

GHAD RESOLUTION NO. 95-01

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE SILVER CREEK VALLEY COUNTRY CLUB
GEOLOGIC HAZARD ABATEMENT DISTRICT
APPROVING
COOPERATION AGREEMENT FOR MAINTENANCE, REPAIRS AND
IMPROVEMENTS AT SILVER CREEK VALLEY COUNTRY CLUB
WITH
SILVER CREEK VALLEY COUNTRY CLUB HOMEOWNERS
ASSOCIATION
AND
SILVER CREEK VALLEY COUNTRY CLUB, INC.**

WHEREAS, Silver Creek Valley Country Club Geologic Hazard Abatement District ("District") was formed by the City of San Jose ("City"), in accordance With California Public Resources Code, Section 26500 et seq. (the "GHAD Law"), for the purpose of prevention, mitigation, abatement and control of geologic hazards (as defined in the GHAD Law) within the boundaries of the Silver Creek Valley Country Club project area (the "Project"), as more particularly described in the Plan of Control for the District, applicable resolutions of the City Council and District Board pertaining to the District, and other governing documents of the District on file with the City and/or District, as may be amended from time to time in accordance with the GHAD Law (collectively, "District Governing Documents");

WHEREAS, Silver Creek Valley Country Club Homeowners Association ("Association") owns and maintains certain roads and other common area and open space within the Project (collectively, "Association Areas"), as more particularly described in and in accordance with one or more recorded declaration(s) of covenants, conditions and restrictions, grant deeds, articles, bylaws and other governing documents of the Association (collectively, "Association Governing Documents"), for the mutual benefit of owners of residential lots within the Project;

WHEREAS, Silver Creek Valley Country Club, Inc. ("Club") owns and maintains certain golf course, swim, tennis and related recreational facilities within the Project (collectively, "Club Areas"), in accordance with its articles, bylaws and other governing documents (collectively, "Club Governing Documents"), for the benefit of the permitted users of the Club Areas;

WHEREAS; in the absence of an agreement among District, Association and Club, the scope of their respective maintenance, repair and improvement responsibilities as they pertain to potential geologic hazards within the Project might be unclear, particularly given the District's legal capacity to perform such work throughout the Project;

WHEREAS; the GHAD Law authorizes District to enter into any agreement with a private organization or other person in furtherance of the purposes of the GHAD Law;

WHEREAS; District, Association and Club have determined it to be in their mutual best interests, and beneficial to the health, safety and welfare of persons and property within the Project, to enter into a written agreement to further clarify, refine and specify the scope of their respective maintenance, repair and improvement responsibilities as they pertain to potential geologic hazards within Association Areas and Club Areas in order to facilitate the prevention, mitigation, abatement and control of geologic hazards within the Project and to minimize any duplicative actions or disputes;

WHEREAS; the District Board previously authorized and directed the District General Manager to initiate discussions and negotiate, subject to final Board approval, such an agreement with the Association and Club;

WHEREAS; the General Manager has completed these discussions and negotiations, resulting in the proposed COOPERATION AGREEMENT FOR MAINTENANCE, REPAIRS AND IMPROVEMENTS AT SILVER CREEK VALLEY COUNTRY CLUB, a copy of which is attached hereto as Exhibit "A" ("Agreement"), which agreement is to be entered into by and among District, Association, and Club;

WHEREAS; the form and substance of the proposed Agreement has been thoroughly reviewed at previous meetings of the Board and has been provided in final form to the Directors prior to this meeting; and

WHEREAS; Association and Club have approved and executed the Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF THE SILVER CREEK VALLEY COUNTRY CLUB GEOLOGIC HAZARD
ABATEMENT DISTRICT:**


1. For the reasons set forth in the recitals above and incorporated herein by this reference, the Board hereby finds that it is in the best interests of District and all landowners and residents within District for District to enter into the Agreement with Association and Club regarding the respective maintenance, repair, and mitigation improvement responsibilities of District, Association, and Club as to Association Areas and Club Areas.
2. The Board hereby approves the Cooperation Agreement for Maintenance, Repairs, and Improvements at Silver Creek Valley Country Club, a copy of which is attached hereto as Exhibit A, and authorizes and directs the appropriate officers of the District to execute the Agreement on behalf of District.

ADOPTED this 27th day of JULY, 1995 by the following vote:

AYES: GUSTAFSSON, JUARCEYS, FILICE, REYAO KATWAN

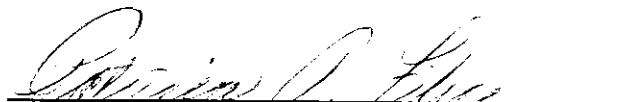
NOES:

ABSENT: SUTTON



Chair of the Board of Directors of the
Silver Creek Valley Country Club
Geologic Hazard Abatement District.

ATTEST:



Clerk of the Silver Creek Valley Country
Club Geologic Hazard Abatement District.

