

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

This restatement of the Declaration of Covenants, Conditions and Restrictions includes all amendments and modifications thereto and previously recorded and any amendments adopted and approved by a vote in excess of two-thirds (2/3) of the eligible voting membership of the Shadow Brook Swim Club and Homeowners' Association.

This document supercedes the following Santa Clara County recordings for purpose of consolidation:

- a. Declaration of Covenants, Conditions and Restrictions recorded on May 13, 1968, Book 8111, Page 526, as amended on September 14, 1979, in Book E792, Page 402.
- b. Declaration of Covenants, Conditions and Restrictions recorded on October 16, 1968, Book 8299, Page 178, as modified December 3, 1970, in Book 9142, Page 370, as amended on September 14, 1979, in Book E792, Page 402.
- c. Declaration of Covenants, Conditions and Restrictions recorded on October 27, 1970, Book 9101, Page 1, as modified December 3, 1970, in Book 9142, Page 370, and as amended on September 14, 1979, in Book E792, Page 402.
- d. Declaration of Covenants, Conditions and Restrictions recorded on January 27, 1983, Book H667, Page 367-385, and as amended on September 14, 1979, in Book E792, Page 402.

Whereas, LAND IMPROVEMENT CORP., a California corporation (hereinafter called "Grantor"), is the owner or controls all that certain real property described in Exhibit "A" attached hereto; and

WHEREAS, it is the desire and intention of the Grantor to subdivide the portion of said real property which is described in Exhibit "B" attached hereto (hereinafter called the "Subdivided Property") and to impose thereon mutually beneficial restrictions under a general plan or scheme of improvement for the benefit of all of said Subdivided Property, the structures thereon and the future owners thereof; to insure the best use and the most appropriate development and improvement of each lot located upon the Subdivided Property; 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 thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials; to insure the highest and best development of said property; to encourage and secure the erection of attractive improvements thereon, with appropriate locations thereof on lots; to prevent haphazard and inharmonious improvements of lots; to secure and maintain proper setbacks from streets and 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 purchaser of lots therein.

NOW, THEREFORE, the Grantor hereby declares that all of the Subdivided Property is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following uniform restrictions, covenants, conditions and equitable servitudes, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said real property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of the covenants, restrictions, conditions and equitable servitudes shall run with the Subdivided Property and shall be binding on all parties having or acquiring any right, title or interest in said property or any part thereof, and shall be for the benefit of each owner of any portion of said property, or any interest therein, and the mortgagees of any owner, and shall inure to the benefit and be binding upon each successor in interest of the owners thereof.

1. DEFINITIONS. As used in this declaration, the following terms shall have the meaning indicated, except as may be expressly otherwise provided herein:

- a. "Subdivided Property" means the real property which is described in Exhibit "B" attached hereto and in any amendments to said Exhibit "B" made in the manner provided by Paragraph 14(b) hereof;
- b. "Lot" means a single-family residential lot designated on any subdivision map relating to any of the real property described in Exhibit "B", as amended from time to time, or a Lot shown on such map that is not designated as a residential Lot but is used for residential purposes. The word "Lot" shall be deemed to include any improvements which may be constructed thereon from time to time; provided, however, that any property that is conveyed to the Club described in subparagraph (f) and used by it for recreational purposes shall not be deemed to be a Lot or Lots for the purpose of these restrictions.
- c. "Owner" means the holder of record title to a Lot; provided, however, that if one holding record title has entered into a contract to sell his Lot and such contract has been recorded the purchaser thereunder shall be deemed the Owner;
- d. "Mortgage" means a voluntary lien against a Lot and shall include a deed of trust;
- e. "Mortgagee" means the original lender under a mortgage and its successors and shall include the holder of a beneficial interest under a deed of trust;
- f. "Club" means SHADOW BROOK SWIM CLUB, a California non-profit corporation, the primary purpose of which is to promote the social welfare of the owners of residential lots located upon the real property described in Exhibit "A" by providing said owner with recreational facilities and a secondary purpose of which shall be to act as a homeowners' association;
- g. "Board" or "Directors" means the Board of Directors of such non-profit corporation;
- h. "Restrictions" means the covenants, conditions and restrictions contained herein.

