

1653

AFTER RECORDING MAIL TO:

FIRST AMERICAN TITLE INSURANCE CO.  
411 IVY STREET  
SAN DIEGO, CA. 92101  
ATTENTION: MERT THOMAS

73-326049  
FILE/PAGE NO.  
BOOK 1973 NOV - 1 1973  
RECORDED REQUEST OF

FIRST AMERICAN TITLE INS. CO.  
NOV 23 11 26 AM '73

OFFICIAL RECORDS  
SAN DIEGO COUNTY, CALIF.  
HARLEY F. BLOOM  
RECORDER

P R E A M B L E

The Intent and Purpose of this document is to preserve the inherent natural beauty of our area and to foster in the community of Lomas Santa Fe, the blending of nature's attributes with man's desire for a better place to live.

The quality of any development is dependent on the people and their attitudes towards the community in which they live. Covenants of this type are directed towards creating an environment in which people will be proud to buy a home and raise a family. Lomas Santa Fe is destined to become one of the finest residential communities in Southern California, and the development of these Covenants is directed towards that goal. The administration and enforcement of these Covenants shall be the responsibility of LOMAS SANTA FE, INC. hereinafter called Declarant, or its successors and assigns. Architectural Control will be the responsibility of the Architectural and Planning Board appointed by Declarant, or its successors, which will control construction of modifications of the homes proposed within the development for the mutual benefit of all Lot Owners.

DECLARATION AND ESTABLISHMENT OF  
PROTECTIVE COVENANTS AND RESTRICTIONS  
SAN ELIJO HILLS

---

THIS DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS, RESTRICTIONS, AND RESERVATIONS: DECLARATION OF PLANNING, DEVELOPING AND MAINTAINING REAL PROPERTY AND IMPROVEMENTS, MADE THIS 31 DAY OF October, 1973, by LOMAS SANTA FE, INC., HEREINAFTER REFERRED TO AS "DECLARANT" AND "COVENANTOR", SANTA FE COMPANY, LOMAS SANTA FE COUNTRY CLUB, CALIFORNIA CORPORATIONS, AND KAISER AETNA, A PARTNERSHIP, HEREINAFTER REFERRED TO AS "COVENANTEES".

WITNESSETH:

WHEREAS, Declarant, together with Santa Fe Company, Lomas Santa Fe Country Club and Kaiser Aetna are the Owners of portions of that certain real property, situated in the Solana Beach Area of the County of San Diego, State of California, described in Record of Survey Map No. 6692, recorded June 14, 1966, as File No. 98776, Official Records, San Diego County; and

WHEREAS, Declarant intends hereby to make a Covenant running with the land pursuant to Section 1468 of the Civil Code of the State of California subjecting the property described in Article I to certain Restrictions, which Restrictions are to be enforceable by owners of property described in said Record of Survey Map No. 6692.

WHEREAS, Declarant is the Owner of the real property described in Article I hereof, being a portion of the property described in said Record of Survey Map. No. 6692; and

WHEREAS, it is the desire and intention of Declarant to sell the property described in Article I hereof and to impose on it mutual, beneficial Restrictions under a general plan or scheme of improvement for the benefit of all the real property described in said Record of Survey Map. No. 6692 and the future Owners of said real property;

NOW THEREFORE, Declarant hereby declares that all of the property described in Article I hereof is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following limitations, Restrictions, Covenants and Reservations, all of which are declared and agreed to be in furtherance of a plan for the Sub-division, improvement, and sale of said property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of said property and every part thereof. All of the limitations, Restrictions and Covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the property described in Article I hereof or any part thereof, and shall inure to the benefit of all of the property described in said

Record of Survey Map No. 6692 and the future Owners of said real property. The limitations, Restrictions and Covenants shall not impose any obligation of land within Record of Survey Map No. 6692 other than the property described in Article I.

