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CAPISTRANO VILLAS, BLOCK 1  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

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140-12-2362

THIS DECLARATION, made on the date hereinafter set forth by ROBERT G. DALLMAN, of San Diego County, California, not individually, but as Trustee under the Trust Agreement (the "MBL Trust") dated as of May 1, 1975, with Union Bank as Agent for certain therein described banks, hereinafter in such capacity referred to as "Declarant";

W I T N E S S E T H :

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WHEREAS, Declarant is the sole owner of that certain tract or parcel of land containing 7.6053 acres, more or less, being Block 1 of CAPISTRANO VILLAS, a subdivision of record in Harris County, Texas, according to the map thereof recorded at Volume 189, Page 125, of the Map Records of Harris County, Texas, which tract or parcel of land is hereinafter referred to as the Subject Property; and

WHEREAS, it is the intent of Declarant by this Declaration, to provide and adopt a general and uniform plan or scheme of easements, restrictions, covenants and conditions designed to govern and control the development, improvement, sale, use and enjoyment of the Subject Property as a residential subdivision and to enhance and protect the value, desirability and attractiveness of such subdivision for residential purposes;

NOW, THEREFORE, Declarant hereby declares that all of the Subject Property, and all portions thereof and all improvements now located or to be located thereon and the subdivision of which it is a part, shall be developed, improved, held, used, sold and conveyed subject to the following matters which are for the purpose of protecting the value and desirability of, and which shall run with, the Subject Property and be binding on all parties having any right, title or interest in the Subject Property, or any part thereof, their heirs, executors, administrators, successors and assigns, regardless of the source of or the manner in which any such right, title or interest is or may be acquired, and shall inure to the benefit of each owner thereof.

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ARTICLE I.

DEFINITIONS

Section 1 - "Association" shall mean and refer to Capistrano Villas East Homeowners Association, a Texas non-profit corporation, its successors and assigns.

Section 2 - "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of an interest in the fee simple title to any Lot which is a part of the Subject Property, including sellers under a sales contract-for-deed and any person or entity holding legal title as Trustee, but excluding those having such interest merely as a security for the performance of an obligation.

Section 3 - The "Subject Property" shall mean and refer to that certain tract or parcel of land containing 7.6053 acres, more or less, hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4 - "Common Area" shall mean all real property constituting a portion of the Subject Property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association as of the time of the conveyance of the first Lot is described in Exhibit "A" attached hereto and made a part hereof for all purposes.

Section 5 - "Lot" or "Parcel" shall mean and refer to any of the building sites (which excepts the Common Area) situated within the Subject Property on which there is, or will be constructed, a single family living unit which is to be individually and separately owned.

Section 6 - "Declarant" shall mean and refer to Robert G. Dallman of San Diego County, California, not individually, but as Trustee under the Trust Agreement (the "MBL Trust") dated as of May 1, 1975, with Union Bank as Agent for certain therein described banks, and to his successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

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Section 7 - "By-Laws" shall mean and refer to the By-Laws of the Association and all amendments thereto, and the term "Articles of Incorporation" shall refer to the Articles of Incorporation of the Association and all amendments thereto.

ARTICLE II.

PROPERTY RIGHTS

Section 1 - Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facility maintained for the common benefit of the Owners, including recreational facilities, situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of such common facilities by an Owner (or his guests) for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as deemed advisable by the Association.

(d) the right of the Association to transfer title to any storm sewer line, sanitary sewer line, water line or any other utility facility or equipment situated in any part of the Common Area and owned by the Association to any public or political authority or agency or to any utility company rendering or to render service to the Subject Property or any part thereof;

(e) the right of the Association to dedicate as public streets the private streets in the subdivision consisting of the Subject Property, which as provided for on the map or plat of such subdivision are now available for the general use of the public;

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(f) the right of individual Owners to the exclusive use of parking spaces as provided below in this Article II.

Section 2 - Delegation of Use. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area facilities to the members of his family, his tenants, or contract purchasers who reside on the Subject Property.

Section 3 - Parking Rights. Ownership of each Lot shall entitle the Owner thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign two (2) vehicle parking spaces for each Lot.

