

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR McMILLIN'S BONITA HIGHLANDS UNIT NO. 1
A Planned Residential Development

THIS DECLARATION of covenants, conditions and restrictions made by McMILLIN CONSTRUCTION CO., INC., a California corporation, (hereinafter called "Grantor") which is the owner of all that certain real property located in the County of San Diego, State of California, described as follows:

Lots 1 through 53 of McMillin's Bonita Highlands
Unit No. 1, according to map thereof No.

7563 ____, filed in the office of the County
Recorder of San Diego County, State of Calif-
ornia, on 2/27/73, (hereinafter some-
times called the "subject Real Property").

WHEREAS, it is the desire and intention of the Grantor to subdivide the subject Real Property by means of deeds substantially in the form attached hereto, marked Exhibit A (hereinafter called the "Deed") and to impose on the subject Real Property mutually beneficial restrictions under a general plan or scheme of improvement for the benefit of all Lots within the subdivision and the structures thereon and for the future Owners thereof and to assure the permanent upkeep and maintenance of the Residence Lots and the Common Area of the subdivided property.

NOW, THEREFORE, the Grantor declares that it has established and does hereby establish a general plan for the protection,

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development, maintenance and improvement of all the subject Real Property and further declares that the subject Real Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, covenants, and conditions, all of which are declared and agreed to be in furtherance of the above mentioned plan for the subdivision, improvement and sale of the subject Real Property and are established and agreed upon for the purpose of enhancing and perfecting the desirability, value and attractiveness of the subject Real Property and every part thereof. All of the limitations, covenants, conditions and restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the subject Real Property or any part thereof whether as sole owner, joint owners, lessees, tenants, occupants, encumbrancers, or otherwise, and shall be for the benefit of each owner of any portion of the subject Real Property or any interest therein and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof.

ARTICLE 1

DEFINITIONS

1.1 Definitions. Terms used herein shall have the following meanings unless expressly otherwise provided:

1.1.1 Corporation shall mean the McMillin's Bonita Highlands Home Owners Association, a California non-profit corporation, or its successor.

1.1.2 Member shall mean the holder of a membership in the

Corporation as defined by the Articles of Incorporation and By-Laws of the Corporation.

1.1.3 Mortgage shall mean and include a deed of trust as well as a mortgage in the conventional sense.

1.1.4 Mortgagee shall mean and include a beneficiary under or a holder of a deed of trust as well as a mortgagee in the conventional sense.

1.1.5. Map shall mean the subdivision Map referred to in the description of the subject Real Property.

1.1.6. Project shall mean all of the subject Real Property and any other real property made subject to this Declaration by annexation or otherwise.

1.1.7 Residence shall mean and include all improvements, facilities and appurtenances upon a Residence Lot.

1.1.8. Residence Lots shall mean Lots 1 through 50 as shown on the Map.

(i) Common Area shall mean Lots 51 through 53 as shown on the Map together with all improvements and facilities thereon and all trees and other landscaping, pavement, streets, curbs, pipes, wires, conduits, and all other utility facilities thereon, together with any building, structures and community facilities which may be now or hereafter located thereon, together with all other portions of or interest in the subject Real Property or other property which is owned by the Corporation from time to time.

(ii) Further Common Area shall include any easements for equestrian riding trails and facilities and pedestrian traffic which may be conveyed to the Corporation from time to time.

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1.1.9 Owner shall mean the holder or holders of record title to a Residence Lot; provided, however, that said term shall include the resident contract purchaser or purchasers of any Residence Lot being purchased for residential use by the purchaser under a bona fide duly recorded contract of purchase and not the fee owner thereof.

1.1.10 Unit shall mean the total interest conveyed by deed to an Owner including a Residence Lot and the corporation membership appurtenant to such Residence Lot.

1.1.11 Declaration shall mean this Declaration of Covenants, Conditions and Restrictions, duly recorded.

1.1.12 Board shall mean the board of directors of the Corporation.

ARTICLE 2

PURPOSE

2.1 Plan of Ownership. The Grantor in order to establish a plan of ownership for the Project, including improvements thereon, hereby divides the Project into the following free-hold estates:

(1) Fifty (50) separately designated and legally described free-hold estates consisting of the numbered Lots 1 through 50 inclusive, as shown on the Map and defined as Residence Lots.

(2) An appurtenant membership in the Corporation which holds a free-hold estate in the Common Area consisting of

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Lots 51 through 53 as shown on the Map and as defined in this Declaration, as well as such other Common Areas, including Open Space Lots and Easements for equestrian riding trails and facilities and pedestrian traffic, as may be conveyed to the Corporation from time to time. Title to and control of said Common Area, including easements for equestrian riding trails and facilities and pedestrian traffic across the Project, shall be transferred by Grantor to the Corporation prior to the transfer of the first Unit.

ARTICLE 3

MANAGEMENT CORPORATION

3.1 Management Corporation. The Project shall be operated as a planned residential development by a nonprofit corporation charged with the duties and empowered with the rights as set forth herein. The Corporation is created by Articles of Incorporation, a copy of which is attached hereto and marked Exhibit B and incorporated herein by reference thereto, and its affairs are governed in accordance with its By-Laws, a copy of which is attached hereto, marked Exhibit C and incorporated herein by reference thereto.

ARTICLE 4

CORPORATION: MEMBERSHIP

4.1 Corporation Membership. There shall be one (1) membership in the Corporation appurtenant to each Residence Lot and constituting part of the unit ownership. No such membership may be severed or separated from its Residence Lot and any sale, transfer, encumbrance or conveyance of the Residence Lot shall operate to transfer or encumber the appurtenant membership without the requirement of express reference thereto. No Owner may avoid the obligations incidental to his membership (including the payment of any assessments) by nonuse of the Common Area or abandonment of his Residence Lot. Upon conveyance, sale, or assignment of a Residence Lot to a new Owner, the old Owner shall not be liable for any assess-

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ments levied after the date of recording the conveyance evidencing such sale of the Residence Lot. The rights, duties, privileges and obligations incidental to membership shall be exercised and imposed in accordance with the provisions of this Declaration, the Articles and the By-Laws of the Corporation. Each Owner, tenant, or occupant of a Residence Lot shall comply with this Declaration, the Articles, and the By-Laws, and failure to comply shall be grounds for an action by the Corporation to recover sums due for damages to it or to its Members or for injunctive relief as the Corporation may deem proper. Each membership shall represent an equal underlying beneficial interest in any and all property owned by the Corporation.

ARTICLE 5

CORPORATION: BOARD OF DIRECTORS

5.1 Number, Qualification, and Office. The number of Directors, qualification of Directors, and all other matters concerning the make-up and operation of the office of a Director and of the Board shall be as set forth in the By-Laws of the Association.

5.2 Certificate of Identity of Board. From time to time hereafter, a certificate of identity of the persons constituting the Board may, but need not, be filed for record. The latest of such certificates appearing of record shall be conclusive evidence of such identity in favor of any person relying thereon in good faith, providing the same shall be executed and acknowledged by (i) at least two persons, each of whom is identified as a Director by the next last previous such certificates appearing of record (or, in

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