## ARTICLE I

### PROPERTY SUBJECT TO THIS DECLARATION

The Property subject to this Declaration is known as SAN ELIJO HILLS, and is more particularly described as:

LOTS 1 through 192, inclusive of "SAN ELIJO HILLS",  
in the County of San Diego, State of California,  
according to Map thereof No. 7670, filed in the  
office of the County Recorder of San Diego County,  
June 20, 1973

## ARTICLE II

### DEFINITIONS

1. "Lot" means one of the numbered parcels of real property on the Map referred to in Article I herein.
2. "Said property" means the property described in Article I herein, or any portion thereof.
3. "Set-back" means the minimum distance between the residence or other structure referred to and given street or line.
4. "Building limits" means the area defined by the set-back from the street and side lot lines and a building limit line across the rear of the lots.
5. "Streets" means any street, highway or other thoroughfare shown on the Map of said property, whether designated thereon as street, avenue, boulevard, place, drive, road, terrace, way, lane, circle, or otherwise.
6. "Maintenance District Easement" means certain rear slopes of said lots and other areas to be deeded to the County Open Space Service and Maintenance District by Declarant.
7. "Building site" means a single lot as shown on the Map of said property.

## ARTICLE III

### BASIC RESTRICTIONS

#### A. USE OF PROPERTY.

No building shall be erected, constructed, altered or maintained on

any of said lots other than a single residence for a single family (including guests and household servants), with customary and suitable outbuildings as permitted by Law and the Architectural and Planning Board, hereinafter sometimes called the Board.

B. LOCATION OF STRUCTURES.

Construction of any and every nature shall be confined to and take place only within the building limits of each building site. The location and design of swimming pools, covered gazebos, and other outbuildings, as well as the main structures upon each of the building sites must be approved in writing by the Board prior to any construction or preparation for construction thereon.

C. RESUBDIVISION OF LOTS.

None of the above described lots shall be resubdivided or split into lots of a lesser size than the size of the original lot without the written consent of Declarant and Board first had and obtained.

D. HEIGHT LIMITATIONS.

No structures shall be placed or landscape materials allowed to grow upon any of the lots in such a manner as to substantially impair the view from adjacent lots. The term structures shall include fences.

E. CHANGING GRADES, SLOPES AND DRAINAGE.

No change in the established grade or elevation of said lots, and no change in the established slope or ratio of the cuts and fills, which alters established drainage patterns shall be permitted without the prior written consent of the Board and without the prior written approval of the County Building Department. For the purpose hereof, established drainage patterns are defined as the drainage patterns existing at the time the grading of said property was completed in conformity with the grading plan heretofore approved by the County.

Declarant hereby reserves the right to make any and all cuts and fills on said property and on the building sites included therein, and to do such grading as in its judgment may be necessary to grade streets and lots designated or delineated upon said Map of said property or any part thereof.

Each of the Owners of the lots Covenants to permit free access by Declarant and Owners of adjacent Lots to slopes or drainageways located on his property when such access is required for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities or for the protection and use of property other than the lot on which the slope or drainageway is located.

F. WELLS, DERRICKS AND MINES.

No wells for the production of, or from which there is produced water, oil or gas shall be operated upon any lot; nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business. No mining or quarrying operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any lot. Declarant hereby reserves all crude oil, petroleum, gas, brea, asphaltum and all kindred substances and other minerals under and in said land; however, expressly waiving any right of surface entry or any entry thereto above a depth of 500 feet below the surface.

G. NUISANCE AND NON-CONFORMITY.

No noxious or offensive trade or activity shall be carried on upon said property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Owners or Occupants of said property, including but not limited to the storage of any materials which might create an insect pest control problem, or the ill-maintenance of any plant or landscape materials.

1. LIVESTOCK.

No farm animals, livestock, poultry or fish of any kind shall be raised, bred or kept on said real property, except that dogs, cats, or other common household pets and fish or tropical fish may be kept provided that they are not kept, bred or maintained for any commercial purposes or in unreasonable quantities, and provided that they do not become a nuisance to the Owners or Occupants of said property. Pets must be kept within lot areas or on leash or tether when out of lot areas.

2. TEMPORARY STRUCTURES.

No tents, shacks, trailers, basement, garage or outbuildings shall at any time be used on any lot as a residence, either temporarily or permanently; nor shall any residence of a temporary character be constructed, placed or erected on any lot.

3. FENCES.

(a) SIDE YARDS.

All lot lines shall be kept free and open one to another and no fences will be permitted on any lot line except where, in the opinion of the Board, such a fence or enclosure, as a

structural, protective, or aesthetic feature of a design concept will contribute to the character of the area; provided, however, the Board shall not approve any fence which encroaches upon an easement described in Article XV hereof.

(b) REAR YARDS.