**COOPERATION AGREEMENT FOR MAINTENANCE, REPAIRS AND
IMPROVEMENTS AT SILVER CREEK VALLEY COUNTRY CLUB**

THIS COOPERATION AGREEMENT FOR MAINTENANCE, REPAIRS AND IMPROVEMENTS AT SILVER CREEK VALLEY COUNTRY CLUB ("Agreement"), dated for reference purposes as of OCTOBER 10, 1995 ("Effective Date"), is entered into by and among SILVER CREEK VALLEY COUNTRY CLUB GEOLOGIC HAZARD ABATEMENT DISTRICT, a political subdivision of the State of California ("District"), SILVER CREEK VALLEY COUNTRY CLUB HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"), and SILVER CREEK VALLEY COUNTRY CLUB, INC., a California corporation ("Club"), with reference to the following facts:

RECITALS

WHEREAS, District was formed by the City of San Jose ("City"), in accordance with California Public Resources Code, Section 26500 et seq. (the "GHAD Law"), for the purpose of prevention, mitigation, abatement and control of geologic hazards (as defined in the GHAD Law) within the boundaries of the Silver Creek Valley Country Club project area (the "Project"), as more particularly described in the Plan of Control for the District, applicable resolutions of the City Council and District Board pertaining to the District, and other governing documents of the District on file with the City and/or District, as may be amended from time to time in accordance with the GHAD Law (collectively, "District Governing Documents");

WHEREAS, Association owns and maintains certain roads and other common area and open space within the Project (collectively, "Association Areas"), as more particularly described in and in accordance with one or more recorded declaration(s) of covenants, conditions and restrictions, grant deeds, articles, bylaws and other governing documents of the Association (collectively, "Association Governing Documents"), for the mutual benefit of owners of residential lots within the Project;

WHEREAS, Club owns and maintains certain golf course, swim, tennis and related recreational facilities within the Project (collectively, "Club Areas"), in accordance with its articles, bylaws and other governing documents (collectively, "Club Governing Documents"), for the benefit of the permitted users of the Club Areas;

WHEREAS, in the absence of an agreement among District, Association and Club, the scope of their respective maintenance, repair and improvement responsibilities as they pertain to potential geologic hazards within the Project might be unclear, particularly given the District's legal capacity to perform such work throughout the Project; and

WHEREAS, District, Association and Club have determined it to be in their mutual best interests, and beneficial to the health, safety and welfare of persons and property within the Project, to enter into this Agreement to further clarify, refine and specify the scope of their respective maintenance, repair and improvement responsibilities as they pertain to potential geologic hazards within Association Areas and Club Areas in order to facilitate the prevention, mitigation, abatement and control of geologic hazards within the Project and to minimize any duplicative actions or disputes.

NOW, THEREFORE, in consideration of the foregoing recitals of fact and the mutual covenants and obligations of the parties set forth herein, District, Association and Club hereby agree as follows:

AGREEMENT

1. Duties of Association.

(a) Association Work. Association shall perform as and when needed, in accordance with the Association Governing Documents and this Agreement, the maintenance and repairs of improvements within the Association Areas as may be necessary to preserve the geologic stability of the Association Areas in reasonably the same condition as existed at the time of initial conveyance to the Association or as subsequently improved, in order that the geologic condition of the Association Areas will not pose a threat at any time to any adjacent property or to the health, safety or welfare of persons within the Project (collectively, "Association Work"). Association acknowledges and agrees that such Association Work helps to maintain the stability of Association Areas and other property within the Project and the health, safety and welfare of persons within the Project. All Association Work shall be promptly commenced and thereafter diligently pursued to completion in a timely and workmanlike manner and consistent with the condition, design and quality that existed at the time of such initial conveyance or subsequent improvement. Without limiting the preceding provisions of this paragraph, Association shall perform, at its sole expense, those items of Association Work included within the list on attached Exhibit "A". Also as part of Association Work, Association shall perform, at its sole expense, repairs of any ground movement or other ground failure in the Association Areas in those instances where the repairs require minimal or no design and/or supervision by geotechnical or engineering professionals. Neither Association nor District shall have any obligation to perform any repairs of any ground movement or other ground failure in the Association Areas that does not pose a threat to any property other than the Association Areas and does not pose a threat or cause any damage to any improvements within the Association Areas. The parties acknowledge and agree that all or a portion of Association Work may be deemed to comprise or include prevention, mitigation, abatement or control of geologic hazards that District might otherwise be legally and/or financially capable of performing, and that an express purpose of this Agreement is to specify that such work is to be the responsibility of Association.

(b) Payment of Association Available Proceeds. If and to the extent there are any Association Available Proceeds with respect to any item of District Work (as defined in Paragraph 3 hereof), all such Association Available Proceeds shall be paid by Association to District to be applied by District to the costs of such District Work.

