

This is an HTML version of the CC&Rs of the *Casa del Rey HOA*. While intended to accurately reflect the officially recorded CC&Rs, in case of any differences the officially recorded CC&Rs are the definitive version.

The [Davis-Stirling Common Interest Development Act](#) is the legal basis for much of the California HOA law and these CC&Rs.

Click [here](#) for the text of many other California laws that may also have influenced these CC&Rs.

Our CC&Rs contain eleven Articles, covering:

[DEFINITIONS](#)
[PROPERTY RIGHTS](#)
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[MEMBERSHIP AND VOTING RIGHTS](#)
[COVENANT FOR MAINTENANCE ASSESSMENTS](#)
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Recorded August 12, 1977 in Volume D069 Official Records Page 289, file 5752885

Covenants or Restrictions based on race, color, religion, sex, handicap, familial status, or national origin, if any contained herein, are hereby omitted from this document, unless and only to the extent that said covenant

(a) is exempt under chapter 42 section 3607 of the United States Code or

(b) relates to handicap but does not discriminate against handicapped persons.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by CASA DEL REY, a general partnership, referred to as "Declarant".

WHEREAS, Declarant is the owner of certain real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

LOTS 1 through 41, inclusive, as shown on the Map of "Tract No. 6046", filed on May 18, 1977, Instrument No. 5650664, in Book 397 of Maps, pages 4 and 5 of the Official Records of Santa Clara County.

NOW THEREFORE, declarant declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Section 1.01

"Association" shall mean and refer to CASA DEL REY HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 1.02

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.03

"Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 1.04

"Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

LOT 41 as shown on the Map of "Tract No. 6046" filed on May 18, 1977 Instrument No. 5650664, in Book 397 of Maps, pages 4 & 5, Santa Clara County Records.

Section 1.05

"Common Facilities" shall mean the improvements owned by the Association located within the Common Area, and includes the storm drainage system, located within Lots 2 through 6, 14, 15, 18 through 30 and 38 in the Storm Drain Easement as shown on the recorded subdivision map of the Properties.

Section 1.06

"Lot" shall mean and refer to any improved or unimproved plot of land or parcel shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 1.07

"Declarant" shall mean and refer to CASA DEL REY, a general partnership, as subdivider, its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 1.08

"Board" shall mean and refer to the Board of Directors of the Association.

Section 1.09

"Mortgage" shall mean and refer to a voluntary lien against a Lot and shall include a Deed of Trust.

Section 1.10

"Restrictions" shall mean and refer to the covenants, conditions, and restrictions and equitable servitudes set forth herein.

Section 1.11

"Articles" shall mean and refer to the Articles of Incorporation of the Association.

Section 1.12

"By-Laws" shall mean and refer to the By-Laws of the Association.

Section 1.13

"Rules" shall mean and refer to the Rules of the Association.

Section 1.14

"Approval" shall mean and refer to prior written approval.

Section 1.15

"Residence" shall mean and refer to all of the improvements on a Lot, including patio area on such Lot.

ARTICLE II
PROPERTY RIGHTS

Section 2.01 – Easements Reserved

Easements are reserved as shown on and in accordance with Map of "Tract No. 6046" hereinabove referred to.

Section 2.02 – Easements of the Association

The Association or its agents may enter any Lot when reasonably necessary for the purpose of carrying out any maintenance, repair, improvement or replacement which the Association is permitted or required to carry out, and the Association shall have and is hereby granted an easement and right of entry for such purpose. Prior to entry, Association shall give to Owner twenty-four (24) hours notice except in case of an emergency. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be the responsibility of the Association.

Section 2.03 – Owner's Easements of Enjoyment

Every Owner shall have a right and easement of enjoyment in and to the Common Area and Common Facilities which shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions set forth herein and to the following provisions:

- a. the right of the Association to establish annual assessments or charges and to collect same for the use of any Common Facility or of any private streets or drives situated upon the Common Area;
- b. the right of the Association to suspend the voting rights and right to use of any of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 30 days for any infraction of its published Rules, but only after a hearing before the Board in which the Owner shall have the right to be present and upon receiving five (5) days written notice which shall specify the violations and time and place of the meeting;
- c. the right of the Association to dedicate or transfer all or any part of the Common Area or Common Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2.04 – Delegation of Use

Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his property.

