

SAFECO/S-584270

When Recorded Mail to: 2288

Stephen W. Lusk
2254 Moore St., Ste. 101
San Diego, CA 92110

FILE/PAGE NO. 79-237311
BOOK 1979
RECORDED REQUEST OF

SAFECO TITLE INSURANCE COMPANY

JUN 8 10 40 AM '79

OFFICIAL RECORDS
RECORDER
SAN DIEGO COUNTY, CALIF.

DECLARATION OF RESTRICTIONS
FOR

3769 FIRST AVENUE
CONDOMINIUMS

* * *

\$68.00/2

This Declaration is made this 7TH day of JUNE, 1979
by Mascot Realty, Inc, a California Corporation, hereinafter
referred to as Declarant.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property
located in the County of San Diego, State of California, and more
particularly described in Legal Exhibit "A", attached hereto and in-
corporated herein by reference:

WHEREAS, it is the intention of Declarant to subdivide
said real property described above into condominium estates pur-
suant to the provisions of Title 6, Part 4, Division Second, of
the Civil Code of the State of California, by means of deed in the
form attached hereto and marked Exhibit "B" and to impose thereon
mutually beneficial restrictions under a general plan or scheme of
improvement for the benefit of all the condominium estates created:

WHEREAS, there has been recorded a condominium plan
pursuant to Section 1351 of the Civil Code of the State of Cal-
ifornia covering the condominium property, including such amend-
ments thereto as may from time to time be recorded.

NOW, THEREFORE, Declarant hereby declares that all
property described above is held and shall be held, conveyed,
hypothecated or encumbered, leased, rented, used, occupied and
improved subject to the following limitations, covenants, con-
ditions and restrictions, all of which are declared and agreed

-1-

79-237311
60

upon for the purpose of enhancing and protecting the value, desirability and attractiveness of said property and every part and portion thereof. All of said limitations, covenants, conditions and restrictions are hereby established and imposed upon said real property for the benefit of said tract, and each and every individual unit hereinafter described and of each owner of one or more condominiums or the owner of an interest of any kind or character in said property. All of said limitations, covenants, conditions and restrictions shall run with the land and shall be binding on all parties having or acquiring a right, title or interest in said property or any part thereof whether as sole owner, joint owners, lessees, tenants, occupants, or otherwise. Each and all of said limitations, covenants, conditions and restrictions shall be deemed to be and shall be construed as equitable servitudes enforceable by any of the owners of any of said individual condominiums or any interest in said property against any other owner or owners thereof, including Declarant.

ARTICLE I

DEFINITIONS

- 1.1 Association shall mean the 3769 FIRST AVENUE CONDOMINIUMS OWNERS ASSOCIATION, a non-profit unincorporated association, and its successors and assigns as charged with the duties and responsibilities set forth herein.
- 1.2 Board shall mean the Board of Directors of the Association.
- 1.3 Common Area shall mean and refer to all portions of the Condominium Property as described in Exhibit "A" hereto, not located within a Unit.
- 1.4 Condominium shall mean and refer to a fee simple estate in the Condominium Property or portions thereof as defined in California Civil Code Section 783 and shall consist of a separate interest in a Unit and an undivided fractional interest as a tenant in common in the Common Area. Any owner may hold or acquire more than one condominium.
- 1.5 Condominium Project shall mean the entire parcel of real property divided or to be divided into condominiums, including all structures thereon.

- 1.6 Declarant shall mean and refer to Mascot Realty, Inc., a California corporation, its successors and assigns if such successors or assigns should acquire the Condominium Property from the Declarant for the purpose of development.
- 1.7 Declaration shall mean this instrument recorded pursuant to the provisions of Section 1350 and following of the California Civil Code relating to Condominiums.
- 1.8 Member shall mean any person or entity holding membership in the association. A member of the Association shall be entitled to one vote for each subdivision interest which he owns. Membership shall be appurtenant to and may not be separated from ownership of any condominium.
- 1.9 Mortgage shall mean and refer to a deed of trust as well as a mortgage, on all or any part of the project, including the mortgage of a condominium.
- 1.10 Mortgagee shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgage.
- 1.11 Owner shall mean and refer to any person or entity who is the record fee owner of a condominium. If a condominium is owned by more than one person, each such person shall be a member of the Association, but there shall be no more than one vote for each subdivision interest owned.
- 1.12 Structural Components of Dwellings shall mean the buildings or edifices in which units are located, but which are part of the common area not being included within the boundaries of the unit or units located therein.
- 1.13 Unit shall mean the elements of a condominium which are not owned in common with the owners of other condominiums in this condominium project.
- 1.14 Exclusive Use Area shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to the Owner as shown and described on the Condominium Plan and shall consist of patios and/or balconies and parking spaces, if any, bearing the same number as the Unit.
- 1.15 Parking Spaces shall mean and refer to the 16 individually numbered spaces, which are Exclusive Use Areas and will be assigned by the Declarant in the first deed out, thereafter to be appurtenant to said Living Unit.
- 1.16 Bylaws shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

ARTICLE II

UNIT BOUNDARIES

The boundaries of the space in each Unit granted are the interior surfaces of the perimeter walls, floors, ceiling, windows and doors thereof and exposed beams abutting thereto, and the Unit includes both the portions of the building so described and the air space so encompassed. The following are not part of said Unit; bearing walls, columns, floors (other than carpeting or other floor coverings), roofs, foundations, reservoir tanks, pumps, and other central services, pipes, duct,

79-237311
60



flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the Unit. In interpreting deeds and plans, the existing physical boundaries of the Unit, or of a Unit reconstructed in substantial accordance with the original plans thereof, shall be presumed to be its boundaries, rather than the metes and bounds expressed in the deed or plan regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.

ARTICLE III
EASEMENTS

3.1 Easement for settlement. None of the rights and obligations of the Owners shall be altered in any way by encroachments due to settlement or shifting of a building or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, provided, however, that in no event shall a valid easement for encroachment be created in favor of any Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

3.2 Easements for Ingress and Egress and Other Purposes. There shall be non-exclusive easements appurtenant to each Unit for ingress and egress to and from each Unit in, over and through the Common Area, and easements for support, maintenance and encroachment as specified in the deed or bylaw. Each Unit shall be subject to the right of the Board or its agents or employees to enter or encroach therein or thereon as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Area of the Owners in common. There shall be an exclusive easement appurtenant to each residential unit for the use

and enjoyment of the patio and/or decking area adjacent to and appurtenant to each residential unit.

3.3 Utility Easements. Easements over the project for the installation of electric, telephone, water, gas, cable television, sanitary sewer lines and facilities, and drainage facilities as shown on the recorded map of the project and as may be hereafter required or needed to service the project are hereby reserved by Declarant, together with the right to grant and transfer the same.

ARTICLE IV
COMMON AREAS

4.1 Interest in Common Area. Each Unit Owner shall be entitled to have an equal undivided one-sixteenth (1/16) interest as a tenant in common in the Common Area.

4.2 No Separate Conveyance. The above undivided interests are hereby established and are to be conveyed with the Units and cannot be changed, and said Declarant, its successors and assigns, and grantees, covenant and agree that the undivided interest in the Common Areas and the fee titles to the respective units conveyed therewith, shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered or released from liens with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

4.3 Member's Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every assessed Condominium, subject to the following provisions:

- (a) The right of the Association to establish uniform

79-237311
60

rules regulations pertaining to the use of the Common Areas.

(b) The right of the Association to suspend the voting rights of a member or members for any period during which any assessment against his Condominium remains unpaid and delinquent, and for a period not to exceed thirty days for any single infraction of the rules and regulations of the Association, provided that any suspension of such voting rights, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof after reasonable notice and opportunity for hearing given and held in accordance with the bylaws of the Association.

(c) The right of Declarant (and its sales agents and representatives) to the non-exclusive use of the Common Areas and the facilities thereof, for display and exhibit purposes in connection with the sale of the Condominiums within the tract, which rights Declarant hereby reserves; provided, however, that such use shall not be for a period beyond the first sale by the Declarant of all the Units in the project; provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise unreasonably restrict the members in their use and in enjoyment of the Common Areas or facilities thereon.

4.4 Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to his guests, invitees, tenants, members of his family, or contract purchases who reside on the property.

4.5 Waiver of Use. No member may exempt himself from personal liability for assessments duly levied by the Association nor release the Condominium owned by him from the liens and charges hereof,

79-237311
60

by waiver of the use and enjoyment of the Common Areas and the facilities thereon or by abandonment of his condominium.

4.6 Additional Provisions Relating to Common Areas. The Declarant, its successors and assigns, and all future owners of the Condominiums, by acceptance of their respective deeds, covenant and agree as follows:

(a) That the Common Areas shall remain undivided, and no owner shall bring any action for partition except as provided in Article V hereof, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the project.

