF, COMMON AREA

Section 1. Requirement To Rebuild. In the event of total or partial damage or destruction of the improvements in the common area, the same shall be promptly repaired and rebuilt.

Section 2. Rebuilding. In connection with such rebuilding, a special assessment for the cost of reconstruction over and above the available insurance proceeds shall be made by the board in accordance with the special assessment provisions hereof.

Section 3. Contract For Rebuilding. In connection with such rebuilding, the board shall obtain bids from at least two reputable contractors and shall award the reconstruction work to the lowest qualified bidder. The board shall have authority to enter into a written contract with said contractor for such reconstruction work and the insurance

etc

proceeds held by the Association shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the board to take all necessary steps to insure the commencement and completion of such reconstruction work at the earliest possible date.

ARTICLE X

FINANCING BY FEDERAL HOME LOAN MORTGAGE CORPORATION  
AND FEDERAL NATIONAL MORTGAGE ASSOCIATION

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

(a) A "first mortgagee" (meaning a mortgagee under a mortgage or a beneficiary under a deed of trust (or any holder or assignee of such interests) encumbering a lot with priority over all other mortgages and deeds of trust encumbering such lot) at its request is entitled to written notification from the Association of any default by the mortgagor of such lot in the performance of such mortgagor's obligations under the "enabling documents" (meaning collectively the within instrument, the articles, by-laws, Association rules and board resolutions) which is not cured within thirty (30) days;

(b) Any first mortgagee or other person or

etc

entity who comes into title or possession of a lot pursuant to the remedies provided in the mortgage, or by foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal" contained in the enabling document.

(c) Any first mortgagee or other person or entity who comes into title or possession of a lot pursuant to the remedies provided in the mortgage, or by foreclosure of the mortgage, or as may otherwise provided in this Declaration, shall take the property free of, and shall not be liable for, any claims for unpaid assessments or charges against the mortgaged lot which accrued prior to the time such holder came into title or possession of the lot (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all lots including the mortgaged lot);

(d) Unless all first mortgagees of lots have given their prior written approval, the Association and the owners shall not, (1) except as in statute made and provided, have the power or authority, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements therein which are owned, directly or indirectly, by the Association, and, in this regard, the granting of easements for public utilities or for other public purposes consistent with the intended use of the properties shall not be deemed a transfer within the meaning of this clause, or (2) change the method of determining the assessments which may be levied against an owner or his lot

(e) Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each



mortgage owned) of lots have given their prior written approval, the Association and the owners shall not be entitled to:

(1) except as in statute made and provided, by act or omission, change, waive or abandon any scheme of regulations, if any, or enforcement thereof, pertaining to the architectural design or the exterior appearance of improvements constructed upon lots and the common area or the maintenance and upkeep of lots and the common area;

(2) fail to maintain fire and extended coverage on insurable portions of the common area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(3) fail to maintain bonds and insurance coverage at any time required by FHUDC; provided blanket fire and extended coverage on lots shall not be required;

(4) fail to maintain professional management (as opposed to self-management) of the development as hereinbelow provided;

(5) use hazard insurance proceeds for losses to any improvements of the common area for other than the repair, replacement or reconstruction of such improvements;

(6) by action or inaction cause or allow the Association to be dissolved;

(7) by action or inaction "materially" amend the within instrument, the articles or the by-laws (and, in this regard, the determination as to whether a proposed amendment is "material" shall be made by FMA, provided, however, if said

agency fails to advise whether such amendment is material within thirty (30) days after being requested in writing so to do, the board may make such determination); and

(8) by action or inaction in any manner seek during the term of the Declaration, or any extension thereof, to abandon or terminate the planned development of the properties as established by the enabling documents.

(f) First mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(g) First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, covering the common area; and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. In this regard, the Association, acting by and through its board, is hereby expressly empowered and authorized to enter into an agreement in favor of all first mortgagees respecting such reimbursement, and, by the recodation of this Declaration, shall be deemed to have agreed to such reimbursement of all first mortgagees.

(h) Assessments shall include an adequate reserve fund for maintenance, repair and replacement of any improvements constructed upon the common area that must be replaced on a periodic basis, and such reserve must be funded by regular assessments collected on a monthly basis rather than by special assessments.

(i) If, at any time, the properties are wholly or partially located within an area or areas which has or have been identified by the Secretary of Housing and Urban Development or any other duly authorized governmental agent or agency as an area or areas (i) having special flood hazards (by publication of a Flood Insurance Boundary Map or Insurance Rate Map by the Flood Insurance Administration or other agency) and (ii) in which the

sale of flood insurance has been made available under the National Flood Insurance Program ("NFIP") then, and in that event, and upon the request of FHA, FHLMC, FNMA, Federal Home Loan Bank or GNMA (hereafter defined), the Association shall forthwith obtain such flood insurance covering the entirety of the properties in amount and coverage, and with such carrier(s) and subject to such terms, as is then being made available by NFIP.

(j) Unless seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned) of lots have consented to self-management, the Association must retain an independent experienced professional managing agent at all times to manage the development. Such managing agent shall not be declarant, an affiliate of declarant, or any person or entity unacceptable to FNMA. Any management agreement entered into respecting the properties shall be for a term not exceeding one (1) year and shall be terminable by the Association without cause and without the payment of a termination fee upon not more than thirty (30) days written notice. Such management agreement may be renewable for one (1) year periods.

(k) Nothing in the enabling documents shall be construed as giving an owner or other party priority over the rights of first mortgagees of lots in case of a distribution to owners or the Association of insurance proceeds or condemnation awards or settlements for loss, damage or destruction to, or a taking of, all or any portion of any lots or the common area. Each mortgagee shall be given thirty (30) days' prior written notice of any such loss, damage or destruction or the threat or institution of proceedings in condemnation and the distribution or proposed distribution of insurance proceeds or condemnation awards or settlements.