Section 2.05 – Easement of Encroachment

If any portion of any wall or other part of an improvement as originally constructed upon the Properties, including without limitation eaves or other overhangs of a structure, encroaches upon any part of the Common Area or upon the Lot or Lots used or designated for use by another Owner, an easement for the encroachment and for the maintenance of the same is granted to and for the benefit of the Owners of such encroaching structure. No such easement shall exist, however, in respect to an encroachment caused by construction or any improvement on any Lot after completion of construction of the original improvements thereon by the Declarant, its successors and assigns.

In the event a dwelling unit constructed on a Lot becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted to the Owner of the Lot upon which the damages or destroyed dwelling unit is located, the Owner of the abutting Lots and the Association to the extent reasonably necessary to make repairs and replacement to the damaged or destroyed property and protecting the structure on the Lot adjacent thereto. Any dispute as to the extent of such easement shall be submitted to the Board of Directors for arbitration and their judgment thereon shall be final and binding as to all parties concerned.

ARTICLE III USE RESTRICTIONS

Section 3.01

No Residence or Lot shall be used except for single family residential purposes; provided, however, that Declarant may make temporary non-residential use of Residence and Lots owned by Declarant during the period of time when Declarant is developing the Properties and selling Residence and Lots. No Residence shall be occupied by more than one (1) family, and no structure of a temporary character, trailer, garage or outbuilding, shall be used on the Properties as a residence, either temporarily or permanently.

Section 3.02

Nothing shall be done in or upon any Lot or Residence which would impair the structural integrity of such Residence or any other Residence or of the Common Area; and, except with the approval of the Architectural Control Committee, no structural modification, alteration or addition to the exterior of any Residence (including but not limited to plumbing and electrical modifications, alterations or additions and fences and walls) shall be made.

Section 3.03

Each Owner shall maintain and keep in repair everything within his Lot and shall not permit anything to be done or kept on his Lot or Residence which would result in the cancellation of any insurance or which would be in violation of the law.

Section 3.04

No use shall be made of the Common Area except in accordance with the Restrictions, Articles, By-Laws and Rules; nothing shall be kept, stored, placed, built, planted or maintained on any part of the Common Area except in accordance with the Restrictions, Articles, By-Laws and Rules; and each Owner by acceptance of a Deed to a Lot covenants and agrees and shall be deemed to covenant and agree, for himself, his heirs, successors and assigns, to abide by the provisions of the Restrictions, Articles, By-Laws and Rules as the same may from time to time be adopted or amended.

Section 3.05

Except with the approval of the Board and subject to the rules and regulations of the Association, nothing shall be stored, placed, kept, built, planted or maintained on any portion of a Lot which lies outside the Residence constructed on such Lot for which the Association has the responsibility for landscaping and maintenance.

Section 3.06

No waste shall be committed in the Common Area and no noxious or offensive activity shall be conducted on, in or upon any Lot or Residence nor shall anything be done which may be or become an annoyance or nuisance to the other Owners through noise or otherwise or which would be in violation of any law.

Section 3.07

No animals, fish, fowls or birds may be kept or bred for commercial purposes on any Lot or in any Residence. Only conventional and customary household pets shall be permitted to be kept and only in reasonable numbers and of such types as not to cause any annoyance or nuisance to any Owner or to commit waste upon any Lot or Common Area.

Section 3.08

No sign of any kind shall be displayed to public view on any Lot or Residence except one (1) sign of not more than five (5) square feet advertising said property for sale or rent, and except signs used by Declarant or its agents or nominees in connection with the development of the Properties or the construction and sale of Lots and Residence.

Section 3.09

No mast, tower, exterior antenna or similar structure shall be erected or maintained on or about any Lot or Residence without approval of Board.