(b) In the event the improved part of the project is partially or totally destroyed, and then rebuilt, the owners of Units agree that minor encroachments of parts of the Common Areas due to construction shall be permitted and that valid easements for said encroachments and the maintenance thereof shall exist.

(c) That a non-exclusive easement for ingress, egress, and support through the Common Areas is appurtenant to each Unit and the Common Areas are subject to such easements.

(d) That the Association shall have the responsibility to manage and maintain all of the Common Areas including but not limited to the common walkways, parking areas and driveways, and the exterior of the building, and such maintenance shall be of a high quality so as to keep the entire project in a first-class condition and in a good state of repair.

ARTICLE V

PARTITION

5.1 Partition. Any condominium project subject to this

79-237311
60

Declaration may be partitioned in the manner provided by law upon a showing of one or more of the following:

(a) This Declaration has been of record for more than fifty (50) years and the Owners holding in aggregate more than fifty (50%) percent interest in the Common Area have elected to cause partition; or

(b) The Owners holding in aggregate more than eighty percent (80%) interest in the Common Area have elected to cause partition; or

(c) Events have occurred or circumstances exist that constitute permissive or mandatory grounds for partition or a sale of the project by the Board as provided elsewhere in this Declaration; or

(d) Events have occurred or circumstances exist that constitute permissive or mandatory grounds for partition under the provisions of Section 752b of the California Code of Civil Procedure, as from time to time, amended, or other California statutes providing for the partition of condominium projects created pursuant to Section 1350 and following of the California Civil Code relating to condominiums.

ARTICLE VI

MEMBERSHIP IN ASSOCIATION

6.1 Membership. Every Owner shall be a member of the Association, which shall be a non-profit unincorporated association. There shall be no other qualifications for membership.

6.2 Termination of Membership. A Member's membership in the Association shall cease upon the termination of such member's status as an Owner, whether by the sale, assignment or conveyance

79-237311
60

of his ownership interest or otherwise. An Owner shall have no liability for assessments levied or occurring from and after the date on which his status as an Owner is terminated as herein provided.

6.3 Avoiding Membership. An Owner may not avoid the obligations of membership in the Association. Without limiting the application of the foregoing, an Owner's non-use of all or part of the Common Area, renunciation or abandonment of his unit or condominium, or any act of abandonment or renunciation shall not relieve him of the obligations of membership.

6.4 Successors to Declarant. The immediate successors to Declarant herein, being the first purchases of condominiums, shall be liable for assessments levied only after the date of acquisition of title to their condominiums unless otherwise agreed.

ARTICLE VII

ORGANIZATION AND ELECTIONS

7.1 Organization Meeting. The owners of the condominiums shall hold an organizational meeting of the Association within thirty (30) days following the sale by Declarant of nine condominium units within the Project and in no event later than six (6) months from the date of the first sale. The Declarant shall call the organization meeting at a time and place in the city of San Diego to be more particularly specified in a written notice to be given by the Declarant at least ten (10) days and not more than forty-five (45) days prior to the date of such meeting. Thereafter, annual meetings of such owners shall be held at 8:00 p.m. on the third Monday of January of each year, or at such time as shall be determined by action of the Association's Board of Directors. The secretary of the Association shall give notice in writing of each

annual meeting at least ten (10) days prior thereto. Special meetings may be called as hereinafter provided. At all meetings of the Association, the voting rights shall be determined as provided in the Association Bylaws and herein.

7.2 Elections. At the first organization meeting, the members shall elect a five (5) member Board of Directors to serve until the first annual meeting, and thereafter at each annual meeting, the members shall elect for a term of one (1) year a Board of Directors, consisting of five (5) members, all of whom shall be owners or agents of owners of condominiums in the Project, whose terms of office shall be concurrent or staggered on a three-two basis. Every owner entitled to vote at any election of the Board of Directors may cumulate his vote and give one candidate a number of votes equal to the the number of directors to be elected, or may distribute his vote on the same principal among as many candidates as he desires. An owner shall have one vote for each unit owned and voting shall be by secret written ballot.

At least one member of the Board shall be elected solely by the votes of owners other than Declarant at any election in which the owners other than Declarant do not have a sufficient percentage of the voting power of the Association to elect at least one Board member through the cumulating of all of their votes, in accordance with procedures set forth in the Bylaws of the Association.

Vacancies in the Board of Directors caused by any reason other than removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

79-237311

60

The Board of Directors shall also elect from among them a president, vice president, secretary and treasurer of the Association. The general powers and duties of the Board shall be as hereinafter set forth. Bylaws and/or regulations shall be adopted at the organization meeting or any subsequent meeting of the Association; provided, however, that this Declaration may not be amended directly or indirectly in any particular by the enactment of any Bylaw or regulation, but only in the manner hereinafter provided. No provision of the Bylaws shall be effective if in conflict with the Declaration. In the case of conflict, the provisions of this Declaration shall prevail. At any such meetings Declarant shall be deemed to be the owner of any and all condominiums' then unsold.

ARTICLE VIII
MEETINGS, POWERS AND DUTIES OF ASSOCIATION

8.1 General Authority. In general, the Board shall have authority to conduct all business affairs of common interest to all owners. The powers of the Board shall include, but shall not be limited to, authority to: Collect the monthly maintenance charge from the owners' contract for and pay for utilities, repairs, janitor, gardening, trash and garbage removal, legal and accounting services, and such other services and expenses as shall be reasonably required for the maintenance of the Common Area; purchase and pay for insurance as hereinafter provided; purchase and pay for fidelity bonds for its officers and employees; purchase and pay for necessary supplies and personal property for the Common Area; pay taxes and special assessments which are or would become a lien on the Project or Common Area if for any reason the Units and Common

79-23731 1
60

Area are not separately assessed; to establish a reserve for replacements for the various components and elements of the Common Areas; to formulate rules for the operation and use of Common Areas or facilities; prepare budgets and financial statements for the Association as provided in the governing instruments.

8.2 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Board shall be authorized to impose monetary penalties, temporary suspension of an Owner's rights as a member of the Association, or such other discipline as the Board may deem appropriate, for failure to comply with the provisions hereof or rules or regulations enacted pursuant to authority granted herein, provided, however, that the Board has first given 30 days prior written notice to the accused setting forth the alleged violations specifically, and inviting the accused to attend the Board meeting at which the matter will be considered and to be heard.

8.3 Contracts. The Board shall have authority to contract with qualified persons or corporations for the professional handling of all or any part of the services required for the maintenance of said project and/or the handling of the financial affairs thereof; provided, however, that any such contract to be valid must be

79-237311
60

ratified by a vote and/or written assent of a majority of the voting power of the Association residing in members other than Declarant, at any regularly held meeting of the Owners, within thirty (30) days from the date of execution of said contract, or the same shall be void and of no effect.

The Board shall not enter into, nor shall the Owners ratify, any contract with a term in excess of one (1) year unless reasonable cancellation provisions are included in the contract. Said professional manager may further be authorized to file any notice and to take any legal action on behalf of the Owners, which is within the power and authority of the Board.

8.4(a) Prohibited Acts. The Board shall not have the authority to act in the following matters, but only the Condominium Owners shall have such authority:

- (1) Amend or repeal this Declaration or the Bylaws or regulations.
- (2) Recall any officer or member of the Board.
- (3) Levy special assessments for emergency expenditures.
- (4) Determine not to rebuild improvements after partial or total destruction.
- (5) Authorize or ratify appointment of financial or management agent.

8.4(b) The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association residing in members other than Declarant:

- (1) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common

79-237311
60

or the Owners' Association for a term longer than one year with the following exceptions:

(a) A Management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(c) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits for short rate cancellation by the insured.

2. Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year.

3. Selling during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year.

4. Paying compensation to members of the Board or to officers of the Association for services performed in the conduct may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

8.5 Quorum. At all meetings of the members entitled to vote, fifty-one percent (51%) of such members shall be necessary to constitute a quorum. If any meeting cannot be held because a quorum is not present, the Owners present, either in person or by

proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which time the quorum requirement shall be reduced to fifty percent (50%) of the members entitled to vote. Except as provided below, if there is a quorum, a fifty-one percent (51%) vote of the members present either in person or by proxy and entitled to vote shall be sufficient for the passage of any motion or the adoption of any resolution. Where the Owner of any Condominium is a corporation or partnership, the nominee of such corporation or partnership shall have the voting rights and the right to be elected to serve on the Board.

8.6 Two Thirds Vote Requirement. The following matters shall require a vote of at least two-thirds (2/3) of the Owners present, either in person or by proxy, and entitled to vote.

- (a) The recall of any officer or member of the Board.
- (b) The levy of special assessments for emergency expenditures.
- (c) The authorization and/or ratification of a financial and/or management agent's contract.