As used in this Agreement, the term "Association Available Proceeds" shall mean the following amounts, if any:

(i) The amount of any Association reserve funds specifically collected to fund the costs of repairing, reconstructing or replacing any specific improvement which will be repaired, reconstructed or replaced to new condition as part of District Work. For example, if District Work includes replacement of a retaining wall and Association has a \$25,000 reserve fund for replacement of retaining walls, \$5,000 of which has been collected for replacement of the retaining wall to be replaced, then \$5,000 shall be included within Association Available Proceeds; and

(ii) The amount of any insurance proceeds paid to Association for loss or damage to a specific improvement which will be repaired, reconstructed or replaced as part of District

Work. For example, if District Work includes replacement of a retaining wall and Association recovers insurance proceeds of \$5,000 to replace the retaining wall, then the \$5,000 shall be included within Association Available Proceeds.

Nothing herein shall be deemed under any circumstance to create or give rise to any obligation, responsibility or liability whatsoever on the part of Association to acquire or maintain any insurance against geologic hazards or to establish or maintain any Association reserve account for geologic hazards.

2. **Duties of Club.** Club shall perform as and when needed, at its sole expense and in accordance with the Club Governing Documents and this Agreement, any and all maintenance, repairs and construction or installation of improvements within the Club Areas as may be necessary to preserve the geologic stability of the Club Areas in reasonably the same condition as existed at the time of initial conveyance to the Club or as subsequently improved, in order that the geologic condition of the Club Areas will not pose a threat at any time to any adjacent property or to the health, safety or welfare of persons within the Project (collectively, "Club Work"). Club acknowledges and agrees that such Club Work helps to maintain the stability of Club Areas and other property within the Project and the health, safety and welfare of persons within the Project. All Club Work shall be promptly commenced and thereafter diligently pursued to completion in a timely and workmanlike manner and consistent with the condition, design and quality that existed at the time of such initial conveyance or subsequent improvement. Without limiting the preceding provisions of this paragraph, Club shall perform those items of Club Work included within the list on attached **Exhibit "B"**. Club agrees that the "Base Amount" monetary limitation on Club Work, as defined and specified in attached **Exhibit "B"**, shall apply only in those instances where, and only to the extent that, (a) "excess" insurance proceeds from Club insurance policies (excess of any insurance proceeds recovered by Club for any other losses it may have suffered as a result of the same occurrence) ("Club Excess Insurance Proceeds") are unavailable to Club or insufficient to pay the costs of the Club Work subject to such Base Amount limitation, and (b) the amount of the costs of the Club Work subject to such Base Amount limitation is not included within any reserve account, deferred maintenance account or other similar account for that type of work as reflected on any Club budget or study ("Club Reserve Account"). In those instances where the Base Amount applies to any items of Club Work, and the costs of such Club Work exceed the Base Amount, Club shall be obligated to pay the Base Amount in such instances if and only to the extent that Club Excess Insurance Proceeds or Club Reserve Account proceeds are available to Club to pay all or a portion of the Base Amount, whereupon all or the available portion of the Base Amount shall be paid by Club to District to be applied by District to the costs of the District Work (as defined in Paragraph 3 hereof) that encompasses such items. The parties acknowledge and agree that all or a portion of Club Work may be deemed to comprise or include prevention, mitigation, abatement or control of geologic hazards that District might otherwise be legally and/or financially capable of performing, and that an express purpose of this Agreement is to specify that such work is to be the responsibility of Club. Nothing herein shall be deemed under any circumstance to create or give rise to any obligation, responsibility or liability whatsoever on the part of Club to acquire or maintain any insurance against geologic hazards or to establish or maintain any Club Reserve Account for geologic hazards.

3. **Duties of District.** District hereby acknowledges and agrees that it shall perform as and when needed, at its sole expense and in accordance with the District Governing Documents, this Agreement and the GHAD Law, any and all maintenance, repairs and construction or installation of improvements pertaining to actual or threatened geologic hazards within the Association Areas and Club Areas, not otherwise required to be performed by Association or Club pursuant to the provisions of