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(l) Any first mortgagee who comes into title or possession of a lot pursuant to the remedies provided in the mortgage, or by foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, shall not be obligated to cure any breach of the enabling documents which is non-curable or of a type which is not practical or feasible to cure.

(m) Any mortgage given to secure a loan to facilitate the resale of a lot after acquisition of title through foreclosure or by deed in lieu thereof shall be deemed to be a loan made in good faith and for value

(n) Because of its financial interest, any first mortgagee under a mortgage encumbering a portion of the properties (i) may appear at meetings of members and board, (ii) shall receive an annual audited financial statement of the Association not later than ninety (90) days after the end of each fiscal year, and (iii) shall receive written notice of all meetings of members.

(o) Any mortgagee shall have the right to furnish information to the board concerning the status of any mortgage.

(p) The Association shall continuously maintain in effect casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by FIMA and the Government National Mortgage Association ("GNMA"), so long as either is a mortgagee or owner of a lot within the development, except to the extent such coverage is not available or has been waived in writing by FIMA or GNMA; provided, however, that nothing herein shall require blanket fire and extended coverage on lots or the improvements constructed thereon.

(q) The right of any owner to sell, transfer or otherwise convey his lot may not be subject to any right of first refusal or similar restriction in favor of the Association.

(r) Any lease or rental (including a month-to-month rental) of a lot shall be required to provide that the terms of such lease or rental shall be subject in all respects to the provisions of the

documents and that any failure by the lessor or tenant to comply with the terms of such documents shall be a default under such lease or rental. All leases and rental agreements shall be in writing. Other than the foregoing, there is no restriction on the right of any owner to lease or rent his lot

(s) There is no restriction upon any owner's right of ingress to and egress from his lot.

(t) Whenever the term "mortgage" is used herein, same shall mean and include a deed of trust; whenever the term "mortgagee" is used herein, same shall mean and include a beneficiary under a deed of trust; and whenever the term "first mortgage" is used herein, same shall mean and include a deed of trust having priority over all other mortgages and deeds of trust. The assignee or holder of an original mortgagee's interest shall, for purposes hereof, be considered a "mortgagee."

#### ARTICLE XI

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, board, manager or any owner shall have the right to enforce, by any proceeding at law for damages, including costs and fees of counsel, or in equity for injunctive relief, or both, all restrictions, conditions, covenants, reservations, liens, easements and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto as well as all provisions of the articles, by-laws, Association rules or board resolutions. Failure by the Association or by any owner to enforce any such remedy shall, in no event, be deemed a waiver of the right so to do thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions, by judgment, or court order or otherwise, shall in no way affect other provisions hereof which shall remain in full force and effect.

Section 3. Term. This Declaration shall run with and bind the properties, and shall inure to the benefit of and be enforceable by the Association or any of the owners of any lots, their respective heirs, successors and assigns, for a term of fifty-nine (59) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years unless an instrument, signed by owners of seventy-five (75%) percent of the lots, and their respective first mortgagees, has been recorded, agreeing to terminate this Declaration.

Section 4. Amendments. This Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of each class of members; provided, however, if there is only one class of members in existence, then such instrument must also be signed by not less than seventy-five percent (75%) of all members other than Declarant. Any amendment must be recorded.

Section 5. FHA Approval. So long as there is a class B membership, the following actions will require the prior approval of the United States Department of Housing and Urban Development ("FHA"): annexation of additional property, dedication or encumbering of common area. special assessments for capital improvements, dissolution of the Association and amendment of this Declaration.

Section 6. Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.

Section 7. Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive.

Section 8. Violations As Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a private nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any owner, any member of the board, the manager, or the Association.

Section 9. Access To Books. Any owner may, at any reasonable time and upon reasonable notice to the board or manager and at his own expense, cause an audit or inspection to be made of the books and financial records of the Association as provided in the by-laws.

Section 10. Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 11. Exhibits. Any and all exhibits attached hereto shall be deemed made a part hereof and incorporated by reference herein.

Section 12. Easements Reserved And Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in any conveyance of a lot.

Section 13. Binding Effect. This Declaration shall inure to the benefit of and be binding upon the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, lessees, successors and assigns of the owners.

Section 14. Indemnification Of Officers And Directors. Except to the extent covered by insurance of any type, every director and every officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a director or officer of the Association, or any settlement thereof, whether or not he is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the board approves such settlement. The foregoing right of indemnification shall be in addition

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to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

Section 15. Attorney's Fees. Should suit be instituted hereon, hereunder or in connection herewith to enforce any of the terms or provisions hereof, or to obtain any of the remedies provided for herein, the prevailing party shall be entitled to an award of reasonable attorney's fees from any court of competent jurisdiction .

ARTICLE XII

RIGHT OF CITY OF UPLAND TO COMPEL PERFORMANCE

In consideration of the approval of the Development by the City of Upland, California (the "City"), Declarant hereby covenants and agrees, and each owner of a lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, and all heirs, executors, administrators, assigns and successors, agree as follows:

(a) The City has determined that the common area and improvements and lot landscaping and the exterior of lot improvements shall be maintained in a first class condition and good state of repair.

(b) If the Association fails to maintain the common area or an owner fails to maintain his lot in accordance with the standards described in (a), last, the City may cause the necessary maintenance to be done to conform with such standards and assess the costs thereof to the Association or owner obligated to so maintain by an action at law therefor or, in the case of an owner, in the same manner as assessments are levied under this Declaration, and, in this regard, the City shall be

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considered a third party beneficiary and shall be entitled to levy assessments in the same manner as the Association is entitled to levy assessments pursuant to this Declaration.

