

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

WHEREAS, TRIAD CONSTRUCTION CO., a California corporation, and U. S. CONSTRUCTORS, a California corporation, Venturers doing business under the name RANCHO SANTA TERESA JOINT VENTURE (herein called "Grantor"), as the owner of all that certain real property described in Exhibit A attached hereto; and

WHEREAS, Grantor has subdivided the portion of said real property which is described in Exhibit B attached hereto (hereinafter called the "Subdivided Property and desires 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;

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 of 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 10(b) hereof;
- b. "Lot" means a single family residential lot designated as such 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 single family residential lot but is used for single family residential purposes, and 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 purposes of these restrictions, nor shall any property that is used as a church or public school and on which the original structure or building was not designed for residential use be deemed to be a Lot or Lots for the purposes of these restrictions; and provided further that any Lot designated on any subdivision map relating to any of the real property described in Exhibit B, as amended from time to time, for uses other than single family residential uses shall not be deemed to be a Lot or Lots for the purposes 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 Rancho Santa Teresa Swim and Racquet Club, a California nonprofit corporation, the primary purpose of which is to provide swimming facilities for the owners of residential Lots located upon the real property described in Exhibit A.
- g. "Restrictions" means the covenants, conditions and restrictions contained herein.

## 2. Enforcement of Restrictions.

Grantor, 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.

## 3. Completion of Construction.

Any building on any Lot the construction of which has been started shall be completed without unreasonably delay, except when such delay is caused by acts of God, strikes, actual inability of the Owner to procure delivery of necessary material or by interference by other persons or forces beyond the control of the Owner to prevent.

## 4. Use of Lots.

The Lots shall be occupied and used as follows:

- a. No Lot (as "Lot" is defined in paragraph 1 (b) above) shall be used except for single family residential purposes. No dwelling designed for occupancy by a single family shall be occupied by more than one family, nor shall any such dwelling exceed two and one-half (2-1/2) stories in height. 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 Lot, which Lot has an area of less than 6,000 square feet or a width of less than 60 feet at the front building setback line, 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 floor area of the main structure of any single family dwelling, exclusive of one-story open porches and garages, shall not be less than 1,200 square feet in the case of a one-story structure, nor less than 1,400 square feet in the case of a structure of more than one story.
- d. Any single family dwelling erected, constructed or placed on any Lot shall cost and be fairly worth not less than 11,500.00, based upon cost levels prevailing on the date these covenants are recorded.
- 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) of any Lot, nor shall any sign of any kind be displayed to the public view on any Lot except one sign of not more than five (5) square feet advertising the property for sale or rent, provided, however, that Grantor or its agents or nominees may, during the construction and sales period for any of the property described in Exhibit A, erect and display larger signs and construct, maintain and operate sales office.

- f. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (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 twenty-five (25) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (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. No animals, fowls or birds may be kept or bred for commercial purposes on any Lot. Only conventional and customary household pets shall be permitted to be kept on any Lot and only in reasonable numbers and of such types so as not to cause an annoyance or nuisance to the neighborhood.
- h. 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.
- i. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for storage or disposal of such material shall be kept in a clean and sanitary condition.
- j. No Owner of any Lot 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.
- k. 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 the neighborhood.
- l. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. The Committee shall grant its approval if the proposed work is not detrimental to the Subdivided Property and is to be carried out 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.

During any period of time when underground television cable antenna service is available to any Lot, no exterior television antenna shall be erected or maintained on or about such Lot or any portion of any improvement thereon. No mast, tower, antenna (other than a television antenna), or similar structure shall be erected or maintained on or about any Lot or any portion of any improvement thereon except with the approval of the Architectural Control Committee. Any mast, tower, antenna or similar structure 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 work, the provisions of this

subparagraph to the contrary notwithstanding.