Paragraph 1 or Paragraph 2 hereof, as may be reasonably necessary for the prevention, mitigation, abatement or control of geologic hazards within the Project (collectively, "District Work"). All District Work shall be promptly commenced and thereafter diligently pursued to completion in a timely and workmanlike manner. In performing any District Work, District shall restore the Association Areas or Club Areas, as applicable, to reasonably the same condition as existed at the time of initial conveyance to Association or Club, as applicable, or as subsequently improved. Without limiting the preceding provisions of this paragraph, District shall perform those items of District Work included within the list on attached Exhibit "C", which items District hereby acknowledges are within the scope of its Plan of Control. Without limiting the powers or rights of District under the District Governing Documents and the GHAD Law, Association and Club, respectively, hereby grant to District, and District shall have, the irrevocable right to enter upon Association Areas and/or Club Areas, respectively, at all reasonable times to perform any District Work and/or to perform or undertake any inspections, tests and any other duties, powers, rights and/or remedies of District under this Agreement, the District Governing Documents and/or the GHAD law. During the term of this Agreement, District shall include within its budget the build-up and replenishment of reasonable reserves for District Work hereunder. In the event that available District funds (including reserves) are insufficient to pay for the costs of any District Work hereunder, the District agrees to undertake good faith best efforts to obtain funds from the sale of bonds, loan(s) to District and/or additional District assessments upon property within the Project, in accordance with the GHAD law, sufficient to pay for the costs of such District Work. Notwithstanding any provision herein to the contrary, District shall have no obligation, responsibility or liability whatsoever to do any of the following: (a) to perform any District Work to the extent that District funds (including reserves) as shown on the most recently approved budget for the District, when taken alone or when added together with any unbudgeted District revenues, including such revenues from any bonds or other alternative financing sources implemented by District in accordance with the GHAD Law and revenues from any payments hereunder to District by Association and/or Club, as applicable, are insufficient to pay for the costs of such District Work; (b) to perform any District Work to the extent that any Association Available Proceeds or Club Excess Insurance Proceeds, as applicable, are available to Association or Club, as applicable, and sufficient to pay the costs of such District Work, unless such Association Available Proceeds or Club Excess Insurance Proceeds are made available to District to pay for the costs of such District Work; (c) to perform any District Work to the extent that any Club Reserve Account exists and is sufficient to pay the costs of such District Work, unless the proceeds of such Club Reserve Account are made available to District to pay for the costs of such District Work; or (d) to maintain, repair, construct, install, improve, restore or replace any buildings (whether permanent or temporary) situated at any time within any Association Areas or Club Areas.

4. **Failure to Comply.** In the event that Association fails to timely and/or properly perform any Association Work, or Club fails to timely and/or properly perform any Club Work, if District or the District General Manager determines that a lack of prompt action in performing such work will create a threat to the health, safety or welfare of any landowners or residents or to the beneficial use of any property within the Project, and if such failure continues for a period of ten (10) days following written notice thereof from District to Association or Club, as applicable, then District shall have, in addition to any and all other rights and remedies it may have at law or in equity, the right, but not the obligation, to perform such Association Work or Club Work, as applicable, and charge Association or Club, as applicable, for all costs incurred by District in performing such work. Association or Club, as applicable, shall pay all such costs to District not later than sixty (60) days after receipt of a written invoice therefor from District. However, in the event such work is of a nature that would ordinarily require more than ten (10) days to complete, and Association or Club, as applicable, commences such work within such ten-day period and thereafter diligently pursues such work to completion in accordance

herewith, then District agrees that it shall forbear from exercising its rights under this paragraph. As used in this paragraph, "commences such work" shall include preparing bid documents and putting the work out to bid.

5. **District Determination.** The parties agree that, if they are unable to resolve any dispute between them regarding the characterization of any particular item of maintenance, repairs and/or improvements within the Project as Association Work, Club Work or District Work within ten (10) days after any party to this Agreement provides written notice of such dispute to the other parties (the "dispute notice"), then the District, in its discretion and consistent with the provisions of District's Plan of Control, the GHAD Law and this Agreement, shall make a preliminary determination regarding such characterization and shall provide written notice of its determination (the "determination notice") to Association and Club within ten (10) days after District's receipt of such dispute notice. In making its preliminary determination regarding the characterization of any item of work under this Paragraph 5, District may allocate any such item, in whole or in part, to one or more of the categories of Association Work, Club Work and/or District Work. District's preliminary determination as set forth in its determination notice shall become final and binding upon the parties unless Association and/or Club disputes District's preliminary determination and submits such dispute to arbitration in accordance with the provisions of, and within the time period set forth in, Paragraph 6 hereof. In any such arbitration, there shall be no presumption that District's preliminary determination was correct.