8.7 Special Meetings. Special meetings may be called by a majority of a quorum of the Board or by any four (4) owners entitled to vote which desires to meet or by members representing not less than 15% of the voting power residing in members other than the subdivider, by written notice signed by those desiring to meet and sent by them to the Owners at least ten (10) days before the meeting. Notice of all meetings shall specify the place, date and hour of the meeting and, in the case of a special meeting, the general nature of the business to be transacted. At any meeting Declarant shall be deemed to be the Owner of any and all Condominium Units with in the Project unsold at the time.

8.8 Financial Statements and Budgets. The Board of Directors shall have an annual independent audit of the account or accounts of the Board.

A pro forma operating statement (budget) for each fiscal year shall be distributed to each member not less than sixty (60) days before the beginning of the fiscal year.

A balance sheet -- as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the subdivision interest and the name of the entity assessed.

A balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year and any audit report or other documents prepared by the auditor shall be distributed to each member within ninety (90) days after the close of the fiscal year.

8.9 Board Meeting. The Board shall conduct its organization meeting immediately upon the adjournment of the organization meeting of the Owners, and shall at such time elect from its members such officers as shall be designated in the Bylaws. The powers and duties of such officers shall be as set forth in the Bylaws. The annual meeting of the Board shall be held immediately upon adjournment of the annual meeting of the Owners. Regular and special meetings of the Boards shall be open to all member of the Association; provided, however, the members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may upon the vote of a majority of a quorum, adjourn a meeting and reconvene an executive session to discuss and vote upon personal matters, litigation in which the Association is or may become involved in other matters of a similar nature. Only members of the Board shall be entitled to attend executive sessions. The nature of any and all business to be considered in executive sessions shall first be announced in open session.

-16-

79-237311
60

8.10 Collections. The Board of Directors may, with the approval of fifty-one percent (51%) of the Owners present at any duly constituted meeting, delegate to a bank or other qualified financial or accounting firm the collection of maintenance charges, the disbursement thereof, and the preparation of said annual financial statements. But in such event, the Board of Directors shall be responsible to the Owners for the accurate handling and accounting of such funds, and the vouchers authorizing the payment of expenses from said maintenance funds shall be signed by not less than two (2) members of the Board of Directors.

8.11 Documentation. Any action to be taken by the Board of Directors as required herein which must be evidenced by a written document shall be executed by the Chairman and one (1) other member of the Board of Directors.

8.12 Acquisition of Personal Property. The Board may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise. Title to said personal property shall be taken in the name of the Association. The beneficial interest in said property shall not be transferable by an Owner except in connection with the sale of his Condominium, or where such property is being disposed of for the benefit of the Condominium Owners. A sale of a Condominium, as hereinafter provided, shall transfer to the purchaser ownership of the transferor's beneficial interest in such personal property.

8.13 General Maintenance. The Association shall have the duty and power to maintain and otherwise manage all of the Common Areas and all of its facilities including the exterior walls (but not door knobs or locks), common area walkways, parking areas, driveways,

79-23731

60

landscaping, and all property that may be acquired by the Association. Furthermore, the Association shall have the authority to obtain and pay for the common area refuse collection, electric services, lighting facilities, fire extinguishers, gardening and janitorial service, and may grant easements where necessary for utilities and sewer facilities over the Common Areas to serve the common and open space areas and the Condominiums.

8.14 Owner Maintenance. It shall be the obligation of each Condominium Owner to maintain, repair and replace, if required, at his own expense, all internal installations and components of his unit including but not limited to showers, baths, tiling, plumbing, sinks, toilets, electrical sockets, switches and wiring, hearing units, outlets, fans, windows (interior and exterior), sliding glass doors (interior floor surfaces, lighting installations, electrical appliances, and telephone equipment. Excepted from the provisions of this section shall be the malfunctioning of any system which is part of the Common Area and in which the problem necessitating work or service is caused by a malfunction originating within the Common Area. An Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any part of the Common Area or property located thereon belonging to the Association which has been damaged through his fault.

8.15 Exterior Maintenance of Condominiums.

(a) The Association shall provide exterior maintenance of each Condominium only as follows: Paint, maintain, and repair and replace (if required because of normal wear, tear, or deterioration) roofs, gutters, down spouts and exterior building surfaces.



(but not glass surfaces) and maintain the landscaping (including the trees, shrubs, grass and walks) within the Common Area.

Such Association exterior maintenance shall not include: glass surfaces; patio covers or other additions built or maintained within any patio areas by an Owner, repairs or replacements arising out of or caused by the willful or negligent act of the Owner, his family, guests, or invitees, or caused by earthquake or other Acts of God. Such excluded items shall be the responsibility of each Condominium Owner; provided, however, that if an Owner shall fail to maintain or make the repairs or replacements which are the responsibility of such Owner, as provided above then, upon a vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to the Owner, the Association shall have the right (but not the obligation) to enter the Condominium and provide such maintenance or make such repairs or replacements, and the cost thereof shall be added to the assessments chargeable to such Condominium and shall be payable to the Association by the Owner of such Condominium.

(b) An Owner shall grant the right of entry to the management agent or to any other person authorized by the Board in case of any emergency originating in or threatening his Unit, whether the Owner is present at the time or not. Similarly, an Owner shall permit other Owners, the Association, or their representatives, when so required, to enter his Unit for the purpose of performing installations, alterations, or repairs to the mechanical, plumbing, or electrical services, provided that requests for entry are made in advance and that such entry is at a time convenient to the

Owner. In case of an emergency, such right of entry shall be immediate.

8.16 Association Powers Exclusive. Except as otherwise provided to the contrary in this Declaration, the powers and duties enumerated in Section VIII shall be exclusively those of the Association. No Owner shall exercise such powers or perform such duties without the written consent of the Board. Without limiting or being limited by the foregoing, the Association shall have the exclusive power and duty to contract for all services, goods, insurance, and other items for which payment is to be made from the Maintenance Fund.

ARTICLE IX

COVENANT FOR MAINTENANCE ASSESSMENTS

9.1 Creation of Lien and Personal Obligation of Assessments.
The Declarant, for each Condominium owned by it within the project hereby covenants, and each Owner of any Condominium which becomes subject to the jurisdiction of the Association, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) regular assessments or charges, and (2) special assessments for capital improvements or other purposes; such assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest thereon and costs of collection thereof as hereafter provided, shall be a charge on the real property and shall be a lien upon the Condominium against which each such

79-237311
60

assessment is made upon the Association recording with the San Diego County Recorder a notice of assessment as provided in California Civil Code Section 1356. Each such assessment, together with such interest, costs, penalties, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Condominium at the time when such assessment fell due.

9.2 Regular Assessments.

(a) Regular assessments for the ordinary operation of the Association shall be made each year as follows: Within thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the cash required to meet the net charges to be paid during such year by the Association in the exercise of its powers and the performance of its duties (including a reasonable reserve for contingencies and replacements after taking into account any expected income and any surplus from the prior year's funds). The estimated cash requirement for the year shall be assessed to the owners in proportion to the percentage interest in the common area belonging to each owner based on one-sixteenth (1/16) of the total estimated cash requirement for each unit owned, i.e., the Owner of each Condominium shall be assessed an amount determined by multiplying the estimated cash requirement by his respective interest in the Common Area. Each Owner shall be obligated to pay such regular assessments to the Association in equal monthly installments on or before the first day of each month during the fiscal year, or in such other reasonable manner as the Board shall designate. In the event the Board shall fail to estimate the net charges to be paid during the fiscal year within thirty (30) days prior to the beginning of such year, the assessment for such fiscal

79-237311
60

Year shall be in the amount of the assessments for the next previous year, but only until such time as new assessments are fixed by the Board.

The Board may not, without the vote or written assent or combination thereof of a majority of the voting power of the Association residing in members other than Declarant impose a regular annual assessment per unit which is more than twenty percent (20%) greater than the regular assessment for the immediately preceding fiscal year.

9.3 Special Assessments. The Board shall levy special assessments where required by any provision of this Declaration. If the estimated cash requirement proves inadequate for any assessment or capital improvements made pursuant to any provisions herein, the Board may at any time levy a special assessment, which shall be assessed to the Owners in like proportions and on the same basis as that provided for regular assessments, except as otherwise provided in this Declaration. Each Owner against whom a special assessment is assessed shall be obligated to pay the special assessment within thirty (30) days of the date on which the Board acts to make the assessment unless the Board, when making the assessment, allows some greater period for its payment.

In any fiscal year, the Board may not, without the vote or written assent or combination thereof of a majority of the voting power of the Association residing in members other than Declarant, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except where the special

79-237311

60

assessment against a member is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the member and his interest in the project into compliance with this document and/or the Association Bylaws or other governing instruments promulgated under the authority thereof.