2. ENFORCEMENT OF RESTRICTIONS. Grantor, Club or any Owner who is not in default hereunder shall be entitled to bring an action for damages against any defaulting Owner or Owners and/or to enjoin any violation of these restrictions, and may prosecute any other appropriate legal or equitable action that may be necessary under the existing

facts. In any such action or proceeding the plaintiff shall be deemed to be acting on behalf of all of the Owners. Any judgment rendered in any such action or proceeding shall include a sum for attorneys' fees, in such amount as the Court may adjudge reasonable, in favor of the prevailing party.

3. **POWERS OF CLUB AS HOMEOWNERS' ASSOCIATION.** The Club shall have all of the rights and powers reasonably necessary to perform the function of a homeowners' association and shall be subject to the obligations and duties in connection therewith. The Club shall be entitled to levy and collect the association assessment referred to in Paragraph 8(b) and shall have the power to contract for services, including legal services, necessary or proper in exercising said rights and powers or performing said duties.

4. **USE OF LOTS.** The Lots shall be occupied and used as follows:

- a. Each Lot shall be used as a single-family residence and for no other purpose. No dwelling designed for occupancy by a single family shall be occupied by more than one family. No structure of a temporary character, trailer, tent, garage, or outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.
- b. No residential structure shall be erected or placed on any residential building plot, which plot has an area of less than 8,000 square feet or a width of less 65 feet at the front building setback lines, except that a residential building may be erected or placed on any Lot shown on a subdivision map of any of the Subdivided Property.
- c. The ground floor area of the main structure of any single-family dwelling, exclusive of one-story open porches and garages, shall not be less than 1,100 square feet in the case of a one or one and one-half story structure, nor less than 800 square feet in the case of a two-story structure.
- d. Any single-family dwelling erected, constructed or placed on any residential building plot shall cost and be fairly worth not less than \$14,000.00.
- e. Without the specific written approval of the Committee referred to in Paragraph 5, no fence, hedge or wall of any type shall be erected or permitted in the setback area (as this term is hereinafter defined), nor shall any fence, wall or hedge over six feet in height (measured from the ground on which it stands) be erected or permitted on any other portion of the Lot or residential building plot and not more than one sign advertising the property for sale or for rent shall be erected or maintained on any part thereof, except as herein provided.
- f. 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 off 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.

- g. Each Owner shall have the obligation to maintain in sound and attractive condition the parking strip in front of his Lot and the landscaping and fencing on his Lot which are visible from the street on which the Lot fronts.
- h. No animals, fowls or birds may be kept or bred for commercial purposes. Only conventional and customary household pets shall be permitted and only in reasonable numbers of such types so as not to cause an annoyance or nuisance to the neighborhood.
- i. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any portion of the Subdivided Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted thereon. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Subdivided Property.
- j. No portion of the Subdivided Property 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.
- k. 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 appropriate public health authority. Approval of such system as installed shall be obtained from such authority.
- l. No individual sewage-disposal system shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the appropriate public health authority. Approval of such system as installed shall be obtained from such authority.
- m. No Owner shall permit anything to be done or kept on a Lot which will result in cancellation of insurance on any part of the Subdivided Property or which would be in violation of any law.
- n. No noxious or offensive activity shall be conducted on or about any Lot, nor shall anything be done which may be or become an annoyance or nuisance to others.
- o. No Owner shall alter the appearance of the exterior of any improvement on his Lot or construct or install any improvement, or addition to improvement, on such Lot so altering the appearance of existing improvements (including alteration of the exterior color scheme so that it differs substantially from the exterior color scheme of any other improvement located on the Subdivided Property) without the prior written approval of the plans and specifications therefor by the Architectural Control Committee (as defined in Paragraph 5). The Committee shall grant its approval only in the event that the proposed work will benefit and enhance the entire Subdivided Property in a manner generally consistent with the plan of development thereof. The Committee's approval or disapproval shall be in writing. In the event that the Committee fails to approve or disapprove within thirty (30) days after the appropriate plans and specifications have been submitted to it, or in any event, if no suit to enjoin such work has been commenced before completion thereof, approval will be deemed given and compliance with the terms of this paragraph conclusively presumed.