- m. The Architectural Control Committee and its representatives shall have the right to inspect the work referred to in subparagraph (l) 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.
- n. Easements are reserved as shown on the recorded map of the Subdivided Property, and in addition, within and adjacent to the rear line of all Lots, easements five (5) feet in width are hereby provided for and reserved. In the event the original boundaries of a Lot are changed, said five-foot easements shall be located within and adjacent to the new rear Lot line. Said easements may be used 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 easements, 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.
- o. 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.

- p. No building on a Lot shall be located nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the recorded subdivision map. In any event, no building on a Lot shall be located nearer than twenty (20) feet to the front Lot line or nearer than twelve and one-half (12-1/2) feet to any side street line. No building on a Lot shall be located nearer than five (5) feet from any interior side Lot line. No dwelling shall be located nearer than fifteen (15) feet from rear Lot lines on interior Lots. For the purposes of this subparagraph, eaves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

## 5. Architectural Control Committee.

- a. 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(l) and 6 of these restrictions.
- b. Grantor or its nominee shall have the power to appoint the Committee and to change the membership thereof, and, in the event of death or resignation of any member of the Committee, to appoint successors, until the earliest of the following dates:

- i. at such time as ninety percent (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), or
- ii. on December 31, 1975, or three (3) years from and after the date of the last Final Subdivision Public Report issued by the Division of Real Estate of the State of California and covering any part of the property described in Exhibit A (whichever is later);

thereafter the then Owners of fifty-one percent (51%) of such Lots shall have the right by a duly recorded written instrument signed and acknowledged by such Owners to appoint the Committee and change the membership thereof, or to withdraw from the Committee or restore to it any of its powers and duties. Any amendments to this Paragraph 5 shall be effective only if accomplished in the manner provided for in Paragraph 10 (b) hereof. Grantor hereby appoints, as first members of the Architectural Control Committee John C. Mackay, R. H. Walter, and L. E. Newman. The acts of such Committee shall be by a majority vote, and by such vote the Committee may designate a representative to act for it.

#### 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 reconstructions shall be subject to the provisions of subparagraphs (l) and (m) of Paragraph 4 hereof.

#### 7. Rancho Santa Teresa Swim and Racquet Club.

- a. Each beneficial Owner (as distinguished from a security owner) of a single family residential unit on the property described in Exhibit B hereto (as Exhibit B shall from time to time be amended), other than Grantor, shall, in accordance with and subject to the laws of the State of California governing non-profit corporations, be a proprietary member of Rancho Santa Teresa Swim and Racquet Club, a corporation organized and incorporated pursuant to the General Non-profit Corporation Law of the State of California on October 13, 1966, and there shall be no other qualification for such membership, provided that if any such single family residential unit shall be owned by two or more persons, only one of such persons, as they may elect, shall be a member. Each such person shall, in accordance with and subject to the laws of the State of California governing non-profit corporations, have all of the rights and privileges of a proprietary member in accordance with the by-laws of said nonprofit corporation, on filing with the Secretary of said non-profit corporation proof of his qualification therefor, and on payment of any dues or assessments then payable. All dues and assessments, in the amount fixed as provided in said by-laws, shall accrue and be payable by such proprietary member from the date title to such residential unit is conveyed to him or the date on which he first occupied such unit, whichever is the earlier, and all dues and assessments, if not paid within thirty (30) days after the same becomes due and payable, shall, upon the recording at any time thereafter of a claim of lien by said non-profit corporation, be and become a lien on the said proprietary member's residential unit, and said non-profit corporation shall then have the right to enforce the payment of said dues and assessments in accordance with the laws of the State of California governing foreclosure and enforcement of liens. If and in the event that any proprietary member of said Rancho Santa Teresa Swim and Racquet Club shall be the beneficial owner (as distinguished from a security owner) of more than one single family residential unit on the property described in Exhibit B hereto (as Exhibit B shall from time to time be amended), such proprietary member shall have the rights, privileges and obligations of a proprietary member with respect to each such unit so owned, and each such unit owned shall be subject to the lien provided for in this paragraph, to

the end that the rights privileges and obligations of such proprietary member shall be the name as though such member held a separate proprietary membership for each such unit so owned.