9.4 Uniform Rate. All general assessments shall be fixed at a uniform rate for all units.

9.5 Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an Officer of the Association, setting forth whether the regular and special assessments on a specified Condominium have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

9.6 Equal Maintenance Assessments. Each Condominium Unit in the Project shall bear one-sixteenth (1/16) of the total maintenance assessment.

9.7 Property Taxes. Each Condominium Unit shall be responsible for the payment of one-sixteenth (1/16) of any property taxes separately assessed against the Common Areas, together with the respective property tax assessed against the particular Unit.

9.8 Improvement and Bond Assessments. In the event the project is subject to any governmental improvement bond assessment or other special improvement assessment, each Condominium Unit shall bear one-sixteenth (1/16) of the cost thereof.

9.9 Date of Commencement of Regular Assessments and Fixing.

79-23731 1
60

Thereof. The regular assessments provided for herein shall commence as to all Condominiums covered by this Declaration on the date of recordation of a Deed to the first purchaser of a Condominium. Maintenance charges for fractions of a month shall be prorated. The Declarant shall pay its full prorate share of maintenance charges and property taxes on all unsold Condominiums.

An assessment period shall be deemed to be for the twelve (12) months of each fiscal year beginning on January 1 and ending on December 31 of the same year, provided that if the month of the commencement of the initial assessments shall be a month other than January, the assessment period for the first fractional year shall be deemed to end on December 31. The payments shall be due in advance on the first day of each succeeding month.

9.10 Maintenance Fund. Maintenance charges so collected shall be properly deposited in a commercial or savings account in a bank or savings and loan association to be selected by the Board, which account shall be clearly designated as the 3769 First Avenue Condominiums Maintenance Fund Account. The Board, or manager, as the case may be, shall have control of said account, and shall be responsible to the Owners for the maintenance of accurate records thereof at all times. No withdrawal shall be made from said account except to pay the charges and expenses for the common benefit of all Owners.

9.11 Delinquency. Any assessment provided for in this Declaration which is not said when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed \$1.00 per each delinquent assessment.

79-237311
60

If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the then legal rate, and the Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or, upon compliance with the notice provisions set forth herein, foreclose the lien (provided for in Paragraph 9.1 of this Article) against the Condominium, and here shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and, in the event a judgment is obtained, such judgment shall include said interest and reasonable attorneys' fees, together with the costs of action. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosures against such Owner or other Owners for the collection of such delinquent assessments.

9.12 Notice of Assessment. No action shall be brought to foreclose said assessment lien or to proceed under the power of sale herein less than thirty (30) days after the date of notice of assessment is deposited in the United States Mail, certified or registered, postage prepaid, to the Owner of said Condominium, and a copy thereof is recorded by the Association in the Office of the County Recorder in which the properties are located. Said notice of assessment must comply in form and content with the requirements of California Civil Code Section 1356.

9.13 Foreclosure Sale. Any such sale provided for above is to be conducted in accordance with the provisions of Section 2924, 2924b and 2924c of the Civil Code of the State of California, applicable to the exercise of powers of sale in mortgages and deeds

79-237311
60

of trust, or in any other manner permitted by law. The Association, after a vote by at least two-thirds (2/3) of the voting power, may, through its duly authorized agents, have the power to bid on the condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

9.14 During the Default. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officer of the Association shall file or record, as the case may be an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed fifteen dollars (\$15.00) to cover the costs of preparing and filing or recording such release.

9.15 Cumulative Remedies. The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recovery money judgment for unpaid assessments, as above provided.

9.16 Declarants Maintenance Authority. Prior to the holding of the organization meeting, at which time control and operation of the entire project shall be turned over to the Owners, the Declarant shall have the authority and responsibility for the management, supervision and control of all of the common area, and also of all unsold individual units within the project. During the period from the date of execution of a binding contract for the purchase of any Condominium until the date of recording of a conveyance of said Condominium to the purchaser or purchasers thereof the Declarant shall continue to have authority and responsibility

for its maintenance and shall have the exclusive right of possession of the individual unit contained therein, unless otherwise provided in the contract of sale; provided, however, that during such period, the Declarant shall have no authority to make any structural alteration to, or any extraordinary expenditure in connection with said unit without the prior consent of the purchaser or purchasers.

9.17 Declarant's Disbursements and Collections. The Declarant shall have the authority to expend from said maintenance account necessary funds for required maintenance of the Common Area of said project or for the common benefit of all the Owners. No expenditure may be made from said account for the cost of any labor and/or materials required in connection with the construction of any part or portion of said project or any of the improvements on said land, which are part of the original plans and specifications therefor. Within thirty (30) days following the organization meeting, the Declarant shall be required to present to the Owners a written financial statement of the deposits and withdrawals from said account from the date of establishment thereof, and any surplus remaining in said account belonging to the Owners shall be turned over to the Board of Directors or to such officer or agent of the Association as shall be designated by the Board of Directors.

9.18 Distribution of Maintenance Funds. It is understood and agreed that said Association is primarily organized for the convenience of the Owners and is a conduit of the Owners for the payment of each Owner's share of maintenance expenses as set forth above. The Association shall not carry on any business function of any kind or character for profit. With the consent of the holders of first trust deeds of records, any funds held by the Association

may from time to time be returned to the existing Owners.

ARTICLE X
UTILITIES

10.1 Utilities. The rights and duties of the Owners of the Condominiums with respect to sanitary sewer and water, electricity, gas and telephone lines and facilities shall be governed by the following:

(a) Whenever sanitary sewer house connections and/or water house connections or electricity, gas or telephone lines are installed within the project, which connections or any portion thereof lie in or upon Condominiums owned by other than the Owner of a Condominium served by said connections, the Owners of any Condominiums served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Condominiums or to have the utility companies enter upon the Condominiums in or upon which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when these same may be necessary as set forth below.

(b) Whenever sanitary sewer house connections and/or water house connections or electricity, gas, or telephone lines are installed within the project, which connections serve more than one Condominium, the Owner of each condominium served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Condominium.

-28-

-28a-

79-237311
60

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

-28a-

79-23731

respect to the hearing of the costs thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties. If any of the disputing Owners is a member of the Board of Directors, he (they) shall not be entitled to vote on such issue. The remaining non-disputing Board members shall temporarily appoint another Owner to serve on the Board for the purpose of voting on such dispute.

ARTICLE XI
INSURANCE

The Association shall maintain insurance (which shall comply as to form, content, and insuror with the requirements of any encumbrances upon the project) as follows:

11.1 Blanket Insurance. A blanket policy or policies of fire and casualty insurance with special form all risk coverage endorsements for the full insurance replacement cost from time to time of the Common Areas and the Units (or such other blanket, fire and casualty insurance as gives substantially equal or greater protection) insuring the Board and Owner or Owners of each Condominium hereunder, and their mortgagee or mortgagees, as their respective interests may appear, against loss due to fire and other casualty customarily insured against by homeowners, which policy or policies may provide for separate protection for each Condominium to the full insurable replacement cost thereof, and a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Condominium, if any, except that such policy or policies shall not operate so as to defeat the purpose or objectives of Article XIII (Damage and Destruction) hereof, and shall contain provisions to the extent possible protecting against any reduction in the amount of the process payable as a result of any fire or similar insurance

79-237311
60

independently carried by an Owner of or in respect to any individual Condominium.

11.2 Liability Insurance. A policy or policies insuring the Board, the Association, the Members and the Association's employees against any liability to the public, other Members and their invitees or tenants, incident to the ownership and use of the Common Area, and including the potential personal liability of the Members. Limits of liability under such policy of insurance shall not be less than five hundred thousand dollars (\$500,000.00) for any one accident and one hundred fifty thousand dollars (\$150,000.00) for property damage each occurrence, such limits and coverage to be reviewed at least annually by the Board and increased in its discretion. Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement wherein the rights of a named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

11.3 Payment of Premiums. The premiums for insurance purchased pursuant to the Paragraphs 11.1 and 11.2 shall be payable out of the maintenance fund. If any additional insurance is required due to extra hazardous use made of any unit or because of improvements to any Unit installed by its Owner which increased the premiums for the required amount of coverage, the cost thereof shall be assessed to the Owner of such unit. In order to facilitate the providing and maintaining of adequate and proper insurance, it is contemplated

79-237311
60

that Declarant may contract for blanket insurance coverage covering the entire project as contemplated by this Paragraph prior to or concurrently with the first sale or sales of Condominiums in connection with the financing of such sales, and any obligations or commitments for the payment of premiums or expenses otherwise incurred by Declarant under any such blanket policy or coverage, whether or not the same is also a personal obligation of the purchaser or purchasers of a Condominium, shall become an obligation of the Board and shall be paid for out of the maintenance fund as provided herein.