In no event shall rear yard fences be permitted except on the pad level; rear yard fences are specifically prohibited within the Maintenance District Easement.

4. SIGNS.

No signs of any kind, or other advertising device of any character, for any purpose or use whatsoever, shall be erected, posted, pasted, painted, displayed or maintained on said property, except that:

- (a) On any Lot or building site, one sign, not larger than Eighteen (18) by Twenty-Four (24) inches, advertising the property for sale or lease, may be erected and maintained;
- (b) Declarant or its agents may erect and maintain on said property such signs and other advertising devices as it may deem necessary or proper in connection with the conduct of its operations for the Development, Improvement, Subdivision or Sale of said property.

5. POLES, MASTS AND ANTENNAS.

No poles, masts or antennas of any type, size or height shall be constructed on any lot, or on or above the roof of any dwelling or structure.

6. UPKEEP OF REAL PROPERTY.

Each lot Owner covenants to keep, maintain, water, plant and replant all areas, slopes, banks, rights of way, and set-back areas located on his lot, and appurtenant easements, so as to prevent erosion and to present an attractive, clean, sightly and wholesome appearance at all times.

Anything herein to the contrary notwithstanding, each owner of a Dominant Tenement described in Article XIV hereof shall be solely obligated to so keep, maintain, water, plant and replant landscape portions of the easement area appurtenant to said Dominant Tenement.

7. VENDING OF LIQUOR OR BEVERAGES.

No liquor or alcoholic beverages of any kind shall be sold on said property.

8. DRYING YARDS.

No utility area or drying yard shall be constructed or maintained on the property unless a plan therefore shall be first submitted to the Board and the latter shall determine in writing that such plan appropriately provides for screening said area or yard from exterior view.

9. STORAGE OF MATERIALS, JUNK, TRASH AND MANURE.

The storage of or accumulation of junk, trash, manure and other offensive or noxious materials is specifically prohibited. No burning shall be permitted except in fireplaces or barbecues.

10. STORAGE OF CARS, TRAILERS, CAMPER, BOATS, ETC.

No house trailer, living trailer, self-propelled vehicle, boat or boat trailer of any type shall be parked on any street or building site permanently, if visible from the street or adjoining lots. No painting, repairing or mechanical work, other than customary maintenance work and minor emergency repairs, shall be done on any building site except in enclosed areas approved by the Board in writing, which areas shall be sufficiently screened from the street and adjacent lots to eliminate any possibility of a nuisance being created by storage of such items or activities involving such items.

11. USE OF GARAGES.

No dwelling shall be constructed or maintained on a building site without a garage large enough to contain two standard sized automobiles, which garage shall be used to park the automobiles and/or golf cart belonging to the Owner or Occupants of the building site, and for other purposes not incompatible with such use. Automobiles are to be kept in the garage when not in use. The use of carports in place of garages is specifically prohibited.

(a) GARAGES FACING STREETS.

The doors of a garage facing the street or streets adjacent to the building site upon which said garage is located, shall be kept closed at all times, except when an automobile is entering or exiting to or from said garage.

12. WATER SOFTENERS.

No water softener shall be installed or maintained for use in connection with any building on said property unless it discharges directly into the sewage system and unless it is appropriately screened from exterior view.

H. DILIGENCE IN CONSTRUCTION.

The work of constructing and erecting any building or structure shall be prosecuted diligently and continuously from the commencement thereof until the same is completed. No outbuildings shall be completed prior to the completion of the building, except that temporary office and storage buildings may be erected for workmen engaged in building a dwelling on said property. Such temporary buildings must be removed as soon as the dwelling is completed. All structures shall be suitably painted, colored or stained immediately upon construction as per plans and specifications. The construction schedule shall be submitted as a part of the plans and specifications and shall be subject to the approval of the Board. A licensed General Contractor may be required and be responsible on all construction.

I. TREES, SHRUBS, WITHIN SET-BACKS AND EASEMENTS.

The Maintenance District Easement areas shall be landscaped initially by Declarant and any supplemental planting or changes in these areas must be approved in writing by the Board.

Declarant hereby reserves the right to enter upon any of the lots at any time to inspect and control the plants, trees and seed thereon and also to inspect for and control insect pests.

