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RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

RHODES, KENDALL & BIDNA
a Professional Law Corporation
1400 Dove Street
Newport Beach, California. 92660
Attention: J.J. Scott Immel
File No.: 2803-08

RECORDED AT REQUEST OF
Chicago Title Ins. Co.
At 10:30 A.M.
NOV 16 1984
OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
RENE C. DAVIDSON
COUNTY RECORDER

(Above Space for Recorder's Use Only)

CERTIFICATION OF AMENDMENT AND RESTATEMENT
OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FOOTHILL KNOLLS OWNERS ASSOCIATION

WHEREAS on August 23, 1984, as Instrument No. 84-172919 of the Official Records of the County Recorder of Alameda County, a Declaration of Covenants, Conditions and Restrictions ("the Declaration"), was recorded by Declarant, Falcon Development Company, a general partnership, covering a residential project identified as Tracts Nos. 4768 and 5065 as per map recorded in Book 140, Pages 54 through 60, inclusive, of Maps in the Office of the County Recorder of Alameda County, and

WHEREAS, in Section 10 thereof the procedures for amending the Declaration are set forth, and

WHEREAS, the Board of Directors of the Association have approved and the Owners have now consented to an amendment of the Declaration,

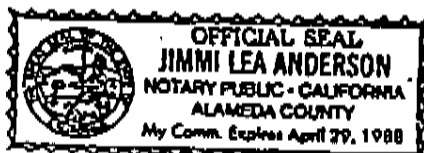
NOW, THEREFORE, a majority of the Board of Directors of the Foothill Knolls Owners Association (the "Association") hereby certify as follows:

1. That the Amended and Restated Declaration attached hereto as Exhibit "1," and incorporated herein by reference (the "Amendment"), has been approved in writing by not less than a majority

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On November 14, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared Bruce E. Harrington, personally known to me (or proved to me on the basis of satisfactory evidence) to be the President and Sally A. Richards, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Secretary of FOOTHILL KNOLLS OWNERS ASSOCIATION, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Jimmi Lea Anderson
Notary Public

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EXHIBIT 1

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PLEASANTON HILLS OWNERS ASSOCIATION

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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FOOTHILL KNOLLS OWNERS ASSOCIATION

FALCON DEVELOPMENT COMPANY, a California general partnership ("Declarant"), is the owner of all that certain real property (the "Property") subject to this Declaration, located in the County of Alameda, State of California, and more particularly described as follows:

Lots 1 through 23, inclusive, and Parcels A, B, C and D and those certain strips of land designated "P.S.D.E." and "P.S.E.," inclusive, all of Tract No. 4768 filed in Map Book 140, Pages 54 through 56, inclusive, and Lots 1 through 58, inclusive, of Tract No. 5065 filed in Map Book 140, Pages 57 through 60, inclusive, all of Alameda County Records, Alameda County, California.

Declarant hereby declares as follows:

A. Declarant deems it desirable to amend and restate the general plan for the protection, maintenance, improvement, development, use, occupancy and enjoyment of the Property, and to reaffirm the covenants, conditions and restrictions upon the Property for the purpose of enforcing and protecting the value, desirability and attractiveness thereof.

B. Declarant has deemed it desirable, for the efficient preservation of the values and improvements on the Property to create a corporation under the California Nonprofit Mutual Benefit Corporation Law (the "Law") to which should be delegated and assigned the powers of (1) owning, maintaining and administering the Association Property, as hereinafter defined, for the private use of its members and authorized guests and (2) administering and enforcing the covenants and restrictions, in collecting and disbursing the assessments and charges hereinafter created.

C. Declarant will or has caused such corporation, the members of which shall be the respective Owners of Lots, to be formed for the purpose of exercising such functions.

D E C L A R A T I O N

Declarant, the fee owner of the Property, hereby amends and restates the following declaration as to division, easements, rights, liens, charges, covenants, servitudes, restrictions, limitations, conditions and uses to which the Property may be put, hereby specifying that such declaration shall operate for the mutual benefit of all owners of the Property and shall constitute covenants to run with the land and shall be binding on and for the benefit

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of Declarant, its successors and assigns, and all subsequent owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, for the benefit of the Property, and shall be imposed upon all of the Property as a servitude in favor of each and every other owner thereof as the dominant tenement.

1. Definitions. The following definitions shall be applicable to this Declaration:

1.1. Architectural Committee. "Architectural Committee" shall mean the architectural and landscaping committee created pursuant to Article 14.16 hereof.

1.2. Articles. "Articles" shall mean the Articles of Incorporation of the Association as filed or to be filed in the Office of the Secretary of State of the State of California, as such Articles may be amended from time to time.

1.3. Assessment, Capital Improvement. "Assessment, Capital Improvement" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for installation or construction of any improvements on any portion of the Association Property which the Association may from time to time authorize, pursuant to the provisions of this Declaration.

1.4. Assessment, Common. "Assessment, Common" shall mean the annual charge against each Owner and his Lot, representing a portion of the total, ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Association Property, which are to be paid by each Owner to the Association, as provided herein.

1.5. Assessment, Reconstruction. "Assessment, Reconstruction" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion of the improvements on the Association Property, or the repair, maintenance, replacement or reconstruction of the Perimeter Lot Fencing contiguous to each Owner's Lot pursuant to the provisions of this Declaration.

1.6. Assessment, Special. "Assessment, Special" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the costs incurred by the Association for corrective action, pursuant to the provisions of this Declaration.

1.7. Association Property. "Association Property" shall mean all the real and personal property and improvements which are owned at any time by the Association, or over which the Association has an easement for the use, care or maintenance thereof, as further provided in Article 2 of this Declaration. The Association Property shall be Lot 58 of Tract No. 5065, Parcels A, B, C and D of Tract No. 4768, those certain strips of land designated

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as "P.S.D.E." or "Private Storm Drain Easement" and "P.S.E." or "Private Sewer Easement" on the Final Tract Map (as hereinafter defined) for Tract No. 4768 and that certain fence and front entry monuments along the perimeter of the Property adjacent to Foothill Road as shown on the Final Tract Map.

1.8 Association. "Association" means FOOTHILL KNOLLS OWNERS ASSOCIATION, a California nonprofit corporation, its successors and assigns.

1.9 Board. "Board" means the Board of Directors of the Association as the same may, from time to time, be constituted.

1.10 Bylaws. "Bylaws" means the Bylaws adopted by the Association, including any amendments or additions thereto.

1.11 City. "City" shall mean the City of Pleasanton.

1.12 Common Expenses. "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Association Property (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments), including those costs not paid by the Owner responsible for payment; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all services benefiting the Association Property; the costs of casualty and liability insurance, workmen's compensation insurance, and other insurance covering the Association Property; the costs of bonding the members of the management body; taxes paid by the Association, amounts paid by the Association for discharge of any lien or encumbrance levied against the Association Property or portions thereof; all prudent reserves; and the costs of any other item or items designated by the Association for any reason whatsoever in connection with the Association Property, for the benefit of all of the Owners.

1.13 Custom Homes. "Custom Homes" shall mean those residential dwelling units which are constructed on Lots 1 through 14, inclusive, of Tract No. 4768.

1.14 Declaration. "Declaration" means this Declaration of Covenants, Conditions and Restrictions, together with any amendments, supplements or modifications hereto.

1.15 Final Tract Map. "Final Tract Map" means those certain maps filed in Map Book 140, Pages 54 through 60, inclusive, Alameda County Records, Alameda County, California.

1.16 Fencing Plan. "Fencing Plan" means that certain plan for the Perimeter Lot Fencing which describes the location and color scheme of the Perimeter Lot Fencing and which

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is more particularly described in Exhibits "A" and "B" attached hereto and incorporated herein by this reference. Declarant shall within 90 days of the completion of the last Lot cause to be prepared an "as-built" plan for the Perimeter Lot Fencing which shall supersede Exhibits "A" and "B" hereto and Declarant shall record any amendments to this Declaration substituting the new exhibits hereto.

1.17 Lot. "Lot" means and refers to any numbered plot of land shown upon the Final Tract Map of the Property, or any portion thereof.

1.18 Member. "Member" means every person or entity who holds a membership in the Association.

1.19 Mortgage. "Mortgage" means both a deed of trust and the conveyance of any Lot or other portion of the Property to secure the performance of an obligation, which conveyance shall be void upon the due performance of said obligation.