11.4 Individual Insurance. The Owner of any Condominium may purchase such fire and casualty insurance as he may deem advisable for his own account and at his own expense, except that the carrying of any insurance individually by any Owner shall not relieve him of the obligation to pay such portion of assessments as may be made from time to time for the purpose of paying premiums or other charges on fire and casualty insurance carried or contracted for by the Board for the benefit of the entire project, and provided that any such insurance shall contain a loss payable clause in favor of such Owner's mortgagee or mortgagees and the Board, as their respective interest may appear. No such insurance coverage or the terms of any such insurance policy shall defeat or contravene the purposes and intent of Article XIII (Damage and Destruction) hereof.

11.5 Notice of Cancellation. All insurance policies purchased by the Board for the mutual benefit of all Owners shall contain a provision that each Owner will receive a notice from the insurance company that said policy is in effect and that each Owner and each mortgagee will receive thirty (30) days' notice prior to

79-237311

60

cancellation or termination of said policy for any reason whatsoever.

11.6 Owner Insurance. Each Owner should provide adequate insurance on his personal property located within the project.

11.7 Authority to Negotiate Loss Settlement. Loss settlements shall be handled in accordance with the provisions of Article XIII herein (Damage and Destruction).

11.8 Mortgagees Control Over Insurance. No provision of this Declaration shall affect or limit the right of any first mortgagee to require that the proceeds of any policy of fire, casualty or other insurance referred to in this Article be paid to it for application or release as provided under the terms of the mortgage involved. No provision of this Declaration shall be construed as limiting in any way the right of any first mortgagee to require from the mortgagor such fire or other insurance as the first mortgagee in its sole discretion may require.

ARTICLE XII

USE RESTRICTIONS

In addition to all other covenants contained herein, the use of the project and each condominium unit herein and the Common Areas is subject to the following:

12.1 Business Usage Prohibited. None of the Condominium units shall be used except for residential purposes. No part of the project or condominiums therein shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, or any business, commercial, manufacturing, mercantile, storing, or other such non-residential purposes, except Declarant, its successors or assigns, may use the condominiums owned by it as

79-237311

60



models, and display and sales offices during the sales period.

12.2 Billboards. Except for the signs approved by the Board of Directors for the benefit of the entire project, no signs of any kind shall be displayed in the public view on or about the exterior of any unit, except one professional sign not exceeding 12 inches by 18 inches in size advertising said property for sale or lease. The foregoing is not applicable to signs used by the Declarant or its agents in connection with the original sale of said condominiums.

12.3 Owner Structural Changes. No structural alterations to the interior of any unit shall be made, and no plumbing or electrical work within any bearing or party walls shall be made by an individual Owner without the prior written consent of the Board, other than repairs, as above set forth.

12.4 Association Maintenance and Decoration Authority. The Board of Directors, or its duly appointed agent, including the manager, if any, shall have the exclusive right to paint, decorate, repair, maintain and alter or modify the exterior walls, railings, exterior door surfaces, roof, and all installations and improvements in the Common Area, and no Owner of a Condominium shall be permitted to do, or have done, any such work. The approval of the Board of Directors shall be required in writing for the installation of any awnings, sunshades, screen doors, or any antenna or structures on the roof of the project.

12.5 Pets. The reasonable determination as to whether and to what extent pets shall be permitted to be maintained on or in said project shall be made by vote of a quorum of the Owners at the organization meeting or any subsequently held duly constituted meeting of the Owners. Prior to the organizational meeting,

the Declarant shall have the right to reasonably determine what, if any, pets may be kept on or in said project. The Owners may not cause a pet to be removed which previously had been accepted or approved by the Declarant or the Owners.

12.6 Right of Entry. The Board of Directors or their duly appointed agent shall have the power to enter into any unit only when necessary in connection with maintenance or construction for which the Board of Directors is responsible.

12.7 Offensive Activities. No Owner shall permit or suffer anything to be done or kept upon or in his Unit or the Common Areas which will unreasonably increase the rate of insurance thereon or which will unreasonably obstruct or interfere with the rights of other Owners, their families, guests, and invitees, nor annoy them by unreasonable noises or otherwise, nor shall in any way interfere with the quiet enjoyment of each of the Owners of his respective condominium, nor will he commit or permit any nuisance, noxious or offensive activity, or any objectively immoral or illegal act to be committed thereon or therein. Each Owner shall comply with all of the requirements of the local or State Board of Health and with all other governmental agencies with respect to the occupancy and use of said premises.

12.8 Rubbish. All rubbish, trash, and garbage shall be regularly removed from the units by the Owners thereof, and shall not be allowed to unreasonably accumulate thereon. All clothes lines, refuse containers, wood piles, storage areas and machinery and equipment shall be prohibited upon or in any condominium.

12.9 Drilling Prohibited. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any condominium unit, nor shall

79-237311
60

oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon the surface of any condominium or within five hundred feet (500') below the surface of the properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon or in any condominium or in the Common Area.

12.10 Prohibited Restrictions. No condominium owner shall execute or file for record any instrument which imposes restrictions upon the sale, leasing or occupancy of his condominium on the basis of race, color, creed or religion or sex.

ARTICLE XIII
DAMAGE AND DESTRUCTION

13.1 Damage to one or more units but to no part of the Common Area. If any unit in the project is damaged by fire, casualty or other disaster, and no part of the Common Area is damaged, the proceeds of any insurance policy or coverage insuring against loss due to any such event obtained pursuant to the provisions of this Declaration or by or for an Owner, but not the proceeds of any such policy or coverage to the extent paid to and retained by a Mortgagee pursuant to the terms of any mortgage of the condominium containing such unit, shall be paid to the Owner of such unit, and such Owner shall cause the repair and rebuilding of such damage and use such proceeds toward payment therefor. The provisions of 13.2 of this Article shall not be applicable in the event any unit is so damaged where no part of the Common Area is damaged.

13.2 Damage affecting the Common Area. Any damage to the project caused by fire, casualty or other disaster that extends to one or more units and any part of the Common Areas, or is confined

solely to the Common Areas is herein designated as "damage affecting the Common Areas". In the event there occurs damage affecting the Common Area, the provisions of this section shall govern the repair and rebuilding or other disposition of the project and shall likewise govern the collection, holding, application and disposition of the proceeds of any insurance policy or coverage insuring against loss due to any such event obtained pursuant to the provisions of this Declaration or by or for an Owners, but not the proceeds of any policy or coverage to the extent paid to and retained by a Mortgagee pursuant to the terms of any mortgage of a condominium. If any of the proceeds of any such policy or coverage is paid to and retained by a Mortgagee or condominium, then the Board shall levy a special assessment upon the Owner of the condominium in such amount to replace the proceeds paid to and retained by the Mortgagee. The term "insurance proceeds" as hereinafter used shall be deemed to refer to the insurance proceeds governed hereby, together with the amount of any such special assessment. The term "Insurance Trustee" as hereinafter used shall be deemed to refer to _____, or its successor, or such other bank or trust company as may be designated by the Board and approved by each of the Mortgagees holding a first mortgage on any portion of the project which is damaged. All funds paid to the Insurance Trustee pursuant to the terms hereof shall be held by it for the benefit of the Owners and their respective Mortgagees, if any, as their interests may appear.

All of the insurance proceeds whether initially paid to the Board, or to any Owner, or otherwise, and the amount of all special assessments levied by the Board pursuant to the terms of

79-23731

60

this section shall be paid to the Insurance Trustee and same shall be held, used and disbursed by the Insurance Trustee for the purposes of rebuilding and repairing such damage as the work progresses or upon completion pursuant to such contract with respect thereto as shall be entered into by the Board pursuant to and as authorized by the provisions hereof, or shall be disbursed as otherwise hereinbelow provided.

If the insurance proceeds are insufficient to pay all the costs of repairing and rebuilding the damage involved, the Board shall levy a special assessment on all Owners, in proportion to their respective interests in the Common Area, to make up any deficiency. Notwithstanding the above, the amount of any deficiency attributable to the repairing or rebuilding of improvements or additions made to a damaged unit after the initial conveyance by the Developer of the condominium containing such unit shall be the subject of a special assessment in the amount of such insufficiency upon the Owner of the Condominium containing that unit; provided, however, to the extent any such insufficiency results from the failure of the Board to comply with its obligations to maintain insurance on the condominium in an amount equal to its full replacement cost from time to time any such special assessment shall be levied upon all the Owners in proportion to their respective interests in the Common Area. The funds payable as a result of any such special assessment shall be paid over to the Insurance Trustee to be held, used and disbursed in the same manner and for the same purposes as is herein provided for in the case if insurance proceeds. If any Owner shall fail to pay such special assessment within thirty (30) days after the levy thereof, the

-37-



Board shall make up the deficiency by a payment from the maintenance fund, but such payment shall not release the defaulting Owner from his liability for the special assessment.