This right shall be exercised in the following manner:

If, after notice to the Owners from Declarant of the existence of infected plants, tree diseases, or insect pests, the Owner fails or neglects to take such measures for the eradication or control of the same as Declarant may deem necessary for the protection of the community, Declarant may thereupon enter thereon and destroy or remove infected or diseased plants and/or trees, and/or spray the same, and/or take such other measures as may be deemed necessary in the opinion of the Declarant to protect the community from the spread of such infection and/or pests; and Declarant, or any Officer of Agent thereof, or Designee described in Article X hereof, shall not thereby be deemed guilty of any manner of trespass.

J. EASEMENTS AND RIGHTS OF WAY.

Said real property, and the building sites included thereon, is



subject to such easements and rights of way for erecting, constructing, maintaining and operating public sewers, and poles, wires and conduits for lighting, heating, power, telephone, television and any other method of conducting and performing any public or quasi-public utility service or function beneath the surface of the ground, as such easements and rights of way are more particularly set forth on said Map, or as may hereafter be located and utilized by Declarant. There may also be appurtenant easements on some lots for the benefit of adjoining lots.

#### ARTICLE IV

#### ARCHITECTURAL STANDARDS AND CONTROLS

##### A. SUBDIVISION STANDARDS.

1. These Restrictions have neither the intent nor purpose to in any way affect the Subdivision Standards which are set up by the County of San Diego. The Declarant and/or his Agents as Subdividers shall have the sole responsibility of developing the planning, engineering and execution of the Subdivision and Development of said property prior to home sales. It will be their responsibility to coordinate and meet the County requirements for said Subdivision.
2. No alterations in the exterior design or color of any structure, including additions, shall be made without the prior written approval of the Board. The materials used for any such approved alteration must harmonize and compliment the original building or buildings and must be approved by the Board in writing prior to such alteration. No approval is required to repaint or restain any structure with the same color scheme as previously used and approved.

##### B. ON SITE CONSTRUCTION.

###### 1. SET-BACKS.

The front set-backs shall conform to County requirements per plans approved by the County relating to said property. The side yard set-backs shall be a minimum of 10 feet along the entire side yard area.

###### 2. LOCATION ON LOTS.

The location of the structure or structures on the building site and the landscaping shall bear such an overall relation to the adjacent properties as to create an aesthetically pleasing overall appearance and to maintain views. Building shall be placed only on the major pad area as shown on the approved grading plan. Slopes are specifically excluded as building areas even though other set-back requirements are met.

3. LOT COVERAGE.

Not more than 50% of any Lot shall be covered with structures or paving materials.

4. FENCES.

All fences proposed by Lot Owners; including the location, style, material, color, height and function thereof, shall be subject to the written approval of the Board prior to installation thereof. The Board shall consider the topography of the land and the maintenance of views before granting such approval. No fences, rails or hedges, or any structure over 36 inches in height shall be placed or allowed to exist in front yard set-backs. Fences, walls, rails or hedges elsewhere on the Lot shall be limited to 72" in height. Fences within 15 feet of the top or toe of rear pad line shall be limited to chain link or split rail construction. The Owner will maintain and keep in good condition and repair the fences located on his building site. If the Owner fails or refuses to fully and faithfully comply with and conform to the provisions of this Section, then Declarant shall have the right to enter upon said Lot or Lots and perform such work as may be necessary to fulfill the requirements of this Section.

5. LANDSCAPING.

Within sixty (60) days after the occupancy of any residence, permanent landscaping shall be installed around said residence in the front, side and rear yard areas. Said landscaping shall be maintained in a neat and orderly condition at all times after installation so as to present a pleasing appearance to the Owners and Occupants of the building sites. Declarant hereby reserves the right at all times, upon evidence, written or visual, of any unplanted or inadequately maintained building site, to enter in or upon said building site after reasonable notice to the Owner, to plant, cut or replant, trim, cut back, remove, replace and/or maintain hedges, trees, shrubs, and flowers within set-back areas and/or to keep cultivated and/or remove plants on any portion of the Lot. Declarant, or any officer, or Agent thereof, or Designee described in Article X hereof, shall not thereby be deemed guilty of any manner of trespass.

C. BASIC STRUCTURAL REQUIREMENTS.

1. TYPE AND CHARACTER OF DESIGN.

The exterior building design of all buildings has been

established by Declarant and any proposed additions shall be required to be of consistent design and character. Exterior design in each case shall be compatible to the rural atmosphere of Lomas Santa Fe and subject to approval by the Board, in its sole discretion. Decisions of the Board shall be final.

