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REEL 1035 PAGE 473

RECORDED AT REQUEST OF
Title Insurance and Trust Company

FEB 23 11 01 AM '76

OFFICE OF RECORDER
COUNTY OF MONTEREY
SANCTAS, CALIFORNIA

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR LAS VILLAS NOGALES, A PLANNED UNIT DEVELOPMENT

REEL 1035 PAGE 473

THIS DECLARATION is made on the date hereinafter set forth by ILBERT TUCKER, a married man, and MARGARET TUCKER, his wife, hereinafter referred to as "Declarant;"

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the unincorporated area of Carmel Valley, County of Monterey, State of California, which is more particularly described as that property known as Parcel B, as shown on the "Record of Survey" filed September 18, 1964, in Book 7 of Surveys at page 38, Monterey County Records, as shown on the attached Parcel Map.

NOW, THEREFORE, Declarant hereby declares that all properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding upon all parties having any right, title, or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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ARTICLE I

DEFINITIONS

For the purposes of this Declaration, the terms used shall have the following meanings:

A. "Association:" shall mean and refer to the Association of homeowners residing on the property, to its successors and assigns;

* B. "Owner" shall mean and refer to the record owner, whether one or more entities, of a fee simple title to any Unit which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation;

C. "Properties" shall mean and refer to that certain property hereinbefore described in Exhibit "A."

D. "Common Area" shall mean all real property owned in common by Members of the Association, as shown in Exhibit "A," for the common use and enjoyment of said Owners.

E. "Declarant" shall mean and refer to ILBERT TUCKER, a married man, and MARGARET TUCKER, his wife, their successors and assigns, if such successors and/or assigns should acquire more than one (1) undeveloped lot from Declarant for the purpose of development;

F. "Mortgage" shall mean a deed of trust as well as a mortgage;

G. "Mortgagee" shall mean a beneficiary under, or a holder of, a deed of trust as well as a mortgagee;

H. "Unit" shall mean the real property owned by the individual Owners, and not held by the Owners in common;

I. "Board" or "Board of Directors" shall mean the governing body of the Association, selected pursuant to the By-Laws.

ARTICLE II

PROPERTY RIGHTS

A. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to, and shall pass with, the title to every lot, subject to the following provisions:

(1) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed to by the members.

(2) The Owners of Unit D shall have the exclusive use of one (1) parking space in the Common Area, known as Parking Space #8, shown in Exhibit "A". The remaining spaces shall be available for the use of all Units.

B. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the

Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.)

ARTICLE III

RESTRICTIONS ON THE PROPERTY

A. No Owner shall occupy or use his Unit, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence.

B. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board.

C. Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on any Unit or on any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area. No gasoline, kerosene, cleaning solvents or other flammable liquids shall be stored in the Common Area or in any Unit, provided, however, that reasonable amounts in metal containers may be stored in the storage spaces of each Unit.

D. No sign of any kind shall be displayed to the public view or from any Unit or the Common Area without the prior written consent of the Board, except a sign advertising the property for sale as provided in Section 712 of the California Civil Code.

E. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in the Unit or in the Common Area, except that dogs, cats, or other household pets may be kept in Units, subject to the rules and regulations adopted by the Board.

F. No noxious or offensive activity shall be carried out in any Unit or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners.

G. Nothing shall be altered or constructed in or re-

moved from the Common Area, except upon the written consent of the Board.

H. There shall be no violation of the rules for the use of the Common Area, adopted by the Board and furnished in writing to the Owners, and the Board is authorized to adopt such rules.

I. No Owner shall park any automobile or other motor vehicle in the Common Area except as provided in Article III hereinabove.

J. None of the rights and obligations of the Owners created herein, or by the deed creating the Units shall be altered in any way by encroachments due to settlement or shifting of structure[s] or any other cause. There shall be valid easements for the maintenance of such encroachments, so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

K. No boat or recreational vehicle or similar vehicle shall be parked on the property except inside a covered carport.

L. In the event an Owner fails to correct any restricted activity after notice from the Association and he has an opportunity to do so, the Association may apply to the court for injunctive relief. The prevailing side shall be entitled to attorneys' fees.