- p. No antennas, or poles, of any kind, shall be allowed to be displayed to the public view other than a standard home television antenna. When cable service is provided, exposed antennas must be removed and no further exposed television antennas will be allowed. No cooler, air-conditioner, fan, or similar device shall be installed or maintained in such manner as to project outward from any exterior surface of the building to which it is attached if such device is visible at eye level from any point on the front street property line of the lot upon which such building is situate. Any mast, tower, antenna, or similar structure and any cooler, air-conditioner, fan or similar device installed or maintained in violation of the foregoing restrictive provision shall not be deemed to comply with these restrictions by virtue of the completion thereof without commencement of suit to enjoin such work, the provisions of this subparagraph to the contrary notwithstanding.
- q. The Architectural Control Committee and its representatives shall have the right to inspect the work referred to in subparagraph (o) from time to time prior to its completion. The Committee shall have the authority to order an abatement of such work to the extent it fails to conform to the plans and specifications approved by the Committee.
- r. Within and adjacent to the rear and side lines of all Lots, an easement five feet in width is hereby provided for and reserved. In the event the original boundaries of a Lot are changed, said five foot easement shall be located within and adjacent to the new Lot lines. Said easement may be used for the benefit of owners of Lots in the Subdivided Property and for the purpose of installing and maintaining sanitary and storm sewers, gas and water pipe lines and electric power and telephone lines, and drainage facilities. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
- s. No Owner shall park, store or keep, or permit the parking, storage, or keeping of any motor vehicle which exceeds 12,000 pounds gross vehicle weight, or has a wheelbase exceeding 133 inches, or is fitted with dual rear wheels; or any bus, trailer, farm vehicle, camper body, boat, or aircraft, in or upon the public streets within the Subdivided Property or in or upon the portion of any Lot (including the driveway) in the setback area, except for occasional periods of time of not more than eight hours. The parking of any commercial type vehicle, the presence of which would tend to lower property values in any part of the Subdivided Property, shall be deemed a nuisance to others within the meaning of subparagraph (n) of this paragraph. No Owner shall repair or restore any motor vehicle, boat, trailer or aircraft in or upon the public streets within the Subdivided Property, or in the portion of any Lot (including the driveway) in the setback area, except for emergency repairs to motor vehicles or trailers, and then only to the extent necessary to enable movement of the vehicle or trailer.

- t. As used herein, the term "setback area" shall mean the larger of the following:
  - i. The area bounded by the front street lot line, the front setback line established by the applicable ordinance, and the portions of the lot lines connecting said lines;
  - ii. The area bounded by the front street lot line, a line that (a) is parallel to the front setback line established by ordinance and (b) touches the residential structure located on the Lot at its point closest to the front lot line, and the portions of the lot lines connecting said lines. With respect to any corner Lot, the term "setback area" shall include the side street setback area which shall be determined by applying the definition above set forth, with the word "side" substituted for the word "front" wherever it appears therein.
- u. No building shall be located nearer to the front lot line or nearer to the side street line than the building setback lines shown on the recorded subdivision map. In any event, no building shall be located nearer than 25 feet to the front lot line or nearer than 12½ feet to any side street line. No building, except a detached garage or other outbuilding located 40 feet or more from the front lot line, shall be located nearer than five feet from any side lot line, or 15 feet to rear lot lines on interior lots.

5. ARCHITECTURAL CONTROL COMMITTEE. There shall be an Architectural Control Committee (hereinafter called the "Committee") which shall have the authority to perform the functions set forth in Paragraphs 4(e), 4(o), 4(p), 4(q), 4(s) and 6 of these Restrictions.

Grantor shall have the power to appoint the Committee and to change the membership thereof so long as Grantor retains title to any portion of the real property described in Exhibit "A", provided, however, that at any time 90% or more of the lots then designated on any recorded subdivision map or maps covering any part of the property described in Exhibit "A" are owned by persons other than Grantor (or its related successors in interest), the Owners shall have the right by a majority vote of a quorum of the membership of the Club to appoint the Committee and change the membership thereof. Any amendment to this Paragraph 5 shall be effective only if accomplished in the manner provided for in Paragraph 14(b) hereof.

Grantor hereby appoints, as first members of the Architectural Control Committee, Dean Morrison, Hunter Morrison and Dudley W. Frost, Jr. The acts of such committee shall be by a majority vote.

