

261383

DECLARATION OF RESTRICTIONS, COVENANTS, EASEMENTS

AND CHARGES AFFECTING REAL PROPERTY KNOWN AS

HOLIDAY LAKE ESTATES UNIT NO. 2

TRACT NO. 4196

THIS DECLARATION, made this 15th day of November, 1966, by HOLIDAY LAKE ESTATES, INC., a California corporation.

WITNESSETH:

WHEREAS, Holiday Lake Estates, Inc., a corporation, hereinafter referred to as Declarant, is the owner of that certain tract of land in the City of Morgan Hill, County of Santa Clara, State of California, shown on the subdivision map entitled, "TRACT NO. 4196, HOLIDAY LAKE ESTATES UNIT NO. 2", filed November 17, 1966 in Book 216 of Maps, at pages 39, 40, 41, 42, 43 and 44; and

WHEREAS, there has been incorporated under the laws of the State of California a non-profit corporation without capital stock known as Holiday Estates Maintenance Association, hereinafter referred to as Association, membership in which is limited to owners of lots and contract purchasers of lots and lessees of lots or building sites in those certain tracts generally known as, or to be known as, Holiday Estates Units 1, 2, 3, etc., of which the above described real property is the second such unit, and which said Association, subject to the provisions hereinafter contained, is to have the interpretation and enforcement of certain of the restrictions, covenants, charges and agreements set out in this Declaration,

NOW, THEREFORE, HOLIDAY LAKE ESTATES, INC., a Corporation, in pursuance of a general plan or scheme of improvement for the whole of the property shown on said map hereinabove mentioned, hereby declares that the property shown on said Map is hold and shall be conveyed subject to the restrictions covenants, easements and charges contained in this Declaration.

ARTICLE I

RESIDENCE CONDITIONS

No building shall be constructed or maintained on any lot or parcel of land shown on said map of Unit #2, except a private dwelling house designed and intended for occupation by no more than one family; flats, apartment houses and all other multiple dwelling houses and rooming and boarding houses being expressly prohibited. There may be constructed and maintained as appurtenant to said dwelling house appropriate outbuildings. Including a private garage and a boat house for the use of the occupants of such dwelling house, and a guest house or housing accommodations for servants, employed on the premises, provided, however, that no such outbuildings shall be more than one story in height, and such guest house or housing accommodations must be attached to the dwelling house or joined thereto by a roofed connection unless a substitute method be approved by the Association's Board of Directors in writing.

enterprise, or for any hospital, sanitarium or institution of like or kindred nature.

Notwithstanding the foregoing restrictions, if any portion of said property shall be zoned by the appropriate municipal or county authorities to a zone other than a first residential zone at a time when Declarant is the owner of said portion, then Declarant may erect and maintain on said portion or any part thereof any building or structure permitted by the zoning regulations then controlling. In the event of such a change in zoning affecting any portion of the property, then owned by Declarant, the Declarant may, but is not required to, cancel the restrictions, covenants and charges imposed by this Declaration insofar as it applies to the said portion of the property subject to the change in zoning, such cancellation to be effected by recording in the office of the County Recorder of Santa Clara County, California, a Declaration of Cancellation of Restrictions, duly executed by Declarant and setting forth therein the purpose of such instrument.

ARTICLE II

TEMPORARY BUILDINGS

No trailer, basement, tent, shack, garage, barn or other outbuildings shall at any time be used as a residence, temporary or permanent, nor shall any residence of a temporary character be permitted on said property except as necessary for the interim period while a permanent structure is being erected and then only on such terms and conditions set by the Association's Board of Directors in writing, and no structure shall be moved on or brought upon any part of said property unless it shall conform to and be in harmony with existing structures in the area of the proposed location thereof.

