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DECLARATION
 OF
 COVENANTS, RESTRICTIONS, RESERVATIONS,
 SERVITUDES, EASEMENTS, LIENS AND CHARGES
 AFFECTING THE REAL PROPERTY KNOWN AS
 PARKMONT -- TRACT 2265

THIS DECLARATION made by Barton Homes, a co-
 partnership, hereinafter called the Declarant,

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Clause I of this Declaration, and is desirous of subjecting the real property described in said Clause I to the covenants, restrictions, reservations, servitudes, easements, liens and charges hereinafter set forth each and all of which is and are for the benefit of said property and of each present and future owner thereof or of any part thereof, and shall inure to the benefit of and pass with said property, and each and every part thereof, and shall apply to and bind every present and future owner of said property, or any part thereof, and their and each of their heirs, successors and assigns;

NOW THEREFORE, Declarant hereby declares that the real property described in Clause I hereof is, and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, restrictions, reservations, servitudes, easements, liens and charges hereinafter set forth.

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CLAUSE I

Property Subject to this Declaration

The real property which is, and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, restrictions, reservations, servitudes, easements, liens and charges with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is all located in the County of Alameda, State of California, and is more particularly described as follows:

LOTS 1 to 11, inclusive, in block 1; lots 12 to 36, inclusive, in block 2; and lots 37 to 42, inclusive, in block 3, as said lots and blocks are shown on the map of "Tract 2265, Parkmont Unit No. 3, City of Fremont, Alameda County, California", filed *February 14, 1962* in book *44* of Maps, pages *177-80*, in the office of the County Recorder of Alameda County.

CLAUSE II

General Purpose of Conditions

The real property described in Clause I hereof is subject to the covenants, restrictions, reservations, servitudes, easements, liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each lot thereof; to protect the owners of lots against such improper use of surrounding lots as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereof of poorly designed or proportioned structures and structures built of improper or unsuitable materials, to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on lots; to prevent haphazard and inharmonious improvements of lots; to secure and maintain property setbacks from streets and

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adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvement in said property, and thereby to enhance the values of investments made by purchasers of lots therein.

CLAUSE III

Definition of Terms

1. DWELLING HOUSE. The words "Dwelling House" and "Outhouse" wherever used in this Declaration shall be deemed and construed to include both the main portion of such structures and all projections therefrom, such as bay, bow or oriel windows, exterior chimneys, covered porches, or porticos and the like, including any garage incorporated in or forming a part thereof, but shall not include the eaves of such structures, nor any open pergola, nor any uncovered porch, stoop, or steps, or balustrades, the sides of which do not extend more than three (3) feet above the level of the ground floor of said building.
2. LOT. The word "Lot" wherever used in this Declaration means and refers to one of the numbered lots of land described in Clause I hereof, as shown on the map hereinabove referred to. The numbers following the words "Lot" or "Lots", refer to the particular lot or lots so numbered on the aforesaid map.
3. SAID MAP. The words "Said Map" wherever used in this Declaration mean and refer to the map referred to in Clause I hereof.
4. SAID PROPERTY. The term "Said Property" wherever used in this Declaration means and refers to the property described in the aforesaid Clause I hereof.
5. SETBACK. The term "Setback" wherever used in this Declaration means the distance between the dwelling house or other structure referred to and the given street or side or rear line of the particular lot.

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6. STREET. The word "Street" wherever used in this Declaration means and refers to any street, highway, or other thoroughfare shown on said map, or contiguous to the real property designated on said map, whether designated thereon as street, avenue, boulevard, drive, place, court, road, terrace, way, circle, land, walk, path or otherwise.

7. ASSOCIATION. The word "Association" wherever used in this Declaration refers to Parkmont Homes Association, a corporation, organized under the laws of the State of California.

CLAUSE IV

Uses Prohibited and Permitted

1. Said property shall not be used, nor shall any portion thereof be used for any purposes other than residence purposes and the purposes in subdivision (7) and (8) of Clause IV hereof provided for.

2. No building other than a single family dwelling house and appurtenant outhouses, including garages for private use, shall be erected, constructed or maintained on said property, nor shall any building constructed or erected on said property be used for any purpose other than a private dwelling house or appurtenant outhouse, including garage for private use.

3. No dwelling house, appurtenant outhouse or garage, being more than 2 stories in height, shall be erected, constructed or maintained on said property. For the purposes of this paragraph, a basement shall not be considered a story.