- b. Nothing contained in this Paragraph 7 shall impair or defeat the lien of any Mortgage, but title to any property subject to this Paragraph 7 obtained through sale in satisfaction of any Mortgage shall be free of the lien created by this Paragraph 7 for all charges that have accrued up to the time of such sale, but subject to the lien created by this Paragraph 7 for all charges accruing thereafter.
- c. The word "Grantor", as used in this Paragraph 7, shall have the same meaning as in Paragraph 8, below.

#### 8. Rights of Grantor.

As used in this paragraph, the work "Grantor" shall be deemed to include Triad Construction Co., a California corporation and U. S. Constructors, a California corporation, Joint Venturers doing business under the name Rancho Santa Teresa Joint Venture, and any successor in interest holding title for the purpose of construction and sale of residences, and the representatives of Grantor and any such successor. Grantor has undertaken or will undertake the work of constructing residences and incidental improvements upon 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 improvement of said property. In order that said work may be completed 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 reasonable necessary for the conduct of its business of completing said work and of disposing of the said property 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 disposing of said property in parcels by sale, lease or otherwise; or
- d. Prevent Grantor from erecting, constructing and maintaining such sign or signs on any Lot or Lots owned or controlled by Grantor as may in the sole judgement of Grantor be reasonable necessary for the purpose set forth in this paragraph.

Any amendment to this paragraph shall be effective only if accomplished in the manner provided for amendment of Paragraph 10(b) hereof.

#### 9. Interpretation.

The provisions of this declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the subdivision and improvement 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.

#### 10. Amendment.

- a. (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 ninety percent (90%) of the Lots which are immediately prior to recordation of such instrument, subject to these restrictions, which amendment shall be effective upon recordation in the Office of the Recorder of the County of Santa Clara.
- b. Except as other wise provided herein, the provisions of these restrictions may also be amended by an instrument in writing signed and acknowledged by Grantor (or Grantor's nominee) and by the holders of record title to at least a majority of the Lots which are, immediately prior to recordation of such instrument, subject to these restrictions, which amendment shall be effective upon recordation in the Office of the Recorder of the County of Santa Clara.
- c. 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 addinc<sup>3</sup> thereto a description of any portion of the real property described in Exhibit A then owned by Grantor (or its nominee). Such amendment if recorded prior to December 31, 1975, or within three years from and after the date of the last Final Subdivision Public Report issued by the Division of Real Estate of the State of California and covering any part of the property described in Exhibit A (whichever is the later) shall not require the consent of any Owner other than Grantor, or of any Mortgagee, 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 10 shall be effected only by an instrument in writing signed and acknowledged by Grantor and by the holders of record Title to at least ninety percent (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 subparagraph (b) of Paragraph 10 shall be effective upon recordation in the Office of the Recorder of the County of Santa Clara.

#### 11. Termination of Restrictions.

These covenants, conditions and restrictions shall continue for a period of thirty-five (35) years following the date of this declaration and shall be automatically extended for successive periods of ten (10) Years unless an instrument executed and acknowledged by the Owners of a majority of the Lots located in the Subdivided Property has been recorded revoking this provision for automatic extension.

#### 12. 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 effect the validity or enforceability of any other provision hereof.

#### 13. Subordination.

Nothing contained in the restrictions shall defeat, impair, or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value as to the premises subject to these restrictions or any part thereof, but these restrictions shall be binding upon and effective against any Owner of said premises or any part thereof whose title thereto is required by foreclosure, Trustee's sale or otherwise.

#### 14. 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.

Dated this 10th day of October. 1966.

ATTEST: TRIAD CONSTRUCTION CO.

/s/ Don Balensiefer By /s/ John C. Mackay

Secretary

ATTEST: U. S. Constructors

/s/ L. L. Gordon By /s/ R. H. Walter. -President

L. L. Gordon. Asst. Secretary R. H. Walter, President

(Acknowledgements)

CONTINENTAL AUXILIARY COMPANY, a California corporation, as Trustee, hereby approves, consents to and joins in the execution of the foregoing instrument.