ARTICLE III

ARCHITECTURAL CONTROL

No building, wall, fence or other structure shall be erected or maintained upon any building site, and no alteration in the exterior of any building or structure for which it is necessary to secure a permit from the appropriate municipal or other governing authority, nor any other permanent alteration in the exterior of any building or structure shall be made unless and until complete plans and specifications therefore, showing the nature, design, height, material, color scheme and location on the lot of the proposed structure or altered structure are submitted to and approved in writing by Association, and Association shall refuse to approve of any structure or proposed structure or proposed alteration thereof if the same does not conform to the requirements laid down in this Declaration or does not conform to and is not in harmony with the general design and scheme of improvements in the area. Without the written consent of Association having been obtained, no fence or wall shall be erected or maintained on any building site nearer to any street than the fence installed at the time of the original construction of the dwelling house to which the fence or wall is appurtenant, or, if the location of such originally installed fence is not ascertainable, then not nearer to the front street line than the building setback line, nor without like written consent shall such fence, hedge or other enclosure be permitted having a height greater than six feet above the surface of the ground, as originally graded or terraced by Declarant on either side of the fence, hedge or enclosure, nor without like written consent shall any clothes line or clothes pole or other similar structure, except a rotating clothes dryer located in the rear of the dwelling house be permitted, nor without like written consent shall any radio or other aerial be erected or maintained except at the rear of a building or structure. Any proposed change in color on the exterior of any structure must be submitted to and approved in writing by Association before such change is made.

called a "slope control area," then, without the written consent of Association, said slope control area shall not be altered nor shall any structure, planting or other material be placed or permitted to remain, or other activities undertaken, thereon which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of the flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas within any lot and all improvements in them shall be maintained continuously by the owner of such lot, except for those improvements for which a public authority or utility company is responsible. Upon failure of the owner to comply with the requirements of this paragraph, the Association may at its option, after **ten** days' written notice to the owner, restore or alter such slope control areas to the condition in which they are required to be kept pursuant to the provisions of this paragraph, and may so maintain the same, and reasonable costs and expenses of such restoration, alteration and maintenance shall be paid for by the owner. In any suit brought by the Association to collect such indebtedness, the Association shall be entitled to recover, in addition to such costs and expenses, reasonable attorneys' fees to be fixed by the Court.

Declarant shall for a period of one year following Declarant's sale and deed of any particular building site have the right but not the obligation to enter upon the said site and maintain the slope control areas, if any, thereon so that they shall conform to the requirements of this Article IV. An easement of reasonable access for said purpose is reserved to Declarant, and the purchaser by the acceptance of a deed from Declarant shall take title subject to such easement for said period of one year.

ARTICLE V

MINIMUM SIZE AND LOCATION REQUIREMENTS

No dwelling shall be erected or maintained on any building site having a floor area, exclusive of open porches and garages, of less than twelve hundred and fifty square feet, or having a height in excess of two stories; unless the floor area restriction above established is modified by the Association's Board of Directors for cause shown or unusual difficulties or hardships related to the land under improvement in specific cases.

ARTICLE VI

TREES AND SITE CLEARANCE

No trees and/or shrubbery shall be removed on any lot except such as constitute a fire hazard or hazard to the structure constructed thereon, and then only with the approval of the Association in writing. Site clearance and tree removal proposals shall be submitted in plan form to the Association and approval received before any work or construction may begin. Tree planting programs authorized by the Association shall be carried out by the lot owner, his heirs, assigns and successors. Stock necessary for such programs may be provided by the Association and the cost thereof equitably distributed to all lot owners by and through assessment provided for herein.