1.20 Mortgagee/Mortgagor. "Mortgagee" means a person or entity to whom a Mortgage is made, its successors and assigns, and the beneficiary of a deed of trust, its successors and assigns; "Mortgagor" means a person or entity who mortgages property to another, i.e., the maker of a Mortgage, and the trustor of a deed of trust.

1.21 Owner. "Owner" means the record owner, whether one or more persons or entities, of a Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall also include a contract vendee under a Real Property Sales Contract, provided that such Real Property Sales Contract complies with the provisions of §§ 2985-2985.6 of the California Civil Code.

1.22 Perimeter Lot Fencing. "Perimeter Lot Fencing" means that fencing to be installed along the boundaries of the Lots as such fencing is shown on the Plan attached to this Declaration as Exhibits "A" and "B." Perimeter Lot Fencing for each Lot will be installed on a lot-by-lot basis on or before the completion of each house constructed on each lot. It is understood that the Perimeter Lot Fencing as shown on the Plan is the Declarant's best estimate of the proper location of the fences for each Lot. The Plan was prepared to maximize the view potential of each Lot. Declarant reserves the right to make minor field modifications to the Plan at the time of the installation of the fencing for each Lot, all for the purpose of ensuring that each Lot within the Property has a maximized view while at the same time ensuring adequate privacy between Lots.

1.23 Person. The term "person" means a natural person, corporation, partnership, association, firm or other entity as the context may require.

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1.24 Phase. "Phase" means each increment of the Property on which the Department of Real Estate of the State of California has issued a Final Subdivision Public Report.

1.25 Plan. "Plan" means that certain Fencing Plan and Details which describes the location of the side and rear lot fencing, and which is attached to this Declaration.

1.26 Production Homes. "Production Homes" shall mean those residential dwelling units which are constructed on Lots 1 through 57, inclusive, of Tract No. 5065 and on Lots 15 through 23, inclusive, of Tract No. 4768.

1.27 Residence. "Residence" means a lot shown on any final map filed for record or a parcel shown on any parcel map filed for record to the extent such lots or parcels are part of the Property, and shall include the residential dwelling unit together with garages, structures and other improvements on the same lot or parcel, except that this definition shall not apply to Association Property as defined in Section 1.7 herein.

1.28 Rules and Regulations. "Rules and Regulations" means those rules and regulations adopted by the Association or its Board, including any amendments or additions thereto.

1.29 Single Family. "Single Family" means one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than four persons not all so related, together with his, her or their domestic servants, maintaining a common household on a Lot.

2. Owner's Property Rights.

2.1 Use of Association Property. Every Owner shall have a right and easement of access, use and enjoyment in and to the Association Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

2.1.1 The rights of the public as dedicated and as specifically limited to the dedication on the Final Tract Map.

2.1.2 The right of the Association to establish uniform rules and regulations pertaining to the use of the Association Property.

2.1.3 The right of the Association to suspend the voting rights of an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed 30 days for any infraction of its published rules and regulations after hearing by the Board.

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2.1.4 The right of the Association to dedicate or transfer all or any part of the Association Property or the obligation of maintenance attendant thereto, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

2.1.5 The right of Declarant (and its sales agents, customers and representatives) to the non-exclusive use without charge, for common driveway purposes, for drainage and encroachment purposes, and for ingress to and egress from the Property for the purpose of completing improvements thereon or for the performance of necessary repair work and, for entry onto adjacent property in connection with the development of additional Phases, which right Declarant hereby reserves; provided, however, that such use shall extend only for so long as Declarant owns a Lot in the Property. Notwithstanding the foregoing, Declarant shall not interfere with the reasonable intended use of the Association Property.

2.1.6 The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Association Property; and the right to repair or replace any portion or all of the fencing which is part of the Association Property.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of access, use and enjoyment to the Association Property and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

2.3 Easements for Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Association Property adjacent thereto, and as between Adjacent Lots due to the unwillful placements or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of the restrictions) to a distance of not more than five feet, as measured from a point on the common boundary between each Lot and the adjacent Lots, as the case may be, along a line perpendicular to such boundary at such boundary point. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant or the Association.

2.4 Easements for Utilities. The rights and duties of the Owners of the Lots within the Property with respect to sanitary sewer, water, electricity, gas and telephone lines and other facilities shall be governed by the following:

2.4.1 It shall be the duty of each respective utility company to maintain its utility facilities and connection on any Lot; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections.

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2.4.2 Wherever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Property and said connections, cables and/or lines lie in or upon a Lot in the Property owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon the Lot or to have the utility companies enter upon the Lot in or upon which said connections, cables and/or lines lie, to repair, replace and generally maintain same whenever it shall be necessary to do so.

2.4.3 Wherever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Property, and said connections, cables and/or lines serve more than one Lot, the Owner of each Lot served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as necessary to service his Lot.

2.4.4 In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the costs thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners.

2.4.5 Easements over the Property for the installation and maintenance of electric and telephone lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, and as may be hereafter required or needed to service the Property, are hereby reserved by Declarant, together with the right to grant and transfer the same.

2.5 Easements for Maintenance. For purposes of performing the maintenance of the Association Property authorized herein, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner to enter upon the Lots at reasonable hours on any day. In case of an emergency, such right of entry shall be immediate.

2.6 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot, or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Association Property or by abandonment of his Lot.

3. Title to the Association Property. Declarant hereby covenants for itself, its successors and assigns, that it will convey to the Association fee simple title to, or a non-exclusive easement for maintenance over, the Association Property described

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in Subparagraph 1.7 of this Declaration, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants and conditions then of record, including those set forth in this Declaration. Such conveyance shall be made prior to the close of escrow for the sale of the first Lot in the Property to the public.

4. Management of Association Property. The common business, affairs and management of the Association Property shall be conducted by the Association, as provided in this Declaration and in the Bylaws.

4.1 Membership in the Association.

4.1.1 Membership. An Owner (including Declarant) of a Lot shall automatically, upon becoming the record Owner thereof, be a Member of the Association and shall remain a member thereof until such time as that Owner's ownership ceases for any reason, at which time that Owner's membership in the Association shall automatically cease. No Owner shall have more than one membership for each Lot owned. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws and Rules and Regulations to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Residence. Ownership of a Residence shall be the sole qualification for membership. A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot on transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association.

4.1.2 Classes. There shall be two classes of members:

4.1.2.1 Class "A." Class "A" members shall be all owners with the exception of the Declarant. Class "A" members shall be entitled to one vote for each lot owned. When more than one person holds an ownership interest in any lot, all such persons shall be members, and, subject to the provisions of Section 7612 of the California Nonprofit Mutual Benefit Corporation Law, the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

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4.1.2.2 Class "B." Class "B" member shall be the Declarant. Class "B" member shall be entitled to three votes for each lot which it owns. Class "B" membership shall forever cease to exist and be converted to Class "A" membership on the happening of any of the following events, whichever occurs earliest:

4.1.2.2.1 When the total number of votes in Class "A" equal the total number of votes in Class "B"; or

4.1.2.2.2 The second anniversary of the date of issuance of the most recently issued final public report for the project.

4.1.3 Required Majority. Except as otherwise provided herein, any action by the Association which must have the approval of the members before being undertaken shall require the vote or written assent of at least a majority of each class of membership during the time that there are two outstanding classes of membership.

4.1.4 Administration of the Property. The Owners of all the Lots covenant and agree that the administration of the Property shall be in accordance with the provisions of this Declaration and the Bylaws. In the event that any of the matters in the Bylaws are in any way inconsistent with any matters in this Declaration, then any such matters in this Declaration shall prevail. In the event of a conflict between the Bylaws and this Declaration, the latter shall prevail.

4.1.5 Compliance with Governing Documents. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations of the Association, or its duly authorized representative, all as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or regulations, shall be grounds for an action to recover sums due for damages or for injunctive relief.

4.1.6 Transfer of Membership. The membership in the Association held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership may be (i) pledged to a lending institution as additional security for a loan which is also secured by the Lot, or (ii) transferred upon the transfer of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot shall fail or refuse to transfer the membership registered in his name to the transferee of such Lot, the Association shall have the right to record the transfer upon the books of the Association. A membership shall survive the death of a Member and may be transferred in the manner herein provided.

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4.2 Powers, Rights and Duties of the Association.