Section 3.10

No Owner shall park, store or maintain within the Common Area any boats, trailers, campers, pickup trucks, motorcycles, or vehicles other than ordinary passenger cars, family station wagons, and half (1/2) ton or smaller pickup trucks, except with the approval of the Board and subject to the rules and regulations of the Association.

Section 3.11

The Association shall have the right to assign each Lot Owner the exclusive use of not more than two (2) automobile parking spaces within the Common Area, which shall be located on the driveway area nearest and adjacent to the said Lot Owner's residence. The Association shall have no power to reassign a parking space without the express written consent of all affected Owners.

Section 3.12

An easement for vehicular ingress and egress to and from each residence over the private road and driveways in the Common Area is reserved for the non-exclusive use of each Lot. Parking of automobiles and other motor driven vehicles on the private road in the Common Area shall not be permitted except in parking spaces designated by the Association.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 4.01

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

Section 4.02

The Association shall have two classes of membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B member shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;
- (b) Two years from the date of the original issuance of the subdivision public report for the development; or
- (c) On April 1, 1979.

Any action by the Association which must have the approval of Association membership before being undertaken shall require the vote or written assent of a prescribed percentage of each class of membership during the time there are two outstanding classes of membership.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.01 – Creation of the Lien and Personal Obligation of Assessments

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

- 1) annual assessments or charges, and
- 2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorneys' fees, if not paid within thirty (30) days after the same (or any part thereof) become due and payable, shall upon the recording at any time thereafter of a claim of lien by the Association, be and become a charge on the land and a continuing lien upon the property against which each such assessment is made, and the Association shall then have the right to enforce the payment of said assessments together with interest, costs, and reasonable attorneys' fees in accordance with the laws of the State of California governing foreclosure and enforcement of liens. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 5.02 – Purpose of Annual Assessments

The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and Common Facilities, of the exterior of the residences, and of the landscaping which extend from the Common Area into the front of the Properties. Said annual assessment shall include and the Association shall acquire and pay for out of the funds derived from said annual assessment the following:

1. water, electricity and other necessary utility service for the Common Area, and water and other necessary utility service which the Association provides for the benefit of the Owners;
2. maintenance and repair of storm drain, sanitary sewer, private driveways and streets lying within the Common Area, or within quasi-public easements within any of the Lots within the Properties;
3. liability insurance insuring the Association against any liability to the public or to any Owners, their invitees or tenants incident to their occupation and or use of the Common Area and Common Facilities, with limits of liability to be set by the Board and increased or decreased in its discretion;
4. workers' compensation insurance to the extent necessary to comply with applicable laws and any other insurance deemed necessary by the Board;
5. standard fidelity bond covering all members of the Board and all other employees of the Association in an amount which shall be determined by the Board;
6. exterior maintenance and repair of residences upon each Owner's Lot;
7. maintenance, repair and replacement and all landscaping of the Common Area as are necessary and proper;
8. repair, maintenance and replacement of any fence or part thereof that extends into Common Area; and
9. any other materials, services, labor, maintenance, repair, insurance, taxes or assessment which the Association is required to secure or pay as the Board shall determine as necessary or proper for the Common Area and Common Facilities, or for the benefit of the Lot Owners or for the enforcement of these Restrictions.

Section 5.03 – Maximum Annual Assessment

Until January 1 of the year immediately following the conveyance of the first Lot of an Owner, the maximum annual assessment shall be \$46.33 per Lot.

- a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, said annual assessment may be increased by the Board of Directors each year provided, however, that the Board may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant, impose a regular annual assessment which is greater than 20% of the regular annual assessment for the immediately preceding fiscal year.
- b. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. The failure of the Board to fix the amount of an annual assessment shall not be deemed a waiver of its power to fix that amount, and the amount of annual assessment fixed for the immediate preceding year shall continue in force until and unless changed by the Board.