If any committee appointed by Grantor becomes inactive for a period of more than sixty (60) days, either through resignation or death of all members of the committee or by willful failure or refusal to act in proper cases, then and in that event, the owners of a majority of the improved Lots subject to these covenants and restrictions, acting for and on behalf of Grantor, may elect a committee of not more than three members for a term of one year. The fact of the election of such committee and the identity of the members thereof shall be conclusively established and disclosed by a written instrument setting

forth the names and addresses of the members so elected and the term for which they are elected. Said instrument shall be signed by the owners of record of a majority of the improved Lots. The execution of said instrument shall be acknowledged before a notary public by one or more of said owners and recorded in the office of the County Recorder of Santa Clara County. After such election by said owners, Grantor may replace one or more members of said committee, with or without cause, after the expiration of said one year term, by an instrument executed and recorded by Grantor in the office of the County Recorder of Santa Clara County. Grantor may delegate or assign to Club, upon such terms and for such periods of time as Grantor may elect, its power to appoint the Architectural Control Committee, and to change the membership thereof.

6. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS. If, following damage or destruction by fire or other casualty affecting any improvement upon a Lot, the Owner thereof elects to repair or reconstruct the same, such repair or reconstruction shall be subject to the provisions of subparagraphs (p) and (q) of Paragraph 4 hereof.

7. SHADOW BROOK SWIM CLUB: OPERATION OF POOLS. The Club shall be responsible for the operation and maintenance of a swimming pool and related recreational facilities (hereinafter referred to as "the pool") for the benefit of the Owners, and in connection therewith the Board of Directors of the Club has the power to:

- a. Make reasonable rules relating to the operation and use of the pool by the Owners and other persons, which rules shall be furnished in writing to the Owners and any other persons entitled to use the pool.
- b. Suspend for a reasonable period, not exceeding 30 days, the right of an Owner or other person to use the pool in the event the Directors, following a hearing upon reasonable notice, determined by a four-fifths vote that such person has willfully violated any reasonable rule promulgated by the Directors pursuant to these restrictions or failed to pay any assessment for which he is liable.
- c. Contract and pay premiums for fire, casualty, liability and other insurance, including indemnity and other bonds.
- d. Contract and pay for maintenance, repairs, gardening, utilities, supplies and services relating to the pool, and for the replacement or reconstruction of any real or personal property of the Club.
- e. Contract and pay for the services of a person or firm to manage the affairs of the Club, to the extent deemed advisable by the Directors, as well as such other personnel as the Directors shall determine to be necessary or proper for the operation of the Club, whether such personnel are employed directly by the Directors or are furnished by the person or firm serving as manager.
- f. Contract and pay for legal and accounting services necessary or proper in the operation of the Club.
- g. Pay taxes and special assessments which are or would become a lien upon the property owned by the Club.
- h. Pay for reconstruction of any portion of the property of the Club which is damaged or destroyed.

- i. Do all things authorized by Section 9501 of the Corporation Code of California, including all acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Club.

## 8. ASSESSEMENT.

- a. The Directors shall have the responsibility for levying and collecting the assessments described in subparagraphs (b), (c) and (d).
- b. Operating Assessment: Not later than April 1 of each year, the Directors shall estimate the Club's budget for operating and maintaining the pool for the current operating year (an operating year shall be deemed to commence March 1), including a reasonable provision for contingencies and reserves for depreciation, and assess the same to the Owners in the manner provided by subparagraph (e) of this paragraph. In no year shall a Lot's share of such assessment exceed \$125.00.
- c. If the estimated budget for operating and maintaining the pool proves inadequate for any reason, including non-payment of any assessment, the Owners, by a majority vote or written consent, may authorize the Directors to levy a further assessment, which shall be assessed in the manner provided in subparagraph (e) of this paragraph, and shall be payable at such time or times as may be fixed by the Directors. In no year shall a Lot's share of such further assessment exceed \$25.00.
- d. Association Assessment: Not later than April 1 of each year, the Directors shall estimate the Club's cash requirement for the current operating year for purposes other than the operation and maintenance of the pool. Such amount shall be assessed by the Directors to the Owners in the manner provided by subparagraph (e) of this paragraph and collected as provided in Paragraph 9. In no year shall a Lot's share of such assessment exceed \$5.00.
- e. Each assessment referred to in subparagraphs (b), (c) and (d) of this paragraph shall be assessed to the owners of Lots located upon the real property described in exhibit "B", as amended from time to time, on the following basis: Each Lot located upon the real property described in Exhibit "B", as amended from time to time, shall bear an equal portion of such assessment without regard to the existence of any improvements on such Lot or the use being made thereof. The Directors are authorized to divide the amount of any assessment into two or more portions which shall be payable periodically. The Club shall give each Owner written notice of the total amount of any assessment, the amount thereof assessed to such Owner, and the date or dates upon which said amount or portion thereof shall be due and payable. Each such payment so indicated in the written notice shall be a separate debt of the Owner against whom it is assessed and shall be due and payable on the indicated date. Notwithstanding any other provision of these restrictions, Grantor (or its related successor in interest) shall be obligated to pay any assessment which becomes due with respect to any Lot owned by Grantor (or such successor in interest).
- f. The limitation on the amount of an assessment contained in subparagraph (b), (c) or (d) may be raised or lowered by an amendment of such subparagraph adopted by not less than a two-thirds vote or written consent of the Owners; provided,