(c) The foregoing notwithstanding, the City shall take no action hereunder unless it has given the Association or owner, as the case may be, thirty (30) days prior written notice of its decision to perform maintenance pursuant hereto, and within said period of time the Association or owner, as the case may be, has not filed an appeal of such decision with the Planning Commission of the City. If an appeal is filed with the Planning Commission of the City, the Planning Commission shall thereafter hear such matter and shall determine whether the Association or owner, as the case may be, has failed to comply with the aforescribed standards of maintenance. Such hearing shall be held no earlier than 15 days after the appeal to the Planning Commission has been filed. Following the decision of the Planning Commission, an appeal may be taken therefrom to the City Council of the City pursuant to the same procedural requirements which are applicable to appeals taken in respect to other matters from the Planning Commission to the City Council of the City.

ARTICLE XIII  
SIDEYARDS

Certain of the lots within said property are subject to an easement for sideyard purposes (a "servient tenement"). Such easement for sideyard purposes benefits an adjoining lot

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(a "dominant tenement"). A lot may be both burdened by an easement for sideyard purposes as well as benefitted by an easement for sideyard purposes. The location of the various sideyard easements shall be as set forth in the respective grant deeds to the respective lots within said real property (or shall be as depicted in instruments incorporated by reference into said grant deeds). Each such sideyard easement shall be created by an appropriate reservation in the deed to the servient tenement and an appropriate grant in the deed to the dominant tenement.

Section 1. General. The provisions of this Article XIII shall govern as to the rights and obligations of owners and occupants of lots respecting sideyard easements.

Section 2. Use, Occupancy And Maintenance Of Sideyards. The owners or occupants of a dominant tenement shall have the exclusive right to use, occupy, possess and enjoy the sideyard easement appurtenant thereto, and shall be obligated to maintain at their sole cost and expense the real property subject to the easement for sideyard purposes (herein the "sideyard") subject to the following --

(a) Encroachment upon the sideyard by reason of placement or settlement of portions of improvements originally constructed by Declarant upon the servient tenement, and any reconstruction or replacement thereof, including, but not limited to, overhangs, eaves, portions of roofs, and outcroppings of structures;

(b) The right of the owners and occupants of the servient tenement at all reasonable times to enter upon the sideyard for purposes of maintaining, repairing, constructing and/or reconstructing im-

provements upon the servient tenement; and

(c) Drainage over and across the sideyard in favor of the servient tenement for water drainage from any structure upon the servient tenement and from normal usage of the servient tenement.

Section 3. Limitations. The use and occupancy of the sideyard by owners and occupants of the dominant tenement shall be limited to the following:

(a) Landscaping and gardening;

(b) General recreational purposes, yard purposes, ingress and egress, all of which are incidental to the use and enjoyment of the structures and other improvements constructed upon the dominant tenement; and

(c) Improvement (including paving) of the sideyard subject to approval of the Architectural Committee.

The foregoing to the contrary notwithstanding, the owners and occupants of the dominant tenement shall not, in any event, be entitled to attach any object to any building wall of a structure constructed upon the servient tenement or to lean any object thereagainst. In addition, no improvements shall be made to the sideyard which might cause damage to improvements constructed upon the servient tenement by reason of water drainage or otherwise.

Section 4. Failure To Properly Maintain The Improvements Constructed Upon The Servient Tenement. Should the owners and occupants of the improvements constructed upon the servient tenement fail to paint or otherwise properly maintain

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in a clean, neat and attractive manner that portion of any building wall facing the dominant tenement (as determined by a two-thirds (2/3) vote of the board based upon the standards established by the Association), the Association, with the consent of the owners or occupants of the dominant tenement, may enter upon the servient tenement and perform such maintenance. The cost of such maintenance shall be added to and become a part of the assessment to which the servient tenement is subject.

Section 5. Enclosing Sideyard. The owners and occupants of the dominant tenement shall be entitled to fence in or otherwise enclose the sideyard provided the manner of enclosing same is approved by the Architectural Committee. Any enclosed sideyard shall be subject to rights of owners and occupants of the servient tenement as set forth in Section 2, above.

Section 6. Damage To Servient Tenement. In addition, the owners and occupants of the dominant tenement shall be responsible for all damage to the servient tenement resulting directly or indirectly from their use and enjoyment of the sideyard as herein described.

ARTICLE XIV

EMINENT DOMAIN

COMMON AREA

The term "taking" as used in this Article XIV shall

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mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of any common area, the members hereby appoint the board and such persons as the board may delegate to represent all of the members in connection with the taking. The board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the common area, the rules as to restoration and replacement of the common area shall apply as in the case of destruction of improvements upon the common area. In the event of a total taking, the board shall retain any award in the general funds of the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto executed this instrument this 30th day of November, 1977.

MATREYEK HOMES, INC.,  
a California corporation

By Bruce A. Matreyek

By Philip A. Matreyek

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EXHIBIT "A"

The entirety of said Tract 9236, in the City of Upland, County of San Bernardino, State of California, excepting therefrom that portion thereof described at page 1 of the within Declaration of Covenants, Conditions and Restrictions.

TRACT NO. 9236

ASSOCIATED ENGINEERS  
ONTARIO, CALIFORNIA

IN THE CITY OF UPLAND

BEING A SUBDIVISION OF LOT 4, BLOCK 3 OF REVISED MAP OF THE MURIN TRACT AS RECORDED  
IN BOOK 17 OF MAPS PAGE 82 AND PORTIONS OF LOTS 21 AND 22 OF MAP OF RE-ARRANGEMENT  
OF LOTS 17-18-19-20-21-22-23-24 OF THE UPLAND FOOTMILL TRACT AS RECORDED IN BOOK 18 OF  
MAPS PAGE 76 RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

OWNER'S CERTIFICATE

I HEREBY CERTIFY THAT I AM THE OWNER OF THE LAND DESCRIBED IN THE ABOVE MAP AND THAT I AM THE OWNER OF THE INTEREST IN THE LAND DESCRIBED IN THE ABOVE MAP AND THAT I AM THE OWNER OF THE INTEREST IN THE LAND DESCRIBED IN THE ABOVE MAP...