Section 5.04 – Special Assessments for Capital Improvements

In addition to the annual assessments authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or of a Common Facility, including fixtures and personal property related thereto; provided, however, that the Board may not without the vote or written assent of a majority voting power of the Association residing in members other than the Declarant, impose a special assessment which in the aggregate exceeds 5% of the budgeted gross expenses of the Association for the fiscal year.

Section 5.05 – Notice and Quorum for Any Action Authorized Under Sections 5.03 and 5.04

Any action authorized under Sections 5.03 and 5.04 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 10 days in advance of the meeting specifying the place, day and hour of the meeting, and in the case of a special meeting, the nature of the assessment for which the meeting has been called.

Section 5.06 – Uniform Rate of Assessment

Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. The exception to this provision is in the case of a special assessment against an Owner imposed by the Board as a remedy to reimburse the Association for costs incurred in bringing the Owner and his Lot into compliance with the Restrictions, or the Rules of the Association.

Section 5.07 – Date of Commencement of Annual Assessments. Due Dates.

The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the closing of the first sale of a subdivision interest as to the purchaser thereof. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot and notify each Owner in writing at least thirty (30) days in advance of each annual assessment period. The due dates shall be established by the Board of Directors.

Section 5.08 – Financial Statements and Budget

Owner shall be entitled to have furnished to him financial statements as follows:

- a. a pro-forma operating statement or budget for each fiscal year not less than 60 days before the beginning of the fiscal year;
- b. a balance sheet within 60 days as of an accounting date which shall be the last day of the month closest in time to six months from the date of the conveyance of the first unit, and an operating statement for an accounting period from the aforesaid date of first closing to the aforesaid accounting date, which shall include a schedule of assessments received or receivable by itemized unit number and by the name of the Owner assessed;
- c. a balance sheet and an operating statement for said fiscal year within 90 days as of the last day of the Association's fiscal year;
- d. other than the above mentioned financial statements which shall be regularly furnished to Owner, the Association shall upon demand, and for a reasonable charge, furnish copies of said financial statements or furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 5.09 – Default in Payment of Assessments; Remedies of Association.

Each Owner shall pay all assessments promptly after levy thereof by the Board. Any assessment not paid within thirty (30) days after the due date shall be considered delinquent, and the Board is hereby given a lien against the interest of any Owner who is delinquent in the amount of any assessment, whether regular or special, assessed to the Owner of any Lot, plus interest at the rate of ten percent (10%) per annum, and costs, including reasonable attorneys' fees. In the event of a default in payment of any such assessment, and in addition to any other remedies herein or by law provided, the Board may enforce such obligation, or foreclose the lien against the property, as follows:

- a. By a suit at law to enforce such assessment obligation personally against the Owner. Such action must be authorized by a majority of the Board at a regular or special meeting. Such action shall be brought in the name of the Association, and the Board shall be deemed to be acting on behalf of all Owners.
- b. By action to foreclose the lien against the property of the defaulting Owner. The Board, upon authorization of a majority thereof at a regular or special meeting may give notice to the defaulting Owner which states the date and amount of delinquency and makes a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to file a claim of lien against the Lot of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner; (2) a description of the Lot against which claim of lien is made; (3) the amount claimed to be due and owing (with proper offset allowed); (4) that the claim is made by the Board pursuant to the terms of these Restrictions giving the references of recording of them; and (5) that a lien is claimed against said described Lot in an amount equal to the amount of stated delinquency. Such claim shall be signed and acknowledged by any two members of the Board and dated as of the date the last such Board member executed the same.

Upon recordation of such claim of lien by the Santa Clara County Recorder, the lien claim shall immediately attach and become effective. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a mortgage or deed of trust under power of sale. Such sales shall be conducted in accordance with the provisions of the laws 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.

Section 5.10 – Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sales or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which become due prior to any such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 6.01

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior re-painting, exterior additions, changes or other alterations thereon be made until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee, which shall be composed of three (3) representatives.

Section 6.02 – Selection of Committee.