M. There shall be no remodeling or alteration of the exterior of any Unit without the approval of a majority of the Members of the Board.

ARTICLE IV

MAINTENANCE

A. Maintenance of Common Area. The Association shall provide maintenance as follows:

- (1) Maintenance of the water system to be utilized for the Common Area;
- (2) Maintenance of the underground utility lines

running to each Unit.

(3) Landscaping of the Common Area, to maintain the Common Area in a litter-free, weed-free condition, with all plant material to be maintained in a healthy, growing condition;

(4) Maintenance of the common septic sewage disposal system;

(5) Maintenance of all pavement not enclosed or covered, excluding gasoline damage to pavement in assigned parking spaces; and

(6) Maintenance of the tennis court.

The maintenance referred to herein shall be paid for out of the maintenance fund.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided herein and in By-Laws adopted by the Association. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property of the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title, unless expressly assumed by them.

B. Purpose of assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties, and for the improvement and the maintenance of the Common Area.

C. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$240.00 per Lot.

(1) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year, as provided by the By-Laws adopted by the Owner, not more than three per cent (3%) above the maximum assessment for the previous year without a vote of the membership.

(2) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above three per cent (3%) by the vote or written assent of a majority of the Owners.

(3) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of the Owners.

E. Notice and Quorum for Any Action Authorized Under Assessment Provisions. Any action authorized under the Assessment Provisions immediately stated above shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than a majority of the members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

F. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots,

and may be collected on a monthly basis.

G. Date of Commencement of Annual Assessments. Due Dates: The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

H. Delinquency of Charges and Assessments. Thirty (30) days after any general or special charge and assessment shall be due and payable and unpaid or not otherwise satisfied, the same shall be and become delinquent, and shall so continue until the amount of said charge and assessment, together with all costs, penalties and interest as herein provided, have been fully paid or otherwise satisfied.

I. Notice of Delinquency. At any time after any general or special charge and assessment against any unit has become delinquent the Association may record a Notice of Delinquency as to such unit, which Notice shall state therein the amount of such delinquency, and the interest, costs (including attorneys' fees) and penalties which have accrued thereon, a description of the unit against which the same has been assessed, and the name of the record or reputed recordowner thereof, and such Notice shall be signed by an officer of the Association; provided that upon the payment of said charges and assessments, interest, penalties and costs in connection with such Notice that has been so recorded, or other satisfaction thereof, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

J. Attachment of Lien. Immediately upon the recording of any Notice of Delinquency pursuant thereto, the amounts of the delinquency set forth therein and the interest, costs and penalties accrued and accruing thereon shall be and become a lien upon the unit or units described therein, which lien shall continue until the amount of such delinquency and the interest, costs and penalties accrued thereon has been fully paid or otherwise satisfied or the lien foreclosed as provided for herein.

K. Enforcement of Liens. Each lien established pursuant

to the provisions of this Declaration as hereinabove provided may be foreclosed as and in the same manner as is provided for the foreclosure of a mortgage upon real property by the laws of California at the date of the commencement of such foreclosure action. Such lien may, at the option of the Board, be enforced by sale by the Board acting on behalf of all of the owners (or the Board shall be permitted to appoint a duly authorized representative or trustee for such sale) after failure of the owner of the unit to discharge such delinquency and the interest, costs and penalties accrued thereon, such sale to be conducted in accordance with the provisions of Section 2924, 2924b and 2924c of the Civil Code of the State of California, or in such other manner permitted by law. In any action to foreclose any such lien or sell any unit or units pursuant to the power of sale herein given, the Association shall be entitled to such costs, including reasonable attorneys' fees, and such penalties for delinquent charges and assessments as shall have been established by the Board of the Association, or shall otherwise be allowable by law, or, if applicable, a court of competent jurisdiction.