4. For the purposes of this Declaration, a private garage for the use of the owners or occupants of the lot upon which said garage is erected shall be deemed an outhouse, and may be erected and constructed on such lot. A private garage may be incorporated in and made a part of such private dwelling house as is permitted by this Declaration to be erected on the lot.

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5. When the construction of any building on any lot is once begun, work thereon must be prosecuted diligently and it must be completed within a reasonable time. No building shall be occupied during construction, or until made to comply with all requirements of this Declaration.

6. No outhouse, garage, shed, tent, trailer or temporary buildings of any kind shall be erected, constructed, permitted or maintained on any lot prior to commencement of the erection of such dwelling house as is permitted hereby, and no outhouse, garage, shed, tent, trailer, basement or temporary building shall be used for permanent or temporary residence purposes.

7. Declarant has undertaken the work of constructing residential units and incidental improvements upon substantially all of the lots included within said property. The completion of that work and the sale, rental and other disposal of said residential units is essential to the establishment and welfare of said property as a residential community. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to;

(a) Prevent Declarant, its contractors or sub-contractors from doing on said property or any part thereof whatever is reasonably necessary or advisable in connection with the completion of said work;

(b) Prevent Declarant, or its representative from erecting, constructing and maintaining on any part or parts of said property owned or controlled by Declarant such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or

(c) Prevent Declarant from conducting on any part or parts of said property owned or controlled by Declarant their business of completing said work and of

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establishing said property as a residential community and of disposing of said property in parcels by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any of said lots owned or controlled by Declarant as may be necessary for the purposes set forth in this subdivision (7).

8. The Association, being an association of owners and occupants of said property and other properties and existing for the benefit of its members and said property, shall have the right to conduct its business connected with said property and to do all things that may be necessary or convenient in furtherance of its purposes upon any part or parts of said property owned or controlled by it.

9. No business of any kind whatsoever shall be erected, maintained, operated, carried on, permitted or conducted on said property, or any part thereof, except as in subdivisions (7) and (8) of Clause IV provided and, without limiting the generality of the foregoing, no store, market, shop, mercantile establishment, trading or amusement establishment, quarry, pit, undertaking establishment, crematory, cemetery, radio tower, auto camp, trailer camp or haven, hospital, public baths, sanitarium, asylum or institution, and no noxious, dangerous or offensive thing, activity or nuisance shall be erected, maintained, operated, carried on, permitted or conducted on said property, or any part thereof, nor shall anything be done thereon which may be, or become an annoyance or nuisance to the neighborhood.

10. No animals, birds, or fowl, including but not limited to hogs, cattle, cows, goats, sheep, rabbits, hares, dogs, cats, pigeons, pheasant, game birds, game fowl, or poultry (except as in subdivision 11 hereof permitted) shall be kept or maintained on any part of said property.

11. Dogs and cats may be kept upon any lot in reasonable numbers as pets for the pleasure and use of the occupants of said lot, but not for any commercial

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use or purposes. The Association shall have the right to determine what is a reasonable number of such animals. Rabbits and poultry may not be kept upon any lot for any purpose, unless and until authorized in writing by the Association, and in granting any such authorization the Association shall have the right to limit the number and prescribe the conditions under which any such rabbits and poultry may be kept. In no event shall any roosters, guinea hens, or other noisy fowl, be kept for any purpose on any lot.

12. No stable, livery stable, or riding academy shall be erected, conducted, carried on, kept, permitted or maintained, nor shall any horses, ponies, donkeys, or burros be kept upon any part of said real property.

13. No trailers shall be kept or stored on the front half of any lot or the side of any lot adjacent to a street for a period of time exceeding thirty-six (36) hours, unless within a garage.

14. No dwelling, outhouse or garage on any lot shall be painted any color other than the original color of the residence located thereon unless and until written approval shall have been secured from the Association.

15. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building set-back line shown on the recorded plat. In any event, no building shall be located on any lot nearer than fifteen (15) feet to the front lot line nor nearer than ten (10) feet to any side street line. No building excepting a detached garage or other outbuilding located fifty-five feet (55') or more from the front lot line shall be located nearer than five (5) feet to any side lot line, provided, however, that an attached garage may be located not nearer than three (3) feet to an interior side lot line. No dwelling shall be located on any interior lot nearer than fifteen (15) feet from the rear lot line.

