

FILE/PAGE NO. _____
BOOK 1979
RECORDED REQUEST OF

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OFFICIAL RECORDS
RECORDER
SAN DIEGO COUNTY, CALIF.

RECORDING REQUESTED BY:

Louis Feller

WHEN RECORDED MAIL TO:

Foster V. Hepperley
4017 42nd St, Suite I
San Diego, Calif. 92105

\$21.00

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions is made this 7th day of August, 1979, by SAMUEL FELLER and LOUIS FELLER, herein referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of all that certain real property situated in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as "real property"); and,

WHEREAS, it is Declarant's intention to impose upon the real property mutually beneficial restrictions under a general plan of improvement for the benefit of Declarant and any and all future Owners of any portion of such real property.

NOW, THEREFORE, Declarant does hereby establish the following general plan for the protection and benefit of all of said real property and does hereby fix the following protective restrictions upon each and every ownership interest in said real property. Each ownership interest in said real property shall be hereafter held, used, occupied, leased, sold or conveyed subject to said restrictions. All of the limitations, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest therein or any part thereof, and shall be for the benefit of each owner of any portion of said real property or any interest therein and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. The owner of a unit will receive title to his individual condominium unit plus an undivided one-eighteenth (1/18th) interest as tenant in common in the common area of said real property.

COPY

I hereby certify that if impressed with the seal of the San Diego County Recorder, this is a true copy of the permanent record filed and/or recorded in this office.

Vera L. Lyle

Vera L. Lyle, Recorder
County of San Diego, California

AUG 8 1979

1. DEFINITIONS: The terms used herein shall have the following meanings:

- (a) "Association" means AMHERST ESTATE ASSOCIATION
- (b) "Living Unit" means that portion of real property designated upon the condominium plan numbered as Units L-1 through L-18 inclusive, the boundaries of which are the interior surfaces of the perimeter walls, the finished surfaces of the floors and of the ceilings, windows and doors thereof, and includes both the portions of the building so described and the air space so encompassed. "Unit" refers to the living unit. The following are not parts of the units: bearing walls, columns, floors, roofs, foundations, reservoirs, tanks, pumps, and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except their outlets, when located within the units. The physical boundaries of the units as constructed, or any unit reconstructed in substantial accordance with the original plans, shall be conclusively presumed to be the boundaries rather than any meets and bounds description expressed in any deed or plan, regardless of settling or lateral movement of the building and regardless of any minor variances between boundaries shown in any deed or plan and those of the building.
- (c) "Parking Space" means that portion of real property designated upon the condominium Plan numbered as P-1 through P-28 inclusive.
- (d) "Project" means AMHERST STREET CONDOMINIUMS and includes the entire parcel of real property described in Exhibit "A" attached hereto and made a part hereof by reference, including all structures thereon.
- (e) "Common Area" means the entire project except living units and parking spaces.
- (f) "Owner" means the record owner, whether one or more persons or entities, of a living unit.
- (g) "Mortgage" shall mean a beneficiary under a holder of trust as well as a mortgagee.
- (h) "Board" or "Board of Directors" shall mean the governing body of the project, elected pursuant to Article II, Section 5, of the By-Laws of AMHEREST ESTATES ASSOCIATION.

2. MEMBERSHIP AND VOTING:

2.1 The owner of a unit shall automatically, upon becoming the owner of same, be a member of the Association, and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the By-Laws of the Association.

2.2 Transferred Membership: Membership in The Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the unit to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in case of an encumbrance of such unit.

2.3 Membership Classes and Voting Rights:

Class A. Class A members shall be all owners with the exception of the Declarant (as defined on the Declaration). Each unit shall be entitled to one (1) vote. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they among themselves determine, but in no event shall more votes than a unit is entitled to be cast with respect to any unit.

Class B. Class B member(s) shall be the Declarant and shall be entitled to vote as follows: Voting shall be the same as for Class A membership, except that Class B members may triple their votes for each unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes (tripled as stated above) outstanding in the Class B membership; or

(b) On August 1, 1981.