ARTICLE VII

RESUBDIVISION OF LOTS

A "building site" as the term is used in this Declaration shall mean a parcel of land having an area not smaller than 20,000 square feet and having a street frontage of not less than 100 feet, or as shown on the final recorded subdivision map. When unusual difficulties and

ARTICLE VIII

EASEMENTS

Easements and rights of way, as indicated upon said Map, are created for the installation and maintenance of foot and bridle paths, launching easements, storm drains, sewers, pole lines, conduits for the transmission of electricity for lighting, telephone or other purposes, and any other public utility or quasi public utility purpose; and no building shall be placed upon such easements or interference made with the free use of the same for the purposes intended; and connections with sewers, if installed at any time, and the use thereof shall be for sanitary purposes only, unless permission for additional use or uses is previously secured from the governing body of the district or municipality operating and maintaining such sewers. Purchasers of lots as shown on said map shall take title subject to such easements as are set forth by recorded maps or other documents recorded prior to receiving title.

ARTICLE IX

BRIDLE PATHS

Horseback riding is limited to bridle paths and riding areas as designated on the recorded map of Tract No. 4196.

Declarant and Holiday Estates Maintenance Association shall have the right, but not the obligation to enter upon any lot for the purpose of fencing said bridle paths and/or riding areas.

ARTICLE X

SIGNS

No billboards or other advertising devices shall be erected or placed on any lot or plot in said tract; and no "For Sale, Lease or Rent" signs shall be displayed upon any lot or plot. Sales and rentals may be processed through a tract sales office to be established and maintained by the Declarant. Nothing herein shall prohibit the lessee or owner of a lot from listing the same for sale or rental with the brokers or agents or from advertising the same provided no evidence of such sale or rental intent shall be exhibited in the tract itself. The Association shall have the right to summarily remove any and all violations of this clause and shall have no responsibility or liability for any trespass reasonably required to do so. A master directional sign shall be kept and maintained by the Association near the entry to Holiday Estates, and individual directional signs shall not be permitted. Post office boxes shall be of a shape and size and material approved by the Association and no divergence will be allowed from the approved design. During the development and sale of lots and homes in said tract or adjoining tracts, Declarant may erect and display one or more sales signs as it may determine.

ARTICLE XI

COMPLETION OF CONSTRUCTION

Any residence or other buildings in said subdivision, the construction of which has been started, shall be completed without delay, except when such delay is caused by acts of God, strikes, actual inability of the owner to procure deliveries of necessary materials, or by interference by other persons or forces beyond the control of the owner to prevent. Financial

existence of such incompleting building shall be deemed a nuisance, and the Association shall have the right to enter upon the premises and remove the incompleting building, or carry such construction forward to completion, and the costs and expenses incurred in connection with such removal or completion shall constitute a lien upon said property under the mechanic's Lien Law of the State of California, such lien to attach as of the time of the commencement of the work so undertaken to complete such construction or to effect such removal and the said lien may be enforced in the manner provided for the enforcement of mechanics' liens.

ARTICLE XII

LANDSCAPING

No portion of any building site between the street line and the main residential building or structure thereon shall be used for the planting or growing of garden vegetables. The major portion of all yard areas must be kept in natural condition or lawns or a combination thereof with ornamental rock or approved ground cover such as ivy, ajuga, etc., unless otherwise permitted in writing by Association, and shall be kept and maintained by the owner or lessee in a good and husbandlike manner under the direction of such Association without the right of removal, replacement or substitution thereof except by written permission of the Association. Upon failure of owner to comply with this paragraph after fifteen days' written notice, the Association may, at its option, restore such portion of lot and such area to the condition in which it is required to be kept pursuant to the provisions of this paragraph, and may so maintain the same, and the reasonable costs and expenses of such restoration and maintenance shall be paid for by such r lot owner. In any suit brought by the Association to collect such indebtedness the Association shall be entitled to recover, in addition to such costs and expenses, reasonable attorneys' fees to be fixed by the Court. The Association shall also have the authority to cut and remove all weeds and other plant or building materials on any lot which is declared to be a fire hazard by the fire protection authorities having jurisdiction; and the cost of such action shall be assessed to the owner of the property receiving the service reasonable required by assessment or inclusion in the tax bills levied by the County of Santa Clara, whichever method may be selected by the Association's Board of Directors.