4.2.1 General. The Association shall have the following powers, rights, and duties in addition to those provided elsewhere in this Declaration and those adopted in its Bylaws and, in the Rules and Regulations:

4.2.1.1 To enforce the provisions of this Declaration, the Articles and the Bylaws.

4.2.1.2 To pay taxes, special assessments and other liabilities which are or would become a lien on the Association Property, or any portion thereof, unless such lien encumbers an undivided interest in the Association Property as a part of a Lot and is solely the obligation of the Owner of such Lot.

4.2.1.3 To levy assessments and to perfect and enforce liens as hereinafter provided.

4.2.1.4 To make and enforce reasonable Rules and Regulations for the operation and use of the Property and to amend them from time to time, provided that any Rule or Regulation may also be amended or repealed by an instrument in writing signed by the Owners of a majority of the Lots.

4.2.1.5 To contract for goods and/or services for the Association Property and interests of the Association, subject to the limitations set forth below in Subparagraph 4.2.2.1.

4.2.1.6 To delegate its powers to committees, officers or employees of the Association as expressly authorized by this Declaration or the Bylaws. These committees and their functions shall include, but not be limited to, the following:

4.2.1.6.1 Architectural Committee, as provided in Subparagraph 14.16;

4.2.1.6.2 Finance and Legal Committee, to oversee the financial and legal affairs of the Association;

4.2.1.7 To prepare budgets and financial statements for the Association as prescribed in this Declaration or in the Bylaws.

4.2.1.8 To initiate and execute disciplinary proceedings against Members for violations of provisions of this Declaration, the Bylaws, or the Rules and Regulations, in accordance with procedures set forth either below or in the Bylaws.

4.2.1.9 To enter onto any Lot, within which is located any portion of the Association Property, as necessary, in connection with construction, maintenance or emergency repair for the benefit of the Association Property.

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4.2.1.10 To elect officers of the Association.

4.2.1.11 To fill vacancies on the Board except for a vacancy created by the removal of a Board member, as provided in the Bylaws.

4.2.1.12 To paint, plant, maintain and repair in a neat and attractive condition, in accordance with standards adopted by the Board, the Association Property, and all improvements thereon, and to pay for services for the Association Property.

4.2.1.13 To grant and convey, with the consent of at least 75% of the voting power of the Association, to any person or entity, easements or rights-of-way, in, on, over or under any portion of the Association Property for the purpose of constructing, erecting, operating or maintaining thereon:

4.2.1.13.1 Roads, streets, walks, driveways, parkways, and park areas;

4.2.1.13.2 Underground lines, cables, wires, conduits or other devices for the transmission of electricity for lighting, heating, power, television, telephone and other similar purposes;

4.2.1.13.3 Sewers, storm water drains, and pipes, water systems, sprinkling systems, water, heating, and gas lines for pipes; and

4.2.1.13.4 Any similar public or quasi-public improvements or facilities.

4.2.1.14 To maintain the integrity of the Association Property and provide such other services as may be necessary or proper to carry out the Association's obligations in business under the terms of this Declaration in order to facilitate the use of the Association Property.

4.2.1.15 If deemed appropriate by the Board, to retain and pay for legal and accounting services necessary or proper in the operation of the Association Property, enforcement of the Declaration, Bylaws or the Rules and Regulations, or in performing any of the other duties or rights of the Association.

4.2.1.16 To contract for casualty and/or liability insurance policies not to exceed three years' duration, provided that the policy permits short rate cancellation by the insured.

4.2.1 Subject to Member Approval. The Association may take the following actions only upon the vote or written assent of a majority of the voting power of the Association residing in Members other than Declarant:

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4.2.2.1 To enter into a contract with any third person wherein the third person will furnish goods or services for the Association Property or the Association for a term longer than one year, except as provided in Subparagraph 4.2.1.16.

4.2.2.2 To incur aggregate expenditures for capital improvements to the Association Property in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year.

4.2.2.3 To pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided, however, that the Board may cause a board member or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

4.2.2.4 To fill a vacancy on the Board created by the removal of a Board member.

4.2.3 Board Approval. Whenever this Declaration or the Bylaws require the approval or consent of the Association, said approval or consent shall mean the written approval of the Board unless otherwise provided by this Declaration or the Bylaws.

4.3 Maintenance, Repairs and Alterations. Notwithstanding the existence of any insurance covering an Owner, the Association, or both, against loss, damage and destruction, the Association and each Owner shall have the affirmative obligations for maintenance, repair and restoration as set forth herein.

4.3.1 Repair and Maintenance by Association: Generally. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Articles, Bylaws or Rules and Regulations, the Association, in such manner and at such times as the Board shall prescribe, shall have the duty to maintain the Association Property, more particularly including, but not limited to the following duties:

4.3.1.1 Maintain, repair, restore, replace, and make necessary improvements to the Association Property, including, but not limited to, major slopes, entry monuments and lighting associated therewith, and entry gates.

4.3.1.2 Provide, maintain, repair, restore and replace as necessary, the following:

4.3.1.2.1 Maintain, replant and redesign those landscaped areas within the Association Property;

4.3.1.2.2 Maintain all other areas, facilities, equipment, services or aesthetic components of whatever

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nature as may from time to time be requested with a vote of written consent of two-thirds of the voting power of the Members;

4.3.1.2.3 No Owner shall do anything which would interfere with the Association's maintenance activities undertaken pursuant to this Declaration;

4.3.1.2.4 The cost of such maintenance, repair or replacement shall be assessed in accordance with Subparagraph 5.1.1, except that the cost of such maintenance, repair or replacement which results from the negligence or willfulness of a particular Owner, that Owner's guest, or any occupant of that Owner's Lot, shall be charged to that Owner in addition to that Owner's regular monthly assessment and shall be an obligation of such Owner as provided in Subparagraph 5.1.4.

4.3.2 Right of Entry. The Association shall have the right to enter upon any Lot within which is located any portion of the Association Property in connection with any reasonably necessary maintenance, repair or construction in the exercise of the powers and duties of the Association.

4.3.3 Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements in the Association Property owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

5. Assessments and Liens.

5.1 Types of Assessments. Each Owner, including Declarant, shall be subject to the following uniform assessments in amounts to be determined by the Board:

5.1.1 Regular Assessments. Regular monthly maintenance assessments equal to the Owner's share of the actual or estimated cost of all maintenance, repairs, taxes, insurance, and other common expenses for which the Association is responsible. Such assessments shall commence as to all Lots within any Phase of the development of the Property as of the first day of the month following the close of escrow for the sale of the first Lot in any such Phase.

5.1.2 Reserves. Adequate reserves for replacement, whether by capital contribution or otherwise, which reserves shall be amortized and collected on the same basis as for regular assessments.

5.1.3 Special Assessments. Special assessments for capital expenditures or other purposes, which may be assessed on the following basis:

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5.1.3.1 In any fiscal year the Board may not, without the vote or written consent of a majority of the voting power of the Association residing in Members other than Declarant, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent of the budgeted gross expenses of the Association for that fiscal year.

5.1.3.2 Except as provided in Subparagraph 5.2, below, every special assessment shall be levied upon the same basis as that prescribed in Subparagraph 5.1.1 above for the levying of regular assessments.

5.1.4 Other Charges. Charges, payments, fines, penalties and such other sums as become payable under this Declaration or the Bylaws. A monetary penalty imposed by the Board as a disciplinary measure for failure of a Member to comply with this Declaration or the Bylaws, or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Property for which the Member was allegedly responsible, or in bringing the Member or his Lot into compliance with this Declaration or the Bylaws, shall not be characterized or treated as an Assessment which may become a lien against the Member's Lot enforceable by sale of the Lot.

5.2 Limitation on Regular Assessment Increases. The Board may not, without the vote or written consent of a majority of the voting power of the Association residing in Members other than Declarant, impose a regular annual assessment per Lot which is more than 20% greater than the regular annual assessment for the immediately preceding fiscal year.

5.3 Owner's Liability. Each Owner shall pay all assessments levied upon that Owner's Lot (whether pursuant to this or any other provision hereof) to the Association within ten days of the mailing or delivery of an invoice for the same to said Owner. The Association may, in addition to said assessments, charge and assess costs (including reasonable attorneys' fees) and penalties and interest for the late payment or nonpayment thereof. No Owner of a Lot may exempt himself from liability for that Owner's share of assessments and costs by waiving the use of any of the Association Property or by abandoning the Lot.