6. **ARBITRATION OF DISPUTES.** SUBJECT TO THE PROVISIONS OF PARAGRAPH 5 HEREOF, ANY DISPUTE OR CLAIM BETWEEN ANY OF THE PARTIES TO THIS AGREEMENT ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE SUBJECT MATTER THEREOF, OR ANY RESULTING TRANSACTION ("CLAIM"), SHALL BE DECIDED BY NEUTRAL BINDING ARBITRATION BY A SINGLE NEUTRAL ARBITRATOR IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1280 THROUGH 1294.2, INCLUSIVE, INCLUDING WITHOUT LIMITATION SECTION 1283.05; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL HAVE THE DISCRETION TO MODIFY THE TIME LIMITS SET FORTH IN SECTION 1282.2(a)(2). THE ARBITRATOR SHALL BE A RETIRED JUDGE SELECTED FROM THE PANEL OF JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("JAMS"). IF THE PARTIES TO THE ARBITRATION ARE UNABLE TO AGREE ON THE SELECTION OF A RETIRED JUDGE FROM THE JAMS PANEL, JAMS WILL PROVIDE A LIST OF AVAILABLE JUDGES, CONTAINING A NUMBER OF JUDGES EQUAL TO THE NUMBER OF PARTIES TO THE ARBITRATION PLUS ONE (1), AND EACH PARTY TO THE ARBITRATION SHALL STRIKE ONE NAME FROM THE LIST. THE REMAINING JUDGE WILL SERVE AS THE ARBITRATOR. IF JAMS IS NO LONGER IN EXISTENCE AT THE TIME OF ANY DEMAND FOR ARBITRATION HEREUNDER, THE ARBITRATOR SHALL BE A RETIRED JUDGE AGREED TO BY THE PARTIES TO THE ARBITRATION OR, IF THE PARTIES ARE UNABLE TO SO AGREE, A RETIRED JUDGE SELECTED FROM A PANEL OF ANY OTHER ORGANIZATION OF RETIRED JUDGES SIMILAR TO JAMS IN ACCORDANCE WITH THE SELECTION PROCEDURES SET FORTH HEREIN. ANY PROCEEDINGS HEREUNDER SHALL TAKE PLACE IN SANTA CLARA COUNTY OR SUCH OTHER LOCATION AGREED TO BY THE PARTIES TO THE ARBITRATION, AND THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF THE EVIDENCE CODE, SHALL CONTROL ANY DECISION MADE BY THE ARBITRATOR AS A PART OF THE ARBITRATION. THE ARBITRATION HEARING SHALL BE SCHEDULED FOR A DATE WITHIN ONE HUNDRED TWENTY (120) DAYS AFTER THE DEMAND FOR ARBITRATION HAS BEEN MADE IN ACCORDANCE WITH THE PROVISIONS

OF THIS PARAGRAPH 6. THE ARBITRATION FEES AND COSTS SHALL BE ADVANCED IN EQUAL SHARES BY THE PARTIES TO THE ARBITRATION, SUBJECT TO THE PREVAILING PARTY'S RIGHT TO REIMBURSEMENT AS PROVIDED IN THIS PARAGRAPH 6. THE ARBITRATOR SHALL AWARD TO THE PREVAILING PARTY, AND THE PREVAILING PARTY SHALL RECOVER, ATTORNEYS' AND EXPERTS' FEES AND COSTS AND COSTS OF THE ARBITRATION. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. ALL COSTS AND FEES, INCLUDING ATTORNEYS' AND EXPERTS' FEES AND COSTS, INCURRED IN CONNECTION WITH THE CONFIRMATION OR ENFORCEMENT OF THE ARBITRATION AWARD SHALL BE RECOVERED BY THE PREVAILING PARTY. ANY DEMAND FOR ARBITRATION MUST BE IN WRITING AND MUST BE MADE UPON ALL PARTIES TO THE ARBITRATION (IN ACCORDANCE WITH THE NOTICE PROVISIONS OF PARAGRAPH 8(a) HEREOF) AND FILED WITH JAMS OR SUCH OTHER SIMILAR ORGANIZATION DESCRIBED ABOVE. THE DEMAND MUST CONTAIN A DESCRIPTION OF THE CLAIM, THE AMOUNT INVOLVED (IF APPLICABLE), AND THE REMEDIES SOUGHT. ANY DEMAND FOR ARBITRATION ARISING OUT OF OR RELATED TO A DISTRICT DETERMINATION PURSUANT TO THE PROVISIONS OF PARAGRAPH 5 HEREOF MUST BE MADE ON OR BEFORE THE DATE THAT IS THIRTY (30) DAYS AFTER DISTRICT HAS PROVIDED ITS DETERMINATION NOTICE PURSUANT THERETO. ANY OTHER DEMAND FOR ARBITRATION HEREUNDER MUST BE MADE ON OR BEFORE THE DATE THAT IS ONE HUNDRED EIGHTY (180) DAYS AFTER THE ACCRUAL OF THE CLAIM. ANY CLAIM OF AN AGGRIEVED PARTY SHALL BE DEEMED WAIVED BY SUCH PARTY AND SHALL AUTOMATICALLY TERMINATE AND BE ABSOLUTELY BARRED UNLESS A DEMAND FOR ARBITRATION OF SUCH CLAIM HAS BEEN MADE BY SUCH PARTY WITHIN THE TIME PERIOD APPLICABLE TO SUCH DEMAND AS SET FORTH IN THE PRECEDING TWO SENTENCES OF THIS PARAGRAPH 6.

THE FILING OF A JUDICIAL ACTION FOR INJUNCTION OR OTHER PROVISIONAL REMEDIES SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT TO ARBITRATE UNDER THIS PARAGRAPH 6.