2. COLORS.

All exterior colors, textures and materials, including roofs, must be set forth in the plans and specifications and approved in writing by the Board prior to construction. Color samples shall be submitted with plans and specifications which said plans and specifications shall be coded or marked so as to indicate where the colors are to be used upon the finished dwelling. Careful consideration of the adjacent and surrounding properties as well as overall community appearance will be the basis for approval or denial of such color schemes.

3. NEW MATERIALS ONLY AND NEW STRUCTURES ONLY.

No second hand material shall be used in the construction of any buildings or structure without the prior written approval of the Board, and all buildings and fences which are of frame construction shall be painted or stained with at least two coats upon completion.

No buildings of any kind shall be moved from any other place to any of said building sites, or from one building site to another without prior written permission from the Board.

4. HEIGHT LIMITATIONS.

No building shall be of more than one story or one level and the ridge height of any such building shall not exceed 15 feet from the ground or pad level without the written approval of the Board. On the Lots where site conditions warrant, multi-story or split-level floor plans may be considered by the Board. Balconies or decks shall be no higher than floor level.

5. PAINTING.

All exterior wood and manufactured surfaces with the exception of brick shall be painted or stained.

6. ROOF DESIGN, PITCH AND MATERIALS.

Five (5) and twelve (12) maximum pitch shall be used. No flat roofs or rock roofs shall be permitted, except where the design concept in the opinion of the Board is not detrimental to the environmental character of the adjacent

property or the community. The roofing materials to be used shall be Mission Tile, Clay Fired Flat Tile or Concrete Flat Tile products, or heavy handsplit Cedar Shakes. Other quality roofing materials may be submitted for review by the Board, but in no event will composition shingles be used.

## ARTICLE V

### ARCHITECTURAL AND PLANNING BOARD

#### A. PURPOSE AND FUNCTIONS.

The purpose of the Architectural and Planning Board is to achieve and maintain the aesthetic goals of the Declarant. The function of the Board is to enforce the Restrictions herein by the review of plans and specifications for additions, fences, pools, patio structures, out buildings, etc., submitted for approval, and by inspection of actual construction and progress to insure conformity with the plans and specifications as approved. It is not the intent of the Declarant to deprive the individual Owner from having a home of unique design, but to protect the community as a whole, and the individuals comprising the same, from undesirable construction. In this connection, in the case of hardship, or other good reason, exceptions to any of the Restrictions contained in any portion of the Declaration may be made by the Board at any time after proper application therefor in writing.

#### B. BOARD MEMBERS, ORGANIZATION AND TERM.

The Architectural and Planning Board shall consist of Three (3) persons to be appointed by Declarant. Such persons shall be subject to removal by Declarant at any time. Vacancies shall be filled by Declarant or if Declarant fails to act, within ninety (90) days after such vacancy occurs, then, as to such vacancy, by the majority of the Owners of the building sites other than Declarant's into which portions or all of the real property described in said record of Survey Map No. 6692, have been subdivided for single family residential purposes at the time of said vacancy. Any written notice of appointment or removal duly executed by Declarant may be filed with the County Recorder of San Diego and such Recordation shall impart notice to all persons of the matters set forth therein. No person shall be a Member of the Board who is not actively engaged and/or experienced in land development, land planning, architecture, engineering or such other associated fields as would lend background and experience to such person to judge the intent of these Restrictions and the conformity of the plans submitted for review and approval. The term of each Member of this Board unless earlier terminated as hereinabove stated shall be Three (3) years which can be extended for additional Three (3) year terms at the discretion and option of the Declarant.

The Declarant may at any time relieve itself of the obligation of appointing and maintaining said Board by filing in the Recorder's Office of the County of San Diego, State of California, a Notice stating that Declarant has surrendered the powers of appointment and maintenance of said Board, and upon the Recording of such Notice, even if not specified therein, said powers and obligations shall immediately vest in the majority of the Owners of the building sites into which portions or all of the real property described in said Record of Survey Map No. 6692 have been Subdivided for Single Family Residential purposes at the time of said Recording, or in a Maintenance Advisory Association if one has been formed by the Owners of said building sites and is in existence.