5.4 Lien. If not paid within 30 days from the date said assessments are due, such assessments (including late or nonpayment charges) shall become a lien upon the Owner's Lot and shall continue to be such a lien until fully paid and shall also be the personal obligation of the Owner of the Lot at the time the assessment fell due, subject to the following conditions:

5.4.1 Recordation of Notice of Lien. Such lien shall become effective against any such Lot only upon the recordation by the Association of a Notice of Lien, in accordance with California Civil Code Section 1356, in the Office of the County Recorder of Alameda County, California.

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5.4.2 Foreclosure Action. Any action brought to foreclose such lien must be commenced within one year following such recordation; provided, however, that said period may be extended by the Association for a period not to exceed one additional year by recording a written extension thereof.

5.4.3 Priority of First Mortgage. Any such lien shall not defeat nor render invalid the lien of any first Mortgage affecting any Lot, made in good faith and for value and recorded in the office of said County Recorder prior to the recordation of any such lien, and any such lien shall be subordinate and subject to the lien of any such prior recorded first Mortgage or Deed of Trust.

5.5 Association Enforcement Rights. The Association is hereby vested with the right and power to bring, at its option, any and all actions against the Owners for the collection of assessments which are not paid when due, and to enforce the aforesaid lien by any and all methods available for the enforcement of contractual obligations or liens including, without limitation, the right to bring a personal action against the Owner on such debt, the right to foreclose such lien in a method provided by law for foreclosure of a Mortgage, and the right to sell by public or private sale the Owner's interest, which may be enforced by the Association, its attorney, or other person authorized to bring such action or make such sale. A sale of an Owner's interest shall be conducted in accordance with the provisions of Section 2924b and 2924c of the Civil Code of California (or any similar statutory provisions that may hereafter exist). The Association shall have the power to bid on the property sold in its own name and to hold, lease, mortgage and convey the same for the benefit of all the Owners. All rights and remedies granted to the Association hereunder shall be cumulative and the exercise of one or more rights or remedies shall not constitute a waiver or election preventing the use of other rights or remedies. The Association shall be entitled to collect from a defaulting Owner all costs and attorneys' fees incurred in connection with any legal action commenced for the purpose of collecting said assessments and/or enforcing said lien.

The Association shall be entitled to collect from a defaulting Owner all costs and attorneys' fees incurred in connection with any legal action commenced for the purpose of collecting said assessments and/or enforcing said lien. Any judgment rendered in any action or proceeding pursuant to this Declaration or any amendment thereto shall include a sum for attorneys' fees in such amount as the court may deem reasonable in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon and costs of collection and court costs.

5.6 Suspension of Rights and Privileges. During any period in which a Member shall be in default in the payment of any regular or special assessment levied by the Association, the voting rights of such Member may be suspended by the Board

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until such assessment has been paid. Such rights of a Member may also be suspended, after reasonable notice and an opportunity for a hearing before the Board satisfying the minimum requirements of Section 7341 of the Law, for a period not to exceed 30 days, for any single infraction of any Rules and Regulations established by the Board governing the use of the Property.

6. Insurance. The Association shall acquire the following insurance policies for the benefit of the Lots and Owners:

6.1 Casualty. A policy or policies of insurance for the full insurable replacement value, without deduction for depreciation, of all the Property improvements located thereon other than improvements on individual Lots, for the interest of and naming as insured the Association for the use and benefit of the Owners, as their interests may appear. In any event, the amount of coverage shall be sufficient so that insurance proceeds from a covered loss shall provide at least the full amount of the covered damage or loss. Such policy or policies shall:

6.1.1 Provide coverage against the perils of fire, vandalism, and malicious mischief, and extended coverage, as minimum requirements;

6.1.2 Contain a waiver of subrogation rights by the insurer as against the Association, its officers, the Board and the Owners;

6.1.3 Provide that, without affecting any protection to Mortgagees, any proceeds payable to the Association shall be paid to a bank or trust company to be designated by the Association to act as depository; and

6.1.4 Be primary to and shall not be affected by any right of setoff, proration or contribution by reason of any insurance held by an Owner.

6.2 Public Liability. A policy insuring the Association, its officers, the Board and Owners against any liability, to the public or to the Owners, their guests, invitees, or tenants, incident to the activities and responsibilities of the Association. Limits of liability under such policy or policies of insurance shall not be less than a combined limit of \$1,000,000. Said policy or policies shall include errors and omission coverage for the Board members. Said policy or policies shall contain severability of interest endorsements which shall preclude the insurer from denying the claim of named insureds because of any neglect or other act or omission of another named insured.

6.3 Fidelity. A fidelity bond or insurance for Board members, officers, managers, trustees, employees and volunteers responsible for handling funds belonging to or administered by the Association or Owners, naming as insured the Association for an amount sufficient to cover at least one and one-half times

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the Association's estimated annual operating expenses and reserves. Such bond or insurance shall contain an appropriate endorsement to cover any persons who serve without compensation if the policy would not otherwise cover volunteers.

6.4 Workers' Compensation. Workers' compensation insurance, including employer's liability insurance to the extent necessary to comply with applicable laws.

6.5 Insurer Rating. All policies of insurance obtained by the Association as provided in this Paragraph 6 shall be obtained from an insurance company qualified to do and doing business in the State of California and holding a rating of "A/X" or better, by Best's Insurance Reports, and such policies may be obtained from one or more companies.

7. Covenants and Restrictions Regarding Use. All Members of this Association shall be bound by the covenants, conditions and restrictions found in this Declaration.

7.1 Residential Single Family Use. Except as provided in Subparagraph 7.11 (respecting Declarant's use of the Property), the Property shall be used solely for residential use and each Lot shall be used solely for Single Family residential use. No building, structure or improvement of any kind shall be constructed, erected, altered, placed or permitted to remain on any of the Lots within the Property, other than residential dwellings and customary appurtenances designed for occupation by not more than one family. None of the Lots shall be used or cause to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes, or for such other use which would be in violation of any ordinance or regulation of the City.

7.2 Pets. Subject to such Rules and Regulations as the Association may adopt, Owners may keep household pets, including dogs, cats or other similar animals on each Lot, provided they are not kept, bred or maintained for any commercial purpose and are controlled on a leash when outside their master's Lot. Any pet deemed a nuisance by the Association shall be removed from the Property. Excessively noisy pets, such as barking dogs, may be deemed a nuisance. Every Owner keeping a pet shall clean up any mess created by such pet. Except as provided in the preceding sentences, no animals, of any kind, shall be raised, bred or kept on the Property.

7.3 Parking. No mobile home, boat, camper, truck (except that pick-up trucks for personal use of one-half ton size or smaller shall be permitted), trailer, recreation vehicle of any kind, or commercial vehicle shall be kept, stored, parked (other than temporarily), maintained, constructed or repaired, on any property or street within the Property in such a manner as to be visible from any Lot; provided, that the provisions of this paragraph shall not apply to emergency repairs to such vehicles, for

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a period of time not to exceed 12 hours. Temporary parking shall mean parking the vehicles belonging to guests of Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Owners and parking of vehicles belonging to or being used by Owners for loading or unloading purposes.

7.4 Advertising. No Owner, tenant or other occupant of the covered Property shall post any advertisement, signs, flags, banners or posters of any kind for public display, provided that with the prior written approval of the Board as to size, type, color, style and location, a sign of customary and reasonable dimension may be posted to advertise a Lot for sale or lease. This restriction shall neither apply to nor limit the right of Declarant to display or have displayed signs, posters, banners, flags and similar items advertising the sale or lease of the covered Property or Lots therein. The Board shall have the right to remove an item displayed in violation of this Subparagraph 7.4.

7.5 No Nuisance. No Lot or other part of the Property shall be used in such manner as to unreasonably obstruct or interfere with the enjoyment of other residents or to annoy them by unreasonable noises or otherwise; nor shall any nuisance or immoral or illegal activity be committed or permitted to occur, or any noxious or offensive activity be carried on within the Property. No weeds, rubbish, debris, objects or materials of any kind shall be placed or permitted to accumulate upon any Lot within the Property which renders such portion unsanitary, unsightly, offensive or detrimental to any property in the vicinity thereof or to the occupants of any such property in such vicinity. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers. All service yards or service area, clothesline areas, sanitary containers and storage piles on any property within the Property shall be enclosed or fenced in such a manner that such service yards or areas, containers or piles will not be visible from any neighboring property or street. Sanitary containers may be set out for a reasonable period of time before and after scheduled trash pick-up times. No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown, or maintained upon on any property within the Property. No noxious trade or activity shall be carried within any portion of the Property, nor shall anything be done or maintained thereon that may become an annoyance or nuisance to the neighborhood.