16. No residential structure shall be erected or placed on any building plot which plot has an area of less than six thousand (6000) square feet or a width

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of less than sixty (60) feet at the front building set-back line, except that a residence may be erected or placed on any original lot as shown on the recorded plat.

17. Sewage disposal shall be by means of public sewer and no cesspools or outside toilets shall be permitted.

18. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

19. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

20. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

21. No individual water supply system shall be permitted on any lot unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the City of Fremont Health Department. Approval of such system as installed shall be obtained from such authority.

CLAUSE V.

Approval of Plans and Location of Structures

1. No building, outhouse, garage, fence, wall, retaining wall, or other structure of any kind shall be erected, constructed, placed or maintained on said real property, or any part thereof, nor shall any alteration, addition, changing, repairing, remodeling or adding to the exterior thereof be made, unless prior to the commencement of any construction, excavation, or other work, two complete plans and specifications therefor, including front, side and rear elevations and floor plans for each floor and basement, color scheme thereof, and two plot plans indicating and fixing the exact location of such structure, or such altered structure on the lot with reference to the street and side line thereof, shall have been first submitted in writing for approval, and approved in writing by the Association or its duly appointed agent.
2. In the event a proposed improvement be one for repainting or redecorating the exterior of such structure without remodeling or changing it, or making additions thereto, it shall only be necessary to file two color schemes of such proposed work and have the same approved prior to the commencement of such work.
3. Approval of such plans, specifications and location of buildings by the Association shall be endorsed on both sets of said plans and specifications and one set shall forthwith be returned by the Association to the persons submitting the same to the Association, and the other shall be retained by the Association in its permanent records.
4. The approval by the Association of any plans or specifications submitted for approval, as herein specified, shall not be deemed to be a waiver by the Association of the right to object to any of the features or elements embodied in such plans or specifications if and when the same features or elements are embodied in any subsequent plans or specifications submitted for approval for use on other lots.

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5. After such plans and specifications, and other data submitted have been approved by the Association, no building, outhouse, garage, fence, wall, retaining wall, or other structure of any kind shall be erected, constructed, placed, altered or maintained upon said property unless the same shall be erected, constructed or altered in conformity with the plans and specifications, color scheme and plot plan theretofore approved by the Association, or its duly appointed agent, as provided in subdivisions (1) and (2) of Clause V hereof. If any building, outhouse, garage, fence, wall, retaining wall, or other structure of any kind shall be erected, constructed, placed, altered or maintained upon said property, other than in accordance with the plans and specifications, color scheme and plot plan therefor, approved by the Association, such erection, construction, placing, alteration and maintenance shall be deemed to have been undertaken without the approval of the Association ever having been obtained as required by this Declaration.

6. (a) After the expiration of one year from the date of completion of any structure, or alteration, such structure or alteration shall be deemed to comply with all of the provisions of subdivisions (1) and (2) of Clause V, unless notice to the contrary shall have been recorded in the office of the County Recorder of Alameda County, or legal proceedings shall have been instituted to enforce such compliance.

(b) In the event that Association shall fail for a period of thirty (30) days to approve or disapprove any plans, specifications, color scheme or plot plans submitted to it for approval, the same shall be deemed to have been approved.

7. Any agent or officer of the Association may at any reasonable time enter and inspect any building or property subject to the jurisdiction of the Association, under construction on or in which such agent or officer may believe that a violation of the covenants, restrictions, reservations, servitudes or easements is occurring or has occurred.

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8. The Association may, from time to time, delegate to a person or persons the right to approve or disapprove the plans and specifications, color scheme and plot plans in this clause referred to.

9. Declarant is now in the process of causing to be constructed upon said property approximately forty-two (42) residential units and incidental improvements pursuant to a general plan of and for the improvement of said property, each and all of the residential units and incidental improvements which are so constructed pursuant to said general plan, whether more or less than said number, shall be deemed to fully comply with each and all of the provisions hereof without any approval thereof, or of the plans and specifications therefor by the Association.

10. Neither the Association nor any representative of the Association shall be entitled to any compensation for services performed pursuant to this Clause V.

CLAUSE VI

Setback and Free Spaces of Buildings

1. Declarant, with the cooperation and valuable assistance of the Planning Commission and City Council of the City of Fremont, are constructing the residential unit on each lot with setbacks and free spaces so fixed with respect to each lot and each group of lots in said property that the same will make the improvements on each lot, and in said property as a whole, most desirable and most attractive. For this purpose Parkmont is a "planned unit development" and setbacks and free spaces shall be in accordance with Planned Unit Development No. 4 as approved by the City of Fremont Planning Commission.