however, that no such amendment shall be effective if it is adopted within two years of the date of adoption of a prior amendment to such subparagraph.

- g. When the first Directors elected take office, they shall determine the Club's operating budget for the balance of the current operating year. Assessments therefor shall be levied in the manner provided in subparagraph (e) of this paragraph, and shall be payable at such time or times as may be fixed by the Directors.
- h. No Owner may waive or otherwise escape liability for any assessment provided for in this paragraph by non-user of the facilities of the club, refusal of membership in the Club or transfer of abandonment of his Lot.

9. DEFAULT IN PAYMENT OF ASSESSMENTS. Each assessment made pursuant to Paragraph 8 shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. In the event of a default or defaults in payment of any such assessment or assessments, the delinquent sum shall bear interest at the rate of 2% per month service charge. In addition to any other remedies herein or by law provided, the Club may enforce each such obligation as follows:

- a. By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized by a majority of the Directors at a regular or special meeting thereof and any such suit may be instituted by an officer of the Club or by the Manager, if the latter is so authorized in writing. Each such action shall be brought in the name of the Club. Any judgment rendered in any such action shall include, where permissible under any law, reasonable attorneys' fees in such amount as the Court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Directors to authorize any two officers of the Club, acting in the name of the Club, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.
- b. At any time within three months after the occurrence of any such default, the Club (upon the vote of a majority of the Directors at any regular or special meeting) may give a notice to the defaulting Owner, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after such notice is given, the Directors may authorize any officer of the Club to file a claim of lien against the Lot or Lots owned by such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner, (2) a description of the property against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Club pursuant to the terms of these Restrictions (giving the date of execution and the date, book and page reference of the recording hereof in the Office of the Recorder of the County of Santa Clara), and (5) that a lien is claimed against the described property in an amount equal to the amount of the stated delinquency. Any such claim of lien shall be signed and acknowledged by said officer. Upon recordation of a duly executed claim of lien in the Office of the Recorder of the County of Santa Clara, the lien claimed therein shall immediately attach and become effective, subject only to the limitations hereinafter set forth.

Each default shall constitute a separate basis for a claim of lien. Reasonable attorneys' fees and expenses in connection with collection of the debt secured by such lien or foreclosure thereof shall be added to the debt and secured by the lien. Any such lien may be enforced by sale by the Club, its attorney or any other person authorized by it to make the sale, such sale to be conducted in accordance with the provisions of the law of the State of California applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Club shall have the power to bid its lien at the foreclosure sale, and if it acquires the property, to hold, lease, mortgage and convey the same.

For the purposes of the Paragraph a certificate stating the indebtedness secured by an assessment lien, executed and acknowledged or made under penalty of perjury by any two officers of the Club, shall be conclusive upon the Club and the owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained. Such a certificate shall be furnished to any interested party upon request at a reasonable fee, not to exceed Fifteen Dollars (\$15.00). If, after any claim of lien has been recorded, the Club receives payment in full of the amount claimed to be due and owing, then upon demand of the Owner or his successor, and payment of a reasonable fee, not to exceed Fifteen Dollars (\$15.00), the Club acting by any two officers, shall execute, acknowledge and deliver a release of lien, stating the date of the original claim of lien, the amount claimed, the date, book and page wherein the claim of lien was recorded, the fact that the lien has been fully satisfied and that the particular lien is released and discharged.