7.6 Antennas. Unless the Architectural Committee shall approve otherwise, no projections or antennas of any type shall be placed, connected, maintained or permitted to remain above the roof of any dwelling or other structure in such a manner to be visible from the outside of any dwellings with the exception of one or more chimneys and one or more vent stacks.

7.7 Microwave Dishes, Windmills, Turbines, Solar Panels. Unless the Architectural Committee shall approve otherwise, no microwave dishes, turbines or windmills generating electric

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power shall be placed, connected, maintained or permitted to remain on a Lot or structure within the Property in such a manner as to be visible from any neighboring property or street. Solar heating panels shall not be placed anywhere within the Property on the front side or roof of any structure, or on the ground in such a manner as to be visible from the street fronting the structure.

7.8 Garages. Garages shall be used only for the purpose of parking automobiles and storing an owner's household goods. Garages shall not be used for the storage of goods and merchandise for trade or sale or for the conduct of any trade or business. When garages are not in use, garage doors shall be closed. No basketball hoops shall be installed, connected, maintained or permitted within a driveway or front yard area or on any garage within the Property.

7.9 No Adverse Insurance Effect. No Owner shall permit anything to be done or kept on that Owner's Lot or on the Association Property which will result in any increase of the Association's insurance premiums or the cancellation of insurance on any part of the Property, or which would be in violation of any law. No waste shall be committed in the Association Property.

7.10 Maintenance of Dwelling and Lot by Owner. All dwellings and other structures within the Property and each portion thereof shall at all times be maintained (including the replacement thereof when necessary or appropriate) in good repair and in an attractive, neat and orderly condition and shall be well and properly painted by the Owner thereof unless otherwise provided in this Declaration. No windows shall be covered with aluminum foil or other such material. All swings, playground sets, sandboxes, wading pools and like children's articles shall be placed only in private backyards. All front yards within a Lot shall be landscaped in a reasonable manner to enhance the appearance of the Lot within a period of 12 months from the date of the close of the first escrow for the purchase of such Lot. All landscaping of every kind and character, including shrubs, trees, grass and other plantings shall be neatly trimmed, properly cultivated and maintained continuously by the owner thereof in a neat and orderly condition and in a manner to enhance its appearance. Landscaped areas within any Lot shall be maintained continuously by the Owner thereof in a manner to maintain established slope ratios, prevent erosion or sliding problems, and to facilitate the orderly discharge of water through natural drainage systems and patterns to such systems and patterns established by Declarant. No structure, planting or other materials shall be placed or permitted to remain, or other activities undertaken on any slope area or any other area within a Lot to which might damage or interfere with such natural or established drainage systems or patterns. Any area drains and other drainage facilities and systems located on any Lot shall be maintained by the owner thereof in a neat, orderly and safe condition and in such a manner to facilitate the orderly discharge of water by means of same. As used herein, the term "Drainage System

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and Pattern" includes, but is not necessarily limited to, underground drain pipes and patterns of drainage over the Property from and to adjoining properties and improvements. The Owner of each Lot shall have the right to use the natural drainage system and pattern or such drainage system and pattern established by Declarant, for the purpose of draining that Owner's Lot and improvements thereon; provided that such right of drainage shall not include the right to discharge noxious or offensive matter. Water from any Lot and the improvements thereon may drain or flow into adjacent streets. Water shall be allowed to drain and flow onto adjacent lots to the extent provided for by the natural and established drainage system and pattern as more particularly referenced herein. All slopes and terraces on any Lot shall be maintained as provided herein so as to prevent any erosion thereof upon adjacent streets or adjoining property.

7.11 Completion of Property. Until Declarant has closed the sales of all of the Lots, neither the Owners nor the Association shall interfere with the sale of the Lots. For a period of five years after the date this Declaration is recorded, Declarant and its authorized agents and assigns may make such use of the unsold Lots and of the Association Property as may facilitate completion and sale, including, but not limited to, maintenance of model homes and sales and construction offices, and the showing of the Property and the Lots therein; provided, however, that Declarant shall not unreasonably interfere with any Owner's use and enjoyment of the Property.

7.12 Leases. With the exception of a Mortgagee in possession of a Lot following a default in a first Mortgage, a foreclosure proceeding or a deed or other arrangement in lieu of foreclosure, no Owner shall lease that Owner's Lot for transient or hotel purposes nor shall any Owner lease less than that Owner's entire Lot. No Owner shall enter into any rental, lease or tenancy agreement unless such agreement is in writing. Such written agreement shall include an express provision that it is subject in all respects to the provisions of this Declaration, the Bylaws, and Rules and Regulations and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the agreement.

7.13 Rules and Regulations.

7.13.1 The Board may, from time to time, establish, supplement, amend or revoke reasonable rules and regulations ("Association Rules") governing or restricting:

7.13.1.1 the use of the Association Property, and

7.13.1.2 any activity, conduct, condition or thing located in or upon any Lot, if deemed reasonably necessary or desirable to the peace, health, comfort, safety, protection or general welfare of the Owner.

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7.13.2 The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments and otherwise, all as provided in the Bylaws and in this Declaration.

7.13.3 Such rules and regulations shall be effective and binding to the same extent and effect as if set forth in the Declaration on the Owners and their successors in interest, and all families, guests or invitees, whether or not actually received thereby, when a copy of said rules and regulations as adopted, amended or repealed, certified by the Secretary or any Assistant Secretary of the Association is (1) mailed or delivered to each Owner, and (2) posted in any public place on the Properties designated by the Association as a place for the posting of notices. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Mortgagee upon request. In the event of any conflict between any such Association rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflicts.

7.14 General Applicability of Regulations. All Owners, lessees, guests and occupants of Lots shall abide by this Declaration, the Bylaws, and any Rules and Regulations adopted by the Association.

8. Notice of Transfer. Upon the lease, sale or other transfer of a Lot, either the Owner who transfers the Lot or the transferee shall promptly notify the Association in writing of the name and address of the transferee, the nature of the transfer and the Lot involved, as well as such other information relative to the transfer and the transferee as the Association may reasonably request. An executed copy of the instrument of transfer shall accompany said notice. All transfers shall be subject to this Paragraph, including, but not limited to, transfers occurring by reason of sale, lease, gift, devise or inheritance. The provisions of this Paragraph 8 shall not apply to Declarant.

9. Condemnation. In the event the Association Property or any portion thereof shall be taken or condemned by any authority under the power of eminent domain, all compensation and damage relating to the land or improvements shall be payable to the Owners of the Lots upon which the taken or condemned Association Property is located.

10. Amendment. This Declaration may be amended by the written approval of both at least 75% of the total voting power of the Association and at least a majority of the votes of Members other than the Declarant. Any such amendment shall become effective upon recordation in the Office of the Alameda County Recorder of a written instrument setting forth such amendment and signed and acknowledged by a majority of the Board, who shall certify in

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said instrument that at least 75% of the total voting power of the Association and at least a majority of the votes of Members other than the Declarant have given their written approval of such amendment. Provided, however, that no amendment that materially affects the ownership, possession or use of a Lot or would materially change such rights of an Owner, either directly or as a Member of the Association, shall be valid unless the prior written consent of the California Real Estate Commissioner is obtained, to the extent that such consent is required under Section 11018.7 of the California Business and Professions Code. Provided, further, that no material amendment shall become effective unless written approval of such amendment is obtained from at least 67% of all first Mortgagees of Lots within the Property. For purposes of this Paragraph 10, the term "material amendment" shall mean amendments to provisions of this Declaration governing the following subjects:

10.1 The fundamental purpose for which the Property was created (such as a change from residential use to a different use);

10.2 Voting;

10.3 Assessments, assessment liens, and subordination thereof;

10.4 Reserves for repair and maintenance of the Association Property;

10.5 Property maintenance obligations;

10.6 Casualty and liability insurance; and

10.7 Any of the provisions of Paragraph 10.

11. Partition.

11.1 Restrictions on Partition. Except as provided in California Civil Code § 1354, there shall be no judicial partition of the Association Property, nor shall Declarant or any person acquiring any interests in the Association Property, or any part thereof, seek any judicial partition thereof; provided, however, that if any Lot shall be owned by two or more Owners as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such Owners.