2.4 Organizational Meeting: An organizational meeting of the members shall be held within forty-five (45) days after the closing of the sale of the subdivision interest which represents the 51st percentile interest authorized for sale under the first public report for the subdivision, but in no event shall the meeting be held later than six (6) months after the closing of the sale of the first subdivision interest. Thereafter, regular meetings of members of The Association shall be held not less frequently than once each calendar year at a time and place prescribed by The By-Laws of The Association.

At the organizational meeting, and at each annual meeting, the members shall elect a Board of Directors consisting of three (3) members, and all officers of The Association.

2.5 Cumulative Voting: For the purpose of electing or removing members of the Board of Directors, each member entitled to vote shall have the right to accumulate his votes and give one candidate a number of votes equal to the number of directors to be elected, multiplied by the number of votes which he is entitled to, or to distribute his votes on the same principle among several candidates. Cumulative voting in the election of governing body members shall be prescribed for all elections in which more than two (2) positions on the governing body are to be filled.

3. DUTIES AND POWERS OF THE ASSOCIATION: The project shall be managed by, and all the powers specified herein shall be executed by, Declarant until the first annual meeting of the lot owners, at which time all management and power shall be vested in the lot owners and Board of Directors as specified herein.

3.1 In addition to the duties and powers enumerated in its (Articles of Incorporation and) By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, The Association shall:

- (a) Maintain, repair, replace, restore, operate and manage all of the common area and all facilities, improvements, furnishings, equipment and landscape thereon, and all property that may be acquired by the Association.
- (b) Have the authority to obtain, for the benefit of all of the condominiums, all water, gas and electric service and refuse collection, and janitorial or window cleaning service.
- (c) Grant easements where necessary for utilities and sewer facilities over the common area to serve the common and open space areas and the condominiums.
- (d) Maintain such policy or policies of insurance as The Board of Directors deem necessary or desirable in protecting the interests of the Association and its members.
- (e) Discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the member or members responsible for the existence of said lien.

3.2 For the purpose of performing the maintenance authorized by this Article, or for any other purpose reasonably related to the performance by The Board of its responsibilities under This Declaration, The Association's agent or employee shall have the right, after reasonable notice to the owner, to enter any unit or upon any portion of the common area at reasonable hours.

3.3 Any agreement for professional management of said condominium project, or any other contract providing for services by the developer, sponsor, or builder, must provide for termination by either party without cause or payment of termination fee of (90) days or less written notice and a maximum contract term of three years.

3.4 Notwithstanding anything to the contrary contained in this Declaration of Restrictions, The Association 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 the subdivider:

- (1) By act or omission seek to abandon or terminate the condominium project;
- (2) Change the pro rata interest or obligations of any individual living unit owner for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each living unit in the common area; (iii) partition or subdivide any living unit; (iv) by act or omission seek to abandon, partition, subdivide, encumber or sell or transfer any of the common area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed to be a transfer within the meaning of this clause); (v) use hazard insurance proceeds for losses to any living unit or common area for the purpose other than repair, replacement or reconstruction of such living unit or common area, except as provided by statute in the case of substantial loss to the units and/or the common area of the project.
- (3) Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or The Association for a term longer than one (1) year with the following exceptions:
 - (a) A management contract,
 - (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; and
 - (c) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits for short rate cancellation by the insured.
- (4) Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- (5) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- (6) Paying compensation to members of the governing body or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the governing

body may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

4. MAINTENANCE FUND: ASSESSMENTS. Except where otherwise provided,

The Association shall be responsible for the maintenance of common areas. Immediately following the first annual meeting of the owners, and thereafter at least thirty (30) days prior to January 1 of each year, the Board shall estimate the total charges to be assessed against the project and to be expended by the Board during the succeeding year including a reasonable provision for contingencies and improvements which shall constitute the maintenance fund. The estimated amount required for the maintenance fund shall be assessed to and paid by each living unit owner equally (Regular Assessment). Assessments for each unit shall be determined by dividing the total monthly assessment by 18 (the total number of units). The assessment shall be effective on the first day of the month following the close of escrow for the sale of the first unit.