2. Anything in this Clause VI to the contrary notwithstanding, in the event one lot and the whole or a portion of a contiguous lot, all in one ownership, shall be used as one building site for one residence building and its appurtenant outhouses permitted by this Declaration, then while so owned and used the side

lines and rear line of such site shall, for the purposes of this Clause VI, be deemed to be the side lot lines and rear lot line of such site.

CLAUSE VII

Lots

1. Not more than one dwelling house shall be erected, constructed or maintained upon any one lot, or upon any building site consisting of a lot and a portion of a contiguous lot in the same ownership.

CLAUSE VIII

Area of Improvements

1. No dwelling house having a square foot living area (exclusive of porches, terraces, porticos, patios, and garages) of less than twelve hundred (1200) square feet shall be erected, constructed or maintained upon any lot.

2. Unless and until written authorization shall be obtained from the Association, no residence building, outhouse, garage, or other structure shall be constructed of any material except new material, except in the case of brick masonry, used brick or stone may be used.

CLAUSE IX

Removal of Trees

1. The Association shall have the right at any time, and from time to time, at its own cost, to cut and remove any trees on any lots, or other portion of the property, or remove or trim the branches of any trees, if it deems it desirable so to do for the benefit of other lots in said property, or for the general benefit of said property.

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2. The Association may require the owner of any lot, or the purchaser of any lot under a contract of sale from Declarant, or their successors or assigns, to cut and remove any trees, or any branches of any trees, which in the opinion of the Association are dangerous to adjoining property, or the streets shown on said maps, or bordering thereon, or any hedges which shall be maintained in violation of the provisions of Clause VI hereof. If such owner or purchaser shall fail so to do within ten (10) days after written notification from the Association, then the Association may cut and remove such trees or branches or make such hedges conform to the provisions of Clause VI hereof, and such owner or purchaser by accepting a conveyance of any lot, or entering into a contract of purchase therefor agrees to reimburse the Association, upon demand, for all monies so expended by it.

CLAUSE X

Streets, Easements, Reservations
and Rights of Way

1. Easements, reservations and rights of way as shown on said map shall be and are reserved on and across said property for the erection, construction and maintenance of

(a) Poles, wires and conduits for the transmission of electricity, power, lighting, telephone and other purposes, pipes and mains for water, gas and heating, and for necessary attachments in connection therewith.

(b) Public and private sewers, storm drains and land drains.

(c) Any other method of conducting or performing any public or quasi-public utility function, or use beneath the surface of the ground.

2. Such easements, reservations and rights of way are designated on said map, and additional easements, reservations and rights of way may be reserved by

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Declarant, its successors and assigns, in any conveyance it may make of said property, or any portion thereof, except that no additional easements, reservations and rights of way may be reserved by Declarant, its successors and assigns, in any conveyance it may make of said property, or any portion thereof, other than easements or rights of way for stubs, anchors or guy wires used for bracing poles which support pole lines.

3. No dwelling house and, except with the prior approval of the Association, or its duly appointed agent for the approval of plans, no outhouse, garage or other structure of any kind, shall be built, erected or maintained upon any such easement, reservation or right of way, and said easements, reservations and rights of way shall, at all times, be open and accessible to public and quasi-public utility corporations, and other persons erecting, constructing or servicing such utilities and quasi-public utilities, and to Declarant, its successors and assigns, all of whom shall have the right of ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary in, under and upon said locations for the carrying out of any of the purposes for which said easements, reservations and rights of way are hereby reserved, or may hereafter be reserved.

4. The Association, or Declarant with the consent of the Association, shall have the right at any time to extinguish such easements, reservations and rights of way.

5. Declarant, or the Association, shall have the right at any time to cut and remove any trees or branches or any other unauthorized object, from such easements, reservations and rights of way.

CLAUSE XI

Signs

No signs, or other advertising device of any character shall be erected, posted, pasted, displayed or permitted upon or about any part of said real property without

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the written permission of the Association, except as in subdivisions (7) and (8) of Clause IV, and provided said Association shall have the right, in its uncontrolled discretion, to prohibit or to restrict and to control the size, construction, material and location of all signs and advertising devices, and may summarily remove all unauthorized signs and other advertising devices.