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR OF THE STATE OF CALIFORNIA AND THAT I HAVE BEEN INSTRUMENTED BY THE STATE OF CALIFORNIA AND THAT I HAVE BEEN INSTRUMENTED BY THE STATE OF CALIFORNIA AND THAT I HAVE BEEN INSTRUMENTED BY THE STATE OF CALIFORNIA...

*Lee H. Pann*  
LICENSED LAND SURVEYOR, STATE OF CALIFORNIA

CITY ENGINEER'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE EXAMINED THE ABOVE MAP, THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE CITY ENGINEER'S ACT AND THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE CITY ENGINEER'S ACT...

May 12, 1977 *Frank B. Blundell*  
CITY ENGINEER, CITY OF UPLAND, CALIFORNIA

CITY PLANNING COMMISSION CERTIFICATE

I HEREBY CERTIFY THAT THE SUBDIVISION SHOWN ON THE ABOVE MAP IS IN ACCORDANCE WITH THE CITY PLANNING COMMISSION ACT AND THAT THE SUBDIVISION SHOWN ON THE ABOVE MAP IS IN ACCORDANCE WITH THE CITY PLANNING COMMISSION ACT...

July 18, 1977 *Robert J. ...*  
CITY PLANNING COMMISSION, CITY OF UPLAND, CALIFORNIA

AUDITOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE EXAMINED THE ABOVE MAP AND THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE AUDITOR'S ACT AND THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE AUDITOR'S ACT...

5/19/77 *John E. ...*  
CITY AUDITOR, CITY OF UPLAND, CALIFORNIA

CITY CLERK'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE EXAMINED THE ABOVE MAP AND THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE CITY CLERK'S ACT AND THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE CITY CLERK'S ACT...

Marie *Joanna ...*  
CITY CLERK, CITY OF UPLAND, CALIFORNIA

BOARD OF SUPERVISORS CERTIFICATE

I HEREBY CERTIFY THAT I HAVE EXAMINED THE ABOVE MAP AND THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE BOARD OF SUPERVISORS ACT AND THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE BOARD OF SUPERVISORS ACT...

May 15-1977 *Andree ...*  
BOARD OF SUPERVISORS, CITY OF UPLAND, CALIFORNIA

NOTARY ACKNOWLEDGEMENT

State of California }  
County of San Bernardino } S.S.  
On this 12th day of May 1977 before me, the undersigned authority, personally appeared *Frank B. Blundell* and *Marie* known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

*Frank B. Blundell*  
*Marie*  
Notary Public for the State of California  
My Commission Expires *April 12, 1987*

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR OF THE STATE OF CALIFORNIA AND THAT I HAVE BEEN INSTRUMENTED BY THE STATE OF CALIFORNIA AND THAT I HAVE BEEN INSTRUMENTED BY THE STATE OF CALIFORNIA...

*Lee H. Pann*  
LICENSED LAND SURVEYOR, STATE OF CALIFORNIA

SIGNATURE OMISSIONS

The signature of the undersigned authority is hereby acknowledged to have been made by the undersigned authority and that the undersigned authority is hereby acknowledged to have been made by the undersigned authority...

CITY ENGINEER'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE EXAMINED THE ABOVE MAP, THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE CITY ENGINEER'S ACT AND THAT THE SUBDIVISION LINES SHOWN IN THE ABOVE MAP COMPLY WITH THE REQUIREMENTS OF THE CITY ENGINEER'S ACT...

May 12, 1977 *Frank B. Blundell*  
CITY ENGINEER, CITY OF UPLAND, CALIFORNIA

FILED REQUEST OF  
FIRST AMERICAN TITLE INS. CO.  
ON May 10, 1978  
AT 3:32 P.M. IN  
BOOK 141 PAGE 4-9  
OF MAPS  
SAN BERNARDINO COUNTY  
FEE \$15.00