C. ACTION BY BOARD.

The Three Board Members shall work as a Panel, first reviewing plans and specifications submitted as hereinafter stated individually, and then subsequently discussing said plans and specifications jointly. A written approval of Two (2) members of the Board will constitute approval of said Preliminary or Final submittals as the case may be or if no Notice of Rejection is received after Thirty (30) days from the date of receipt of said submittals, such inaction shall be deemed to be approval. All decisions of the Board shall be final. The written approval or Notice of Rejection of the Board may be Recorded in the Office of the County Recorder of San Diego County, and shall be conclusive evidence of such approval or rejection.

Final acceptance shall be in writing signed by Two (2) members of the Board, and it may be Recorded in which case such Recordation shall be conclusive evidence of such final acceptance. If no such final acceptance is given or Recorded, or if no Notice of Non Compliance is recorded in the Office of the County Recorder of San Diego County by or on behalf of the Board within Sixty (60) days after receipt by the Board and Declarant of a copy of the duly recorded Notice of Completion of the construction, alteration or placement of any structure upon the building site, then such failure to give or record such acceptance or to file a Notice of Non-Compliance shall be deemed conclusive evidence of final acceptance of the structure by said Board.

The actions or inactions of the Board or its agents, when said Board is exercising its discretion in enforcing this Declaration in good faith, shall not be a basis for damages to any Owner herein or any other person, nor shall any such actions or inactions by Declarant or the Board or any Member of the Board or their Officers or Agents, individually or collectively, constitute a cause of action for damages or equitable relief to any Owner herein or any other person. Declarant, its successors, or assigns, or the Board or any member of the Board, or their Officers or Agents, all acting singularly or together, shall not be responsible for any loss or damage, or be liable in any other way for any errors or defects, either latent or patent, in the plans and specifications submitted for approval, or any building or structure erected in accordance with such plans and specifications.

D. ARCHITECTURAL PERMIT.

An Architectural Permit is required and may be obtained by the Architect, Designer or Owner at Declarant's Office.

E. SUBMISSION OF PRELIMINARY PLANS.

The Owner of each Lot upon which construction is contemplated shall submit to the Board a set of Preliminary Working Drawings or Plans, which shall consist of:

In the case of an addition or accessory building - a plot plan, floor plan and elevation.

In the case of pools, patios, grade changes, fences, etc. - a plot plan.

Upon review, the Board may request additional Drawings for clarification.

F. SUBMISSION OF FINAL PLANS AND SPECIFICATIONS.

Upon approval of the Preliminary Plans, two sets of Final Plans and Specifications shall be submitted to the Board for final approval. Such plans and specifications shall describe in detail the floor plan arrangement, elevations, section structural solutions, use of material, heights and dimensions, site placement, fences, grading, drainage plans, access, landscape and patio plans and any other pertinent data as may be required to fully illustrate the intended design, construction and use. Physical samples of the exterior materials and colors shall also be submitted for approval. Before giving any such final approval, the Board may require that said plans and specifications comply with any such requirements that the Board may impose as to structural features, types of building materials used, or characteristics not otherwise expressly covered by the provisions herein. The approval by the Board shall not relieve the Owner from complying with any requirements of any public authority having jurisdiction and shall not constitute any representation or guarantee by the Board or any member of the Board or Declarant as to the structural sufficiency of any construction. Approval of the Board of any plans and specifications shall not be deemed to be a Waiver by the Board of its right to object to any of the features or elements embodied in such plans or specifications if and when the same features or elements are embodied in any subsequent plans and specifications submitted for approval for other building sites.

G. INSPECTION AND CONFORMITY TO PLANS.

During and after completion of construction, Declarant or any Agent or any member of the Board may, from time to time, at any reasonable hour or hours, with reasonable notice, enter into and inspect any property subject to this Declaration as to compliance with the approved

submittals. Deviations shall be diligently guarded against, and all such deviations or non-conformities set forth in any Notice of Non-Compliance issued by the Board shall be corrected prior to final acceptance as set forth below. Declarant, the Board or any Agent or Officer thereof, acting in good faith, shall not be deemed guilty of, or become liable for any manner of trespass for such entry or inspection.

H. ENFORCEMENT OF BOARD RULINGS.

This Declaration shall be deemed to Vest the Board or Declarant with the right to bring a proceeding in equity to enforce the general and specific intent of this Declaration as follows:

If written notice to the Board of steps to correct any Non-Compliance is not given within Fifteen (15) days, or if the Non-Compliance is not thereafter cured within a reasonable time from the date notice of such Non-Compliance is given by the Board to the Owner of the building site whose act of omission constitutes such Non-Compliance, the Board or Declarant may record such notice of non-compliance and thereafter file a Proceeding in Equity to restrain said Non-Compliance or attempted Non-Compliance.