(a) Minor damage involving the Common Areas. If there occurs any damage affecting the Common Area and the cost of repairing or rebuilding the project does not exceed the amount of available insurance proceeds by the higher of five percent (5%) of such costs, or \$30,000.00, then the insurance proceeds and the amount of any special assessment paid to make up the deficiency thereof shall be held, used and disbursed by the Insurance Trustee for the purpose of rebuilding and repairing such damage as the work progresses, or upon completion, pursuant to such contract or contracts with respect thereto as shall be entered into by the Board. Any such contract must require that performance by the contractor involved is assured by a performance bond and a labor and materials bond.

(b) Major damage involving the Common Areas. If there occurs damage affecting the Common Area and the cost of repairing or rebuilding such damage exceeds the amount of available insurance proceeds by the higher of five percent (5%) of such costs, or \$30,000.00, then the insurance proceeds and the amount of any special assessment paid to make up for any deficiency there in shall be held, used and disbursed by the Insurance Trustee and hereinafter provided. The Board shall obtain firm bids (including an obligation to obtain and furnish a performance and labor and materials bond) from two (2) or more responsible contractors to repair and rebuild the damage portion of the subject, and shall, as soon as possible thereafter, call a special meeting of the Owners to consider such

79-237311
60

bids. If the Board fails to do so within sixty (60) days after the damage occurs, any Owner may obtain such bids and call and conduct such meeting as herein provided. The failure to call any such meeting or to repair such damage within twelve (12) months from the date the damage occurred shall be deemed for all purposes a decision of all the Owners not to rebuild or repair such damage. At such meeting, if the Owners, by at least a majority thereof, whether or not present at such meeting, shall elect or reject all such bids to repair or rebuild, the Owners, as soon as reasonably possible, shall sell the entire project in its then condition on terms approved in writing by a majority of the Owners, free from the effect of this Declaration of Covenants, Conditions and Restrictions, which shall terminate upon such sale. The Owners appoint the Board as their agent for the said sale and said agency shall be deemed to be coupled with an interest and said appointment shall be deemed to be irrevocable. As soon as possible after such election not to rebuild, the amount of any special assessment made pursuant to the terms of this Article made for the purpose of making up any insufficiency in insurance proceeds to pay for the cost of repairing and rebuilding the damage involved or to replace any of the proceeds of any insurance policy or coverage insuring against loss due to the event causing such damage paid to and retained by a Mortgagee pursuant to the terms of any mortgage of a condominium, if paid, shall be repaid to the Owner who paid the same. As soon as possible after such election not to rebuild, and whether or not the project has then been sold, all insurance proceeds, excluding therefrom, however, the portion thereof the result of any special assessment made pursuant to the terms of this Article,

79-237311

60



shall thereupon be distributed by the Insurance Trustee to all the then Owners. The net proceeds of any such sale of the project, immediately upon receipt thereof, likewise shall be distributed to all the then owners as hereinbelow provided.

If the Owners by at least a majority thereof elect to rebuild or repair the project and direct that a bid be accepted, the Board shall accept such bid and enter into a contract with the successful bidder in such form and containing such provisions as the Board may deem advisable, provided, however, that any such contract must require that the contractor furnish a performance and a labor and materials bond.

13.3 Payment of insurance proceeds to Owners. Where provision is made in this Article for the payment of insurance proceeds to the Owners, payment shall be made to each Owner in proportion to his percentage interest in the Common Area. If the Owner's interest in the project is subject to one or more Mortgages, that Owner's share shall be paid to the various Mortgagees thereunder in order of priority to the extent necessary to satisfy the obligations secured. Any payment to a Mortgagee shall be made toward payment of the obligation secured in the inverse order of their maturity.

13.4 Agreements with Trustee. The Board may enter into such agreements or commitments with the trustee designated as provided hereinabove, as the holder in trust of proceeds of any such insurance or assessments, relating to the powers, duties and compensation, if any, of the trustee. Any such agreements or commitments must be consistent with the various provisions of this Declaration. Any such agreement or commitment may delegate to the trustee authority to supervise the repairing or rebuilding and the

79-237311

60



disbursement of funds held by the trustee as payment therefor.

13.5 Adjustments in Assessments. The Board is hereby authorized to make equitable reductions in the assessments authorized in this Article against any condominium in the event the Owner of that condominium has obtained insurance at his or their own individual expense and the proceeds thereof have been made available for the rebuilding or repairing of any portion of the subdivision. No such reduction shall exceed the amount of the proceeds which are so made available for rebuilding or repairing.

13.6 Standard of Repair. Any repairing or rebuilding pursuant to this Article shall be undertaken to restore the Common Area and Units affected by the damage to their condition immediately prior to the occurrence of the damage, insofar as reasonably possible.

13.7 Amendment of this Article. The provisions of this Article cannot be amended without the unanimous written consent of each Owner and each Mortgagee. Nothing contained in this Declaration shall affect the right of any Mortgagee to apply or release any insurance proceeds payable to it under the terms of any such policy of insurance in accordance with the terms of the mortgage involved.

ARTICLE XIV

MORTGAGE PROTECTION

Notwithstanding the other provisions of this Declaration:

14.1 Subordination. The liens authorized to be created under the terms of this Declaration and those created under authority of law upon any condominium as the result of non-payment of any assessment authorized under the terms of this Declaration shall be subject and subordinate to and shall not affect the rights of the

79-237311
60

obligee of any indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) recorded prior to the recordation of any such lien. After the foreclosure of any such mortgage, the Board shall have the authority to create in the manner prescribed in Article IX hereof, a lien on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular (general) or special, levied hereunder for or payable during any period subsequent to the date of the foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein in the case of liens for unpaid assessments. However, neither the purchaser at any such foreclosure sale, nor his grantee, shall be or become liable to any extent for any portion of any assessment the purpose of which is to cover or make up any deficiency in the assessment fund resulting from the failure of any Owner of any condominium, the subject of any such foreclosure, to pay any assessment levied prior to the date of such foreclosure sale, nor shall there be any lien for such portion of such assessment.

14.2 Effect of Amendment. No amendment to any part of this Declaration shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

79-23731 1
60

14.4 Extension of Mortgage Protection. By subordination agreement executed by a majority of the Board, the benefits of Paragraphs 14.1 and 14.2 above may be extended to mortgagees not otherwise entitled thereto.

79-237311

60



14.5 Conflicts. If any portion of this Article is in conflict with any other portion of this Declaration, the provisions of this Article shall prevail. No provision of the Bylaws of the Association and no amendment thereto shall be effective if in conflict with the provisions of this Declaration.

ARTICLE XI

LIMITATION OF RESTRICTIONS ON DECLARANT

15.1 Completion of Work. Declarant is undertaking the work of constructing residential single-family dwellings and incidental improvements on the common area. The completion of that work and the sale, rental and other disposal of said residential dwellings is essential to the establishment and welfare of said property as a residential community. In order that said work may be completed and said property be established as fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed as:

(a) Preventing Declarant, its contractors, or sub-contractors from doing or performing on the project or any residential lot thereof, whatever is reasonably necessary or advisable in connection with the completion of said work with the consent of the Owner. The Owner agrees to not unreasonably withhold such consent.

(b) Preventing Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in parcels by sale, lease or otherwise, provided, however, that Declarant or its representatives do so in a manner that will not unreasonably interfere with the use and enjoyment of the Common Area by any existing parcel Owner.

(c) Preventing Declarant from conducting on any part of the Project its business of completing said work and establishing

79237311
60

said Project as a residential community and of disposing of said Project in parcels or residential lots by sales, lease or otherwise, providing Declarant or its representatives do so in a manner so as to not interfere with the reasonable use and enjoyment of the Common Area by any Owners; or

(d) Preventing Declarant from maintaining such sign or signs on any of the unsold lots as may be reasonably necessary for the sale, lease or disposition thereof.

15.2 Additional Easements. Declarant shall have the right at any time prior to acquisition of title by any grantee to establish additional reasonable easements, reservations and rights of way to itself, its successors and assigns in any conveyance it or they may make of said Project or any portion thereof. Declarant or the organization for whose benefit said easements, reservation and rights of way have been established shall have the right at any time to reasonably cut and remove any trees or branches or any other unauthorized object from such easements, reservations and rights of way.

79-237311
60



ARTICLE XVII

MISCELLANEOUS

17.1 Audit. Any Owner may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Board of Directors or any Manager appointed by the Board of Directors.

17.2 Additional Provisions. Additional provisions are set forth in Exhibits "C", "D", "E" and "F" attached hereto and made a part hereof.