11.2 Sale of Entire Property. The Association, acting through its Board, is hereby granted an irrevocable power of attorney to sell the entire Association Property for the benefit of all the Owners when partition of the Association Property may be had under California Civil Code § 1534 which shall (i) be binding on all Owners; (ii) be exercisable only after prior approval of not less than a majority of Owners in the Association Property; and (iii) be exercisable only after recordation by the duly authorized officers of the Association of a Certificate setting forth

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compliance with the foregoing conditions, which Certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

12. Term of Restrictions. This Declaration shall remain in full force and effect for a period of 40 years from the date hereof. Thereafter, it shall be deemed to have been renewed for successive terms of ten years each unless revoked or amended by an instrument in writing, executed and acknowledged by the Owners of a majority of the Lots within the Property, which instrument shall be recorded in the Office of the County Recorder of Alameda County, California, within 90 days prior to the expiration of the initial effective period hereof or any 10-year extension.

13. Notices. Any notice required to be sent to any Member of the Association under the provisions of this Declaration shall be deemed to have been received when mailed with proper postage prepaid to the last known address of the person who appears as a member on the records of the Association at the time of such mailing.

14. Miscellaneous.

14.1 Enforcement of Restrictions. After the date on which this Declaration has been recorded, these covenants, conditions, servitudes, rights, reservations, limitations, liens, charges and restrictions may be enforced by the Association through the assertion of any and all available legal and/or equitable remedies, including but not limited to injunction, declaratory relief and action to abate a nuisance. The Association shall, in addition, have the right and duty to expend assessment funds in pursuance thereof. Any one or more Owners shall also have the right and duty of enforcement except that no Owner shall have the right to enforce any assessment, lien or charge created herein independently of the Association. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

14.2 Violations and Nuisance. Every act or omission whereby any provisions of the Restrictions is violated in whole or in part is hereby declared to be a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner, by the Association, or its successors in interest.

14.3 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of the Restrictions and subject to all of the enforcement procedures set forth in the Restrictions.

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14.4 Remedies Cumulative. Each remedy provided by the Restrictions or in the Bylaws is cumulative and not exclusive. The Association may, at its option, without waiving the right to enforce its lien against the Lot, bring a suit at law to enforce each assessment obligation.

14.5 Non-Waiver. The failure of the Association to enforce any of the provisions of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provisions or any other provisions of the Restrictions.

14.6 Attorneys' Fees. Any judgment rendered in any action or proceeding hereunder shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in payment (if applicable), interest thereon, late charges (if any) and court costs.

14.7 Special Assessment. If any Owner, his family, guest or any invitee violates the Restrictions, the Board may, in addition to the other remedies available, impose a reasonable Special Assessment upon such Owner for each violation and may suspend or condition such Owner's voting right. Before invoking any such measure, the Board shall give such Owner Notice and an opportunity for a formal Hearing, as further provided below and in the Bylaws. Any such suspension or conditional suspension shall be for a period of not more than 30 days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues.

14.8 Notice and Hearing Procedure.

14.8.1 Suspension of Privileges. In the event of an alleged violation of this Declaration, the Bylaws or the Rules and Regulations of the Association, and after written notice or such alleged failure is delivered personally or mailed to the Owner or any agent of the Owner ("respondent") alleged to be in default in the manner herein provided, by certified mail, return receipt requested, the Board of Directors shall have the right, after affording the respondent an opportunity for an appropriate hearing as hereinafter provided, and upon an affirmative vote of a majority of all Directors on the Board, to take any one or more of the following actions: (1) levy a Special Assessment as provided in the Declaration; (2) suspend said Owner's voting privileges as Owner, as further provided in the Declaration; or (3) record a notice of noncompliance encumbering the Lot of the respondent. Any such suspension shall be for a period of not more than 30 days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. The failure of the Board to enforce the Rules and Regulations of the Association, the Bylaws or this Declaration shall

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not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by the Bylaws or this Declaration shall be cumulative and none shall be exclusive. However, any individual Owner must exhaust all available internal remedies of the Association prescribed by the Bylaws, by this Declaration or by the Rules and Regulations of the Association, before the Owner may resort to a court of law for relief with respect to any alleged violation of this Declaration, the Bylaws or the Rules and Regulations of the Association by another Owner, provided that the foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board or to an Owner where the complaint alleges nonpayment of general or special assessments.

14.8.2 Written Complaint. A hearing to determine whether a right or privilege of the respondent under this Declaration or the Bylaws should be suspended or conditioned, or whether a Special Assessment should be levied, shall be initiated by the filing of a written complaint by any Owner or by any officer or member of the Board of Directors with the President of the Association or other presiding member of the Board. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, and a reference to the specific provisions of the Declaration, these Bylaws or the Rules and Regulations of the Association which the respondent is alleged to have violated. A copy of the complaint shall be delivered to the respondent in accordance with the notice procedures set forth in the Declaration, together with a statement which shall be substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the person named as a respondent in the accompanying complaint is delivered or mailed to the Board of Directors within 45 days after the complaint, the Board of Directors may proceed upon the complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled 'Notice of Defense' to the Board of Directors at the following address:

You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board of Directors, you may contact _____

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14.9 Mortgage Protection. No breach of this Declaration shall defeat or render invalid the lien of any first Mortgage made in good faith and for value. Each and all of the provisions hereof shall be binding, however, upon and effective against any Owner whose title thereto is acquired by or through trustee's sale or foreclosure, except that said person who acquires title in such manner shall take title to said Lot free of any liens for all assessments that have accrued up to the time of trustee's sale or foreclosure of a first Mortgage, but subject to the lien of this Declaration and all said charges that shall accrue subsequent thereto. The breach of any of the provisions hereof may be enjoined, abated, or reviewed by appropriate proceedings notwithstanding the lien or existence of any such Mortgage.

14.10 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a general plan for the maintenance of the Property.

14.11 Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provisions hereof.

14.12 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners; provided, however, that this paragraph shall not affect, limit or abridge, in any way, the rights reserved by Declarant in this Declaration.

14.13 Limitation of Liability. Neither the Declarant (nor its agents or employees), the Association, the Board (nor any member thereof), nor any officers of the Association shall be liable for any failure to provide any service or perform any duty, function or responsibility designated or provided in this Declaration or the Bylaws to be performed by the same, or for injury and/or damage to persons or property caused by fire, explosion, the elements or by another Owner or person in the Property or resulting from electricity, water, rain, dust or sand which may leak or flow from outside any unit or from any pipes, drains, conduits, appliances or equipment, or from any other place or cause unless caused by the willful misconduct of Declarant, the Association, its Board or officers and except to the extent such liability, damage or injury is covered by any type of insurance.

14.14 Indemnification. The Association shall and does hereby indemnify the Board (and each member thereof) and the officers of the Association (and each of them) against all expenses and liabilities, including attorneys' fees reasonably incurred by such person or persons in connection with any proceeding to which such person or persons may be a party by reason of being or having been a Board member or officer of the Association, except in (i) such cases where such person has committed a willful misfeasance

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or malfeasance in the performance of such person's duties; and (ii) to the extent any such liability is covered by any type of insurance.

14.15 Completion Bond. In the event that the Association Property is not completed prior to the issuance of a final Public Report by the California Department of Real Estate and the Association is obligee under a bond or other arrangement (hereinafter "Bond") to secure performance of the commitment of Declarant to complete the improvements, the following provisions shall apply with respect to the Associations initiating action to enforce the obligations of Declarant and the surety under the bonds.

14.15.1 The Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvements for which a notice of completion has not been filed within 60 days after the completion date specified for that improvement in the planned construction statement attached to the bond. If the Association has given an extension in writing for the completion of any Association property improvement, the Board shall be directed to consider and vote on the aforesaid question if a notice of completion had not been filed within 30 days after the expiration of the extension.

14.15.2 A special meeting of Members for the purpose of voting to override the decision by the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question shall be held not less than 35 days or more than 45 days after receipt by the Board of a petition for such a meeting signed by Members representing at least 5% of the total voting power of the Association.

14.15.3 The bond shall be enforced against Declarant and/or the surety upon the affirmative vote of a majority of Members of the Association, excluding Declarant.