CLAUSE XII

Provision for Upkeep

1. Each lot of said property shall be subject to an annual charge of \$30.00.
2. The Association may reduce such annual charge in any year or years in which the Association shall determine that a lesser charge will be adequate for the purpose of such charge.
3. The Association shall have the sole authority to reduce such charge.
4. All reductions, if any, in said annual charge shall be determined and fixed by the Association during December of each year for the ensuing calendar year, as the needs of said property may, in its judgment, require.
5. The right to collect and enforce the collection of such charge is hereby vested in the Association. Such charge shall be paid annually in advance to the Association at its office in Fremont on the second day of January in each and every year during the continuance of this Declaration.
6. The Association shall have a separate lien, and a separate lien is hereby created in favor of the Association, upon each lot in said property to secure the payment of each annual charge which shall during the continuance of such annual charge become payable with respect to such lot. The priority of all such liens on each lot shall be in inverse order, so that upon the foreclosure of the lien for any particular year's charge on any

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particular lot, any sale of such lot pursuant to such foreclosure will be made subject to all liens securing the respective annual charges on such lot for succeeding years. Each such lien for any particular year's charge shall likewise secure interest thereon if the same be not paid when due, and shall likewise secure costs of suit and reasonable attorney's fees to be fixed by the court in the event any action or suit is brought to collect such charge.

7. The first annual charge shall be for the calendar year 1962, and shall become due and payable on the second day of January, 1963. Each annual charge shall, if not paid, within thirty (30) days after its due date, thereafter bear interest at the rate of eight per cent (8%) per annum until paid, but the Association, may in its discretion, waive any interest in any particular instance or instances. If any suit or action be brought to collect any such charge, then there shall be added to the amount thereof costs of suit and reasonable attorney's fees to be fixed by the court and included in any judgment in such suit or action.

8. Declarant and each purchaser of any part of said property hereby waives as to each annual charge for a period of ten (10) years from and after the due date of such annual charge all Statute of Limitations, and agrees that any action or suit for the collection of any such annual charge, may be brought and prosecuted to judgment at any time within ten (10) years after the due date of such annual charge.

9. The purchaser of portions of said property by the acceptance of deeds therefor, whether from Declarant or subsequent owners of such property or by signing contracts or agreements to purchase the same, shall become personally obligated and agree to pay such charges upon the portion or portions of said property owned by them or agreed to be purchased by them, costs of suit, and reasonable attorney's fees as above provided, and shall thereby vest in the Association the right and power to bring all actions for the collection of such charge, costs of suit and attorney's fees, and for the enforcement of such liens. Such right and

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power shall continue in the Association, and such obligations shall run with the land so that the successive owner or owners, of record of any portion of said property, and the purchaser, or purchasers, under any contract or agreement for the purpose thereof shall in turn become liable to pay all such charges which shall become a lien thereon during the time that they may be the owner or purchaser of any portion of said property, or which was a lien against such portion at the time they became the owner or purchaser of such portion, costs of suit and attorneys' fees as above provided. After an owner or purchaser under a contract or agreement of purchase of any portion of said property shall transfer of record the real property owned by him or assign of record his right under a contract or agreement of purchase, he shall not be liable for any charges thereafter to accrue against such portion of said property.

10. Declarant agrees to pay to the Association the aforesaid charge upon each portion of said property owned by it, which is subject to such charge, on the same basis as said charge is paid by other lot owners in said property of lots in the same locality, but only until such portion of said property is sold, or contracted to be sold.

11. Said charge shall be applied by the Association toward payment of the costs of doing any and all things which shall be reasonably necessary or proper for the accomplishment of all or any of the purposes of this Declaration and said Association, which are:

(a) To erect, construct, light, improve, equip, operate, supervise and maintain ornamental and functional structures on said property.

(b) To improve, light, provide for, beautify, equip, operate, supervise and maintain streets, parks, playgrounds, recreational areas, including a swimming pool, if any, and other open spaces, including all grass plots, park strips, other planted areas and trees and shrubs within the lines of said streets in and bordering upon said property as shall be maintained for public use, or for the general use of the owners of lots in said property.

(c) To care for vacant, unimproved and unkept lots in said property, remove and destroy grass, weeds, and rodents therefrom, and any unsightly and obnoxious thing therefrom, and to do any other things, and perform any labor necessary or desirable in the judgment of the Association to keep the property, and the land contiguous and adjacent thereto neat and in good order.