17.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a unitfor plan for the development and operation of the project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

79-237311

60

17.4 Amendment. Except as otherwise expressly provided herein the provisions of this document may be amended by an instrument in writing signed and acknowledged by record owners owning seventy-five percent (75%) interest of the Common Area, exclusive of that owned by Declarant, which amendment shall be effective upon recordation in the Office of the Recorder of the County of San Diego. The provisions of Paragraph XI (Restrictions on Use and Occupancy of Units and Common Areas) and this Paragraph (Amendment) hereinabove contained, may be amended only by an instrument in writing signed and acknowledged by all record owners hereunder. This section shall not be amended so as to provide and nothing in this section shall authorize or permit any amendment to any of Articles I, II, III, X, XII or XIII, nor any of Paragraph 17.4 unless each and every obligee of any obligation secured by a first mortgage on any of the units join in the adaption of any such amendment.

17.5 Effect of Violation of Liens. No breach of any of the terms or conditions of this Declaration or Conveyance, Conditions and Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value.

17.6 Effectiveness of Creation of Condominiums. The creation of a condominium project on the property shall become effective upon the first conveyance by deed by Declarant of a condominium estate as provided herein, and thereafter and until the conveyance of all condominium estates included in this condominium project,

79-237311
60



it is understood that Declarant shall for all purposes be the Owner of the remaining condominium estates until conveyed by Declarant and shall have all the rights and benefits of the Owner of such condominium estates until conveyed by Declarant to some other person or entity.

17.7 Invalidity of Any Provision. In the event any condition or restriction herein contained be invalid or held invalid or void by court of competent jurisdiction, such invalidity or nullity shall in no way affect any other condition or restriction herein contained.

17.8 Binding Effect of Covenants, Conditions and Restrictions. Each Owner and any successor in interest to said Owner takes his right, title, interest and estate subject to all of the covenants, conditions and restrictions set forth in this Declaration, and agrees to perform and to be bound thereby. The covenants, conditions, restrictions and burdens imposed hereby constitute a general scheme for the benefit of each Owner in the project, and are or will be imposed upon the first Owner of any unit by express covenants in the deeds they receive from Declarant. Said Covenants, Conditions and Restrictions may be enforced by the Board or by any Owner or any combination of Owners. Said Covenants, Conditions and Restrictions shall be a burden upon and a benefit to not only each of the original purchasers of condominium, but also his grantees and all subsequent Owners of condominium interests in said project. All Covenants, Conditions and Restriction herein are intended to and shall constitute covenants running with the land or equitable servitude upon the land, as the case may be, and are intended to and shall be binding upon any future Owners of any unit.

79-237311
60



17.9 No Waiver. A waiver of a breach of any of the foregoing conditions or restrictions shall not be construed as a waiver of any succeeding breach or violation thereof or of any other condition or restriction.

17.10 Attorney's Fees. In the event the Board or any Owner or Owners shall bring a legal action against any Owner to enforce the terms, covenants, conditions and restrictions of this Declaration of Restrictions and they shall be the prevailing party in said lawsuit, the Court shall award reasonable attorney's fees and Court costs.

17.11 Who Subject to Provisions. This Declaration shall be for the benefit of and be binding upon the heirs, legatees, executors, devisees, administrators, guardians, conservators, successors, purchasers, lessees, encumbrancers, donees, grantees, mortgagees, lienors, and assigns of and from the parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 7th day of June, 1979.

MASCOT REALTY, INC.
a California corporation

BY: B. Scott Snee

BY: Barbara A. Snee

79-237311
60



EXHIBIT "A"

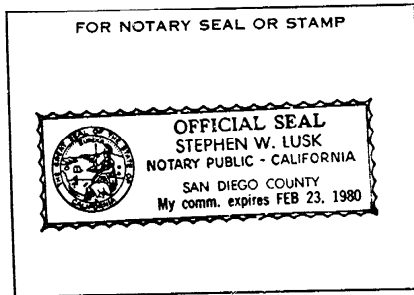
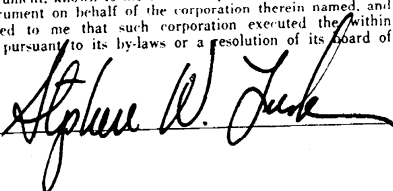
Lot 1 of 3769 FIRST AVENUE, in the City of San Diego, County
of San Diego, State of California, according to Map thereof No.
9239, filed in the office of the County Recorder of San
Diego County, June 1, 1979.

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } SS.

On June 7, 1979 before me,
the undersigned, a Notary Public in and for said County and State,
personally appeared R. Scott Snell
known to me to be the _____ President, and _____

Barbara A. Snell known to me to be
Vice-President of the corporation that executed the
within Instrument, known to me to be the persons who executed the
within Instrument on behalf of the corporation therein named, and
acknowledged to me that such corporation executed the within
in-strument pursuant to its by-laws or a resolution of its board of
directors.

Signature _____



Misc. 165 (G.S.) Ack. Corporation (Rev. 12-63)
Sample

79-237311
60

EXHIBIT "B"

This conveyance is made and accepted and said realty is hereby granted subject to the easements, rights, liens, charges, covenants, restrictions, limitations, conditions and uses set forth in that certain "DECLARATION OF RESTRICTIONS" executed by the Grantor herein, Recorded _____, 1979, as file/Page No.

_____ of Official Records in the Office of the County Recorder of San Diego County, California which are hereby incorporated herein and made a part hereof and expressly imposes on said realty by reference to said Declaration with the same force and effect as though fully set forth herein.

Grantees in accepting this Deed and the conveyance thereunder, do hereby agree that they will promptly, fully and faithfully comply with all the provisions provided in said Declaration and in the Bylaws attached thereto; and, in particular, Grantees do hereby agree to promptly pay in full when due the assessments levied in accordance with the provisions of said Declaration against the Condominiums conveyed hereby; this Agreement being a covenant running with said Condominium and binding upon said Grantees, their successors and assigns.

79-237311

60

EXHIBIT CRIGHTS OF MORTGAGEES

1.1 Any Owner may voluntarily or involuntarily encumber his condominium with or by a real property mortgage, deed of trust or other instrument of hypothecation.

1.2 A breach of any of the foregoing limitations, restrictions, conditions or covenants (except as provided in this Article with respect to a breach by failure to pay any assessment) shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to a Condominium; provided, however, such limitations, restrictions, conditions and covenants shall be binding upon and effective against any person whose title to said Condominium is acquired by foreclosure, trustee's sale or otherwise.

1.3 Each and every lien created by or pursuant to this Declaration, including but not limited to, the assessment liens described in the Article entitled "Assessments" is and shall be subordinate, inferior and subject to the lien and charge of any (i) real property mortgage or deed of trust of record prior to the date of said assessment lien encumbering any Condominium and given for value and (ii) any blanket construction (including acquisition) mortgage(s) or deed(s) of trust encumbering all or any part of the Project which mortgage(s) or deed(s) of trust may have been expressly subordinated to this Declaration.

1.4 Any person who acquires title to any Condominium by purchasing the same at a foreclosure or trustee's sale, shall take title to such Condominium free of any claims by or on behalf of the Association for unpaid assessments accruing prior to the time such purchaser takes title to such condominium, and any assessment lien then encumbering any such Condominium shall be subordinate, inferior and subject to said purchaser's title to such Condominium. Such unpaid assessments shall be reallocated among the Owners (other than said purchaser).

1.5 In the event and Mortgagee (i) shall acquire title to any Condominium by judicial foreclosure, exercise of power of sale contained in any real property mortgage or deed of trust, or deed in lieu of foreclosure and (ii) shall thereafter sell and convey such Condominium, any real property mortgage or deed of trust received by such lender as security for all or a portion of the purchase price of such Condominium shall be introvertibly deemed "given for value". Notwithstanding the provisions of paragraph 1.3 above, any lien created by or pursuant to this Declaration, which lien arises from the failure to pay assessments accruing during the period of such Mortgagee's holding of title to said Condominium, shall be a lien superior to the lien of said real property mortgage or deed of trust received to secure a portion of said purchase price.

79-237311

1.6 In the event of any breach or default hereunder by any owner, and in the future event such breach or default is not cured within 60 days after its occurrence, the Board shall if any first Mortgagee of such Owner shall have so requested of the Association, immediately notify, in writing, such first Mortgagee of said default; provided, however, failure to give such notice shall in no way affect any right or remedy of any enforcing person.

1.7 Each first Mortgagee shall be entitled, upon request, to
(i) receive notice of any and all meetings of the Association and
(ii) designate a representative to attend such meetings on its behalf.

1.8 In the event there shall be any express or implied conflict between any provision of this Exhibit C and any other provision of this Declaration, the provisions of this Exhibit C shall prevail and govern.