The Board shall appoint one, and the Declarant two, of the three Committee Members until 90% of all of the Lots in the subdivision have been sold or until the fifth anniversary date of the issuance of the final public report, whichever occurs first, at which time the Board shall have the power to appoint all of the Committee Members. Members appointed to the Committee, by the Board shall be Members of the Association.

Section 6.03 – Implied Approval.

In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 6.04 – Structural Integrity

Nothing shall be done in or to any residence or in the Common Area which will impair the structural integrity of any residence except in connection with alterations or repairs specifically permitted or required hereunder. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee. Declarant hereby reserves for itself and for its successors in interest a perpetual and reciprocal right of support between the respective Owners of each party wall. In the event it shall become necessary to repair or rebuild the whole or any portion of a party wall, the expense of said repair or rebuilding shall be borne equally by the Owners of the respective residences adjoining said wall. Any such repair or rebuilding shall be erected in the same spot and where the wall was first built and of the same size and of the same or similar material.

ARTICLE VII
GENERAL PROVISIONS

Section 7.01 – Enforcement

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.02 – Severability.

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

Section 7.03 – Amendment.

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than 51% of each class of voting membership of the Association for so long as there are two classes and thereafter by not less than 51% of the total voting power of the Association residing in members other than Declarant, provided however, that the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment of this Declaration shall also require the prior written approval of the City of Santa Clara. Any amendment must be recorded in the Office of the Recorder of the County of Santa Clara, California, and shall in no way impair or invalidate the lien of any mortgage or deed of trust.

Section 7.04 – Mortgage Exception.

The breach of any of the covenants, conditions, or restrictions herein contained or any re-entry by reason of any breach shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to said premises, but said covenants, conditions and restrictions shall be binding upon and effective against any said mortgagor or Owner thereof whose title is or was acquired by foreclosure, trustee sale or otherwise.

ARTICLE VIII
PARTY WALLS

Section 8.01 – General Rules of Law to Apply; Easement for Repairs

Each wall which is built as part of the original construction of the residences upon the Lots and placed within one (1) foot of the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. There shall be no changes in, impairments of, or permanent structural attachments made to any such wall unless expressly made in conformity with Article VI hereof and consented to by all persons having an interest in said wall. There shall be an easement for reasonable repairs over the areas immediately adjacent to each side of all such walls for the benefit of all persons having an interest therein; provided however, that such easement shall allow entry only at reasonable times and shall in no event be deemed to permit entry into the interior portions of any residence. Any damage resulting from use of the easement shall be repaired at the expense of the Owner causing the same.

Section 8.02 – Sharing of Repair and Maintenance.

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

Section 8.03 – Destruction by Fire or Other Casualty.

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

Section 8.04 – Weatherproofing.

Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 8.05 – Right of Contribution Runs With the Land.

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

Section 8.06 – Arbitration.

In the event of any dispute arising concerning a party wall, or under the provisions of this Article the dispute shall be resolved by an arbitrator chosen (sic) by the Board with an interested Board member barred from the vote.

ARTICLE IX
EXTERIOR MAINTENANCE

Section 9.01 – Maintenance by Association.

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance of residences upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, and exterior building surfaces, and also the landscaping between the Common Area and the front of each residence upon a Lot. Such exterior maintenance shall not include glass surfaces, nor shall it include any exterior improvements later placed upon any Lot by an Owner thereof which was not a part of the improvements planned for and constructed upon the Lot as a part of the original development of these Properties by the Declarant. In the event that the need for maintenance or repair is caused through the negligent or willful act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become part of the assessment to which such Lot is subject.

Section 9.02 – Easement for Repairs, etc.

There shall be an easement for such maintenance as provided in Section 9.01 on the exterior surfaces of each Owner's residence and Lot for the benefit of all persons having an interest therein and for the benefit of the Association. Any damage resulting to a Lot or to a residence of an Owner from use of the easement by the Association shall be repaired at the expense of the Association.