CONTINENTAL AUXILIARY COMPANY

By /s/ P. Macdonald

Its Agent

(acknowledgement)

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**EXHIBIT A**

A parcel of land situated in the City of San Jose, County of Santa Clara. State of California, described as follows:

All of Lots B, G, H and I and a portion of Lots C and L and a portion of a Lane (30 links wide) as said Lots and Lane are shown upon that certain map entitled. "Map Accompanying the Report of the Sole Referee in Ygnacio Bernal et al, vs. Rufina Bernal de Gulnac, et al", which map was filed with the Decree of Partition had in District Court of the State of California, In and For the County of Santa Clara, in the Action of Ygnacio Bernal, et al, vs. Rufina Bernal de Gulnac et al, Case No. 5643, a certified copy of which was filed in Book 54 of Deeds at page 86, Santa Clara County Records, and being more particularly described as follows:

BEGINNING at a brass pin found in the centerline of Cottle Road, as said Road is shown on said Map, at the Northwesterly corner of said Lot B; thence from said point of beginning along the Northerly line of said Lot B, South 89° 46' 40" East 1909.63 feet to a 4" X 4" post found at the Northeasterly corner thereof; thence along the Easterly line of said Lot B, South 0° 02' 05" East 101.64 feet to an iron pipe set at the point of intersection thereof with the Westerly prolongation of the Northerly line of said Lot G; thence along said Westerly prolonged line and said Northerly line and along the Northerly line of said Lot 1, South 89° 49' 03" East 1075.09 feet to an iron pipe set at an angle point in the Northerly line of said Lot 1; thence along the Northeasterly line of said Lot 1, South 52° 48' 05" East 651.47 feet to an iron pipe set at the Northeasterly corner thereof; thence along the Easterly line of said Lot 1, South 0° 03' 21" East 1336.49 feet to a 4" X 6" post found at the Southeasterly corner thereof in the Northerly line of said Lot L; thence along said Northerly line. South 89° 45' 32" East 756.06 feet to a 4" x 4" post found at the most Easterly corner of said Lot L; thence along the Southeasterly line of said Lot L, South 37° 06' 11" West 1066.49 feet to a 4" X 4" post found at the most Easterly corner of that certain 37.80 acre tract of land conveyed by Henry W. Edwards to Ygnacio Bernal by Deed recorded October 7, 1884 in Book 75 of Deeds at page 457, Santa Clara County Records; thence along the Northerly lines of said 37.80 acre tract the three following courses and distances; North 89° 45' 26" West 1665.77 feet to a 1" iron pipe found; North 0° 11' 27" West 277.63 feet to an iron pipe set and North



89° 45' 52" West 1948.93 feet to an iron pipe set in said centerline of Cottle Road at the Northwesterly corner of said 37.80 acre tract; thence along said centerline being the Westerly line of said Lot C and said Lot B, North 0° 03' 00" West 2402.79 feet to the brass pin at the point of beginning of this description, containing 205.719 acres and being a portion of Lot 41 of Santa Teresa Rancho.

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**EXHIBIT B**

That certain real property located in the City of San Jose, County of Santa Clara, State of California, described as follows:

All of the lots shown upon that certain Map entitled "TRACT NO. 4046 RANCHO SANTA TERESA", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on November 15, 1965, in Book 202 of Maps, at pages 28, 29 and 30, excluding and excepting therefrom all of lots 1, 203 and 204 as shown upon said Map.

I hereby certify that the foregoing instrument  
is a true and correct copy of the recorded original.

VALLEY TITLE COMPANY  
OF SANTA CLARA COUNTY

By /s/ Don Edwards

*End of Rancho Santa Teresa Swim and Racquet Club*  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
*HTML Document Revised: June 11, 2000 by Donald R. McRoberts*