# AMENDING MAP TRACT NO. 9236

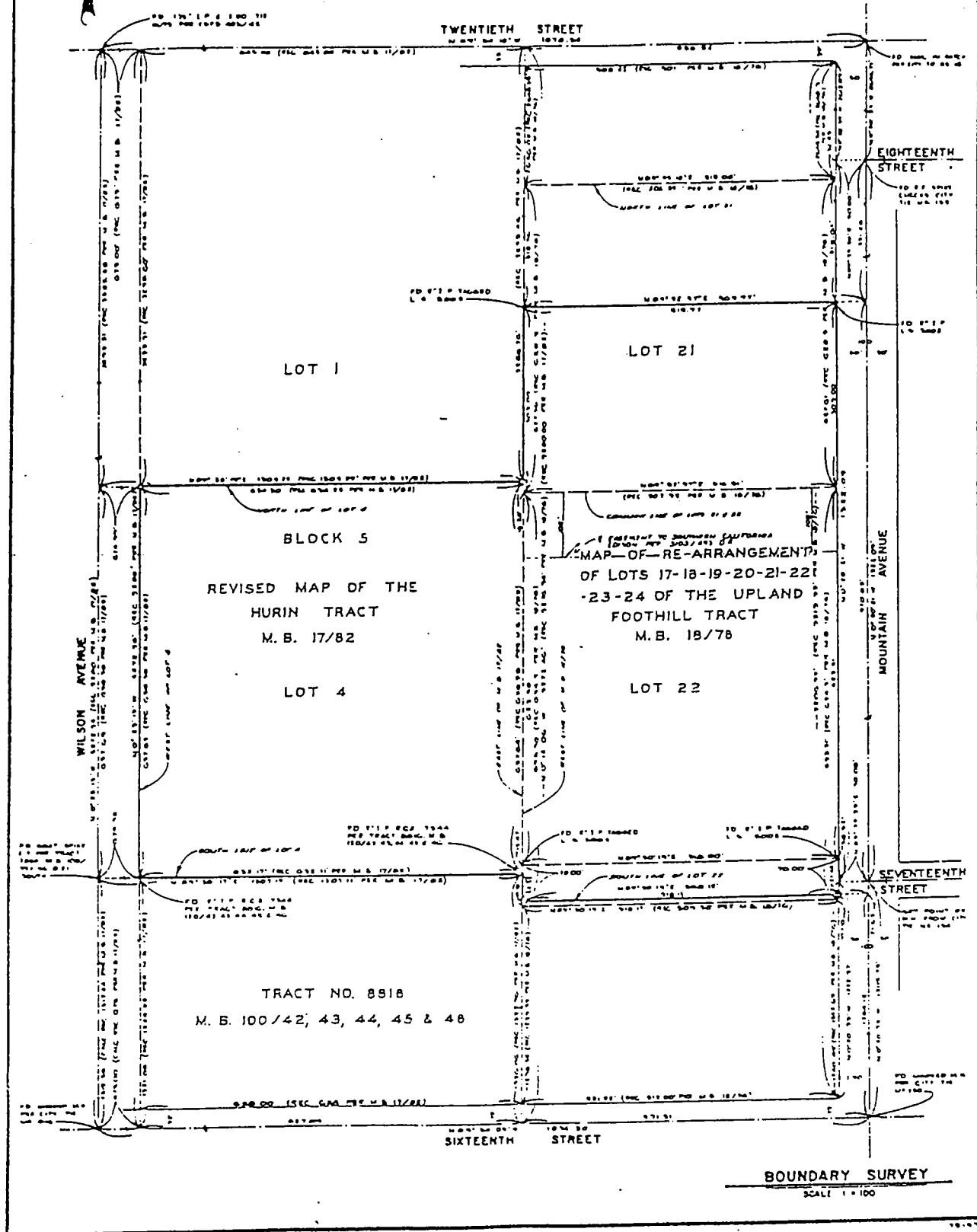
SHEET 2 OF 8 SHEETS

ASSOCIATED ENGINEERS  
ONTARIO, CALIFORNIA

SCALE: 1" = 100'

IN THE CITY OF UPLAND

BEING A SUBDIVISION OF LOT 4 BLOCK 5 OF REVISED MAP OF THE HURIN TRACT AS RECORDED IN BOOK 17 OF MAPS PAGE 82, AND PORTIONS OF LOTS 21 AND 22 OF MAP OF RE-ARRANGEMENT OF LOTS 17-18-19-20-21-22-23-24 OF THE UPLAND FOOTHILL TRACT AS RECORDED IN BOOK 18 OF MAPS PAGE 76 RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA





# AMENDING MAP TRACT NO. 9236

IN THE CITY OF UPLAND

SHEET 3 OF 6 SHEETS

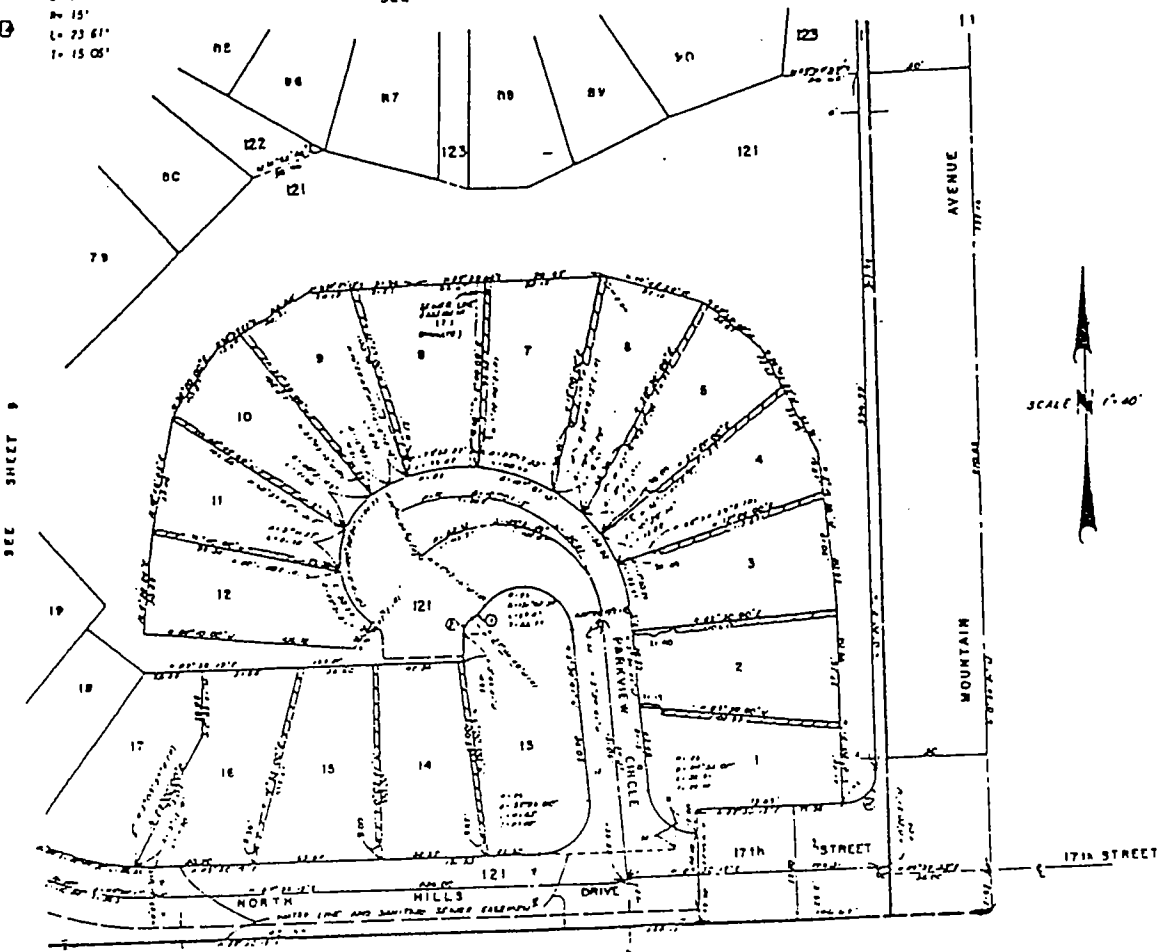
ASSOCIATED ENGINEERS  
ONTARIO, CALIFORNIA

BEING A SUBDIVISION OF LOT 4, BLOCK 5 OF REVISED MAP OF THE HURTH TRACT, AS RECORDED IN BOOK 17 OF MAPS, PAGE 82, AND PORTIONS OF LOTS 21 AND 22 OF MAP OF RE-ARRANGEMENT OF LOTS 17-18-19-20-21-22-23-24 OF THE UPLAND FOOTHILL TRACT, AS RECORDED IN BOOK 18 OF MAPS, PAGE 76, RECORDS OF THE COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA

CLUMP DATA

- ①  $\Delta$  10' 12" 35"
- ①  $\Delta$  40'
- ①  $\Delta$  7' 13"
- ①  $\Delta$  3.55'
- ②  $\Delta$  5' 05" 01"
- ②  $\Delta$  10'
- ②  $\Delta$  9' 28.5"
- ②  $\Delta$  5.00'
- ③  $\Delta$  90' 10" 40"
- ③  $\Delta$  15'
- ③  $\Delta$  23' 61"
- ③  $\Delta$  15' 05"

SEE SHEET 4



SEE SHEET 3



NOTATION

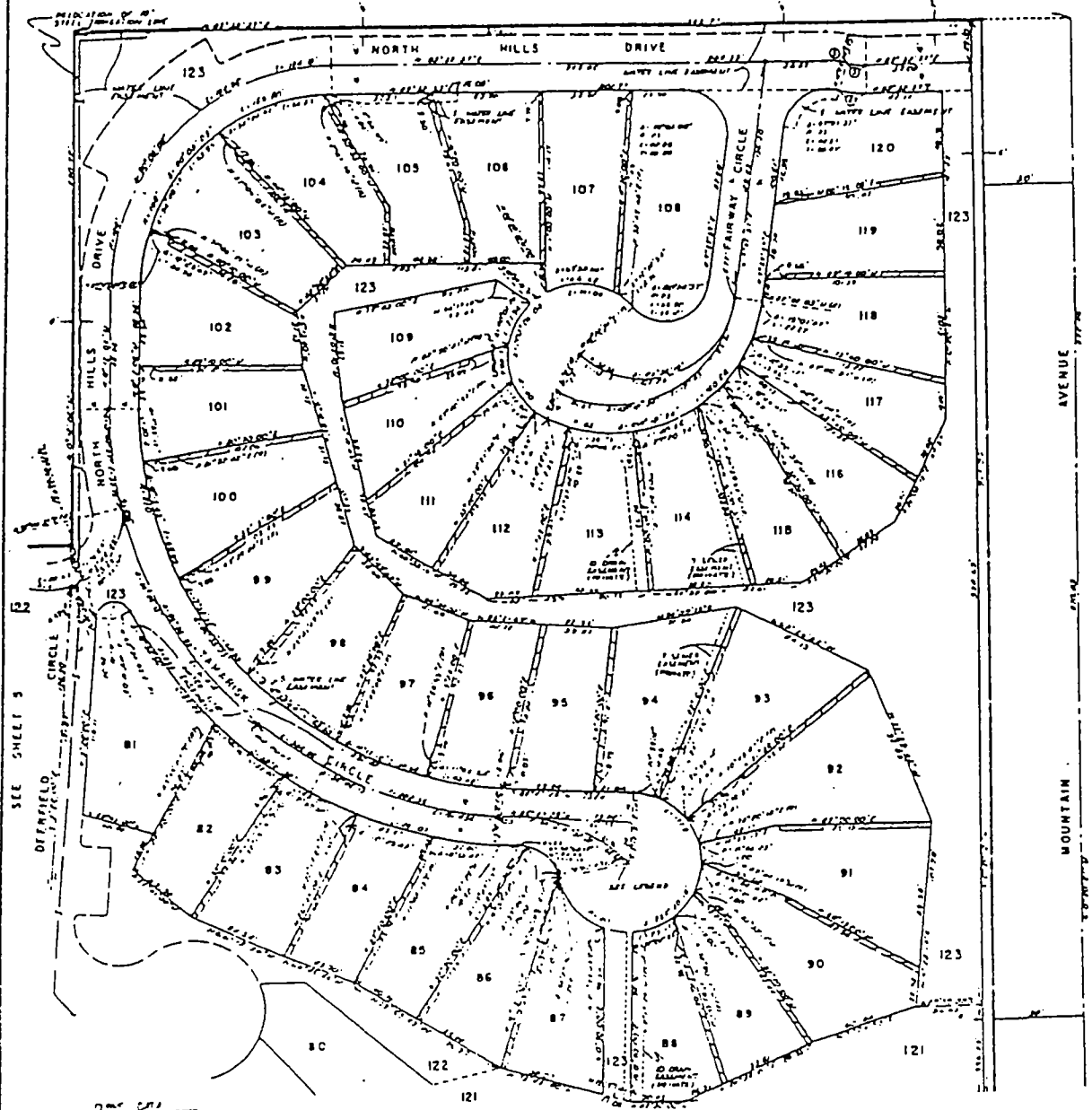
- NOTES ON INTEREST: DISTRICT OFFICE ON THE PROVISION OF THE CORPORATION OF CALIFORNIA SHALL BE THE BASIS OF THE CITY OF UPLAND, CALIFORNIA.
- INDICATED DISTRICT OFFICE AS ABOVE.
  - INDICATED DISTRICT OFFICE AS ABOVE.
  - INDICATED DISTRICT OFFICE AS ABOVE.
  - INDICATED DISTRICT OFFICE AS ABOVE.
  - INDICATED DISTRICT OFFICE AS ABOVE.