(d) To pay the taxes and assessments, if any, which may be levied by any governmental authority upon parks in said property, and any other areas maintained, and lands used or acquired for the general use of the owners of lots within said property, including taxes and assessments, if any, which may be levied by any governmental authority on ornamental or functional structures owned by or subject to the control of the Association, and on any property of the Association, or which may be held in trust for the Association.

(e) To pay for the examination and approval, or disapproval, of plans, specifications, color schemes, plot plans and grading plans, for any building, outhouse, garage, fence, wall, retaining wall, or other structure of any kind which shall be erected, constructed, placed or maintained on said property, or any part thereof, and for any alteration, condition, changing, repairing, remodeling, or adding to the exterior thereof, and for such supervision of construction and inspection as may be required to insure compliance therewith, including the service of architects and other persons employed to examine and advise upon such plans, specifications, color schemes, plot plans, and grading plans.

(f) To enforce the covenants, restrictions, reservations, servitudes, easements, liens and charges existing upon and created for the benefit of said property over which the Association has jurisdiction; to pay all expenses incidental thereto; to enforce the decisions and rulings of the Association having jurisdiction over any of said property; to pay all of the expenses in connection therewith.

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(g) To collect the charges affecting said property; to pay all expenses in connection therewith, and all office and other expenses incident to the conduct of the business of the Association, and all licenses, franchise taxes and governmental charges levied or imposed against the property of the Association.

(h) To acquire by gift, purchase, or otherwise to own, hold, enjoy, lease, operate, maintain, and to convey, sell, lease, transfer, mortgage or otherwise encumber, dedicate for public use, or otherwise dispose of real or personal property in connection with the business of the Association.

(i) To acquire by purchase, lease, gift, or otherwise, and to equip and operate community buildings, nurseries and recreational facilities of all kinds and character; to sponsor and financially aid boy scout and girl scout organizations and similar organizations composed of persons resident on said property.

The Association shall be required to perform only such of the foregoing enumerated purposes as it shall from time to time, deem to be the best interests of said property and the owners thereof, and then only to the extent of the monies available for such purposes. Neither the Association nor Declarant shall in any way be liable to any owner, purchaser, or other persons for any act or omission under this clause.

In the event any city, county, district or other municipality or quasi-municipality, should at any time assume and perform with respect to the real property covered by this Declaration any of the services which are within the purposes of the Association, thence during any period in which such services are assumed and performed by any such city, county, district or other municipality, or quasi-municipality, the Association shall not apply any of said charges for the purpose of duplicating such services.

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CLAUSE XIII

Scope, Duration of Covenants, Restrictions,
Reservations, Servitudes, Easements,
Liens and Charges

1. All of the covenants, restrictions, reservations, servitudes, easements, liens and charges set forth in this Declaration are imposed upon said property for the direct benefit thereof and of the owners thereof as a part of the general plan of development, improvement, building, equipment and maintenance of said property. Each grantee or purchaser under a contract of sale or agreement of purchase, by accepting a deed or contract of sale or agreement of purchase, accepts the same subject to all covenants, restrictions, reservations, servitudes, easements, liens and charges set forth in this Declaration, and agrees to be bound by each such covenant, restriction, reservation, servitude, easement, lien and charge. Said covenants, restrictions, reservations, servitudes, easements, liens and charges shall run with the land and continue to be in full force and effect, except as hereinafter provided, until the first day of January, 1997.

Said covenants, restrictions, reservations, servitudes, easements, liens and charges, as in force on said first day of January 1997, shall be continued automatically and without further notice from that time for a period of thirty-five (35) years and thereafter for successive periods of twenty-five (25) years each without limitation, unless within six (6) months prior to January 1, 1997, or within six (6) months prior to the expiration of any successive twenty-five (25) year period thereafter, a written agreement executed by the then record owners of lots in the property then subject to this Declaration having an aggregate area equivalent to not less than fifty (50) per cent of the area of total number of lots then subject to this Declaration shall be placed on record in the office of the County Recorder of Alameda County, California, in which agreement any of the covenants, restrictions, reservations, servitudes, easements, liens or charges may be changed, modified, waived or extinguished in whole or in part as to all or any part of the property then subject thereto in the manner and to the extent therein provided.