ARTICLE X
RIGHTS OF DECLARANT

Section 10.01

As used in this paragraph, the word "Declarant" shall be deemed to include CASA DEL REY, a general partnership, and any successor in interest holding title for the purpose of construction and sale of Residences and the representations of Declarant and any such successor. Declarant has undertaken or will undertake the work of constructing Residences upon Lots located upon the Properties and improvements to the Common Area. The completion of that work and the sale and other disposal of said Residences is essential to the improvement of said Properties. In order that said work may be completed as rapidly as possible, nothing in this Declaration or in the Articles, By-Laws or Rules shall be understood or construed to:

- a. prevent Declarant from doing on said Properties or any part thereof owned or controlled by Declarant whatever is reasonably necessary or advisable in connection with the completion of said work;
- b. prevent Declarant from erecting, constructing and maintaining on the Common Area or any part or parts of said properties owned or controlled by Declarant such structures as may be reasonably necessary for the conduct of its business of completing said work and disposing of said Properties in parcels by sale, lease or otherwise including, without limiting the generality of the foregoing, tract construction and sales offices;
- c. prevent Declarant from conducting on the Common Area or on any part or parts of said Properties owned or controlled by Declarant its business of completing said work and of disposing of said Properties in parcels by sale, lease or otherwise; or
- d. prevent Declarant from erecting, constructing and maintaining such sign or signs or other sales aids on any Lot or Lots owned or controlled by Declarant or on the Common Area as may be reasonably necessary for the purposes set forth in this Article.

ARTICLE XI
TRANSFER OF COMMON AREAS TO ASSOCIATION

Section 11.01.

Title to and control of the Common Area and Common Facilities shall be transferred from and conveyed by the Declarant to the Association prior to or coincidental with the transfer or conveyance of the first Lot to an Owner by the Declarant, but in no event later than the first annual meeting of the Association.

Section 11.02.

Prior to the transfer to the Association of title to the Common Area and Common Facilities, Declarant shall be responsible for the proper maintenance of the same.

Section 11.03.

If Common Area improvements and Common Facilities are not completed and if the Association is an obligee under a bond or other arrangement (hereafter referred to as "Bond") to secure performance of the commitment of the Declarant to complete the improvements, the following provisions shall apply relative to the initiation of action to enforce the obligations of the Declarant and the surety under the Bond:

- a. The Board shall be directed to consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common-Area improvement, the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.
- b. A special meeting of Members, for the purpose of voting to override a decision of the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held not less than 15 days, nor more than 30 days after receipt by the Board of a petition asking for such a meeting, signed by Members representing 10% of the total voting power of the Association residing in Members other than the Declarant.

- c. At such a meeting of Members referred to in subparagraph (b) above, a vote of a majority of the voting power of the Association, residing in Members other than the Declarant, to take action to enforce the obligations under the Bond, shall be deemed to be the decision of the Association, and the Board shall thereupon implement this decision by initiating and pursuing appropriate action in the name of the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 21st day of July, 1977.

CASA DEL REY, a General Partnership
by EL CAMINO FINANCIAL CORPORATION,
a California Corporation, Partner,
S.A. Steindorf Jr. /s/
S.A. STEINDORF, JR., VICE PRESIDENT
by GAZDAR DEVELOPERS & BUILDERS, INC.,
a California Corporation, Partner
Tony Jelincich /s/
TONY JELINCICH, PRESIDENT

The undersigned, being the Beneficiary and the Trustee under that certain Deed of Trust recorded June 10, 1977 in Book C903, at Page 397, Santa Clara County Official Records, do hereby subordinate same to the above Declaration of Restrictions executed by CASA DEL REY, a General Partnership, and we agree that any sale made under the provisions of said Deed of Trust shall be subject to said Declaration of Restrictions.
The Beneficiary hereby directs the trustee to execute this subordination.

DATED: August 5, 1977
BENEFICIARY
CROCKER NATIONAL BANK
BY R.R. Reiche /s/
BY Assistant Vice President

DATED: August 5, 1977
TRUSTEE
CROCKER CUSTODY CORPORATION
BY R.R. Reiche/s/
BY Vice President