THIS TRACT WAS THE 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

# AMENDING MAP TRACT NO. 9236 IN THE CITY OF UPLAND

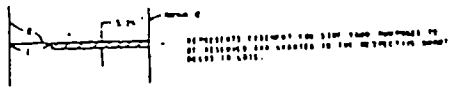
SHEET 4 OF 8 SHEETS  
ASSOCIATED ENGINEERS  
ONTARIO, CALIFORNIA

BEING A SUBDIVISION OF LOT 4, BLOCK 5 OF REVISED MAP OF THE NORTH TRACT, AS RECORDED IN BOOK 17 OF MAPS, PAGE 82 AND PORTIONS OF LOTS 21 AND 22 OF MAP OF RE-ARRANGEMENT OF LOTS 17-18-19-20-21-22-23-24 OF THE UPLAND Foothill TRACT AS RECORDED IN BOOK 18 OF MAPS, PAGE 76 RECORDS OF THE COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA



1	15' 0"
2	15' 0"
3	15' 0"
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9	15' 0"
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13	15' 0"
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113	15' 0"
114	15' 0"
115	15' 0"
116	15' 0"
117	15' 0"
118	15' 0"
119	15' 0"
120	15' 0"
121	15' 0"
122	15' 0"
123	15' 0"

SEE SHEET 3



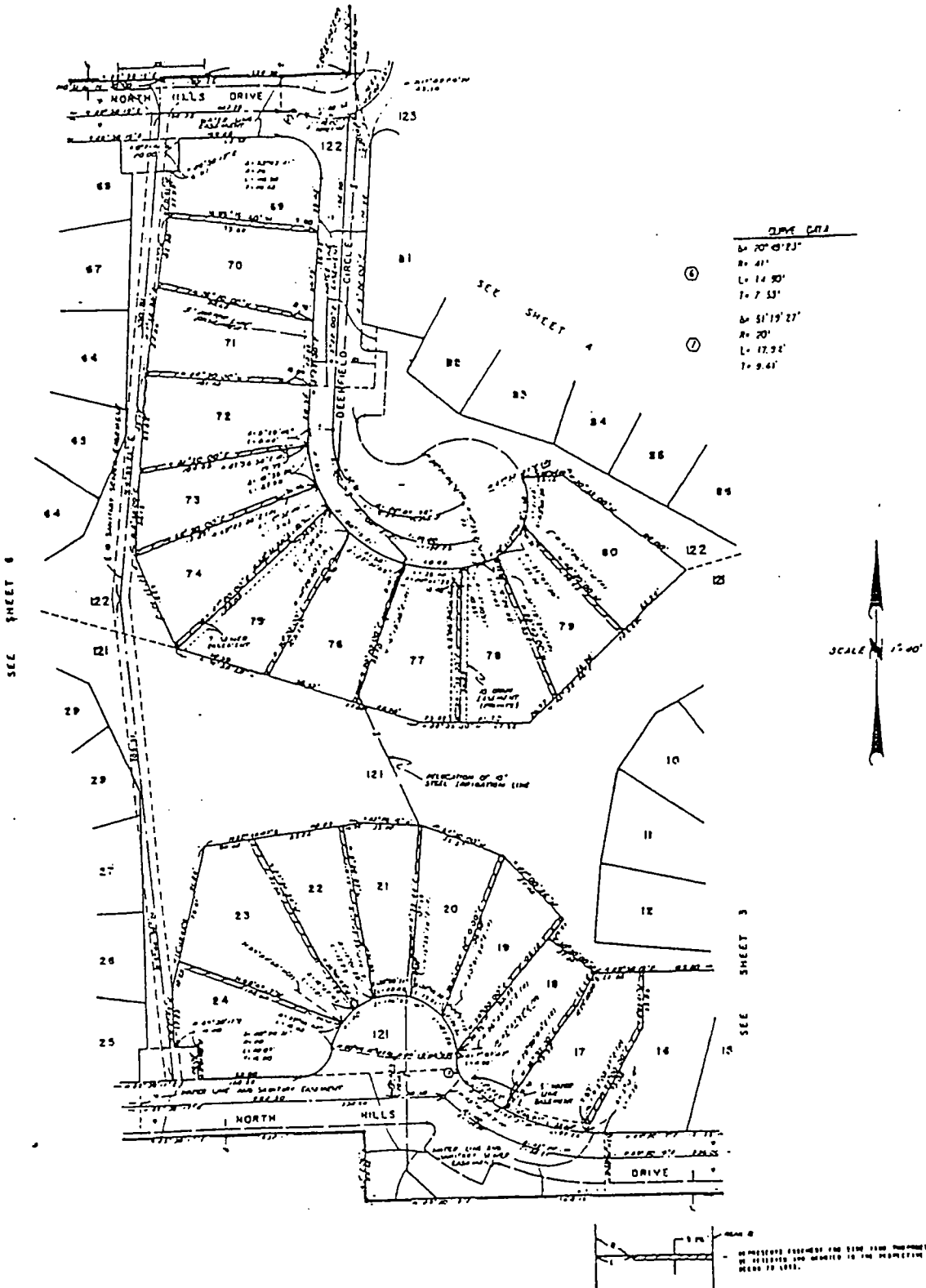
# AMENDING MAP TRACT NO. 9236

IN THE CITY OF UPLAND

BEING A SUBDIVISION OF LOT 4, BLOCK 5 OF REVISED MAP OF THE MURIN TRACT, AS RECORDED IN BOOK 17 OF MAPS, PAGE 82 AND PORTIONS OF LOTS 21 AND 22 OF MAP OF RE-ARRANGEMENT OF LOTS 17-18-19-20-21-22-23-24 OF THE UPLAND FOOTHILL TRACT, AS RECORDED IN BOOK 18 OF MAPS, PAGE 76, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