No amendment of this Paragraph shall be effective without the written consent of the Owners of 90% of the Lots, and all Mortgagees holding mortgages on any part of the real property described in Exhibit "B", as amended from time to time.

10. MORTGAGE PROTECTION. Notwithstanding all other provisions hereof:

- a. The lien which may be created hereunder upon any Lot shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such Lot made in good faith and for value, provided that after the foreclosure of any such mortgage a lien may be created pursuant to paragraph 9 hereof on the interest in such Lot of the purchaser at such foreclosure sale to secure all regular and special assessments (other than special assessments relating to charges incurred prior to foreclosure) assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale. Any such lien shall have the same effect and be enforced in the same manner as provided herein.
- b. No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof,
- c. By subordination agreement authorized by a majority of the Directors, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.

- d. Nothing herein contained shall limit or restrict the rights of the Club pursuant to Civil Code Section 2924(d), to cure any defaults under mortgages to which the lien created hereunder are made subordinate by this paragraph. The Directors are expressly authorized to cure any and all such defaults by payments to the mortgagee or mortgagees of the defaulting Owner or Owners from the contingency reserve fund. Any such payments shall be specially assessed against the Lot or Lots owned by the defaulting Owner or Owners and said special assessment shall be secured by the lien created under Paragraph 9 hereof.

11. RIGHTS OF GRANTOR. As used in this paragraph, the word "Grantor" shall be deemed to include any corporate grantee holding title for the purpose of construction and sale of residences, and the representatives of Grantor or such grantees. Grantor has undertaken or will undertake the work of constructing residences and incidental improvements upon substantially all of the Lots located upon the Subdivided Property. The completion of that work and the sale, rental and other disposal of said residences 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 Grantor 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 Grantor from erecting, constructing and maintaining on any part or parts of said property owned or controlled by Grantor 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, including without limiting the generality of the foregoing, model homes and tract construction and sales offices;
- c. Prevent Grantor from conducting on any part or parts of said property owned or controlled by Grantor its business of completing said work and of establishing said property as a residential community and of disposing of said property in parcels by sale, lease or otherwise; or
- d. Prevent Grantor from maintaining such sign or signs on any of said Lots owned or controlled by Grantor as may be necessary for the purposes set forth in this paragraph.

Any amendment to this paragraph shall be effective only if accomplished in the manner provided for amendment of Paragraph 14(b) hereof.

12. INTERPRETATION. The provisions of this declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Subdivided Property. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

13. NOTICES. If any notice provided for by this declaration is addressed to any Owner at the mailing address of his Lot and deposited in the United States mail with postage fully prepaid within 100 miles of the city of San Jose, Calif., such notice shall be deemed given on the day following such deposit.

14. AMENDMENT.

- a. Except as otherwise provided herein, the provisions of these restrictions may be amended by an instrument in writing signed and acknowledged by the holders of record title to at least 70% of the Lots subject to these restrictions, which amendment shall be effective upon recordation in the Office of the Recorder of the County of Santa Clara.
- b. Notwithstanding any provision of these restrictions to the contrary, Grantor (or Grantor's nominee) shall have the right to amend Exhibit "B" from time to time by adding thereto a description of any portion of the real property described in Exhibit "A" then owned by Grantor (or its nominee). Such amendment shall not require the consent of any Owner other than Grantor, or any Mortgagee other than Grantor's Mortgagee or Mortgagees, and shall be effective upon the recordation in the Office of the Recorder of the County of Santa Clara of an instrument setting forth said amendment which has been executed and acknowledged by Grantor or Grantor's nominee. Any amendment to this subparagraph (b) of Paragraph 14 shall be effective only by an instrument in writing signed and acknowledged by the holders of record title to at least 90% of the Lots subject to these restrictions and by all Mortgagees holding mortgages on any part of the real property described in Exhibit "B", as amended from time to time. Any such amendment to this Paragraph 14(b) shall be effective upon recordation in the Office of the Recorder of the County of Santa Clara.
- c. Notwithstanding any provisions of these restrictions to the contrary, as long as LAND IMPROVEMENT CORP. INC. holds fifty-one percent (51%) or more of the voting power of the membership of Club, there shall be no amendment of these restrictions without the written approval of the Federal Housing Administration.