NOTICE: BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Initials: District: AM
Association: SDR
Club: AM

7. **Term.** The term of this Agreement shall commence as of the Effective Date and, unless sooner terminated by mutual written consent of District, Association and Club, shall terminate upon the first to occur of the following: (a) any dissolution of the District in accordance with the GHAD Law; or (b) the termination of that certain Declarations of Covenants, Conditions and Restrictions of Silver Creek Valley Country Club, recorded April 27, 1992, as instrument number 11333189, Official Records of Santa Clara County, California (as thereafter amended in accordance therewith) in accordance with the provisions thereof.

8. **General Provisions.**

(a) **Notices.** Any notice, demand, request or other communication under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of service if served personally on the party to whom notice is to be given; (ii) on the date of transmittal of such notice to such party by telecopier device capable of creating a written record of such notice and its receipt, with an original of such notice deposited in first class mail addressed as set forth below; or (iii) forty-eight (48) hours following deposit of such notice in registered or certified mail, postage prepaid and return receipt requested, and addressed to such party at its address as hereinafter set forth or such other address as the parties may hereafter designate:

To District: Silver Creek Valley Country Club
Geologic Hazard Abatement District
24665 Glenwood Drive
Los Gatos, California 95030
Attention: General Manager
Telecopier No.: (408) 353-6043

To Association: Silver Creek Valley Country Club
Homeowners Association
c/o Vierra Moore and Santos
P. O. Box 7915
Stockton, California 95207
Attention: George Moore
Telecopier No.: (209) 957-7048

To Club:

Silver Creek Valley Country Club, Inc.
5460 Country Club Parkway
San Jose, California 95138
Attention: General Manager
Telecopier No.: (408) 239-5777

(b) **Entire Agreement.** This Agreement, including all recitals and exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and any and all prior negotiations, understandings and agreements with respect thereto, whether written or oral, are superseded and merged herein. This Agreement may not be amended, altered or modified except by a writing executed by all parties hereto; provided, however, that the parties acknowledge and agree that the partial lists of Association Work, Club Work and/or District Work on Exhibit "A", Exhibit "B" and/or Exhibit "C", respectively, may be amended at any time by mutual agreement of the parties and that any such amendment shall be effective without the necessity of any amendment to any other provision of this Agreement.

(c) **Waiver.** No waiver shall be effective unless made in writing by the party against whom the waiver is asserted. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

(d) **No Joint Venture.** This Agreement shall not create nor be deemed under any circumstances to create any joint venture or partnership between any or all of the parties or to render any or all of the parties joint venturers or partners.

(e) **Construction.** When the context and construction of this Agreement so require, (i) all words used in the singular shall be deemed to have been used in the plural and vice versa; (ii) all words used in the masculine or neuter gender shall be deemed to include the feminine gender and vice versa; (iii) the terms "hereof," "herein," "hereunder," and similar terms shall be construed to refer to this Agreement in its entirety and not to any particular section or paragraph thereof; and (iv) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to." All headings appearing in this Agreement are for convenience only and shall be disregarded in construing this Agreement. Each party represents, warrants and acknowledges that such party has participated in the negotiation and drafting of this Agreement, that such party has had the opportunity to review the provisions of this Agreement with its own independent legal counsel and other advisors, and that this Agreement is executed voluntarily and with full knowledge and understanding of its meaning and significance.

(f) **Governing Law.** This Agreement has been entered into and shall be governed by the internal laws of the State of California.

(g) **Attorneys' Fees.** Subject to the provisions of Paragraph 6 hereof, the prevailing party in any action or proceeding arising out of or related to this Agreement or the subject matter hereof, shall be entitled to recover its costs and expenses, including reasonable attorneys' and experts' fees and costs.

(h) **Successors and Assigns.** No party to this Agreement shall transfer or assign any of its rights or obligations hereunder separate and apart from any conveyance of Association Areas and/or

Club Areas without the prior written consent of all other parties to this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective representatives, agents, successors and assigns. The provisions of this Agreement shall constitute covenants running with the land comprising the Association Areas and Club Areas for the reciprocal benefit and burden thereof, and shall be binding upon each successive owner, during its/his/her ownership, of any portion of the Association Areas and/or Club Areas and upon each person or entity having any interest therein derived through any owner thereof. To the extent any provision of this Agreement is deemed not to constitute a covenant running with the land, such provision shall be deemed an equitable servitude. Notwithstanding the preceding provisions of this Paragraph 8(h), upon the conveyance of any real property comprising any portion of the Association Areas and/or Club Areas to the owner of an adjacent residential lot by means of a lot line adjustment, in accordance with the Association Governing Documents and/or Club Governing Documents and applicable law, such real property shall no longer be subject to or bound by the provisions of this Agreement and shall thereby be automatically released therefrom.