### ARTICLE III.

#### MEMBERSHIP AND VOTING RIGHTS

Section 1 - Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A: Class A members shall be all Owners (with the exception of the Declarant until Class B membership is converted to Class A membership as below provided), and shall be entitled to one vote for each Lot owned. When more than one person holds an interest as an Owner in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot, and there shall be no fractional votes.

Class B: Class B member(s) shall be the Declarant, and Declarant shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and

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be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31, 1977

ARTICLE IV.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1 - Creation of the Lien and Personal

Obligation of Assessments. The Declarant, for each Lot owned by Declarant within the Subject Property, hereby covenants, and each Owner by acceptance of a deed for each Lot within the Subject Property, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) Annual Assessments, and
- (2) Special Assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The Annual Assessments and Special Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. The obligation to pay such assessments is a part of the purchase price of each Lot, and such lien shall be superior and paramount to any homestead or other exemption provided by law. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner with respect to such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2 - Purpose of Assessments. Annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents within the Subject Property and for the improvement and main-

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tenance of the Common Area, and of the homes situated upon the Lots within the Subject Property, including without limitation the following:

(a) Effecting repairs, replacements and additions to the Common Area and facilities thereon;

(b) Paying ad valorem and other property taxes and assessments, if any, levied on property owned by the Association.

(c) Contracting for such employees and other management necessary or appropriate to the operation and maintenance of the Common Areas and supervision thereof; specifically, the Association may contract with any person or entity including Declarant for the performance of all or any portion of the duties of the Association provided herein;

(d) Obtaining and paying for utility services for the Common Areas; and

(e) Obtaining and paying for general public liability insurance and sufficient property damage and fire and extended coverage insurance covering property owned by the Association in amounts and with insurers deemed appropriate by the Board of Directors of the Association; and

(f) Paying for the expenses of administration and management of the Association, and paying all other charges, costs, or expenses lawfully incurred by the Association.

Section 3 - Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment shall be Three Hundred and Sixty Dollars (\$360.00) per Lot.

(a) Beginning with January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment may be increased each year not more than three (3%) per cent above the Maximum

Annual Assessment for the previous year without a vote of the membership.

(b) Beginning on January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment may be increased above three (3%) per cent upon affirmation by two-thirds (2/3) of the votes of each class of members which have been voted in person or by proxy, at a meeting duly called for this purpose and at which a quorum has been present in accordance with the terms of Section 5 below.

(c) The Board of Directors shall fix the Annual Assessment at an amount not in excess of the Maximum Annual Assessment, except that the first Annual Assessment shall be in an amount equal to the first Maximum Annual Assessment of \$360.00 per year.

Section 4 - Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that the capital improvements giving rise to the need for such Special Assessment shall have been made with the assent of two-thirds (2/3) of the votes of each class of members which have been voted in person or by proxy at a meeting duly called for this purpose and at which a quorum has been present in accordance with the terms of Section 5 below.

Section 5 - Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence

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of members or of proxies entitled to cast sixty (60%) per cent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, one subsequent meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Such subsequent meeting shall be held not more than sixty (60) days following the preceding meeting.

Section 6 - Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or annual basis, in advance, or on a monthly or annual basis, as it accrues.

Section 7 - Date of Commencement of Annual Assessments: Due Dates. The first Annual Assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association, and shall be in an amount of \$360.00 per Lot, adjusted however according to the number of months remaining in the calendar year of the first annual assessment. Thereafter, the Board of Directors shall fix the amount of each succeeding Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of each succeeding Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

Section 8 - Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the rate of six (6%) per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien herein provided for against the Lot, and interest,



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costs and reasonable attorney's fees for such action shall be added to the amount of such assessments as part of the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9 - Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate with respect to the Lot which has been assessed to the lien of any first purchase-money mortgage with respect to such Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of such a first purchase-money mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No such sale or transfer pursuant to foreclosure (or in lieu of foreclosure) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10 - Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V.

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide maintenance of the exterior of the residences upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, and exterior building surfaces, excluding specifically interior party walls as described in Article VI below. Such exterior maintenance shall not include glass surfaces. The Association is hereby granted an easement of

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use and right of way on all Lots in order to comply with the terms of this Article and entry on a Lot for such purposes shall not be deemed a trespass.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be paid for by such Owner and shall be added to and become a part of the lienable assessment to which such Lot is subject.