15. TERMINATION OF RESTRICTIONS. These covenants, conditions, and restrictions shall continue for a period of thirty-five years following the date of this declaration and shall be automatically extended for successive periods of ten years unless an instrument executed and acknowledged by the Owners of a majority of the Lots located on the Subdivided Property has been recorded revoking this provision for automatic extension.

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

17. WAIVER OF BREACH. No waiver of the breach of any covenant or restriction herein contained, shall be a waiver of any succeeding breach of the same or any other covenant or restriction.



## **EXHIBIT "A"**

ALL THAT PORTION of the land described in the Deed from Lionel J. Tilson, et ux, to Philip S. Sanfilippo, et ux, recorded November 2, 1953 in Book 2750 of Official Records, page 99, lying Southerly of the Southerly line of the following described property:

COMMENCING at the most Northerly corner of that 54.216 acre parcel of land as shown on that map of the Record of Survey of the lands of City Title Insurance Co., recorded May 25, 1960 in Book 120 of Maps, page 37, Santa Clara County Records; thence along the Northerly prolongation of the Westerly line of said Parcel North<sup>o</sup> 05' 10' East 18.76 feet to the beginning of a curve concave to the Southwest, said beginning of curve being the true point of beginning, said Westerly line and the prolongation thereof, being the Easterly line of that tract of land conveyed to Philip and Martha Sanfilippo by Deed recorded November 2, 1953, in Book 2750, page 99, Santa Clara County Records; thence from the true point of beginning, at which point the tangent bears North 39<sup>o</sup> 15' 46" West Northwesterly along a curve concave to the Southwest, having a radius of 700.00 feet, through an angle of 23<sup>o</sup> 24' 37", an arc distance of 286.01 feet to a point of compound curvature and the beginning of a tangent curve to the left, tangent bearing North 62<sup>o</sup> 40' 23" West; thence Northwesterly along last said curve, having a radius of 1267.00 feet, through an angle of 16<sup>o</sup> 15' 27", an arc distance of 359.51 feet; thence tangent to last said curve North 78<sup>o</sup> 55' 50" West 180.00 feet to the beginning of a tangent curve to the right; thence Northwesterly along last said curve having a radius of 1433.00 feet, through an angle of 17<sup>o</sup> 30' 00", an arc distance of 437.68 feet; thence tangent to last said

curve North 61° 25' 50" West 211.15 feet to the beginning of a tangent curve to the left; thence Westerly along last said curve, having a radius of 700.00 feet, through an angle of 12° 29' 00", an arc distance of 152.51 feet; thence tangent to last said curve North 73° 54' 50" West 98.20 feet to a point on the Westerly line of said tract of Sanfilippo, said point being the most Northerly corner of that Parcel Number 2 as described in that grant of easement conveyed from Arthur J. Mclanson to City of San Jose by Deed recorded December 14, 1965 in Book 7210, page 295, Santa Clara County Records; thence along said Westerly line of said tract of Sanfilippo North 2° 35' 55" East 33.94 feet; thence parallel to and 33 feet equidistant from last mentioned courses lying between the East and West lines of said tract of Sanfilippo the following seven courses: South 73° 54' 50" East 106.12 feet to the beginning of a tangent curve to the right; easterly along last said curve having a radius of 733.00 feet, through an angle of 12° 29' 00", an arc distance of 159.70 feet tangent to last said curve South 61° 25' 50" East 211.15 feet to the beginning of a tangent curve to the left; easterly along last said curve having a radius of 1400.00 feet, through an angle of 17° 30' 00", an arc distance of 427.61 feet; tangent to last said curve South 78° 55' 50" East 180.00 feet to the beginning of a tangent curve to the right; Southwesterly along last said curve having a radius of 1300.00 feet, through an angle of 16° 15' 27", an arc distance of 368.87 feet to a point of compound curvature and the beginning of a tangent curve to the right, tangent bearing South 62° 40' 23" East; Southeasterly along last said curve having a radius of 733 feet, through an angle of 21° 38' 45", an arc distance of 276.92 feet to a point on the Easterly line of said tract of Sanfilippo; thence along said Easterly line South 16° 05' 10" West 39.69 feet to the true point of beginning.