SHEET 1 OF 1 SHEETS

REGISTERED ENGINEERS  
ONTARIO, CALIFORNIA



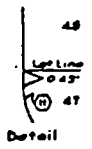
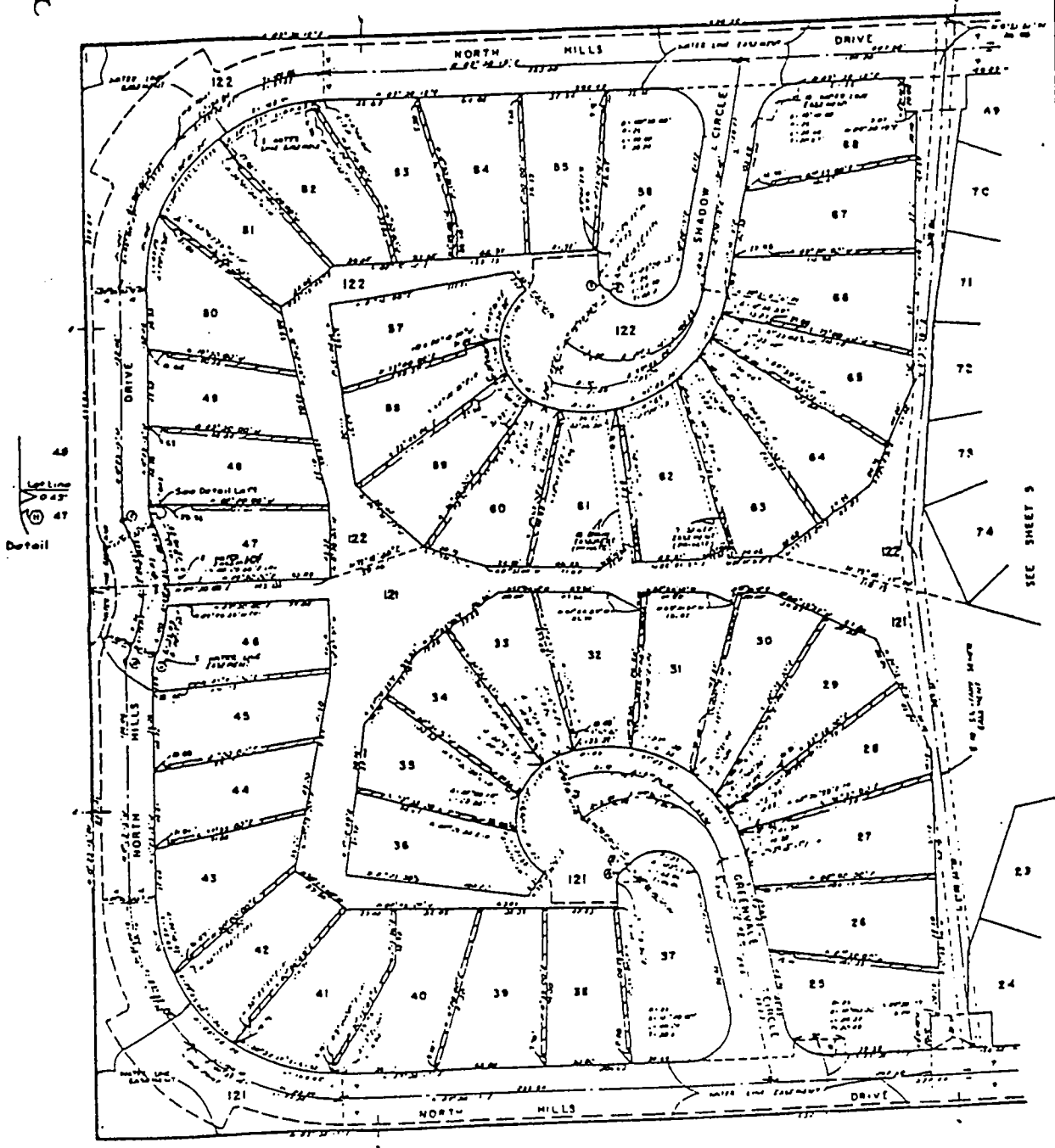
01111

# TRACT NO. 9236

IN THE CITY OF UPLAND

SHEET 5 OF 6 SHEETS  
ASSOCIATED ENGINEERS  
DANA W. CALIFORNIA

BEING A SUBDIVISION OF LOT 4, BLOCK 5 OF REVISED MAP OF THE NORTH TRACT, AS RECORDED IN BOOK 17 OF MAPS, PAGE 82 AND PORTIONS OF LOTS 21 AND 22 OF MAP OF RE-ARRANGEMENT OF LOTS 17-18-19-20-21-22-23-24 OF THE UPLAND FOOTHILL TRACT AS RECORDED IN BOOK 18 OF MAPS, PAGE 76 RECORDS OF THE COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA



CURV DATA		
①	R= 3'-0" 00"	Δ= 2°-55'-17"
	L= 3'-36"	R= 36"
	L= 1'-36"	L= 15'-56"
	L= 4°-55'-40"	L= 1'-36"
	R= 10"	Δ= 2°-55'-17"
	L= 8'-38"	R= 20"
	L= 4'-48"	L= 8'-70"
		L= 4'-48"
②	R= 6'-32'-15"	R= 42"
	L= 4'-56"	L= 4'-56"
	L= 2'-78"	L= 2'-78"
	Δ= 52°-10'-58"	R= 10"
	L= 8'-76"	L= 8'-76"
	L= 4'-68"	L= 4'-68"