#### ARTICLE VI.

##### PARTY WALLS

Section 1 - General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Lots and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2 - Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3 - Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4 - Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful acts causes the party wall to be exposed to the

elements shall bear the whole close of furnishing the necessary protection against such elements.

Section 5 - Right to Contribution Runs with Land.

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE VII.

PERMITTED USES AND RESTRICTIONS

Section 1 - General Restrictions. The Lots shall be used solely for private, single family residential purposes and there shall not be constructed or maintained thereon more than one single family residence with a 2-space parking facility. Without limiting the foregoing, no lot may be used as an apartment house, double house, flat lodging house, hotel or for any business purpose.

Section 2 - Noxious Uses. The land and improvements located on each Lot shall not be used so as to disturb the neighborhood or occupants of adjoining property, or to constitute a nuisance or to violate any public law, ordinance or regulation from time to time applicable thereto, nor to create or emit any objectionable, offensive or noxious odors, dust, gas, fumes or other such material.

Section 3 - Use of Common Area. The Common Area shall be used for park, recreational, social, access, utility easements granted by the Association, and other purposes directly related to the private single family residential use authorized hereunder.

Section 4 - Animals. No animals or birds, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot of Common Area and then only if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. No animal or bird shall

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be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing, or confinement of any animal or bird shall be maintained so as to be visible from neighboring property. Upon the written request of any Owner, the Board of Directors of the Association shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal or bird is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable.

Section 5 - Antennas. No antenna or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic radiation shall be erected, used, or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, except that the Declarant or the Association may erect a common television antenna.

Section 6 - Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such Lot or Common Area shall be moved immediately after the completion of construction.

Section 7 - Trailers, Boats and Motor Vehicles. No mobile home, trailer of any kind, truck camper, permanent tent or similar structure, or boat, shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, or repaired upon any portion of the Subject Property or street or private driveway thereof in such a manner as will be visible from neighboring property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with the construction of any improvement on the

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Lots, and provided further that trailers, truck campers, and boats may be kept and placed in such public parking areas as may be designated by the Board of Directors.

Section 8 - Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot of Common Area, and no odors shall be permitted to arise therefrom, so as to render any such property or portion thereof unsanitary, unsightly, offensive, or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist to operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property.

Section 9 - Repair of Buildings. No building or structure upon any property within any Lot of Common Area shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise furnished.

Section 10 - Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot of Common Area except in covered containers of a type, size and style which are approved by the Board of Directors. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and, then, only the shortest time reasonable necessary to effect such collection.

Section 11 - Clothes Drying Facilities. Outside clothesline or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Common Area.

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Section 12 - Sidewalk Encroachments. No tree, shrub or planting of any kind on any Lot or Common Area shall be allowed to overhang or otherwise encroach upon any sidewalk or other pedestrian way from ground level to a height of seven (7) feet without the prior approval of the Board of Directors of the Association.

Section 13 - Right-of-Way. During reasonable hours, Declarant, or any member of the Board of Directors of the Association, or any other representative of any of them, shall have the right to enter upon and inspect any Lot or Common Area for the purposes of ascertaining whether or not the provisions of these restrictions have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 14 - Mineral Exploration. No Lot or Common Area shall be used in any manner to explore for or to remove any water, oil, gas, or other hydrocarbons, sulphur, minerals of any kind, gravel, earth or any earth substance of any kind.

Section 15 - Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Harris County, Texas, in connection with the use, maintenance, or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association.

Section 16 - Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Common Area which shall induce, breed, or harbor plant diseases or noxious insects.

Section 17 - Restriction on Further Subdivision. No Lot shall be further subdivided and no portion of any such Lot, nor any easement or other interest therein, shall be conveyed by any Owner unless included in a conveyance of the entire Lot.