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In the event that any such written agreement of change or modification be fully executed and recorded, the original covenants, restrictions, reservations, servitudes, easements, liens and charges as therein modified shall continue in force for successive periods of twenty-five (25) years each, unless and until further changed, modified, or extinguished, in the manner herein provided.

2. Damages are hereby declared not to be adequate compensation for any breach of the covenants, restrictions, reservations, servitudes, or easements of this declaration, but such breach and the continuance thereof may be enjoined, abated and remedied by appropriate proceedings by the Declarant, the Association, or by an owner of any other lot in said property.

CLAUSE XIV

Modification and Annulment of Covenants,
Restrictions, Reservations, Servitudes,
Liens and Charges

Any of the covenants, restrictions, reservations, servitudes, easements, liens or charges contained in this Declaration, except those set forth in subdivisions (1), (2), (9), (10), (11) and (12) of Clause IV and the upkeep and maintenance charges set forth in Clause XII hereof may be annulled, waived, changed or modified with respect to all or any portion of said property by Declarant, with the written consent of the Association and of the owner or owners of record in the property to which such annulment, waiver, charge or modification shall apply.

CLAUSE XV

Cancellation and Annulment of Restrictions and Charges

At any time after the first day of January, 1997, the owners of record of lots in the property then subject to this Declaration, having an aggregate area equivalent to not less than sixty-five (65) per cent of the total determined area of the property then subject to this Declaration and

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who shall include in their number the owners of record of not less than seventy-five (75) per cent of the lots in the property then subject to this Declaration on which dwelling houses are then located, may change, modify, cancel and annul with respect to the property then subject to this Declaration all or any of the covenants, restrictions, reservations, servitudes, easements, liens and charges contained in this Declaration by an instrument in writing signed by said owners, which shall be acknowledged by them so as to entitle it to record, and be recorded in the office of the County Recorder of Alameda County, State of California.

CLAUSE XVI

MORTGAGE PROTECTION CLAUSE

Subordination of Covenants, Restrictions,
Reservations, Servitudes, Easements, Liens
and Charges

The breach of any such covenants, restrictions, reservations, servitudes, easements, liens or charges shall not defeat the lien or encumbrance of any such mortgage or deed of trust, and in case of entry the title shall remain subject to such mortgage or deed of trust, provided, however, that except as hereinafter in this clause provided, the purchaser at any foreclosure sale under any such mortgage or deed of trust and at any trustee's sale under any such deed of trust, his or its successors and assigns, shall take and thereafter hold the title subject to all of the covenants, restrictions, reservations, servitudes, easements, liens and charges set forth in this Declaration; provided further, that if title to any of the property described in Clause I hereof, which at any time subsequent to the filing of the Tract Map therein referred to, has or at any time hereafter shall become subject to a mortgage or deed of trust, shall be acquired by the original mortgagee or original beneficiary under a deed of trust, or its successors or assigns pursuant to any foreclosure sale under any such mortgage or deed of trust, or pursuant to any trustee's sale under any such mortgage or deed of trust or by conveyance in satisfaction of any such mortgage or deed of trust, then and in that event

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said original mortgagee or original beneficiary under a deed of trust, or its successors or assigns, shall take title thereto, free and clear of all delinquent charges and liens provided for in Clause XII hereof, until said property shall have been conveyed to a third person, and after such conveyance the liens for charges subsequent to said conveyance shall attach as provided for by said Clause XII hereof.

CLAUSE XVII

Violation of Covenants, Restrictions, Reservations, Servitudes, Easements, Liens and Charges

A breach or violation of any of the covenants, restrictions, reservations, servitudes, easements, liens or charges shall give to the Declarant, and to the Association the right to immediate re-entry upon the property upon which such violation exists, and summarily to abate and remove, at the expense of the owner thereof, any erection, structure, building, thing or condition that may be or exist thereon contrary to this Declaration, and to the true intent and meaning of the provisions hereof, and the Declarant or the Association shall not thereby be deemed guilty of any manner of trespass for such entry, abatement, or removal, nor shall the Declarant, or the Association be liable for any damages occasioned thereby. The result of every act of omission or commission, or the violation of any covenant, restriction, reservation, servitude, easement, lien or charge hereof, whether such covenant, restriction, reservation, servitude, easement, lien or charge is violated in whole or in part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by Declarant, or by the Association, or by the owner of any lot, and may be prohibited and enjoined by injunction. Such remedy shall be deemed cumulative and not exclusive.