14.15.4 A vote of the majority of the voting power of the Association residing in Members, other than the Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

14.16 Architectural Control.

14.16.1 Architectural Approval. No building, fence, wall, sign, pool, jacuzzi, pond, waterfall, concrete slab, walk/slab of other materials, patio cover, gazebo, bath house or other structure, or exterior addition to or change or alteration thereof (including painting) or landscaping shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the Property or any portion thereof, until plans and specifications ("Plans") as required in Subparagraph 14.16.3 shall

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have been submitted to and approved in writing by an architectural committee ("Architectural Committee"), initially to be appointed by Declarant. Maintenance and replacement of any and all fences which are the responsibility of the Owner shall be done in compliance with the details and standards as set forth in the Fencing Plan as defined in Subparagraph 1.16 of this Declaration, and any variance from such plan must be approved by the Architectural Committee and the City. Notwithstanding the foregoing, Declarant shall not be required to comply with any of the provisions of this Article.

14.16.2 Approval by City. Plans for the following structures shall be submitted to, and the design of such structures shall be approved in writing by, the Planning Commission of the City ("Planning Commission") prior to the construction thereof on the Property:

14.16.2.1 The exterior design of all
Custom Homes;

14.16.2.2 The exterior design of all
Production Homes;

14.16.2.3 The exterior design of any
building or structure not attached to a home ("Accessory Structure")
that is visible from outside of the Property.

14.16.2.4 The design of all Perimeter
Lot Fencing that is visible from outside of the Property.

14.16.3 Approval by Declarant. No Custom Home and/or related improvements shall be constructed on any Lot until Plans have been submitted to and approved in writing by the Declarant. Declarant's approval shall not be subject to any standard of good faith or reasonableness. Declarant's approval or disapproval shall be absolute and may be based on any grounds whatsoever. Notwithstanding any other provisions of this Declaration, the approval of the Architectural Committee shall not be required for the initial construction of any Custom Home or Production Home. However, any subsequent modification of a residential dwelling unit and/or construction of related improvements shall be subject to the approval of the Architectural Committee.

14.16.4 Custom Homes Standards. No residential dwelling unit shall be constructed on any Custom Home Lot unless the design of such residential dwelling unit shall provide that the square footage of the living area of such dwelling unit shall be not less than 3,000 square feet, and that the "hard costs" as such term is utilized in the construction industry be not less than \$40 per square foot, and shall further provide that the dwelling unit and all appurtenant structures be designed to comply with the building setback requirements of the City in effect at the time that the Plans are prepared. Notwithstanding the foregoing, Declarant shall not be required to comply with any provisions of this Paragraph 14.16.4.

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14.16.5 Requirements for Approval. Said Plans shall be prepared by a duly licensed architect or other person approved by the Architectural Committee and shall include, where appropriate, the following: (a) plot plans, showing the location of all structures and showing grade elevations and drainage; (b) building plans, including floor, foundation and roof plans, with all materials therefor; (c) exterior elevations, surfaces and sections, structural design and salient exterior details; (d) general exterior color schemes; and (e) landscaping plans showing type, location and elevation of trees, bushes, shrubs, plants, hedges and fences. All such Plans shall be submitted in writing over the signature of the Owner or such Owner's authorized agent. Approval shall be based, among other things, on adequacy of site dimensions; adequacy of structural design and material; conformity and harmony of external design with neighboring structures; effect of location and use of improvements and landscaping on neighboring property, improvements, landscaping operations and uses; relation of topography, grade and finished ground elevation of the property being improved to that of neighboring property; proper facing of main elevations with respect to nearby streets; preservation of view and aesthetic beauty; conformity with such rules and regulations as may be adopted by the Architectural Committee in accordance with this Article; and conformity of the Plans to the purpose and general plan and intent of this Declaration. The Architectural Committee shall have the right, but not the obligation to require any Owner to remove, trim, top or prune any shrub, tree, bush, plant or hedge which such Committee reasonably believes impedes the view of any Lot.

14.16.6 Term and Composition of Architectural Committee. The Architectural Committee shall be composed of three members. Declarant shall appoint the three original members of the Architectural Committee and all replacements until the first anniversary of the issuance of the original Public Report for the Project, at which time the Board shall have the power to appoint one member. Upon the earlier to occur of (i) the fifth anniversary of the issuance of the final Public Report for the Project, or (ii) the sale of 90% of the Lots within the Project and commencement of construction of dwelling units thereon, the Board shall have the power to appoint all of the members of the Architectural Committee. Architectural Committee members appointed by the Board shall be Members of the Association, but those appointed by Declarant need not be Members of the Association.

14.16.7 Failure to Approve or Disapprove Plans and Specifications. In the event the Architectural Committee, or its representatives designated in accordance with Subparagraph 14.16.11 hereinbelow, fails to either approve or disapprove such Plans within 45 days after the same have been submitted to it, it shall be conclusively presumed that the Architectural Committee has approved such Plans. All improvement work approved by the Architectural Committee shall be diligently completed and constructed in accordance with approved Plans.

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14.16.8 No Liability. Neither Declarant, the Architectural Committee, or the members or designated representatives thereof shall be liable in damages to anyone submitting Plans to them for approval, or to any Owner of property affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such Plans, or for any defect in any structure constructed from such Plans. Such Plans are not approved for engineering design. Every person who submits Plans to the Architectural Committee for approval agrees, by submission of such Plans and every Owner of any of said property agrees that he will not bring any action or suit against Declarant, the Architectural Committee or any of the members or designated representatives thereof to recover any such damages.

14.16.9 Rules and Regulations. The Architectural Committee may from time to time, in its sole discretion, adopt, amend and repeal reasonable rules and regulations interpreting and implementing the provisions hereof and establishing reasonable architectural standards over the Property. These rules and regulations shall state that the Architectural Committee will immediately report all violations of its rules and regulations to the Board, whereupon the Board shall take the matter into immediate consideration. All remedial and enforcement powers of the Board, including injunctive powers, shall be available to the Board to remedy violations of, and compel compliance with, the rules and regulations of the Architectural Committee.

14.16.10 Variations. Where circumstances such as topography, location of property lines, location of trees, configuration of Lots, or other matters require, the Architectural Committee, by the vote or written consent of a majority of its members, may allow reasonable variations as to any of the covenants, conditions or restrictions contained in this Declaration under the jurisdiction of such Committee, on such terms and conditions as it shall require; provided, however, that all such variations shall be in keeping with the general plan for the improvement and development of the Property.

14.16.11 Appointment and Designation. The Architectural Committee may from time to time, by a majority of the members thereof, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects, or other qualified persons who shall have full authority to act on behalf of said Architectural Committee in all matters delegated.

14.16.12 Review Fee and Address. All Plans required by Subparagraph 14.16.3 hereof shall be submitted in writing for approval together with a reasonable processing fee not to exceed \$300 for each application. The address of the Architectural Committee shall be such place as may from time to time be designated in writing to the Owners of Lots within the Project by the Architectural Committee. Such address shall be the place for the submittal

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of Plans and the place where the current rules and regulations, if any, of the Architectural Committee shall be kept.

14.16.13 Inspection. Any member or agent of the Architectural Committee may from time to time at any reasonable hour or hours and upon reasonable notice enter and inspect any property subject to the jurisdiction of said Architectural Committee as to its improvement or maintenance in compliance with the provisions hereof.

14.17 Mortgagees.

14.17.1 If any Owner defaults in the performance of any obligation under this Declaration (including nonpayment of assessments) or the Bylaws and such default is not cured within 30 days, the first Mortgagee of such Owner's Lot shall be so notified in writing by the Association.

14.17.2 Notwithstanding any provision in this Declaration or the Bylaws which may be to the contrary, and in addition to all other approvals and consents required to be obtained from Mortgagees, unless the prior written approval of 67% or more of the first Mortgagees of Lots (based on one vote for each first Mortgage held) is obtained, the Association shall not be entitled to:

14.17.2.1 Change the prorata interest or obligations of any Lot for purposes of levying assessments or charges.

14.17.2.2 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Association Property by the Property shall not be deemed a transfer within the meaning of this clause; or

14.17.3 Upon request, first Mortgagees of Lots shall have the right to (i) examine the books and records of the Association at reasonable times and after reasonable notice; (ii) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year if the Association actually prepares such audited financial statements in the ordinary course of its business; and (iii) receive written notice of all meetings of the Association and have the right to designate a representative to attend all such meetings.

14.17.4 All taxes, assessments and charges which may become liens prior to the first Mortgage under local laws shall relate only to the individual Lot and not the Property as a whole.