EXCEPTING FROM the firstly described property the following two parcels:

Parcel 1:

BEGINNING at the Southeast corner of that certain 0.840 acre parcel of land in the Southwesterly line of Almaden Road, 60 feet wide, as said parcel and road are shown on that certain Map entitled "ROS, portion Property of Fiorenzo Mozzone---", which Map was filed for record in Book 67 of Maps, page 33, Santa Clara County Records; thence from said point of beginning, North 82° East 36.65 feet to an iron pipe in the centerline of said Almaden Road; thence along said centerline, South 43° 04' East 65.05 feet to an iron pipe; thence North 49° 08' East 30.02 feet to an iron pipe in the Northeasterly line of said Almaden Road and the true point of beginning of this description; said true point of beginning being in the Southwesterly line of that certain 104 acre parcel of land described in the Deed from Lionel J. Tilson, et ux, to Philip Sanfilippo, et ux, which Deed was recorded November 2, 1953 in Book 2750, page 99, Santa Clara County Records; thence from said true point of beginning, North 49° 08' East 295.68 feet to an iron pipe, thence South 42° 49' East 137.66 feet to an iron pipe; thence South 45° 11' West 295.00 feet to an iron pipe in the Southwesterly line of said 104 acre parcel, being also the Northeasterly line of said Almaden Road, said point being distant North 445° 11' East 30.01 feet from an iron pipe in the centerline of said road; thence along said Northeasterly line of Almaden Road, North 43° 04' West 158.00 feet to the true point of beginning.

CONTAINING 1.002 acres of land, and being a portion of Pueblo Tract No. 3, San Jose City Lands, said parcel surveyed and monumented March, 1959 by Frank E. Pisano, C.E.

Parcel 2:

BEGINNING at a point in the Northeasterly line of Almaden Road, 60 feet wide, at the most Southerly corner of that certain 104 acre tract of land conveyed by Lionel J. Tilson, et ux, to Philip S. Sanfilippo, et ux, by Deed recorded November 2, 1953, in Book 2750, page 99, Official Records of Santa Clara County; thence from said point of beginning along said Northeasterly line of Almaden Road, North 37° 53' 00" West 44.46 feet to an angle point therein; thence continuing along said Northeasterly line North 43° 04' 37" West 232.95 feet to the most Southerly corner of that certain 1.002 acre parcel of land shown upon that certain map entitled, "Record of Survey of the Land of Howard Shaw", filed for record on May 8, 1959 in Book 106 of Maps, page 3, Santa Clara County Records; thence along the Southeasterly line of said 1.002 acre parcel, North 45° 10' 23" East 295.00 feet to the most Easterly corner thereof; thence along the Northeasterly line of said 1.002 acre parcel, North 42° 49' 37" West 137.66 feet to the most Northerly corner thereof; thence North 46° 22' 58" East 103.97 feet; thence along an arc of a curve to the left with a radius of 242.00 feet through a central angle of 24° 20' 31", an arc distance of 102.81 feet to a point in the Easterly line of said 104 acre tract in the channel of a dry creek known as Randol Creek; thence along the Easterly lines of said 104 acre tract and along the channel of said creek the four following courses and distances: South 6° 44' 27" East 32.84 feet; South 20° 42' 34" East 141.63 feet; South 33° 30' 03" West 287.36 feet, and South 48° 16' 44" West 126.41 feet to the point of beginning of this description:

CONTAINING 3.135 acres of land, more or less, and being a portion of Pueblo Tract No. 3, San Jose City Lands.

**EXHIBIT "B"**

THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE,  
COUNTY

OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS:

Lots 1 to 106 inclusive, as said lots are shown on certain map entitled, "TRACT NO. 4404", which map was filed for record in the office of the County Recorder of the County of Santa Clara, State of California, on January 29, 1968, in Book 232 of Maps, pages 51, 52, and 53.

Lots 1 to 118 inclusive, as said lots are shown on certain map entitled, "TRACT NO. 4531", which map was filed for record in the office of the County Recorder of the County

of Santa Clara, State of California, on October 10, 1968, in Book 243 of Maps, pages 27 and 28.

Lots 1 to 100 inclusive, as said lots are shown on certain map entitled, "TRACT NO. 4617", which map was filed for record in the office of the County Recorder of the County of Santa Clara, State of California, on August 6, 1970, in Book 271 of Maps, pages 17 and 18.