ARTICLE VI

SCOPE AND DURATION

All the foregoing Covenants and Restrictions are imposed upon said property for the direct benefit thereof and of the Owners thereof, and the remainder of the real property described in said Record of Survey Map No. 6692 and the Owners thereof, as a part of a general plan of improvement, development, building, occupation and maintenance; and shall run with the land and shall be binding upon all of the Owners of said property and all persons claiming under them, and continue to be in full force and effect for a period of Forty-Five (45) years from the date that this Declaration is recorded. After said Forty-Five (45) year period, the Covenants and Restrictions shall be automatically extended for successive periods of Ten (10) years each, unless an instrument, signed by Three-Fourths (3/4) of the then Owners of Record of said property has been recorded, agreeing to amend this Declaration in whole or in part or to terminate said Declaration.

ARTICLE VII

AMENDMENTS

These Restrictions may be Amended at any time, and from time to time, by an instrument in writing signed by Three-Fourths (3/4) of the then Owners of Record of said property, which said written instrument shall become effective upon its recording in the Office of the County Recorder of San Diego, State of California.

## ARTICLE VIII

### INTERPRETATION OF RESTRICTIONS

All questions of interpretation of construction of any of the terms or Restrictions herein shall be resolved by the Declarant and the Board, and their decision shall be final, binding and conclusive upon all the parties affected.

## ARTICLE IX

### BREACH

- A. The Covenants hereby established shall operate as Covenants running with the land; and further Declarant and/or the Owner of any of the real property described in said Record of Survey Map No. 6692 including any bona fide purchaser under contract, in the event of any breach of any said Restrictions and Covenants or a continuance of any such breach may by appropriate legal proceedings take steps to enjoin, abate or remedy the same. It is hereby agreed that damages are not an adequate remedy for such breach.
- B. Every act or omission whereby any of the Covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable and may be exercised by Declarant, the Board, or the Owner of any of the real property described in said Record of Survey Map No. 6692.
- C. The remedies herein provided for breach of the Covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.
- D. A breach of the Covenants contained in this Declaration shall not affect or impair the lien or charge of any bona fide mortgage or Deed of Trust made in good faith and for value on any building site; provided, however, that any subsequent Owner of such property shall be bound by said Covenants, whether such Owner's title was acquired by Foreclosure or in a Trustee's Sale or otherwise. A Lender who acquired title by Foreclosure or Deed in lieu of Foreclosure or Trustee's Sale shall not be obligated to cure any breach of the Covenants which occurred prior to such acquisition of title but shall be bound by said Covenants.

## ARTICLE X

### RIGHT TO ENFORCE

The provisions contained in this Declaration shall inure to the benefit of and be enforceable by Declarant, its successors or assigns, or the Owner of any of the Real Property described in said Record of Survey Map No. 6692,



and each of their legal representatives, heirs, successors or assigns, and the failure to enforce any of such Covenants or Restrictions herein contained shall in no event be deemed to be a waiver of the right to do so thereafter. In any legal proceeding commenced by anyone entitled to enforce or restrain a violation of this Declaration, or any provision thereof, the losing party or parties shall pay the Attorney's Fees of the winning party or parties in such amount as may be fixed by the Court in such proceeding.

Any right reserved by Declarant herein is also hereby reserved to Declarant's successors or any entity designated by Declarant in writing including the Board of any Maintenance Advisory Association if one has been formed by the Owners of the building sites into which portions or all of the real property described in said Record of Survey Map No. 6692 have been subdivided for single family residential purposes at the time of such designation and is in existence. Such designation may be recorded in the Office of the County Recorder of San Diego County.

#### ARTICLE XI

##### SEVERABILITY

In the event that any of the provisions of this Declaration are held to be invalid or unlawful by a final judgment of a Court of competent jurisdiction, such invalidity or illegality shall not affect the validity of any of the other provisions hereof.