14.18 Delivery of Declaration to Subsequent Owners. All Owners of Lots within the Property, upon transfer of

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title to the Lots, shall deliver to each successive new owner a copy of this Declaration and any subsequent modifications or supplements thereto.

14.19 Association Financial Statements. The Association shall prepare regular financial statements and shall distribute copies of those statements on a regular basis to the members of the Association as follows:

14.19.1 A pro forma operating statement (budget) for each fiscal year shall be distributed not less than 60 days before the beginning of each fiscal year.

14.19.2 A balance sheet of the Association shall be submitted to the members of the Association as of the accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of an interest in the Property and an operating statement for the period from the date of the first closing to said account date shall be distributed within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the subdivision interest and the name of the entity assessed.

14.19.3 An annual report consisting of the following shall be distributed within 120 days after the close of the Association's fiscal year:

(i) a balance sheet as of the end of the fiscal year;

(ii) an operating (income) statement for the fiscal year;

(iii) a statement of changes in financial position for the fiscal year; and

(iv) any information required to be reported under Section 8322 of the California Corporations Code.

The foregoing annual report shall be prepared by an independent accountant for any fiscal year in which the gross income of the Association exceeds \$75,000. If the foregoing report is not prepared by an independent accountant (because the gross income does not exceed \$75,000), it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

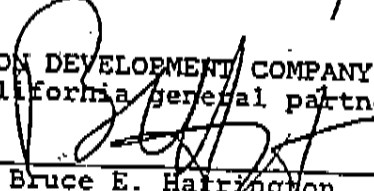
(Signature page to follow.)

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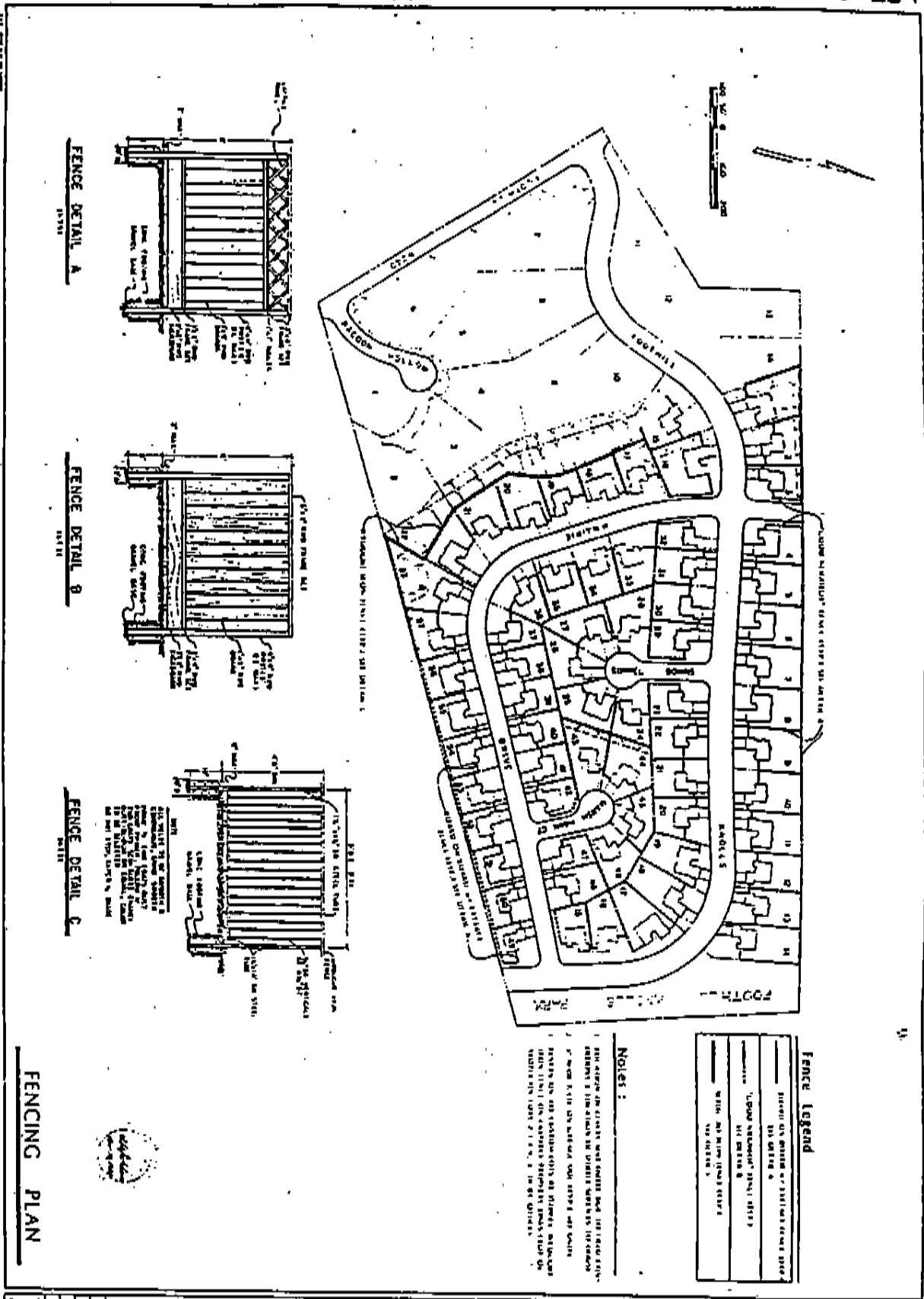
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument this 14th day of November 1984.

DECLARANT:

FALCON DEVELOPMENT COMPANY,
a California general partnership

By 
Bruce E. Harrington
Its Co-Managing General Partner

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FENCING PLAN

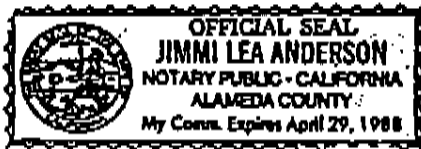


FALCON DEVELOPMENT CO. FOOTHILL KNOLLS / TRACTS 476A & 506S PLEASANTON, CA		A. S. DUTCHOVER LANDSCAPE ARCHITECT 1070 BAYVIEW AVENUE PLEASANTON, CA 94588	
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STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On November 14, 1984, before me, the undersigned, a Notary Public in and for said State, personally appeared Bruce E. Harrington, personally known to me (or proved to me on the basis of satisfactory evidence) to be one of the managing partners of Falcon Development Company, the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.



Jimmi Lea Anderson
Notary Public

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EXHIBIT "A"

LOCATION AND CONSTRUCTION MATERIALS
SPECIFICATIONS OF PERIMETER LOT FENCING

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EXHIBIT "B"

COLOR SCHEME FOR PERIMETER LOT FENCING

Paint Type and Color

Description

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EXHIBIT "A"

LOCATION AND CONSTRUCTION MATERIALS SPECIFICATION OF PERIMETER
LOT FENCING

7.3 Parking. No mobile home, boat, camper, truck (except that pick-up trucks for personal use of one-half ton size or smaller shall be permitted), trailer, recreation vehicle of any kind, or commercial vehicle shall be kept, stored, parked (other than temporarily), maintained, constructed or repaired, on any property or street within the Property in such a manner as to be visible from any Lot; provided, that the provisions of this paragraph shall not apply to emergency repairs to such vehicles, for a period of time not to exceed 12 hours. Temporary parking shall mean parking the vehicles belonging to guests of Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Owners and parking of vehicles belonging to or being used by Owners for loading or unloading purposes.

14.16 Architectural Control.

14.16.1 Architectural Approval. No building, fence, wall, sign, pool, jacuzzi, pond, waterfall, concrete slab, walk/slab of other materials, patio cover, gazebo, bath house or other structure, or exterior addition to or change or alteration thereof (including painting) or landscaping shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the Property or any portion thereof, until plans and specifications ("Plans") as required in Subparagraph 14.16.3 shall have been submitted to and approved in writing by an architectural committee ("Architectural Committee"), initially to be appointed by Declarant. Maintenance and replacement of any and all fences which are the responsibility of the Owner shall be done in compliance with the details and standards as set forth in the Fencing Plan as defined in Subparagraph 1.16 of this Declaration, and any variance from such plan must be approved by the Architectural Committee and the City. Notwithstanding the foregoing, Declarant shall not be required to comply with any of the provisions of this Article.