Section 18 - Signs. No signs whatsoever (moveable or affixed), including but not limited to, commercial, political and similar signs, which are visible from neighboring property

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shall be erected or maintained on any Lot or any improvement thereon except:

- (a) Such signs as may be required by Law.
- (b) A residential identification sign of a combined total face area of seventy-two (72) square inches or less.
- (c) During the time of construction of any building or other improvement, one job identification sign not larger than eighteen (18) by twenty-four (24) inches in height and width and having a face area not larger than three (3) square feet.
- (d) A "for sale" or "for rent" sign, of a reasonable type, size and appearance, which is similar to other signs customarily used in Harris County, Texas, to advertise individual parcels of residential property.

The content and location of all signs shall be subject to such rules as the Board of Directors of the Association may promulgate. The provisions of this paragraph shall not prevent Declarant from commencing, erecting, or maintaining structures or signs on properties owned by it within the Subject Property when Declarant, in its sole discretion, deems it necessary or convenient to the development, sale, operation, or other disposition of such properties.

Section 19 - Maintenance and Use of Carports. The interiors of all carports shall be maintained by their owners in a neat, clean, and slightly condition. No carports shall be used for storage. No power equipment, hobby shops, or carpenter shops shall be maintained in any carport, and no automobile overhaul or maintenance work, other than emergency work, shall be permitted therein.

Section 20 - Tanks. No elevated tanks shall be erected.

Section 21 - Increase of Insurance Costs. Nothing shall be done on any Lot or the Common Area which will result in the increase of fire and casualty insurance premiums thereon or the cancellation of such insurance.

Section 22 - Waste. No waste shall be committed on any Lot or the Common Area.

#### ARTICLE VIII.

##### GENERAL OBLIGATIONS OF OWNER

Section 1 - Each Owner shall maintain and care for all trees, plants or foliage on his Lot and otherwise keep his Lot in conformity to its condition when new.

Section 2 - If the Association believes any Owner is in violation of these Restrictive Covenants, it shall so notify such Owner in writing, explaining its reason for such complaint. If the Owner fails to remedy the alleged violation within ten (10) days following delivery of such notice, then the Association shall have the right to institute appropriate legal action.

#### ARTICLE IX.

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon any portion of the Subject Property, nor shall any exterior addition to or change or alteration thereto be made (excluding specifically, however, buildings and other improvements and appurtenant structures constructed or maintained by Declarant in connection with development of the Subject Property) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee provided for by the By-Laws of the Association. In the event such Architectural Committee to whom the matter is referred fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.



## ARTICLE X.

EASEMENTS, UTILITIES, TAXES AND INSURANCE

Section 1 - Each Lot and the Common Area shall be subject to a perpetual easement for minor encroachments from adjoining Lots which are caused or created by errors in construction, settling, shifting of soil, protrusions and overhangs, as designed or constructed by any builder. A valid and perpetual easement for said minor encroachments and for the maintenance and reconstruction of the same shall and does exist.

Section 2 - The Declarant, so long as he shall retain record title to any Lot or the Common Areas, reserves the right and easement to the use of the Common Areas, or any portion thereof, as may be needed for construction on the Lots or Common Areas, including the right to locate, construct and maintain or cause to be erected, located, constructed or maintained, but only in those areas indicated on the plat as easements, sewer and other pipeline conduits and appurtenances thereto, telephone or electrical poles and wires, and any other method of conducting or performing any utility or utility-type function above or below the ground, with the right of access at any time to the same for the purpose of repair and maintenance.

Section 3 - All water and sanitary sewer lines from each home on a Lot to the common water and sanitary sewer lines (i. e. all water and sanitary sewer lines which carry water to or sewage from more than one Lot) on the public right-of-way or in the Common Areas shall be maintained by the Owner being serviced thereby. To the extent such water and sanitary sewer lines have been placed on the Common Areas, such Owner is hereby granted the right and easement for the purpose of maintaining such facilities. To the extent any common sanitary sewer lines have been placed upon a Lot and such lines are not maintained by a public utility, the Association shall be responsible for such maintenance. To that purpose, the Association is hereby granted the right and easement to maintain such facilities. Such rights and easements are granted subject to the provision

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that if such maintenance by the Owner or Association shall necessitate damage to the Common Areas or a Lot, as applicable, such Owner or the Association, as the case may be, shall (i) create as little damage as possible consistent with good engineering practices and (ii) promptly restore or repair the damage after such maintenance has been completed.

