

California Land Title Company
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DECLARATION OF RESTRICTIONS

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This Declaration made and dated this 19th day of July 1972, by GEORGE W. DAY CONSTRUCTION COMPANY, INC., a corporation

WHEREAS, said party is the owner of a certain tract of land situate in the City of Saratoga, County of Santa Clara, State of California, described as follows:

That certain Tract entitled "Tract No. 5150 which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on May 25, 1972 in Book 302 pages 9 and 10 thereof, reference is hereby made, and

WHEREAS, said party is about sell property shown on said Map which they desire to subject to certain restrictions, conditions, covenants and agreements between themselves and the purchasers of said property, as hereinafter set forth:

NEW THEREFORE said party declares that the property shown on said Map of "Tract No. 5150" is held and shall be conveyed subject to restrictions, conditions, covenants, charges and agreements set forth in the Declaration, to-wit:

PART A. RESIDENTIAL AREA COVENANTS.

A-1 Land use and building type. No lot shall be used except for residential purposes. No building shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height.

A-2 Architectural Control. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the architectural control committee established by PART B of this Declaration as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finish grade elevation, and has received Design Review Approval by the Saratoga Planning Commission including proposed setbacks, perimeter and interior fencing, common green and private landscape areas, and all other requirements of Section 13.3-1 of NS-3 Saratoga Zoning Ordinance. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. Sideyard fences shall not exceed six (6) feet in height, and shall conform to the frontyard setback lines as set forth herein. Rear line fences shall be in conformity with those installed by the subdivider, or if any other fence is installed it shall be subject to the approval of the board of directors of the Improvement Association, hereinafter mentioned, except as shown on the site development plan dated 24 January 1972, Exhibit "Y", file C-148 on file with the planning department of the City of Saratoga, internal fencing on the individual lots shall be limited to fifteen percent (15%) of the area of the lot in addition to protective fencing for the immediate swimming pool area.

"RESTRICTIONS HEREIN, IF ANY, BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN ARE DELETED."

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A-3 Dwelling Cost, Quality and Size. No dwelling shall be permitted on any lot at a cost of less than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The floor living area of the main structure, exclusive of one-story open porches, patios, breezeways and garages, shall be not less than 2,000 square feet for any dwelling.

A-4 Building Location. No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building setback lines shown on the recorded map. In any event no building shall be located on any lot nearer than thirty (30) feet to the front lot line, or nearer than twenty-five (25) feet to any side street line. No building shall be located nearer than twenty (20) feet to a side interior lot line. No dwelling shall be located on any lot nearer than Fifty (50) feet to the rear lot line. For the purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

A-5 Easement. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded map and over the rear five (5) feet of each lot.

A-6 Nuisance. No noxious or offensive activity shall be carried on upon any lot, or shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

A-7 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

A-8 Signs. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

A-9 Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

A-10 Garbage and refuse disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or

other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

A-11 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining 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 or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

A-12 Sight Distances at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within 10 feet from the intersection of street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

PART B. ARCHITECTURAL CONTROL COMMITTEE.

B-1 Membership. The Architectural Control Committee is composed of George W. Day, Muriel Day, and Louis E. Leto, C/O George W. Day Construction Co., Inc., 14651 Big Basin Way, Saratoga, California 95070.

A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate his successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The committee shall act until, at the election of the committee, the powers of the committee shall be transferred to the non-profit corporation to which reference is hereinafter made.

B-2 Procedure. In addition to architectural and site control approval by the City of Saratoga as required by their ordinances, the Architectural Control Committee's approval or disapproval as required in these covenants shall be obtained in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

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B-3 Enforcement by Residence Owners. Enforcement of each covenant A-1 through A-12, inclusive, set forth in these restrictions shall be the right of each property owner in the area covered by said restrictions, either by suit or action in law or equity. In addition such enforcement shall be a right of the Architectural Control Committee until such time as it relinquishes its powers to the non-profit association as provided hereinafter, at which time, the non-profit association shall succeed to all the rights of the Architectural Control Committee.

PART C. UNINCORPORATED IMPROVEMENT ASSOCIATION

C-1 A non-profit association, named IMPROVEMENT ASSOCIATION, has been formed for the purpose of owning, operating and maintaining the common facilities to be made available to the owners of said real property. The owners of said real property are members of said association. For the purposes of identification, lots 17 thru 22 inclusive of said Tract No. 5120 are hereinafter referred to as the "Common Area".

C-2 Said association shall have the powers and duty to:

(a) Assess lot owners within the above described real property for maintenance and operation (including taxes, insurance, utilities, repairs, legal expenses and other purposes pertaining to the common facilities) in a sum not to exceed Twenty dollars per year per member, except that said limit may be raised in one of the following ways:

(1) Upon an affirmative vote of not less than seventy-five per cent (75%) of the voting power of the members or

(2) The board of directors making a finding and adopting a resolution that an additional amount is necessary to comply with requirements imposed by the local fire district, Department of Public Health, County of Santa Clara or City of Saratoga standards, or to meet increases in the prevailing cost of labor and materials from time to time.

(b) Use and expend the assessments collected to maintain, and care for, the common area and improvements.

(c) Pay taxes and assessments levied and assessed against the real property, and such equipment and tools, supplies and other personal property as are owned by the non-profit association for the common benefit of all owners of the above-described property.

(d) Pay for water, insurance, and other utilities and expenses as shall be designated by the non-profit association.

(e) Repair and replace facilities, machinery, Landscaping, decorative fencing, pedestrian pathway, and equipment as is necessary and convenient in the discretion of the non-profit association and set up a reserve for depreciation, if deemed necessary.

(f) Insure, and keep insured, all buildings and improvements owned or leased, against loss from fire or other casualty, and to purchase such other insurance as the non-profit association may deem advisable. Such insurance, may at the discretion of the non-profit association be taken in the name of the non-profit association for the benefit of all owners, or

in such other manner as the non-profit association may deem advisable. In the event any of such insurance proceeds are insufficient to repair or replace loss or damage, to levy an additional assessment in proportionate amounts to cover such deficiency.

(g) Collect delinquent assessments by suit or otherwise.

(h) Protect and defend the property from loss and damage by suit or otherwise.

(i) Employ personnel and purchase supplies and equipment, to enter into contracts and generally to have the powers of a manager in connection with the matters hereinbefore set forth.

(j) Make reasonable rules and to amend the same fromtime to time, and such rules and amendments shall be binding upon the owners of said real property.

(k) Create an assessment fund into which the non-profit association shall place all sums collected by assessment or otherwise, the assessment fund to be used and expended for the purposes hereinset forth.

(l) Appoint officers and agents to carry out the business of the non-profit association.

(m) It is contemplated that during the sales and development state of said real property that the control of the operations and the activities of the community facilities shall be vested in the developer, GEORGE W. DAY CONSTRUCTION COMPANY INC., a corporation.

C-3 Power of Enforcement. That for the purpose of enforcing these presents, the non-profit association and its successors are hereby granted a lien against the interest of any grantee, his heirs, executors, administrators or assigns, to secure the faithful performance of each and every term and condition set forth herein, and in the event of non-performance or default by any such grantee, the interest of such grantee may be foreclosed by the non-profit association in the same manner as a realty mortgage, and that any redemption thereafter shall, nevertheless, be subject to the lien, herein created as to other or future events of non-performance or default, and the lien herein created shall likewise apply to the grantee of any Sheriff's Commissioner's or Trustee's deed after foreclosure as to other or future events of non-performance or default; provided however, it is specifically understood and agreed that the lien herein created shall at all times, be subordinate and inferior to the lien of any deed of trust or mortgage in favor of any bona fide lending institution which now exists, or is hereafter recorded against the said properties, or any of them.

C-4 Assessments. All assessments shall be prorated equally among each of said lots.

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C-5 Membership. Every owner of a lot which is subject to assessments shall be a member of the association. Each member shall be entitled to one vote for each such lot owned on all matters requiring the vote or consent of the members.

PART D GENERAL PROVISIONS

D-1 Terms. All of these restrictions, conditions, covenants and agreements shall affect all of the lots as hereinabove set forth and are made for the direct and reciprocal benefit thereof, and in furtherance of a general plan for the improvement of said tract, and the covenants shall attach to and run with the land. Said restrictions, conditions and covenants shall be binding on all parties and all persons claiming under them until January 1, 2000, at which time they shall be automatically extended for successive periods of five (5) years; provided, however, that such restrictions, conditions, covenants and agreements, or any of them, may be supplemented, changed or rescinded in any or all particulars at any time by the owners of seventy-five per cent (75%) of the number of lots comprising the area incorporated in this declaration, exclusive of street, evidenced by an instrument in writing executed by the said owner in the manner provided by law for the conveyance of real property, and duly recorded in the office of the recorder aforesaid, and upon such recordation shall be valid and binding upon the sellers and owners of the said lot in said tract, and upon all other persons. Anything to the contrary hereinabove set forth notwithstanding, none of the covenants, conditions, agreements and restrictions contained in Part C or Part E of this Declaration of Restrictions may be in any way modified, changed or rescinded without the prior written consent of the City of Saratoga, a Municipal corporation.

D-2 Enforcement. If the parties hereto, or their successors shall violate or attempt to violate any of the covenants herein before January 1, 2000, or during any of the extended periods for which they are in force, it shall be lawful for any person owning any real property subject thereto, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, or either to prevent him or them from so doing or to recover damages or other dues for such violation.

D-3 Subordination. It is further provided that a breach of any of the conditions contained herein or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said premises or any part thereof; but said conditions shall be binding upon and effective against any owner of said premises whose title thereto is acquired for foreclosure, Trustee's sale or otherwise.

D-4 Severability. Invalidation of any one or more of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

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PART E ARTICLES

E-1. EACH MEMBER of this association must be a record owner of a fee interest and intitled to possession of one of the following described lots in the City of Saratoga, County of Santa Clara, State of California.

E-2. UPON THE adoption of these Articles by the Board of Directors, each owner of at least one of said lots shall become a member of this association upon his consenting in writing to be bound by these Articles.

E-3. IN THE event that a member owns more than one lot said member shall pay all assessments charged to each lot.

E-4. IRRESPECTIVE of the number of lots owned, no person shall be entitled to more than one membership in the association, but on all matters coming before the membership for vote he shall be entitled to one vote for each lot owned.

E-5. EACH membership in the association shall include such interest in all the property owned by the association as is represented by the ratio that the lot or lots owned by such member bears to the total number of lots owned by all memberships in the association; provided, however, that during the term of the existence of the association no member of the association shall have the right of distribution of any real or personal property held by or on the possession or control of the association, except that in the event that any property owner by the association shall be condemned by any proceedings in eminent domain, the award, or any portion thereof, received by the association, in any such proceedings may, within the discretion of the board of directors and when and as determined by the board, be distributed among the members of the association in accordance with the above ratio; provided, however that members of the association at the time of its dissolution shall, upon such dissolution, be entitled to distribution among its members, of their respective pro rata shares of said asset on the basis of the abovementioned ratio.

E-6. Joint Ownership. In the event that a lot is owned in joint tenancy or tenancy in common, only one such owners shall be a member of said association. All of the joint owners shall designate in writing one of their number to be a member, subject to all of the other provisions of the Articles. The joint owner designated as a member shall remain a member until notice given in writing to the association that all of the joint owners revoke their designation and designate another of their number to be a member.

E-7. Transfer of Membership. Membership in this association shall be transferable only when the fee interest in one of said lots has been validly conveyed or assigned by written instrument or by operation of Law. The transferee of any such lot shall upon acceptance of conveyance of such lot become a member of this association and subject to these Articles.

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E-8. Voting. In all matters which shall be presented for a vote of the members each member shall be entitled to one vote for each lot owned. Members shall have the right to cumulate their votes.

E-9. Liens. Any assessment not paid for by a member prior to delinquency shall bear interest at the rate of seven percent (7%) per annum from the date of delinquency and the Board of Directors in its discretion may file a claim of lien on the lot or lots which may be so delinquent.