L. Interest, Costs and Penalties. Interest shall accrue at the rate of ten (10%) percent per annum upon all unpaid charges or assessments from the time of delinquency. In any action to foreclose any such lien, the Association shall be entitled to costs, including reasonable attorneys' fees and such penalties for delinquent charges and assessments as shall be established by the Board of Association.

M. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

PROCUREMENT OF INSURANCE

A. The Board of Directors, for the benefit of the individual Owner, shall procure:

(1) A policy or policies of fire insurance with extended coverage endorsement for the full insurable replacement value of the Units and Common Area, payable as provided in Article VIII herein, or such other fire and casualty insurance as the Board shall deter-

mine gives substantially equal or greater protection to the Owners, and their mortgagees, as their respective interests may appear;

(2) A policy or policies insuring the Board and the Owners and/or Owners' Association against any liability to the public or to the Owners, their tenants and invitees, incident to the ownership and/or use of the project, and including the personal liability exposure of the Owners. Limits of liability under such insurance shall not be less than \$500,000.00 for any one (1) person injured, \$1,000,000.00 for any one (1) accident, and \$50,000.00 for property damage. Such limits and coverage shall be reviewed at least annually by the Board, and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis, and shall provide cross-liability endorsement where the rights of the named insureds under the policy or policies shall not be prejudiced as respects his, her, or their action against another named insured.

ARTICLE VII

DAMAGE AND DESTRUCTION

A. Application of Insurance Proceeds. If the project is damaged by fire or other casualty, and said damage is limited to a single Unit, all insurance proceeds shall be paid for the benefit of Owner or Owners, mortgagee or mortgagees of the Owner or Owners, as their respective interests may appear, and such Owner or Owners, mortgagee or mortgagees, shall use the same to rebuild or repair such Unit in accordance with the original plans and specifications thereof. If such damage extends to two or more Units:

(1) If the cost of rebuilding or repairing does not exceed the available insurance proceeds initially offered or paid by the insurer by Five Thousand and no/100 Dollars (\$5,000.00), such insurance proceeds shall be paid to the insurance trustee hereinafter designated. The board shall thereupon contract to repair or rebuild the damaged portions of all Units and the Common Area, in accordance with the original plans and specifications therefor, and the funds held in the insurance trust fund shall be used for this purpose. If the insurance proceeds are insufficient to pay all of

the costs of repairing or rebuilding, the Board shall levy a special assessment on all Owners in proportion to the interest of each Owner in the Common Area.

(2) If subparagraph (1) is inapplicable, then:

(a) All insurance proceeds shall be paid to _____, Insurance Trustee, or to such other trustee as may be designated by amendment hereof, to be held for the benefit of the Owners and their mortgagees as their respective interests may appear. The Board is authorized to enter on behalf of the Owners into such agreement, consistent with this Declaration, with such compensation as the Board may approve;

(b) The Board shall obtain firm bids (including the obligation to obtain a performance bond) from two or more responsible contractors to rebuild the project in accordance with its original plans and specifications, and shall, as soon as possible thereafter, call a special meeting of the voting Owners to consider such bids. If the Board fails to do so within sixty (60) days after the casualty occurs, any Owner may obtain such bids, and call and conduct such meeting as herein provided (failure to call such meeting, or to repair such casualty damage, within twelve [12] months from the date such damage occurred shall be deemed for all purposes a decision not to rebuild said building). At such meeting, the Owners may by a majority vote elect to reject all of such bids and thus not to rebuild. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable;

(c) If a bid is to be accepted, the Board shall levy a special assessment, in proportion to the interest of each Owner in the Common Area, to make up any deficiency between the total insurance proceeds and the contract price for such repair or rebuilding, and such assessments and all insurance proceeds, whether or not subject to liens or mortgages, shall be paid to said insurance trustee to be used for such rebuilding. If any Owner shall fail to pay the special as-

assessment within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the maintenance fund. Upon payment, the Board shall let the contract to the successful bidder;