ARTICLE XIII

No building site or building thereon in said subdivision shall be used for the keeping or breeding of fowls, animals or creatures of any kind for commercial purposes, but such fowls, birds and animals may be kept as pets for the pleasure of the occupants of the premises where kept, and then it is permissible to keep ordinary or usual species in number and under conditions not constituting a nuisance or otherwise objectionable to other residents in the subdivision; and all yards, pens and outbuildings used in connection with the keeping of such fowls, birds and animals shall be adequately screened from view from any street or other lots and be at all times kept and maintained in a clean and sanitary condition. Horses may not be kept on any lot in the tract and shall be stabled off the tract premises unless a specific area is set aside for such purposes by Declarant in or adjacent to the tract under the provisions of applicable zoning laws of the County of Santa Clara.

ARTICLE XIV

OFFENSIVE ACTIVITY

No noxious or offensive activity shall be carried on upon said property, nor shall anything

ARTICLE XV

PROCEDURE FOR APPROVAL OF PLANS

In all cases in which under the provisions of this Declaration, the written approval by Association of plans and specifications' is required before any particular structure or other improvement may be erected or altered, such approval may be given by Association or by a special committee to be appointed by Association for such purposes. If the Association or such duly appointed special committee fails to approve or disapprove of any plans and specifications within thirty days after such plans and specifications are properly submitted to the Association, or if there is no Association in existence to which plans and specifications may be submitted, or if no r suit is brought to enjoin the construction or alteration of such structure before the work thereon is completed, approval of such plans and specifications shall be deemed to have been made, provided such construction or proposed construction otherwise complies with the provisions of this Declaration.

ARTICLE XVI

PROVISIONS FOR UPKEEP

Association shall be charged with the obligation of enforcement of the provisions of the restrictions and shall carry out all required maintenance of common areas and easements set aside by Declarant or conveyed to Association by any lot owner of Declarant from time to time from this unit or from any unit of the Holiday Estates area.

Each building site within said subdivision shall, following the sale thereof by Declarant, be subject to a monthly charge, lien or assessment in an amount of not less than \$2.00 nor more than \$6.00 (subject to increase should the value of the U.S. Dollar vary from the value on July 1, 1963) without regard to the square foot area thereof. That the amount of the monthly dues shall be established by resolution of the Board of Directors of the Holiday Estates Maintenance Association.

The monthly dues for the calendar year shall be payable in advance on the 1st of January of each year.

Provided, however, that the first annual payment of monthly dues shall be paid at the close of escrow of the building site and shall be prorated to reflect the close of escrow within the calendar year.

Said first annual payment shall be deposited and disbursed at the close of escrow by the escrow holder to the financial institution designated by the Board of Directors of Holiday Estates Maintenance Association, Inc.

When due such charge or assessment shall be a lien upon the building site, and shall continue to be a lien thereon for a period of three years or until fully paid, whichever shall first occur. If such charge or assessment is not paid within 30 days after, it becomes due it shall be delinquent and shall bear interest from date of delinquency at the rate of 10 percent per annum. If not paid within 30 days after the delinquency date, Association may bring court action to collect the same and there shall be added to the amount thereof the cost of preparing and filing the complaint in such action and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

- (b) Street lighting, improving and maintaining gateways or ornamental columns or any other ornamental features, repairs to streets, sewers and any other utilities maintained by or at the expense of the Association, including trees, grass plots and planted areas within the lines of such streets or any recreations areas, the construction and maintenance of suitable school bus and public bus stop shelters, all within the said subdivision.
- (c) Caring for vacant and unimproved lots and plots in said sub- division, removing grass and weeds therefrom and any other thing necessary and desirable in the judgment of Association to improve, beautify and make more convenient or enjoyable the living conditions and surroundings of the inhabitants and other owners in said subdivision.
- (d) Sweeping and cleaning streets, sidewalks and any portion of said subdivision maintained for the general use of owners of property therein until such time as the sweeping and cleaning of streets are provided for by r1unicipal Authorities.
- (e) A reasonable proportion of the expenses connected with the maintenance of an office for the transaction of the business of Association in carrying out the foregoing purposes.