(i) **Severability.** If any term or provision hereof, or the application of it to any party or circumstance, shall be held invalid or unenforceable for any reason whatsoever, the remainder of this Agreement and the application of such term or provision to another party or circumstance shall not be affected thereby, the terms and provisions of this Agreement being severable in any such instance.

(j) **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

(k) **No Obligation for Residential Units.** Neither this Agreement nor any actions taken by Association, Club or District pursuant thereto shall be deemed under any circumstance to create or give rise to any obligation, responsibility or liability whatsoever on the part of Association, Club or District with respect to any portion of the Project containing residential lots or units.

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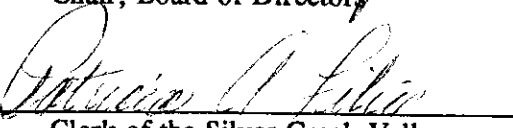
(1) **Time of the Essence.** Unless otherwise expressly specified herein, all references in this Agreement to "days" shall mean and refer to calendar days. Time is of the essence of this Agreement and each and every provision and obligation thereunder.

IN WITNESS WHEREOF, District, Association and Club have executed this Agreement as of the Effective Date.

"DISTRICT"

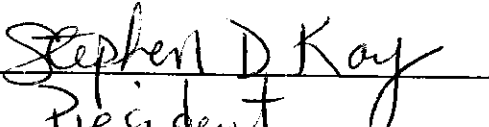
SILVER CREEK VALLEY COUNTRY CLUB GEOLOGIC HAZARD ABATEMENT DISTRICT, a political subdivision of the State of California

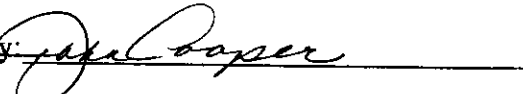
By: 
Chair, Board of Directors

By: 
Clerk of the Silver Creek Valley Country Club Geologic Hazard Abatement District

"ASSOCIATION"

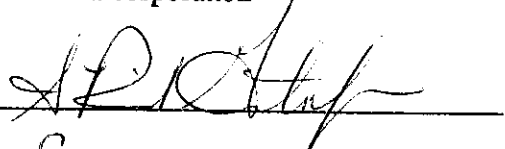
SILVER CREEK VALLEY COUNTRY CLUB HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation

By: 
Its: President

By: 
Its: Secretary

"CLUB"

SILVER CREEK VALLEY COUNTRY CLUB, INC., a California corporation

By: 
Its: PRESIDENT

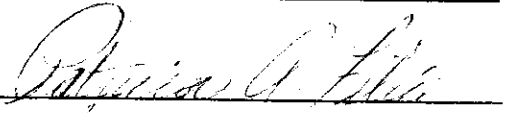
By: 
Its: Secretary

EXHIBIT A
to
**Cooperation Agreement for Maintenance, Repairs and Improvements
at Silver Creek Valley Country Club**

PARTIAL LIST OF ASSOCIATION WORK

1. Maintain existing vegetation and ground cover for erosion protection.
2. Increase ground cover plantings as needed to further reduce erosion.
3. Maintain and repair lined drainage ditches.
4. Maintain and repair natural drainage ways in Association Areas to protect them from excess erosion.
5. Apply jute mesh and/or other synthetic erosion control fabrics in local areas to protect from excess erosion.
6. Repair of rills, berms, ditches and other drainage features, including cleanup of deposited materials.
7. Maintain and repair irrigation lines and equipment.
8. Maintain irrigation rates to minimize runoff, seeps, and destabilizing quantities of water.
9. Maintain and repair drainage lines, inlets, outlets, lakes, and equipment to prevent or minimize any overland flows, flooding, and lake leakage.
10. Allow annual ground cover vegetation on slopes to develop mature seeds prior to cutting or mowing.

EXHIBIT B
to
**Cooperation Agreement for Maintenance, Repairs and Improvements at
Silver Creek Valley Country Club**

PARTIAL LIST OF CLUB WORK

1. Maintain existing vegetation and ground cover for erosion protection.
2. Increase ground cover plantings as needed to further reduce erosion.
3. Maintain and repair lined drainage ditches.
4. Maintain and repair natural drainage ways in Club Areas to protect them from excess erosion.
5. Apply jute mesh and/or other synthetic erosion control fabrics in local areas to protect from excess erosion.
6. Repair of rills, berms, ditches and other drainage features, including cleanup of deposited materials.
7. Maintain and repair irrigation lines and equipment.
8. Maintain irrigation rates to minimize runoff, seeps, and destabilizing quantities of water.
9. Maintain and repair drainage lines, inlets, outlets, lakes, and equipment to prevent or minimize any overland flows, flooding, and lake leakage.
10. Allow annual ground cover vegetation on slopes to develop mature seeds prior to cutting or mowing.
11. In addition to Items 1-10 above, following a determination of the factors listed in Item 11(a) below, Club shall, if required as a result of such determination, perform or participate in the work described in Items 11(b) and (c) below. The cost limitations for such work as set forth in Items 11(b) and (c) are based on the estimated construction (not bid or actual) cost per project. In case of disagreement regarding application of this item, the District, in accordance with Section 5 of the Agreement (and subject to Section 6 of the Agreement), will determine the project estimate and scope of the project(s), which may involve combining or separating items of work into one or more reasonable project(s). The bid or actual cost shall not retroactively change the project responsibility.
 - (a) The following factors shall first be determined:
 - (i) Club will perform all repairs of Club Areas which require minimal or no design and/or supervision by geotechnical or engineering professionals. District may, in its discretion, assist in or take over a project if it requires a higher level of

expertise to bring the project to completion, or if the project is beyond Club's ability to completely fund the project.