(d) Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for the Owners, shall sell the entire project, in its then condition, free from the effect of these Restrictions, which shall terminate upon such sale, on terms satisfactory to the Board. The net proceeds, and all funds held by said insurance trustee, shall thereupon be distributed to the Owners in proportion to the interest of each Owner in the Common Area, and to the mortgagees of the interest of the Owners, as their interests may appear;

(3) Within sixty (60) days after any such damage occurs, the Board, or if it does not, any Owner, the insurer, the insurance trustee, or any mortgagee of any Owner, shall record a sworn declaration stating that such damage has occurred, describing it, identifying the building suffering such damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, reciting that the sworn declaration is recorded pursuant to this paragraph of these Restrictions, and that a copy of such sworn declaration has been served pursuant to the provisions of Article V hereof on the Owners;

(4) If the Owners decide not to rebuild, either by calling a meeting and rejecting all bids presented or by failing to call such a meeting and failing to repair such damage within twelve (12) months after the damage occurs, then the Owner, or the Board, or if they do not, any Owner or mortgagee of any Owner, shall record a sworn declaration setting forth such decision and reciting that under the provisions of these Restrictions the prohibition against judicial partition provided for in Paragraph 2 hereof has terminated and that judicial partition of the Project may be obtained pursuant to Section 752b (4) of the Code of Civil Procedure of the State of California. Upon final judgment of a court of competent jurisdiction

tion decreeing such partition, these Restrictions shall terminate.

The provisions of this Article cannot be amended without the consent in writing of the Owners of seventy-five per cent (75%) of the Common Area.

ARTICLE VIII

PARTY WALLS

A. General Rules of Law to Apply. Each wall which is built as part of the original construction of the homes upon properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article VIII the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners using the wall.

C. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who, by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

D. Right of Contribution Runs With the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

E. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

F. For purposes of this Declaration, the term "party wall[s]" shall include fences.

ARTICLE IX

MORTGAGE PROTECTION

Notwithstanding all other provisions in this Decla-

ration, liens created hereunder upon any Unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided, that after the foreclosure of any such mortgage there may be a lien created pursuant to Article V hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such foreclosure sale, which lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein. No amendment of this Article shall affect the rights of the holder of any such mortgage recorded prior to the recordation of such amendment who does not join in the execution thereof.

ARTICLE X

GENERAL PROVISIONS

A. 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. Failure by the Association or by any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

C. Amendment. This Declaration may be amended by an instrument signed by the Owners of not less than a majority of the Units. Any amendment must be recorded.

ARTICLE XI

ENTRY FOR REPAIRS

The Board or its agents may enter into or upon any Unit when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible. Such entry

shall be made with as little inconvenience to the Owners as is practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund.

ARTICLE XII

Each Owner shall own a twenty-five per cent (25%) undivided interest as a tenant-in-common on the Common area herein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have hereunto set their hands this 17th da of February, 1976.

Albert Tucker
ALBERT TUCKER

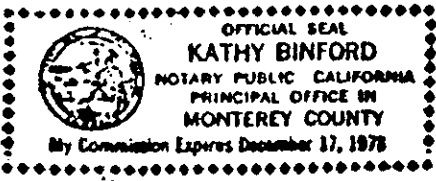
Margaret Tucker
MARGARET TUCKER

STATE OF CALIFORNIA
COUNTY OF Monterey

ON February 17 1976
before me, the undersigned, a Notary Public in and for said State, personally appeared
Albert Tucker & Margaret Tucker

known to me,
to be the persons whose names are subscribed to the within instrument,
and acknowledged to me that they executed the same.

WITNESS my hand and official seal.



Kathy Binford
Notary Public in and for said State.

END OF DOCUMENT