79-237311

60

EXHIBIT DDECLARANT'S SECURITY FOR ITS OBLIGATION

2.1 If the Association is obligee under a bond (the "Bond") obtained pursuant to Business and Professions Code Section 11018.5 (a) (2) (A), to secure completion of improvements in and to the Common Area, the following provisions shall govern any action brought by the Association to enforce the obligations under the Bond.

2.2 The Directors shall, within ten days after passage of the Grace Period (hereinafter defined) consider and vote on the question of action to be taken by the Association to enforce the obligation under the Bond with respect to any improvement in or to the Common Area for which a Notice of Completion has not been filed within 60 days (the "Grace Period") after the completion date specified for that improvement in the "Planned Construction Statement" appended to the Bond. If the Association has, in writing, extended the time for completion of any improvement in or to the Common Area the Directors shall consider and vote on the question of action to be taken to enforce the obligations under the Bond if Notice of Completion has not been filed for said improvements within 30 days (the "Grace Period") after the expiration of said extended time period. Any such extension granted by the Association shall override any contrary decision of the Directors.

2.3 If the Directors fail to consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond or should the Directors decide not to initiate action to enforce said obligations, a special meeting of members shall be held to consider and vote on such action if members having at least five percent of the voting power of the Association sign and submit to the Directors a petition demanding such meeting. Such meeting shall be held not less than 15 days nor more than 30 days after receipt by the Directors of said petition. At such special meeting, all Members other than Declarant shall be entitled to vote.

2.4 If at such special meeting, Members (other than Declarant) having a majority of the voting power of the Association (exclusive of the voting power attributed to Declarant) vote in favor of taking action to enforce the Bond, the Directors shall immediately initiate and thereafter pursue appropriate action in the name of the Association to enforce the obligations under the Bond. If the Directors refuse to pursue such action, then any Member(s) may initiate and pursue appropriate action in the name of the Association to enforce the obligations under the Bond. Funds for pursuing such action shall be obtained by means of a special assessment of the Owners pursuant to Paragraph 9.3; such funds shall be kept in a separate account at a bank designated by the Association and used only for initiation and prosecution of said action.

79237311 60

2.5 If, at such special meeting, Members (other than Declarant) having a majority of the voting power of the Association (exclusive of the voting power attributed to Declarant) vote against taking action enforce the Bond, then no such action may be taken by any Director or Member on behalf of the Association for a period of 60 days after the date of said special meeting, the provisions of the foregoing Paragraphs shall govern the action to be taken by the Directors and the Association with respect to enforcing the obligations under the Bond.

2.6 If Declarant posts a surety bond or deposits funds (pursuant to Section 2792.9, Article 12, Chapter 6, Title 10, California Administrative Code) for the benefit of the Association, to assure the fulfillment by Declarant of its obligations to pay assessments, the exoneration or release of such bond or a dispute arises between Declarant and the Association with respect to the question of satisfaction of such conditions for exoneration or release, then, in such event, such dispute shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgement upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The fee payable to the American Arbitration Association to initiate such arbitration shall ultimately be borne as determined by the Arbitrator(s) under the aforesaid Rules.

79-237311

60

EXHIBIT EAMENDMENT

3.1 Except upon the prior written approval of at least seventy-five percent (75%) of First Mortgagees, based on (1) one vote for each First Mortgage held, neither the Association nor the Members shall be entitled by action or inaction to do any of the following:

3.2 Abandon or terminate by any act or omission the condominium legal status of the Project, or any part thereof, except for abandonment or termination provided by law and/or this Declaration in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain:

3.3 Amend a material provision of this Declaration, or the Bylaws, without limiting the generality of the foregoing, the provisions of the Declaration hereof entitled "Insurance", "Destruction of Improvements", "Eminent Domain", this Article, and any other rights granted specifically to Mortgagees pursuant to any other provision of this Declaration, or any provision of the Bylaws which is a requirement of the Federal Home Loan Mortgage Corporation (FHLMC) shall be deemed to be material.

3.4 Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Area, provided however, the granting of easements affecting the Common Area for public utilities or other public purposes consistent with the intended use of the Common Area shall not require such approval:

3.5 Partition or subdivide a Unit or any elements thereof;

3.6 Change the manner in which Assessments other than Special Assessments are determined and levied as set forth in this Declaration;

3.7 Change the manner in which condemnation awards and insurance proceeds are allocated and distributed as set forth in this Declaration.

3.8 Change the Ownership Interest of the respective Condominium as provided in the Section entitled "Definitions"; and,

3.9 Dissolve the Association or abandon or terminate the maintenance of the Project as set forth in this Declaration, by the Association.

79-237311

60

EXHIBIT "F"GENERAL PROVISIONS

4.1 Notices required by the Declaration, or desired, to be given shall be conclusively deemed served (i) if personally served, at the time of such service, and (ii) 48 hours after deposit thereof in the United States Mail, postage prepaid, addressed to the person(s) to whom such notice is to be given at the last known address of such person(s).

4.2 In the event any limitation, condition, restriction, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any Court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

4.3 Every right, privilege, duty and obligation in or upon the Association shall be exercised by, and shall be a burden upon an unincorporated association or any California corporation incorporated (i) for a purpose of exercising or discharging, as the case may be, said rights, privileges, duties and obligations, and (ii) by, or with the written consent of, the Owners of a majority of the Condominiums. No provision of the Bylaws of any said corporation or unincorporated association, in violation or contravention of any provision of this Declaration shall be valid, subsisting or of any effect whatsoever.

4.4 This Declaration and every provision hereof shall be construed to facilitate the operation of the Project.

79-237311


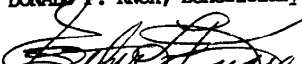
60

2346

SUBORDINATION AGREEMENT

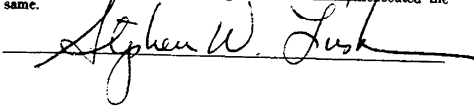
DONALD F. KNOX and ESTHER L. KNOX, husband and wife as joint tenants, being the Beneficiaries under that certain Deed of Trust dated January 11, 1978 and recorded May 10, 1978 as File No. 78-190552 in the Office of the County Recorder of San Diego County, California, hereby declare that the lien and charge of said Deed of Trust is and shall be subordinate and inferior to the Declaration of Restrictions to which this Subordination Agreement is attached for Lot 1, 3769 First Avenue, Map # 9239, recorded June 1, 1979

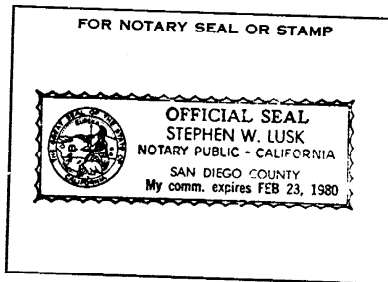
Dated: June 7, 1979


DONALD F. KNOX, Beneficiary

ESTHER L. KNOX, Beneficiary

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } SS.
On June 7, 1979 before me,
the undersigned, a Notary Public in and for said County and State,
personally appeared DONALD F. KNOX
ESTHER L. KNOX

to be the person S whose name S ADE known to me
within instrument and acknowledged that THEY subscribed to the
same. executed the





Misc-166 (C.S.A. Act, Individual (Rev. 9-68))
Single

79-23731 160



2347

SUBORDINATION AGREEMENT

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN DIEGO, a corporation,
being the Beneficiary under that certain Deed of Trust dated January 19, 1978
and recorded January 27, 1978 as File No. 78-034345 in the Office of the
County Recorder of San Diego County, California, hereby declares that the lien
and charge of said deed of trust is and shall be subordinate and inferior to
the Declaration of Restrictions to which this Subordination Agreement is attached
for Lot 1, 3769 First Avenue, Map # 9239, recorded June 1, 1979.

Dated: June 7, 1979

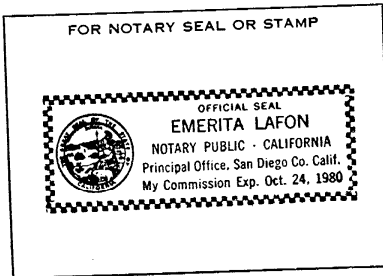
HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN
DIEGO, a corporation

BY: Dale E. Hawley
Dale E. Hawley Title: Assistant Counsel

BY: Peter H. Pickslay
Peter H. Pickslay Title: COUNSEL

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } SS.
On June 7, 1979 before me,
the undersigned, a Notary Public in and for said County and State,
personally appeared Dale E. Hawley
known to me to be the Ass't Counsel, and
Peter H. Pickslay known to me to be
Counsel Secretary of the corporation that executed the
within Instrument, known to me to be the persons who executed the
within Instrument on behalf of the corporation therein named, and
acknowledged to me that such corporation executed the within
instrument pursuant to its by-laws or a resolution of its board of
directors.

Signature Emerita Lafon
Emerita Lafon



79-237311
60