#### ARTICLE XII

##### PROTECTION FOR MORTGAGEES AND TITLE INSURANCE COMPANIES

The Owner of any encumbrance for value on any said building site and any corporation insuring the lien of such encumbrance may conclusively presume that no breach exists under these Restrictions, provided such encumbrance is recorded in the office of the County Recorder of San Diego County, prior to the commencement of any action to establish any such breach and not within Sixty (60) days after the recording of any such Notice of Non-Compliance, anything contained herein to the contrary notwithstanding.

For the purpose of making a Search upon, or guaranteeing or insuring title to, or any lien on or interest in, any Lot or parcel of said property, and for the purpose of protecting purchasers and encumbrancers for value and in good faith as against the performance or non-performance of any of the acts in this Declaration authorized, permitted or to be approved by the Board, the Records of the Board shall be prima facie evidence as to all matters shown by such Records; and the issuance of a certificate of acceptance by the Board showing that the plans and specifications for the improvements or other matters herein provided for or authorized have been approved and that said improvements have been made in accordance therewith shall be prima facie evidence and shall fully justify and protect any title company or persons certifying, guaranteeing and insuring said title, or any lien thereon or any interest therein, and shall also fully protect any purchaser or encumbrancer in good faith and for value in acting thereon, as to all matters within the jurisdiction of the Board.

ARTICLE XIII

SINGULAR INCLUDES PLURAL

The singular shall include the plural, and the masculine the feminine whenever the context herein so requires.

ARTICLE XIV

SIDE YARD EASEMENTS

A. EASEMENTS TO BE CREATED.

At the time Declarant conveys certain of the Lots, appurtenant easements benefiting and/or burdening said Lots shall be created by the deeds used by Declarant to so convey the Lots. Each Lot which will be benefited by any such easement is hereinafter referred to as a "Dominant Tenement." Each Lot which will be burdened by any such easement is hereinafter referred to as a "Servient Tenement."

B. EXCLUSIVITY OF THE EASEMENTS.

Each of said easements shall exclusively benefit the Dominant Tenement appurtenant thereto; provided, however, the rights created by each easement shall not prevent exercise of any rights created by this Declaration or (ii) any other document (including said SAN ELIJO HILLS, Map No. 7670) recorded in the Official Records of San Diego County prior to recordation of this Declaration or (iii) any utility easement(s) or license(s).

C. DOMINANT TENEMENT RIGHTS.

Each easement may be used by the owner(s) of the Dominant Tenement appurtenant thereto as a general recreational and garden area only. Patios, patio furniture, landscaping (including concrete walks, concrete slabs, flowers, shrubs, sprinklers and similar items) may be placed on and under the easement area.

The Owner(s) of a Dominant Tenement shall not use the easement (i) in violation of any law or (ii) for any permanent installation of any sort, such as a swimming pool or structures incident thereto, plumbing installations (other than sprinklers), or recreational sports equipment and facilities.

D. SERVIENT TENEMENT RIGHTS.

The Owner(s) of each Servient Tenement shall have the following rights with respect to the easement burdening said Servient Tenement:

- (a) To at all reasonable times enter the easement area, and reasonably cross over the Dominant Tenement for such entry, in order to perform work related to the usage of the Servient Tenement, including maintenance of any

fence along the easement boundary line, which fence shall be the obligation of the Owner of the Servient Tenement to maintain and repair.

- (b) To drain water over, upon, and across the easement area, if but only if said drainage results from the normal usage of the Servient Tenement; the Owner(s) of the Dominant Tenement shall maintain the easement area in such manner as will not interfere with or alter such drainage.
- (c) To enjoin attachment of any object by the Owner(s) of the Dominant Tenement to a wall or building belonging to the Servient Tenement.
- (d) To locate in the easement area roof overhangs, eaves, rain gutters, etc., which are a part of the structure located on the Servient Tenement, provided that such items do not encroach over the easement area below a height of seven (7) feet measured from the finished grade elevation of the easement area, and to locate in the easement area rain spouts which may extend to said finished grade elevation.

IN WITNESS WHEREOF, LOMAS SANTA FE, INC., LOMAS SANTA FE COUNTRY CLUB, SANTA FE COMPANY, California corporations, and KAISER AETNA, a partnership, have caused their names to be hereunto subscribed by their duly authorized personnel as of the day and year first hereinabove written.

(Signatures omitted)

Original recorded in  
Official Records  
San Diego County, Calif.  
File/Page No. 73-326049  
November 23, 1973.