Association agrees that the money so collected shall be applied to the purposes above mentioned in such manner so that there will not be accumulated and carried over from anyone calendar year to the next a sum which is in excess of that arrived at by multiplying the number of building sites upon which assessments have been collected during the year by the sum of \$25.00. Association shall not be obligated to carry out any of said purposes except to the extent possible from the money so collected.

ARTICLE XVII

SEVERABILITY

The various provisions of this Declaration are declared to be severable, and the invalidation of anyone of the restrictive covenants or other provisions hereof by judgment or Court order shall in no wise affect any other covenant or provision herein contained.

ARTICLE XVIII

ENFORCEMENT AND REMEDY

The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Declarant, by Association and by the owner or owners of any property shown on said map, their and each of their legal representatives, heirs, successors and assigns and the covenants, liens imposed shall run with the bind the land, and failure by anyone of them to enforce any such restrictions, covenants, and agreements herein contained shall in no event be deemed a waiver of the right to do so thereafter; and damages for any breach of the terms, restrictions, covenants and agreements of this declaration are hereby declared not to be adequate compensation, but such breach or the continuation thereof may be enjoined or abated by appropriate proceedings by Declarant or by Association or by any owner or owners of property shown on said map and in any proceedings to enforce such restrictions, covenants or agreements, either by law or in equity, if recovery be had, the plaintiff shall be entitled to recover all costs and expenses, including a reasonable attorney's fee to be fixed by the Court.

ARTICLE XIX

DURATION OF RESTRICTIONS

All the restrictions, covenants, charges and agreements set forth in this Declaration shall affect all of said property, and are made for the direct benefit thereof, and shall run with the land and continue until thirty (30) years from the date hereof, at which time the same shall automatically be extended for successive periods of ten (10) years.

ARTICLE XX

MODIFICATION OF RESTRICTIONS

Any of the restrictions, covenants, charges and agreements contained in this Declaration may be annulled, waived, changed or modified at any time by the record owner or owners of lots or parcels of land within said subdivision having an aggregate area of not less than 75 percent of the total area of said subdivision, exclusive of street areas. The owner or owners desiring to accomplish such annulment, waiver, change or modification shall execute and record in the office of the County Recorder of Santa Clara County an appropriate instrument setting forth the nature and extent of such annulment, waiver, change or modification, and the annulment, waiver, change or modification, as the case may be, shall be effective upon such recordation.

Notwithstanding the foregoing provisions of this paragraph, if at the time of recordation of such instrument annulling, waiving, changing or modifying any of these restrictions there exists upon any of the property in said subdivision a recorded deed of trust or mortgage in which the Federal Housing Administration, or its successor in function, had any interest as insurer, guarantor, or otherwise, or if at such time the Federal Housing Administration or its successor in function is the owner of any property in said subdivision, such purported annulment, waiver, change or modification shall not be effective for any purpose unless and until it is consented to in writing by the Federal Housing Commissioner, or his successor in office. And if at the time of the recordation of such instrument there exists upon any of the property in said subdivision a recorded mortgage or deed of trust in which the Veterans Administration or its successor in function has any interest as insurer, guarantor or otherwise, such purported annulment, waiver, change or modification shall not be effective for any purpose unless and until it is consented to in writing by either the Administrator of Veterans Affairs (or his successor in office), or by the mortgage or beneficiary, as the case may be, of every such mortgage or deed of trust in which the Veterans Administration, or its successor in function, has any such interest; and if at the time of recordation of such instrument the Veterans Administration or its successor in function is the owner of any property in said subdivision, then such purported annulment, waiver, change or modification shall not be effective for any purpose unless and until it is consented to in writing by the Administrator of Veterans Affairs or his successor in office.