Assessments shall commence upon the close of escrow for the sale of the first unit by Declarant, Declarant shall be considered a "Living Unit Owner" and shall pay the proportionate amount of such assessments respecting unsold units. The aggregate regular assessments shall not be increased more than twenty percent (20%) over the preceding year's aggregate regular assessment without approval of at least a majority of the voting power (other than Declarant), present at a special meeting of owners. If the estimated assessment proves inadequate for any reason, including nonpayment of any owner's assessment or unforeseen expenditures (including but not limited to capital investment), the Board, except as otherwise provided herein, may at any time levy a special assessment which shall be assessed to and paid by the owners equally; provided, however, the Board of Directors may not levy a special assessment to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expense of the Association for the fiscal year unless the vote of at least a majority of the voting owners (other than the Declarant) is obtained. There shall be an initial assessment for start up expenses for each living unit for start up costs equal to three (3) months' estimated maintenance charges to commence upon the close of escrow for the sale of the first living unit in the project. The provisions with respect to special assessments do not apply in the case where the special assessment against a member is a remedy utilized by the governing body to reimburse The Association for costs incurred in bringing the member and his subdivision interest into compliance with provisions of the governign instruments for the subdivision.

"The interest of a living unit owner in the common area may not, however, be reduced below 1/18th."

5. ASSESSMENT LIEN. The amount of all regular and special assessments, plus interest thereon at the rate of eight percent (8%) per annum if delinquent, and any expenses reasonably incurred in collecting and/or enforcing such assessments including reasonable attorneys' fees, shall be and become a lien upon the living unit so assessed, which shall attach to the living unit as of the time the Board causes to be recorded in the Office of the County Recorder, San Diego County, California, a Notice of Assessment Lien, which shall state the amount of the assessment and such related charges as may be authorized by this Declaration, a description of the living unit against which the lien has been assessed, and the name of the record or reputed owner of the living unit. The Notice shall be signed by any two (2) members of the Board of Directors. The Assessment Lien shall also be deemed to secure all of the foregoing items which shall be come due and/or incurred relative to the living unit subsequent to the recordation of the Notice of Assessment Lien until the completion of the enforcement of lien or the payment of the full amount secured by the lien. No proceeding or action shall be maintained to foreclose the lien, either judicially or under the power of sale granted herein until the Notice of Default and Intent to Proceed to Foreclose the Lien shall have been delivered by the Board to the record owner of the living unit affected by the Lien and the first mortgagee of said living unit at least sixty (60) days prior to the commencement of any such action or proceeding. The assessment lien may be enforced by judicial foreclosure, or by sale by the Board conducted in accordance with the applicable provisions of law relative to the exercise of powers of sale in mortgages and deeds of trust, or any other manner permitted by law. Upon any such default in payment the Board may cause to be served and recorded any necessary Notice of Default and Notice of Sale which may then be required by law, and after a lapse of such time as may then be required by law the Board may sell such living unit at the time and place fixed in such Notice of Sale. The Board may postpone the sale by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Sale shall be made at a public auction to the highest bidder in cash, payable in lawful money of the United States at the time of sale. After deducting all costs and expenses of sale, including costs of evidence of title, the Board shall apply the proceeds of the sale to the payment of all sums secured by the assessment lien plus accrued interest to the date of sale; the remainder of such proceeds, if any, shall be paid to the person legally entitled thereto. The foregoing rights of enforcement shall not be exclusive, but they shall be in addition to any other rights and remedies which the living unit owners and the Board may have under this Declaration or otherwise in accordance with law. The Board shall have the right to bid at any such foreclosure sale and to hold, lease, mortgage and convey such living unit upon its purchase. Upon payment in full

of the amount secured by any assessment lien, including all authorized charges in accordance with the foregoing, the Board shall cause to be recorded in the Office of the County Recorder, San Diego County, California, a notice setting forth the facts of such payment and satisfaction and of the release of the assessment lien. Each living unit owner shall and hereby does waive and subordinate the benefits of any homestead or exemption law in favor of the assessment liens, which shall be prior to the rights of any living unit owner under any applicable homestead or exemption law."