Section 4 - Surface Area. The surface of easement areas for underground utility services may be paved for streets, driveways or walkways and/or may be used for planting of shrubbery, trees, lawns, or flowers. However, it is expressly agreed that neither Declarant nor any supplier or any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them or their agents, employees, servants or assigns, to the pavement or to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance or repair of any facility in any such easement area.

Section 5 - Obligation of the Owners.

(a) Each Owner shall have his separate water, electric, and gas meter and shall directly pay at his own cost and expense for all water, electricity, gas, telephone service and other utilities, used or consumed by him on his Lot.

(b) Each Owner shall directly render for taxation his own Lot and improvements thereon, and shall at his own cost and expense directly pay all taxes levied or assessed against or upon his Lot and his improvements and property thereon.

(c) Each Owner shall be responsible at his own cost and expense for his own property insurance on the building and contents of his own residence, and his additions and improvements thereto, including decorations, furnishings and personal property therein; and also for his personal liability not covered by liability insurance for all Owners which may be obtained by the Association as part of the common expense in connection with the Common Area.

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Section 6 - Obligation of the Association.

(a) The Association shall pay as a common expense of all Owners, for all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Area or any part thereof.

(b) The Association shall render for taxation and as part of the common expenses of all Owners shall pay all taxes levied or assessed against or upon the Common Area and the improvements and the property appertaining thereto.

(c) The Association shall have authority to obtain and continue in effect as a common expense of all Owners, a blanket property insurance policy or policies to insure the building and structures in the common area and the contents thereof and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have authority to obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Homeowners is available) from and against liability in connection with the Common Area.

(d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid out of the maintenance fund, to the extent such funds are available, as a common expense of all Owners and shall be a part of the maintenance assessment.

ARTICLE XI.

GENERAL PROVISIONS

Section 1 - Enforcement. The Association, as a common expense to be paid out of the maintenance fund, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations,

liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2 - Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3 - Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) per cent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) per cent of the Lot Owners. Any amendment shall be promptly recorded.

Section 4 - Annexation. Additional residential property and Common Area may be annexed to the Subject Property with the consent of members entitled to cast at least 2/3 of the votes of each class of members of the Association.

Section 5 - Amendments by Declarant. Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of an Owner or other person to the extent permitted by law, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of correcting any typographical or grammatical errors, ambiguity or inconsistency appearing in this Declaration, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner or his Mortgagee.

140-12-2382

Section 6 - Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accord with the general purposes and objectives of this Declaration shall govern.

Section 7 - All obligations imposed upon the Association under or by virtue of this Declaration, the By-Laws or the Articles of Incorporation shall be limited to the extent of funds held by the Association, and the Association shall be under no duty to perform any such obligation or make any payments of monies if the funds of the Association are insufficient to satisfy any such obligation or make any such payment of monies.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 15<sup>th</sup> day of April, 1976.

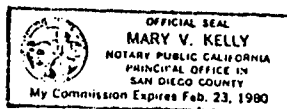
  
ROBERT G. DALLMAN, as Trustee Under  
the Trust Agreement dated May 1,  
1975 with Union Bank

"DECLARANT"

THE STATE OF CALIFORNIA §  
§  
THE COUNTY OF SAN DIEGO §

BEFORE ME, the undersigned authority, on this day personally appeared ROBERT G. DALLMAN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration stated therein and in the capacity therein expressed.

TO CERTIFY WHICH, WITNESS MY HAND AND SEAL OF OFFICE, this 15<sup>th</sup> day of April, 1976.



  
NOTARY PUBLIC, in and for SAN  
DIEGO COUNTY, CALIFORNIA

RETURN TO  
PAT STREETER-JOHN HENRIS  
SOUTHERN TITLE COMPANY  
1415 FANNIN  
HOUSTON, TEXAS 77002

-21-

140-12-2383

FILED

MAY 7 2 51 PM '76

*[Signature]*  
CLERK  
HARRIS COUNTY, TEXAS

STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in  
the number hereunder at the date and at the time stamped  
hereon by me and was duly RECORDED in the Official  
Public Records of Real Property of Harris County, Texas on

MAY 7 - 1976



*[Signature]*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS