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DECLARATION OF CONDITIONS, COVENANTS,
RESTRICTIONS, AGREEMENTS AND CHARGES
AFFECTING REAL PROPERTY KNOWN AS
PEACOCK LAGOON UNIT NUMBER TWO, A
RESIDENTIAL SUBDIVISION IN THE COUNTY
OF MARIN, STATE OF CALIFORNIA

THIS DECLARATION made and dated this 3rd day of
February, 1964, by PEACOCK GAP, INC., a California corporation,

W I T N E S S E T H:

WHEREAS, PEACOCK GAP, INC., hereinafter called
"Declarant", is the owner of real property in the County of
Marin, State of California, as shown on a map entitled "PEACOCK
LAGOON UNIT NUMBER II", said map having been filed in the office
of the County Recorder of the County of Marin, State of Cali-
fornia, on the 9th day of September, 1962, in Map Book 11 at
page 36; and

WHEREAS, Declarant intends to sell, and is desirous of
selling, certain numbered lots shown on said map; and

WHEREAS, Declarant is desirous of subjecting said
real property to the conditions, covenants, restrictions,
agreements and charges hereinafter set forth, each and all of
which are for the protection and benefit of said property and
each owner thereof, and shall inure to the benefit of and pass
with said property, and each and every parcel thereof, and
shall apply to and bind the owner of each and every parcel
thereof and his heirs, successors in interest and assigns;

NOW, THEREFORE, Declarant hereby declares that said
real property is, and shall be, held, transferred, sold and

conveyed subject to the conditions, covenants, restrictions, agreements and charges hereinafter set forth in the various articles of this Declaration, to wit:

ARTICLE I - MUTUAL AND RECIPROCAL COVENANTS AND AGREEMENTS

All of said conditions, covenants, restrictions, agreements and charges shall be made for the direct and mutual and reciprocal protection and benefit of each and every lot shown on said map, as recorded, and shall be intended to create mutual and equitable servitudes upon each of said lots in favor of each other lot shown on said map, and to create reciprocal rights and obligations between respective owners of all of the lots shown on said map and to create a privity of contract and estate between the purchasers of said lots, their heirs, successors in interest and assigns, and shall, as to the owners of each lot shown on said map, their heirs, successors in interest and assigns, operate as covenants running with the land for the protection and benefit of all other lots in each and every part of Peacock Lagoon, Unit Number II.

ARTICLE II - DEFINITION OF TERMS

Whenever used in this Declaration, the following terms shall have the following meanings:

(a) The term "said property" means and refers to the real property shown and described on a certain map entitled "Peacock Lagoon, Unit Number II," said map having been recorded at and filed in the office of the County Recorder of the County of Marin, State of California, as hereinbefore stated.

(b) The term "said map" means and refers to that certain map described and defined in Article II, Section (a) of this Declaration.

(c) The term "lot" means and refers to a numbered subdivision of land delineated and specified on said map and as contained within the respective blocks wherein said property is segregated.

(d) The term "Public Authority" means and refers to any city, county, state or federal governmental body or agency having competent authority to permit, regulate, enjoin or initiate any improvement or activity on said property hereinbefore described.

(e) The terms "dwelling house," "structure," "accessory building" and similar expressions mean and refer to the main portion of such structure and all projections therefrom, such as bay, bow or oriel windows, exterior chimneys, covered porches or porticoes and the like, including in the case of dwelling houses, garages, incorporated in and forming a part thereof, but shall not include eaves of such structures nor any open pergola nor any uncovered porch, stoop or steps, the balustrades or sides of which do not extend laterally more than three (3) feet above the level of the first floor of said structure. Unless the context indicates to the contrary, the term "structure" or "structures" includes "dwelling house," "accessory building" and all other buildings of every type.

(f) The terms "purchasers" and "owners" mean and refer not only to those acquiring title to any lot in fee simple, but also all persons entitled to purchase a lot or lots on said property under outstanding contracts of sale and persons having a possessory interest in any lot or lots as tenants or otherwise, and the heirs, successors in interest and assigns of each of them.

(g) The term "set back" means and refers to the horizontal distance between the furthestmost applicable projection of any dwelling house or other structure referred to and a given line, street, lot or plot.

(h) The term "Committee" means and refers to the Architectural Review Committee established by Article XXXI of this Declaration.

ARTICLE III - COMMITTEE APPROVAL

No structure nor any tennis court, swimming pool or other improvement shall be constructed or maintained upon any lot, nor shall any alteration in the exterior of a structure for which it is necessary to secure a permit under any applicable building ordinance or law be made, unless complete plans and specifications therefor, showing the exterior design, nature, kind, shape, height, building material and color scheme thereof, the general plan of landscaping with special reference to location

of proposed tree and hedge planting and kind of trees and hedges, the grading plan, the location on the lot and type of any mailbox, television antenna or aerial, the location and height of any wall or windbreak and the floor plan of any proposed structure plotted on the lot, shall have been submitted to and approved in writing by the Committee, and a copy of such plans and specifications and other data, as finally approved, deposited with the Committee. Such approval shall be given to those plans, specifications and proposals which the Committee, in its sole discretion, finds to be consistent with the intent of this Declaration and such approval may be given subject to such conditions as the Committee deems necessary to fulfill said intent. Such conditions may include, but are not limited to, a requirement that the pitch, surfacing and color scheme of the roof of any proposed structure shall be of a design and material acceptable to the Committee. Subsequent to approval, no plan, specification, or proposal shall be changed in any major respect without written consent of the Committee, nor shall any change be made in the exterior color scheme of any structure without such approval. After the expiration of one (1) year from the date of issuance of the building permit by the appropriate Public Authority, authorizing construction or alteration of any structure, or after the expiration of one (1) year from the date of such construction or alteration, whichever is later, the structure or alteration described in such permit shall, as to purchasers and encumbrancers from the owner causing such construction or alteration, be deemed to comply with the provisions of this Declaration, unless, prior to the expiration of such period,

notice to the contrary shall have been given to such purchaser or encumbrancer or to a person residing on the lot, or unless legal proceedings shall have been instituted to enforce such compliance.

ARTICLE IV - ONLY RESIDENTIAL PURPOSES

No lot, in whole or in part, shall be used for anything other than residential purposes. No trade, traffic or business of any kind, whether professional, commercial or industrial, shall be engaged in or carried on upon said property, or any part thereof. Without restricting the generality of the phrases "professional trade, traffic or business", "commercial trade, traffic or business" or "industrial trade, traffic or business", said phrases are also intended to prohibit any use of the subjected real property for stores, shops, clinics, nurseries or nursery schools, schools or colleges, for-hire parking areas, gasoline service stations, theaters, hospitals, sanitariums, factories, restaurants, drive-in restaurants, saloons or taverns, signboards, landscape nurseries, hotels, motels or other professional, commercial or industrial uses, provided however, that Declarant reserves the right to designate or set aside any portion of said property then owned by it for use as a school. Without restricting the generality of the phrase "residential purposes", it is intended that the same shall not prohibit the use of the subjected real property for single family dwelling houses, parks or churches, provided however, that no church may be erected on any lot without prior written approval of the Committee.

ARTICLE V - SINGLE FAMILY DWELLINGS

Only one structure shall be erected or maintained on any

lot, regardless of the size of the lot, and said structure shall not be designed or intended to be used for any purpose other than that of a single family dwelling house, provided, however, that this restriction shall not, if an accessory building as defined in Article XXIII hereof has not been constructed on the lot, prevent the erection and maintenance of a detached garage or other customary accessory building appurtenant to each single family dwelling house and erected upon the same lot and used by the occupant or occupants of such single family dwelling house, and provided further, that a detached garage may contain rooms for living quarters for bona fide servants or domestic employees but may not contain a kitchen, and provided further, that no single family dwelling house shall be designed or constructed to include more than one (1) kitchen. This Article shall not prohibit the erection or maintenance of any church pursuant to the provisions of Article IV.

ARTICLE VI - TEMPORARY OR MOVABLE STRUCTURES

No structure shall be moved from without to within or from within to without any lot without written approval from the Committee. No garage, carport, out-door privy, shack, tent, trailer or temporary structure placed or maintained on any lot shall at any time be used as a residence, except as provided in Article V of this Declaration. No dwelling house on any lot shall be occupied while in course of construction nor until made to comply with all conditions set forth herein.

ARTICLE VII - DWELLING COST, QUALITY AND SIZE

No dwelling house shall be constructed on any lot unless said house contains at least four rooms and has a cost or value, excluding lot cost, of at least the total of \$10,000 plus the product obtained by multiplying the number of rooms in said

house by \$2,000. Provided however, that after one year from the recordation of this Declaration the Committee may adjust such minimum cost or value to reflect the increase or decrease in construction costs which has taken place between the date of said recordation and the date on which the plans and specifications then before it were submitted for approval, it being the intention and purpose of this covenant to assure that all dwelling houses shall be of a quality of workmanship and materials substantially the same as or better than that which can be obtained on the date this Declaration is recorded for the minimum cost set forth in the first sentence of this Article. For purposes of this Article, bathrooms, closets, hallways, garages, basements and open porches shall not be considered rooms. No materials used in the construction of a dwelling house on any lot shall be of a second-hand or used nature. The total floor area of each dwelling house, exclusive of open porches, garages, carports, patios and like appurtenances not enclosed by the proper walls of the dwelling house, shall be not less than the total of 400 sq. ft. plus the product obtained by multiplying the number of rooms in said house by 200 sq. ft. In the case of 2-story dwelling houses, the area of the ground floor shall be not less than 850 sq. ft. All exterior walls of each dwelling house shall be finished in the same material and shall be painted or stained as a part of and at the time of erection. This paragraph shall not prohibit the erection of structures of a generally acknowledged type of architecture as may be recognized by the Committee, but it is intended, among other things, to prohibit false fronts and similar structures. Where dwelling houses are built on lots

having a frontage on two (2) streets, an effort shall be made to specially feature the rear of such dwelling houses so as to make the structure architecturally interesting and attractive.

ARTICLE VIII - SET BACKS

No main wall of any dwelling house shall be erected or maintained nearer than fifteen (15) feet to either the front or the rear property line of any lot, or nearer than five (5) feet to either of the side property lines of said lot, provided however, that no such wall shall be erected or maintained nearer than ten (10) feet to any street. For the purposes of this covenant, fireplace chimneys, steps and open porches shall not be considered to be parts of a dwelling house, provided however, that this shall not be construed to permit any portion of a dwelling house on a lot to encroach upon another lot.

ARTICLE IX - HEIGHT

No dwelling house of more than two (2) stories in height shall be erected or maintained on any lot. Said two (2) stories, including the floor joists between them, shall not exceed twenty-two (22) feet in height from the top of the floor of the first story to the underside of the ceiling of the second story. The vertical distance from the average surface grade of that portion of the lot covered by the dwelling house to the apex of the roof shall not exceed thirty (30) feet, provided however, that the highest point of a Mansard roof shall, for the purposes of this Article, be considered the apex of the roof and provided, further, that the Committee may, in the exercise of its reasonable discretion, limit the height of any dwelling house to less than thirty (30) feet in the event that such a limitation shall be deemed

by the Committee to be necessary to preserve to other lots or dwelling houses subject to this Declaration an unimpeded line of sight for view. In addition, a dwelling house may contain a basement if the main floor of the dwelling house is set at the level of the surface grade of the premises on which it is erected.

ARTICLE X - EXCAVATIONS

No excavation for stone, gravel, sand or earth shall be made on any lot, except that Declarant or the Committee may grant revocable permits giving the owner of any lot the right to excavate for the purpose of building a basement or cellar of a dwelling house, building a swimming pool or installing subterranean fuel oil tanks, provided however, that Declarant reserves the right at any time to excavate and grade on any lots then owned by it and to remove material from and to deposit material on said lots in connection with the work of laying out and improving said lots.

ARTICLE XI - LANDSCAPING

No portion of any lot between the street line and the main structure thereon shall be used for the planting or growing of garden vegetables. No landscaping shall be begun on any lot nor any planting or removal of trees take place until the plans and specifications therefor have been approved in writing by the Committee.

ARTICLE XII - DRILLING OF WELLS

No well for the production of, or from which there is produced water, oil, gas or any other mineral substance shall be dug or operated on said property. No tank for the storage of fuel

may be maintained above the surface of said property.

ARTICLE XIII - ANIMALS

No stable, poultry house or yard, or rabbit hutch or house shall be constructed or maintained on any lot. No fowl or animals, other than a reasonable and usual number of household pets, shall be kept on any lot. The Declarant may grant a revocable permit giving the owner of any of said lots the right to keep and maintain a limited number of animals, other than household pets, as pets, provided the same are not kept and maintained for commercial purposes or in unreasonable quantity. The Declarant may revoke any permit so granted if such use of said property shall become a nuisance to the neighbors adjacent.

ARTICLE XIV - NUISANCES

No noxious or offensive activity shall be carried on upon said property, nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

ARTICLE XV - SIGNS

No sign of any kind shall be displayed to the public view on any lot except (1) "For Sale" or "For Rent" sign having dimensions not greater than eighteen (18) inches by twenty-four (24) inches. Declarant, however, shall have the exclusive right to maintain larger signs for the purpose of development advertising. No other signs of any character whatsoever shall be erected upon any lot without the prior written approval of the Committee.

ARTICLE XVI - CARE AND APPEARANCE OF PREMISES

Grass, weeds and other vegetation on each lot shall

be kept mowed at regular intervals so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, and plants which die and animal droppings shall be promptly removed by the lot owner. If the owner of any lot shall fail to comply with the covenants previously set forth in this Article, Declarant may, at its option, give such owner written notice, addressed to him at said lot, that he is obligated to comply with said covenants within thirty (30) days, and if such owner shall then fail to do so, Declarant may employ persons to perform the necessary work when, and as often as the same is in its judgment necessary. The owner shall be obligated to reimburse Declarant for the expense of such work and such expense shall be assessed in the manner provided in Article XXXII of this Declaration. No device or area devoted to or used for the burning of trash, rubbish, papers, etc., or devoted to or used for garbage containers shall be located between the front or the side of any house or a projection of the line thereof, and the adjacent street. Any area or device used for the above purposes shall be screened by means of an adequate fence, approved by the Committee, so that the same may not be seen from the street. Such area or device shall be operated by the owner or occupant in such a manner that it is not noxious to the neighbors. In the event of failure of the owner to so construct a screening fence, the Committee may erect the same. The owner shall be obligated to reimburse the Committee for the expense of such work and such expense shall be assessed in the manner provided in Article XXXII of this Declaration. No basketball standards or fixed sports apparatus shall be attached to the front of any dwelling house or erected in any front yard or in any side yard of a corner lot that is

adjacent to a side street. At all times the owner, at his own expense, shall maintain any sidewalks, planting strips and trees between the curb line of any street and the property line of his lot in first-class condition and in the same manner, at the same place and of the same width as the same were or are hereafter established or planted by the Declarant or the Committee. If such owner fails after thirty (30) days' written demand by Declarant so to maintain his property, Declarant may employ persons to perform all necessary work from time to time, and the owner shall be obligated to reimburse Declarant for the expense of such work and such expense shall be assessed in the manner provided in Article XXXII of this Declaration.

ARTICLE XVII - MAINTENANCE, RESTORATION, AND REPAIR OF STRUCTURE

The owner of the lot shall maintain the appearance of the exterior of all structures erected thereon in a first-class condition. At any time noticeable deterioration is evident, Declarant may, at its option, require that the owner have any structure restored to an acceptable condition. If, after giving the owner thirty (30) days' written notice, such maintenance as Declarant deems necessary has not been commenced, Declarant may, at its option, have the necessary work completed. The owner shall be obligated to reimburse Declarant for the expense of such work and such expense shall be assessed in the manner provided in Article XXXII of this Declaration.

Should any structure, or any part thereof, including windows, be damaged or destroyed by fire or other casualty or by intentional mischief, the owner shall, at his own cost and expense, repair and restore the same or cause the same to be restored substantially in accordance with the original plans and specifications for the structure which are on file with the

Building Department, City of San Rafael, or as approved by the Committee, provided however, that the Committee may approve any modification of said plans and specifications which is consistent with the terms of this Declaration. All such repair and restoration work and the plans and specifications therefor shall be approved by the Committee and shall be in accordance with all applicable laws, ordinances, regulations and building codes.

Said repair and restoration work shall be commenced within thirty (30) days after the occurrence of the destruction or damage, time being of the essence of this covenant, and once commenced, said work shall be pursued diligently to completion. Should the same not be timely commenced, or carried toward completion with diligence, Declarant may, by written notice to the owner addressed to him at the lot, elect to repair or restore the destruction or damage or cause the same to be repaired or restored. If Declarant takes such action the owner shall be obligated to pay to it all insurance proceeds received by him in connection with such destruction or damage and to reimburse Declarant for all expenses incurred by it over and above the amount of such insurance proceeds and the full amount of such expenses incurred by Declarant, less any insurance proceeds paid to it, shall be assessed in the manner provided in Article XXXII of this Declaration.

ARTICLE XVIII - PROVISION FOR UPKEEP

Each lot from the date of the sale thereof by Declarant, shall be subject to an annual charge or assessment of Twenty-Four Dollars (\$24.00) without regard to the square

foot area thereof. Said sum shall be paid in advance to the Committee on the 1st day of January of each year, provided however, that the first annual assessment on each lot shall become due and payable thirty (30) days following the sale thereof by Declarant, and if such due date falls in any month other than January, a credit in an amount to be determined on a monthly pro rata basis shall be given the owner of said lot at the time he pays his next accruing annual assessment. Such assessment may be levied and enforced by the Committee in the manner provided in Article XXXII of this Declaration and for purposes of said Article the Committee shall be deemed to have expended an amount equal to such assessment in addition to any costs it may incur in connection with the enforcement of the assessment.

All charges, assessments and other fees received by the Committee shall be applied towards the payment of the following expenses, to-wit:

(a) Those incident to the enforcement of the conditions, covenants, restrictions, agreements and charges contained in this Declaration, and to the collection of the charge or assessment provided for in this Article.

(b) Construction, landscaping where appropriate, repair and maintenance of streets, street lighting, sewers, recreational areas, bus stop shelters and any other utilities or improvements which the Committee may determine to be of benefit to said property and the expense of which is not undertaken by the Public Authorities, provided however, that all sums so expended shall be for work within the boundaries of said property.

(c) Caring for vacant and unimproved lots and plots on said property, removing grass and weeds therefrom and doing any other thing necessary and desirable in the judgment of the Committee to improve, beautify or make more convenient or enjoyable for

living the conditions and surroundings of the inhabitants and owners of said property.

(d) Sweeping and cleaning streets, sidewalks and any other portions of said property maintained for the general use of owners of property subject to this Declaration until such services are provided by the Public Authorities.

(e) The reasonable expenses incurred by the Committee in connection with carrying out its duties under this Declaration.

(f) Taxes and assessments, if any, which may be levied by Public Authorities on any unaccepted streets or any park plots or portions thereof now or hereafter opened, laid out or established, or on any park plots or other open spaces maintained for the general use of owners of property subject to this Declaration.

(g) Expenses in connection with any project or matter which contributes to the general welfare, enjoyment or advantage of said property.

The Committee shall not be obligated to carry out any of the duties given it by this Declaration except to the extent possible from the money so collected or otherwise received by it. If the Committee shall assign the rights of enforcement herein to any corporation or association as hereinafter provided, then such corporation or association shall have the right to receive such charges and assessments, to enforce the collection thereof, and to expend the same as hereinbefore set forth. Following such assignment and the delivery to said corporation or association of the money then on hand, the Committee shall be discharged of all responsibility in the premises.

ARTICLE XIX - STORAGE

No garbage, refuse, rubbish or cuttings shall be deposited on any lot unless placed in a suitable container suitably located on the premises as provided in Article XVI of this

plant any trees or directing him to cut down, cut back or remove any trees which may have been planted. The agreement contained in the last sentence shall be construed as a Covenant running with the land and not as a condition which might cause the owner's title to be forfeited. The owner further agrees that the members of the Committee may at any time institute or prosecute in their names or cause to be instituted or prosecuted in the name of any member of said Committee any suit or suits which the Committee may consider advisable in order to compel and obtain a decree for the specific performance by owner of his agreement to remove, cut down, or cut back any tree which the Committee has ordered removed, cut down or cut back. Should any such suit be instituted, the owner of the lot affected shall pay reasonable attorney's fees for the plaintiff's attorneys as may be fixed by the Court.

ARTICLE XXI - SANITARY IMPROVEMENTS

No cesspools, septic tanks, outside privies, or similar devices shall at any time exist on any lot, and all dwelling houses shall be equipped with inside toilets at all times, provided however, that a cesspool or septic tank may be used on any lot not reasonably served by sanitary sewers if written approval for such cesspool or septic tank first has been obtained from the Public Authorities having competent jurisdiction.

ARTICLE XXII - LAUNDRY

No poles, lines or other fixtures intended to be used for drying or airing clothes, rugs, drapes, curtains or other materials shall be installed or permitted to remain on any lot except for one (1) rotary clothes dryer located in a yard enclosed by a lattice, fence or other enclosure approved by the Committee.

Such enclosure shall not be located between the front or side of any house, or a projection of the line thereof, and the adjacent street. In the event of failure of the lot owner to so construct a screening fence, the Committee may erect the same. The owner shall be obligated to reimburse Declarant for the expense of such work and such expense shall be assessed in the manner provided in Article XXXII of this Declaration.

ARTICLE XXIII - GARAGES AND OTHER ACCESSORY BUILDINGS

No garage on any lot, whether incorporated in or detached from a dwelling house, shall be constructed to accommodate more than three (3) automobiles at any one time. The owner of any dwelling house which does not include a garage, attached or detached, may construct one accessory building not to exceed one story in height on the same lot. Such accessory building shall not be constructed or used as a guest house or servants' dwelling house, provided however, that any such accessory building designed primarily as a garage may contain servants' quarters designed and constructed in accordance with Article V hereof. The provisions of this Declaration relating to Committee approval of plans and specifications for dwelling houses shall be equally applicable to plans and specifications for accessory buildings. All accessory buildings shall be of the same architectural style as the dwelling house on the lot and shall be finished in substantially the same manner and of the same material as said house.

ARTICLE XXIV - EASEMENTS

There are hereby reserved and retained to Declarant and created and imposed upon the property shown on said map, easements

as delineated on said map, of the dimensions thereon shown and thereon designated as "easements"; said easements being for all or any of the following purposes:

- (a) Service boxes, wires and conduits for the transmission of electricity for lighting, telephone and other purposes and for the necessary attachments in connection therewith,
- (b) Public and private sewers, storm water drains, land drains and pipes, water and gas mains and pipes,
- (c) Any other method of conducting and performing any public or quasi-public utility or function over or beneath the surface of the ground.

No permanent structure except a fence, windbreak or wall, as herein provided, shall be placed upon any easement.

ARTICLE XXV - COMPLETION OF CONSTRUCTION

Any dwelling house and appurtenant improvements on said property, the construction of which have been started, shall be completed without delay, except when such delay is caused by acts of God, strikes, actual inability of the purchaser to procure deliveries of necessary materials, or by interference by other persons or forces beyond the control of the purchaser. Financial inability of the purchaser or his contractor to secure labor or materials or discharge liens or attachments shall not be deemed a cause beyond his control.

If at any time after the sale by Declarant of a lot there should occur a cessation of work upon any dwelling house or appurtenant improvements then under construction thereon, and such cessation continues for a period of one hundred and twenty (120) days or more, then, where the cessation is not excused by the provisions hereof, the existence of such unfinished building or improvement shall be deemed a nuisance, and the

Committee shall have the right to enter upon the premises and remove the same or to carry such construction forward to completion. The costs and expenses incurred in connection with such removal or completion shall constitute a lien upon said property under the Mechanic's Lien Law of the State of California. Such lien shall attach as of the time of the commencement of said work and shall be enforceable in the manner provided for the enforcement of mechanic's liens.

ARTICLE XXVI - RESUBDIVISION OF LOTS

No lot shown on said map shall be subdivided for the purpose of making two (2) or more lots, but two (2) lots may be combined to create one new lot, and three (3) or more lots may be combined and redivided into lots no one of which shall contain fewer square feet or less frontage than the smallest of the lots so combined unless prior written approval of the Committee is obtained.

ARTICLE XXVII - EXTERIOR LIGHTING

Any exterior lighting installed on any lot shall be either indirect or of such controlled focus and intensity as not to disturb the residents of adjacent property. A plan showing the location, intensity and focus of any exterior illumination other than indirect lighting shall be approved by the Committee before the installation thereof.

ARTICLE XXVIII - ELECTRIC AND TELEPHONE UTILITIES

The purchaser of each lot shall, if and when underground electric and telephone utility mains are available for use by the respective lot owners, at his own cost and expense provide and install underground wires or conduits

from such mains to the improvements on his lot, so that no above-surface telephone or electric wires shall exist thereon.

In the event that any public utility shall erect or threaten to erect any pole, standard, fixture or line above the surface of the ground of said property in contravention of any obligation made and incurred by it to Declarant, any owner, the Committee or the Declarant may institute in any appropriate court or in the Public Utilities Commission of the State of California, an action for injunctive relief. For the purpose of maintaining such an action the Committee and any owner who shall be plaintiff or petitioner is hereby assigned all relevant contract rights in the premises given to or acquired by Declarant from any public utility concerning utility service to said property.

ARTICLE XXIX - REZONING

Notwithstanding the foregoing restrictions, if any portion of said property shall be zoned by the appropriate Public Authority for other than single family residential use at a time when Declarant is the owner of said portion, then Declarant may erect and maintain on said portion or any part thereof any building or structure permitted by the zoning regulations then controlling. In the event of such a change in zoning affecting any portion of the property then owned by Declarant, Declarant may, but is not required to, cancel the conditions, covenants, restrictions, agreements and charges imposed by this Declaration insofar as they apply to the said portion of the property subject to the change in zoning. Such cancellation shall be effected by recording in the office of the County Recorder of the County of

Marin, State of California, a Declaration of Cancellation of Restrictions, duly executed by Declarant and setting forth therein the purpose of such instrument.

ARTICLE XXX - HOME OWNERS ASSOCIATION

At any time during the effectiveness of this Declaration or any renewal thereof, Declarant may establish a non-profit corporation, hereinafter referred to as the "Association", which shall have for its purpose the doing of any and all things necessary to promote the general welfare of the residents and owners of real property located in that area known as Peacock Gap, or any portion thereof, and of the residents and owners of such other real property contiguous to said Peacock Gap as Declarant may deem advisable, provided however, that membership in the Association shall not be a prerequisite to the ownership or occupancy of any real property. The "Association" shall be known by the name "The Peacock Gap Home Owners Association", or by a similar name. At any time after the formation of the Association, Declarant may assign to it any or all of the rights and obligations reserved to Declarant and/or granted to the Committee by this Declaration. Such assignment may be irrevocable or for a specified period and may be subject to such terms and conditions as Declarant deems advisable. Upon the acceptance in writing of such assignment, the Association, to the extent of such assignment, shall have the same rights and obligations as are given to and assumed by Declarant and/or the Committee herein.

Declarant may also at any time assign to the Association any or all other rights and obligations it may possess or have the power to assign and which relate to any or all of the

real property with which the Association is concerned but which real property is not subject to this Declaration, and nothing in this Declaration shall prohibit the acceptance of such assignment by the Association.

ARTICLE XXXI - ARCHITECTURAL REVIEW COMMITTEE

The Architectural Review Committee shall be appointed by Declarant and shall consist of not more than five (5) members. The appointment of such members shall be disclosed by a written instrument setting forth the fact of the appointment, the names and business addresses of the members, and the period for which they are appointed. Said instrument shall be signed by Declarant, acknowledged before a Notary Public and recorded in the office of the County Recorder of the County of Marin, State of California. Any changes in the membership of the Committee shall be similarly acknowledged and recorded. Declarant may replace any member of the Committee at any time, with or without cause. The Committee may act by any three (3) of its members, and any authorization, approval or power given by the Committee must be in writing signed by at least three (3) members thereof.

The Committee may, at its discretion, require a payment of an amount not to exceed Twenty Dollars (\$20) to accompany plans, specifications, or other documents when deemed warranted by the Committee in unusual circumstances; and in such event such documents shall not be considered to have been submitted to the Committee, nor shall approval of the same be given, until such fee is received.

In the event the Committee fails to approve or disapprove any plan, specification, color scheme, location or other matter subject to the conditions and restrictions herein contained, within thirty (30) days after submission thereof, then except as

provided in the preceding paragraph, such plan, specification or matter shall be deemed conclusively approved by the Committee if the date of submission of said plan, specification or matter to the Committee is evidenced by written receipt from the Committee or its authorized representative. Provided however, that at any time prior to the end of the thirty (30) day period hereinbefore described, the Committee may extend the period for consideration of such plan, specification or matter for not more than thirty (30) additional days by giving written notice of such extension to the lot owner.

At any time after giving reasonable notice any member or agent of the Committee may enter and inspect any lot and the improvements located thereon for the purpose of determining whether such improvements are in compliance with the provisions of this Declaration and the requirements of the Committee.

ARTICLE XXII - ASSESSMENTS AND LIENS; SUBORDINATION OF RESTRICTIONS

Declarant hereby establishes, reserves and imposes a lien on each lot, including all improvements hereafter erected thereon, which is subject to this Declaration. Said liens shall secure the payment by the lot owner of each and every assessment provided for in this Declaration and also shall secure the payment of interest and costs, including but not limited to reasonable attorney's fees, accrued or incurred in connection with the collection of such assessments or enforcement of this Declaration. Said liens shall be enforced in the following manner:

- (1) Within one year following the expenditure of funds for a purpose for which this Declaration provides an assessment or to enforce this Declaration, Declarant or the Committee, as appropriate, may levy an assessment against the appropriate lot for

the amount of such expenditures. The levy shall be made by depositing in the United States mail, postage prepaid, certified or registered, a notice, addressed to the owner or reputed owner of the lot at the street address of the lot, stating the amount of the expenditures that have been made, that such amount has been assessed against the lot, and that such amount is then due and owing to Declarant or the Committee, as appropriate.

(2) Such assessment shall be due and payable when levied and if not paid in full within thirty (30) days thereafter shall be delinquent.

(3) At any time after an assessment has become delinquent, Declarant or the Committee, as appropriate, may record in the office of the Recorder for the County of Marin a "Notice of Delinquency." Such notice shall state (a) the amount of the delinquent assessment, (b) the date on which the assessment was levied, (c) that said assessment bears interest at the rate of ten percent (10%) per annum from the date of levy, (d) the description of the lot against which the assessment was levied, (e) the name of the record owner or reputed owner of the lot, and (f) that there is a lien against the lot for the sum of the delinquent assessment, for all interest on the assessment until it is paid in full and for all expenses incurred in collecting the assessment, including but not limited to reasonable attorneys' fees. Such notice shall be signed by an officer of Declarant or a member of the Committee, as appropriate.

(4) At any time after the recordation of such Notice, and, if required by law, after the lapse of three months or such other mandatory period of redemption granted by the statutes of the State of California in connection with the exercise of a power of sale under a deed of trust, Declarant or the Committee, as appropriate, or its authorized representative, may sell the lot in any manner permitted by law for the foreclosure of liens created by contract. The preceding sentence shall be construed to permit, among other things, the sale of said property as if the same were subject to a deed of trust containing a power of sale and any sale made pursuant to this sentence shall be made in accordance with the statutes governing such sales, which statutes are hereby incorporated in this sentence, except that the Notice of Delinquency provided for above shall take the place of any other notice of default provided for in said statutes. Declarant or the Committee, as appropriate, shall deduct from the proceeds of the sale all costs of said sale and the amount of the lien and shall remit any proceeds in excess thereof to the lot owner.

Upon the payment in full of any lien provided for herein Declarant or the Committee, as appropriate, shall execute such appropriate releases of the lien as may be requested by the lot owner.

Anything to the contrary herein notwithstanding, each and every provision of this Declaration, including but not limited to each and every assessment and lien

is hereby declared to be subject and subordinate to the lien of any mortgage or deed of trust now or hereafter made or existing in good faith and for value, and said provisions shall in no way restrict, impair or defeat any right of sale contained in any such mortgage or deed of trust or the foreclosure of the same. Provided however, that title to any property subject to these restrictions and obtained through sale under or foreclosure of any such mortgage or deed of trust shall thereafter be held subject to all provisions of this Declaration except that no expenditure made prior to such foreclosure or sale shall thereafter become an assessment or lien against the property and no assessment levied or lien recorded against such property shall be of any further force or effect after such foreclosure or sale. Further provided that, notwithstanding any provision of this Declaration, property acquired by the holder of a loan guaranteed or insured by the Federal Housing Administration or the Veterans Administration or any other governmental agency, or property acquired by any such agency directly, at foreclosure or otherwise, or from the purchaser at foreclosure sale or otherwise, which said property is acquired by reason of or incident to, or as a consequence of such guaranty or insurance, either by way of purchase at a sale under power of sale or other judicial proceedings, or through foreclosure of deed of trust or mortgage on the property securing such loan, or by way of conveyance in full or partial satisfaction of the debts secured by such deed of trust or mortgage immediately upon any such acquisition shall be, and thereafter remain, free from any and all restrictions or impediments as to alienation.

ARTICLE XXXIII - ACCEPTANCE OF RESTRICTIONS

All purchasers of the property shown on said map by the acceptance of deeds therefor, whether from Declarant or from subsequent owners of said property, or by the signing of contracts or agreements to purchase the same, shall thereby be bound by and by said act consent and agree to be bound by all of the restrictions, covenants and other provisions hereof, and shall be said act covenant and agree to be bound by and keep and perform the same and to be personally obligated to pay all unpaid assessments and liens theretofore or thereafter imposed upon the property purchased, except as provided in Article XXIII.

ARTICLE XXXIV - ENFORCEMENT AND REMEDY

Violation or breach of any of the provisions herein contained shall give to Declarant and the Committee or either of them, and to their agents or other representatives, the right to enter upon the property upon or as to which said violation or breach exists, and summarily to abate and remove at the expense of the owner any erection, thing or condition that may be or exist thereon contrary to the provisions hereof without being deemed guilty of any manner of trespass. Every action or omission whereby any provision hereof is violated or breached, in whole or in part, shall render it lawful for Declarant or the Committee to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate the same and either to prevent him or them from so doing or to recover damages for such violation or any combination of the same. Should any such suit be instituted and should the plaintiff be successful, the lot owner shall pay a reasonable attorney's fee for the plaintiff's attorney as that fee may be fixed by

the Court.

ARTICLE XXXV - INVALIDITY

In the event any condition, covenant, restriction, agreement, charge or other provision herein contained be invalid or held invalid or void by any court of competent jurisdiction, such invalidity or void condition, covenant, restriction, agreement, charge, or other provision shall in no way affect any other condition, covenant, restriction, agreement, charge or provision herein contained.

ARTICLE XXXVI - WAIVER OF BREACH

Waiver by Declarant or the Committee of the enforcement of any of the conditions, covenants, restrictions, agreements, charges or other provisions herein contained in any instance shall not constitute a waiver of the right to enforce any other conditions, covenants, restrictions, agreements, charges or other provisions thereafter. Declarant, or the Committee, as the case may be, shall have the right to waive any or all of the provisions contained herein, provided that no such waiver shall be effective unless specifically evidenced in writing.

ARTICLE XXXVII - DURATION OF RESTRICTIONS

All the conditions, covenants, restrictions, agreements, charges and other provisions set forth in this Declaration shall affect all of said property and are made for the direct protection and benefit thereof, and shall run with the land and continue until the 1st day of January, 1986, and may, as then in force, be extended as to all or part of said property from that time for a period not exceeding twenty (20) years, and thereafter for successive periods of not more than twenty (20) years, each without limitation, by recordation of an appropriate agreement executed

by the owners of at least two-thirds (2/3) of the lots shown on said map. Such extensions shall apply to all of the lots subject to this Declaration unless it shall be specified to the contrary in said recorded agreement.

ARTICLE XXXVIII - INTERPRETATION

In case of any uncertainty as to the meaning of any of the provisions of this Declaration, the Committee shall in all cases interpret the same and such interpretation shall be final and conclusive on all interested parties.

ARTICLE XXXIX - TITLE HEADINGS

The title headings as to the contents of particular Articles are inserted only as a matter of convenience and for reference, and in no way are, or are they intended to be, a part of this Declaration or in any way define, limit or describe the scope or intent of the particular section or clause to which they refer.

ARTICLE XL - ASSIGNMENT OF POWERS

In addition to the rights to assign reserved by Article XXX of this Declaration, Declarant also shall have the right to assign to any person or persons, association or corporation owning any property the subject of this Declaration, the rights and obligations granted or reserved to it or the Committee, or both of them, by the terms of this Declaration, and the provisions of said Article XXX, where appropriate, shall apply to assignments made pursuant to this Article.

ARTICLE XLI - FRONT YARDS

Concrete slabs, pads, walkways, etc., are expressly prohibited in the areas in front of the dwelling house, between it and the front property line, except that a driveway connecting the garage to the street and pedestrian paths for normal access to the dwelling house are permitted. Such prohibition applies to all areas in front of the dwelling house line as it is extended to the side property lines, the purpose being to include the two common areas where front and side setbacks coincide as subject to this prohibition.

ARTICLE XLII - LANDSCAPING OF PLANTING STRIPS

The owner, at his own expense, shall plant or cause to have planted, that strip of land, if any, between the curb line of any street and the property line of his lot, said planting to be restricted to that type or category of plant that is approved by the Declarant for the street and neighborhood in question. Under no circumstances is the owner to be permitted to substitute rock, rock gardens, aggregate, or other forms of mineral in lieu of the required plantings.

The purpose of this planting strip restriction is to achieve an aesthetic effect and continuity throughout the neighborhood.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

PEACOCK GAP, INC.

By 
Wm. A. Harding, Vice President

STATE OF CALIFORNIA }
 City and County of San Francisco } ss.

On this 3rd day of February in the year One Thousand Nine Hundred and Sixty-four, before the undersigned a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared WM. A. HARDING known to me to be Vice President of PEACOCK GAP, INC., the corporation which executed the within instrument and he acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco the day and year in this Certificate first above written.



Alberta Sardin
 Alberta Sardin
 NOTARY PUBLIC
 in and for the City and County of
 San Francisco, State of California.
 My Commission Expires: Dec. 13, 1967

RECORDED AT REQUEST OF
 TITLE INSURANCE
 AND TRUST COMPANY
 AT 45 RIAL PAST & R. M.
 FEB 7 1964

BOOK 1777 PAGE 329

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Central Branch of State County Seal

H. J. Licimial
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