- (ii) Club will be solely responsible for all repairs of ground movements wholly contained within Club Areas and not posing a threat to any other property. Club also will repair ground movements of Club Areas which are found to not threaten other property, but are perceived by other owners to threaten their property, and when so directed by District.
 - (iii) District will inspect all ground movements of Club Areas when requested by Club and will consult with Club on any needed maintenance or repairs of Club Areas.
 - (iv) Ground movement which is found to occur across multiple property ownerships, or to threaten other property ownerships, and which requires substantial design and/or supervision by geotechnical or engineering professionals for its repair, will be undertaken by District at its discretion, subject to the provisions of 11(c) below and other applicable provisions of the Agreement.
- (b) Subject to the determination under Item 11(a), Club shall have sole responsibility to repair, stabilize, and/or reconstruct any ground movement, landslide, debris flow, or other ground failure:
- (i) Which is wholly located in Club Areas; and
 - (ii) The cost of the total work is estimated to not exceed the Base Amount (as defined below).
- (c) Subject to the determination under Item 11(a), Club shall have responsibility to participate in any repair, stabilization, and/or reconstruction, to the extent the same ground movement, landslide, debris flow, or other ground failure:
- (i) Is partially located in Club Areas; and
 - (ii) The cost of Club's participation in the work is estimated to not exceed the Base Amount (as defined below).

As used herein, "Base Amount" shall mean the sum of \$50,000, adjusted annually, on the anniversary date of the Agreement, in proportion to the change in the Engineering News Record Construction Cost Index [March 1994=6517] for San Francisco Region.

EXHIBIT C
to
**Cooperation Agreement for Maintenance, Repairs and Improvements at
Silver Creek Valley Country Club**

PARTIAL LIST OF DISTRICT WORK

1. Repair damage from offsite water causing surface erosion or contributing to slides.
2. Inspection and maintenance of subdrainage system, including cleanouts and outlets.
3. Inspection and maintenance of test wells and settlement observation monuments.
4. Repair of ground movement or other ground failure (a) which is found (i) to occur across multiple property ownerships (i.e., Association Areas and Club Areas), or (ii) to threaten property ownership(s) other than the property ownership in which the ground movement or failure occurs, or (iii) to occur upon a single property ownership (i.e., Association Areas or Club Areas) and to pose a threat or cause damage to any improvements; and (b) which requires substantial design and/or supervision by geotechnical or engineering professionals for its repair, will be undertaken by District (subject to Club's obligations under Item 11 of Exhibit "B"). Mitigation, repair, or stabilization work that requires exercise of eminent domain, requires an emergency response for which the District is specially prepared, or requires other special abilities unique to the District may be partially or fully undertaken by the District at its discretion. District will inspect all ground movements of Association Areas when requested by Association and will consult with Association on any needed maintenance or repairs of Association Areas.
5. The installation of certain additional improvements may be undertaken wholly by the District when the District determines that the following criteria are met:
 - (a) A permanent new improvement is required to mitigate a geologic hazard; or
 - (b) The improvement work requires the use of a licensed engineer or geologist for design and/or inspection.

Examples may include:

- Additional drainage improvements that need to be constructed to mitigate erosion problems and geologic hazards.
- Other permanent and new improvements required to mitigate erosion problems and geologic hazards.
- Works necessary to stabilize the land, for example: retaining walls, subdrains, slope buttressing.

6. The installation of certain additional improvements to be paid for by the District may be undertaken by the District through the forces of the Club and/or Association if the improvement does not meet the requirements of item 5(a) or 5(b) above.
 - (a) Normally the District would determine the need, direct the Club and/or Association to perform it at District expense, and the District would provide minimal or no field direction.
 - (b) Occasionally the District could determine the need, direct the Club and/or Association to perform it at District expense, and provide full field direction.
7. Non-emergency work may be discussed with the Club and/or Association to incorporate reasonable architectural treatments. The District will attempt to schedule and use construction methods that reduce disruption of Club and/or Association activities. The District will balance these considerations against District needs and cost constraints.
8. Nothing in this exhibit shall extend any right of review, acceptance, or rejection to either the Club and/or Association as to any work the District determines is necessary.