Notwithstanding any provisions in these restrictions that title to property acquired by the holder of a loan guaranteed or insured by the Federal Housing Administration, or property acquired by such agency directly, at foreclosure

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or otherwise, or from the purchaser at foreclosure sale, or otherwise, by reason of, or incident to, or as a consequence of such guarantee of insurance, either by way of purchase at a sale under power of sale or other judicial proceedings, or through foreclosure of deed of trust or mortgage on the property securing such loan, or by way of conveyance in full or partial satisfaction of the debt secured by such deed of trust or mortgage, immediately, upon any such acquisition shall be and thereafter remain free from any and all restrictions provided in the first paragraph of this Clause XVII until said property is conveyed to a third party and after such conveyance, the provisions contained in the first paragraph of this Clause XVII shall immediately attach.

CLAUSE XVIII

Right to Enforce

The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by the Declarant, the Association, or by the owner or owners of any portion of said property, their and each of their legal representative, heirs, successors and assigns, and failure by Declarant, the Association, or by any other property owner or their legal representative, heirs, successors or assigns, to enforce any of such covenants, restrictions, reservations, servitudes, easements, liens or charges herein contained shall in no event, be deemed a waiver of the right to do so thereafter, unless otherwise herein provided.

CLAUSE XIX

Assignment of Power

Any and all rights and powers and reservations of the Declarant herein contained may be deeded, conveyed, or assigned to the Association, and upon such Association evidencing its consent in writing to accept such assignment and to assume such duties and powers, it shall to the extent of such deed, conveyance or assignment, have the same rights and powers, and be subject to the same obligations and duties as are given to and assumed by Declarant herein, and there-

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RE: 517 IM 85

upon Declarant shall be relieved of the performance of any further duty or obligation hereunder to the extent of such deed, conveyance, or assignment.

In the event Declarant shall convey all of its rights, title and interest in and to the real property described in Clause I hereof and shall assign all of its right, powers and privileges under the Declaration to another corporation and such other corporation should by instrument in writing duly executed, acknowledged and recorded in the office of the County Recorder of Alameda County, accept such conveyance and assume and agree to be bound by each and all of the obligations and duties hereby imposed upon the Declarant then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such other corporation shall succeed to all of the rights, powers, reservations, obligations and duties as though such other corporation had originally been named herein as Declarant instead of Declarant.

CLAUSE XX

Marginal Notes and Headings of Clauses

The marginal notes and headings as to the contents of particular clauses are inserted only as a matter of convenience and for reference, and in no way are, or are they intended to be, a part of this Declaration or in any way define, limit or describe the scope or intent of the particular section or clause to which they refer.

CLAUSE XXI

The Various Parts of this Declaration are Severable

In the event any clause, subdivision, term, provision or part of this Declaration should be adjudicated by final judgment of any court of competent jurisdiction to be invalid, or unenforceable, then disregarding the clause, subdivision, term, provision or part of this Declaration so adjudicated to be invalid or unenforceable, the remainder

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of this Declaration, and each and all of its terms and provisions not so adjudicated to be invalid or unenforceable, shall remain in full force and effect, and each and all of the clauses, subdivisions, terms, provisions, or parts of this Declaration are hereby declared to be severable and independent of each other.

IN WITNESS WHEREOF, Declarant has executed this instrument this 15th day of February, 1962.

RECORDED AT REQUEST OF
Title Insurance & Trust Co.
AT 8:30 A.M.

FEB 16 1962

BARTON HOMES, a co-partnership

BY: Dan Sodily
Partner

OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
Thomas W. Fitzsimmons
COUNTY RECORDER

BY: _____
Partner

AT 21499

22⁹⁹

STATE OF CALIFORNIA
County of Alameda

AT 21499

On this 15th day of February in the year one thousand nine hundred and Sixty-Two
before me, A.W. Meiklejohn a Notary Public in and for the said County of Alameda

State of California, residing there, duly commissioned and sworn, personally appeared Dan Sodily

known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Barton Homes, a co-

partnership, and acknowledged to me that he executed the same as Barton Homes, a co-

partnership, and he is an agent and may in fact

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the said County of Alameda

the day and year in this certificate
A. W. Meiklejohn
Notary Public in and for the said County of Alameda State of California.

Seal
Affixed

Cowdry's Form No. 24-A (Amended) - Attorney in Fact
(C. C. Sec. 1191)

My Commission Expires February 22, 1963

* END OF DOCUMENT *