"Owner" as used in the paragraph shall include, in addition to the owner of the fee title, the lessee under a recorded lease subject to this Declaration of Restrictions, the owner of a beneficial interest under a deed of trust, a mortgage, and a contract purchaser. It shall not include the trustee under a deed of trust, the holder of a lien other than a mortgage lien, or the owner of an easement.

ARTICLE XXI

CONSENT OF PURCHASERS

charges or assessments hereinbefore provided for attaching as a lien during the period of their ownership.

ARTICLE XXII

ASSIGNMENT OF POWERS

Any or all of the rights or powers of Association herein contained may be assigned or re-assigned to any non-profit corporation, assessment district, governmental agency, or association, with membership open to a fee owner and to a contract purchaser of any property in said subdivision, and which assignee will agree to assume the duties of Association hereunder pertaining to the particular rights and powers assigned. Upon any such corporation or association evidencing its consent in writing to accept such assignment and assume such duties, it shall to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are given to and imposed upon Association herein.

ARTICLE XXIII

MEMBERSHIP IN ASSOCIATION NOT REQUIRED

Nothing contained in this Declaration, or in any of the provisions hereof, or in any governing rules, by-laws of articles of incorporation of Association or of any corporation or association to which any powers may hereafter be assigned under Paragraph XXI hereof is intended to or shall be construed to make membership in Association, or in any corporation or association to which any powers may be assigned, mandatory or a condition to holding title to or possession of any property in said subdivision.

ARTICLE XXIV

SUBORDINATION OF MORTGAGES

Each and every restriction as to said property is hereby declared to be subject and subordinate to the lien of any mortgage or Deed of Trust now or hereafter made or existing in good faith and for value, and these restrictions shall in no way restrict, impair, or defeat any right of sale contained in any such mortgage or Deed of Trust or the foreclosure of the same; provided, however, that title to any property subject to these restrictions and obtained through sale under or foreclosure of any such mortgage or Deed of Trust shall thereafter be held subject to all provisions of these restrictions; except (and 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 the Veterans Administration, or any other governmental agency; or property acquired by any such agency directly, at foreclosure, or otherwise, or from the purchaser at foreclosure sale, or otherwise, by reason of, or incident to, or as a consequence of such guaranty, or insurance, either by way of purchase at a sale or other judicial proceedings, or through foreclosure of Deed of Trust or mortgage immediately upon any such acquisition shall be, and thereafter remain, free from any and all restrictions or impediments as to alienation.

ARTICLE XXV

All lots or building sites within the area which is made subject to these restrictions and

IN WITNESS WHEREOF, the said corporation has executed this Declaration the day and year first above written.

HOLIDAY LAKE ESTATES, INC.
a California Corporation

BY Alvin J. Hoffman

BY Woodrow Mousley

VALLEY TITLE COMPANY, a Corporation, as Trustee, hereby consents to the execution of the foregoing Declaration of Restrictions.

VALLEY TITLE COMPANY, a Corporation

BY Don Hancock

BY Fred F. Menichetti

(Corporation)

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA CLARA)

On November 15, 1966 before me, the undersigned, a Notary Public in and for said State, personally appear Alvin J. Hoffman known to me to be the President, and Woodrow Mousley known to me to be the Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official
Signature M. Belgin

SEAL

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA CLARA)

On this 15th day of November in the year one thousand nine hundred and sixty six before me, the undersigned, a Notary Public in and for the County of Santa Clara, State of California, duly commissioned and sworn, personally appeared DON HANCOCK and FRED F. MENICHETTI known to me to be the Vice President and Assistant Vice President of the corporation described in and that executed the within instrument, and also known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Santa Clara the day and year in this certificate first above written.

SEAL

Alicia H. Montoya
Notary Public in and for the County
of Santa Clara. My Commission
Expires 9/29/70.