E-10. Directors. The board of directors shall exercise all powers of the association. It shall control and manage all of the property owned by the association and shall adopt rules and regulations for its use for the benefit of all of the members.

E-11. It shall appoint and remove at its pleasure all officers, agents and employees of the association and prescribe their duties, fees and compensation and make such contract with its officers agents and employees as it may deem to be in the best interest of the association.

E-12. It shall have the power to borrow money and incur indebtedness for the purpose of the association and cause to be executed and delivered therefor in the name of the association promissory notes, bonds, debentures, deeds of trust, mortgages, pledges and hypothecations or other evidences of debt and securities therefor; provided, however, no money shall be borrowed and no indebtedness incurred unless first authorized and approved by the vote of members holding seventy-five percent (75%) of the voting power of the association.

E-13. It shall have the power to appoint and Executive Committee and to delegate to such Committee, subject to its control, any of the powers and authority of said board except the power to adopt, amend, or repeal these Articles. Such Committee shall be composed of members of the board of directors and shall act only in the intervals between the meetings said board and shall be subject at all times to the control thereof.

E-14. In the event of a vacancy or vacancies on the board of directors for any reason other than the expiration of a regular term such vacancy or vacancies shall be filled by the remaining directors, and the person or persons selected shall hold office until the then current term expires.

E-15. To fix and levy from time to time assessments upon the members of the association to determine and fix the due date for the payment of such dues and assessment, and the date upon which the same shall become delinquent; to suspend, upon such terms and to such extent as the directors shall in their absolute discretion determine, membership privileges and the rights of any members if such assessments shall not be paid before delinquency, provided, however, that such assessments shall be fixed and levied only to provide for the payment of taxes and assessments upon real or personal property owned, controlled or

occupied by the association or for labor rendered, or materials, or supplies used or consumed for the maintenance, repair, replacement, improvement, or development of property subject to the management or jurisdiction of the association, or in performing or causing to be performed any of the purpose of the association for the benefit and advantage of its members, and the board of directors is hereby authorized to incur for any of the foregoing purposes as it shall deem necessary or advisable in the interest of the association or its members. Provided, however, that no assessment shall be fixed and levied to provide funds for the purchase or acquisition of additional real property or construction of new improvements unless such purchase, acquisition or improvement shall first have been authorized and approved by the vote or written consent of seventy-five percent (75%) of the total voting power of the association. Should any member fail to pay any such assessment before delinquency, the board of directors in its discretion is authorized to file for record in the office of the County Recorder of the County of Santa Clara, State of California, a claim of lien for the delinquent assessments against the lot owned by the delinquent member in the manner provided in Article E-8.

E-16. Number and Qualification of Directors. The board of directors shall be composed of three (3) members who shall be selected and qualified as hereinafter set forth.

E-17. Election and term of Office. The members of the first board of directors shall be the directors named in the Articles of Association and their terms shall expire on the date of the annual meeting of the members held in 1973. At the annual meeting of the members held in 1973, and at each annual meeting held thereafter save and except as hereinafter set forth three directors shall be elected by the membership.

E-18. Vacancies.

(a) Vacancies in the board of directors may be filled by a majority of the remaining directors, though less than a quorum, and each director so elected shall hold office until his successor is elected at an annual meeting of members, or at a special meeting called for that purpose.

(b) A vacancy or vacancies shall be deemed to exist in case of the death, resignation, removal of any director, or if the members shall increase the authorized number of directors shall fail at the meeting at which such increase is authorized, or at an adjournment thereof, to elect the additional directors so provided for, or in case the members fail at any time to elect the full number of authorized directors.

(c) The members may at any time elect directors to fill any vacancy not filled by the directors and may elect the additional directors at the meeting at which an amendment of the Articles is voted authorizing an increase in the number of directors.

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(d) If any director tenders his resignation to the board of directors, the board shall have power to elect a successor to take office at such time as the resignation shall become effective. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his term of office.

E-19. Place of Meeting. All meetings of the board of Directors, or the association, shall be held at some location at the subdivision or as near as possible for the convenience of the directors and members.

E-20. Organization Meeting. Immediately following each annual meeting of members, the board of directors shall hold a regular meeting for the purpose of organization, election of officers, and the transaction of other business. Notice of such meeting is hereby dispensed with.

E-21. Other Regular Meetings. Regular meetings of the board of directors shall be held at least once every six months or at the call of the president. Notice of regular meetings of the board shall be given each director by the secretary personally, by telegraph, by telephone, or mail, at least twenty-four (24) hours prior to the date set for the meeting.

E-22. Special Meetings. Special meetings of the board of directors for any purpose or purposes shall be called at any time by the president or if he is absent or unable or refuses to act, by any vice president or by any two directors.

E-23. Quorum. A majority of the number of directors as fixed by the articles or the By-Laws, shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors.

E-24. Adjournment. A quorum of the directors may adjourn any directors' meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum a majority of the directors present at any directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the board.

E-25. Fees and Compensation. No director or officer, other than the Secretary, shall receive any salary for his services as such officer or director. Nothing herein contained shall be construed to preclude any director or officer from serving the association as agent, counsel, or in any capacity other than as such director or officer, and receiving compensation therefor.

E-26. Annual Statement. A treasurer who may also be a director shall keep a proper record of all financial transactions of the association; shall be a custodian of the funds of the

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Association, depositing such funds in a bank designated by the board of directors; shall effect payment of all obligations which have been approved by the board of directors; shall sign all checks, together with one other signature from one of the directors; shall make a report of the associations financial standing at each regular or annual meeting of the member families, and shall effect a proper audit of the books of the association at least once annually and prior to the annual meeting. It shall be the responsibility of the treasurer to deliver to each member of the association an annual statement of income and expense within 90 days of the end of the fiscal year.

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E-27. Meetings. The annual meeting of members for the election of directors and the transaction of other pertinent business shall be held during the month of October of each year at such time and place as shall be fixed by the board of directors. Notice of annual meetings shall be mailed to members by the secretary at least one week but not more than 30 days prior thereto.

PART F - MISCELLANEOUS

F-1. The association may, upon the vote of seventy-five percent of the members of the association, elect to incorporate pursuant to the General Non-Profit Corporation Law (part of Division 2 of Title 1 of the Corporations Code of the State of California).

F-2. Association Records. The records of this association shall consist of these covenants, conditions and restrictions, articles and amendments thereof, minutes of all meetings of members and board of directors, a register of members and guests and such other records as shall be designated from time to time by the board of directors.

F-3. Inspection of Association Records. The membership register, or duplicate membership register, the books of account and minutes of proceedings of the members and directors shall be open to inspection upon the written demand of any member, at any reasonable time, and for a purpose reasonable related to his interests as a member and shall be produced at any time when required by the demand of members entitled to cast at least ten percent (10%) of the voting power. Such inspection may be made in person or by an agent or attorney, and shall include the right to make extracts. Demand of inspection other than at a members' meeting shall be made in writing upon the directors of the association.

IN WITNESS whereof the undersigned have hereunto set their hands the day and year first hereinabove written.

GEORGE W. DAY CONSTRUCTION COMPANY, INC.

George W. Day
George W. Day - President

Mary Lengyel
Mary Lengyel - Secretary

Louis E. Leto
Louis E. Leto - Vice President

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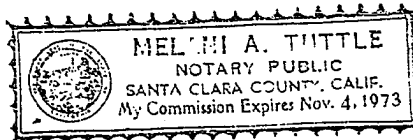
STATE OF CALIFORNIA) SS.
COUNTY OF SANTA CLARA)

On July 19, 1972 before me, the undersigned, a Notary Public in and for said State, personally appeared George W. Day, Known to me to be the President, Mary Lengyel, Known to me to be the Secretary, and Louis E. Leto, Known to me to be the Vice-President of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature

Melani A. Tuttle
Melani A. Tuttle



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Recorded at the request of
California Land Title Company

AUG 24 1972 8:01
A.M.

George E. Fowles Recorder
Santa Clara County, Official Records

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