6. USE OF UNITS AND COMMON AREAS: The Units and Common Areas shall be occupied and used as follows:

- (a) Each unit shall be used as a residence for a single family and for no other purpose; providing however, that Declarant and/or Declarant's Broker may maintain a sales office in one unit until 100 percent of the living units have been sold by Declarant or until three (3) years after recordation of this Declaration of Restrictions whichever shall first occur.
- (b) Every owner shall have a right and easement in and to the Common Area which shall be appurtenant to and shall pass with the title to every condominium, subject to 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. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.
- (c) There shall be no obstruction of the Common Areas nor shall anything be stored in the Common Areas without the prior written consent of the Board except as hereinafter expressly provided.
- (d) Nothing shall be done or kept in any unit or in the Common Areas which will increase the rate of insurance without prior written consent of the Board. No owner shall permit anything to be done or kept in his unit or in the Common Areas which will result in the cancellation of insurance or which would be in violation of any law. No waste will be committed to the Common Areas.
- (e) No sign of any kind shall be displayed to the public view or from any unit or the Common Areas, without the prior consent of the Board as to size, shape, color and content; provided, however, any owner may display a sign upon the project of reasonable and customary dimensions advertising his unit for sale or rent, and Declarant may display a sign of reasonable and customary dimensions on the Common Areas

advertising living units for sale until one hundred percent (100%) of the living units shall have been sold by Declarant or the expiration of three (3) years after the recordation of this Declaration of Restrictions, whichever shall first occur.

- (f) No noxious or offensive activity shall be carried on in any unit or in the Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the owners.
- (g) Nothing shall be done in any unit or in, on, or to the Common Areas which impairs the structural integrity of the buildings or which would structurally change the buildings except as is otherwise provided herein.
- (h) Nothing shall be planted, altered, or constructed in or removed from the Common Areas, except upon the written consent of the Board.
- (i) There shall be no violation of rules and regulations for the use of units or the Common Areas adopted by the Board of Directors pursuant to Paragraph 8.
- (j) No livestock, poultry or animals of any nature shall be raised, bred or kept on the project by any owner except that not exceeding one domesticated dog and/or cat be kept in a unit, provided it weighs less than fourteen (14) pounds. Such pets shall not be permitted in the Common Areas except as may be allowed by rules and regulations of The Board.
- (k) Each living unit owner shall keep clean and in good condition and repair the windows and interior of his unit and shall not permit laundry or other unsightly items to extend from or be placed over windows or the deck of his unit. All windows shall have, facing the exterior, either draperies, drapery lining, casement or shutters of a neutral color approved by the Board.
- (l) There shall be only one outside antenna constructed, installed, or maintained on all of the project, the location of which shall be initially determined by Declarant. Each living unit constructed on the project shall have installed outlets connected to said antenna by concealed cable. The location and configuration of said one antenna shall not be changed without prior written consent of the Board. Except as otherwise provided in this Declaration, it shall be the obligation of the Association to maintain, repair, and replace said antenna and all equipment in connection therewith which is located within the Common Areas. Except as otherwise provided, there shall be no outside television or radio antenna constructed, installed or maintained on the project.

- (m) No exterior clothesline shall be erected or maintained on the project and there shall be no outside drying or laundering of clothes on the balconies, patios, porches or any part of the Common Areas.
- (n) The living unit owners shall not be permitted to maintain or have more than two (2) motor vehicles on the project per living unit owned. No power equipment, hobby shops or carpenter shops shall be maintained on the project except where the prior approval of the Board is obtained.
- (o) The Board may set reasonable regulations regarding the use of the Common Areas by guests of living unit owners.
- (p) No living unit owner may lease or rent his living unit to more than two (2) persons per bedroom contained in his unit, and only then if any tenants shall sign an agreement to be bound by the provisions of this Declaration of Restrictions.

7. ENTRY FOR REPAIRS: The Board or its agents may enter any unit when necessary in connection with any maintenance or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund.

8. AUDIT: The Board shall cause an independent audit of account or accounts of the management body to be made annually as of the close of each fiscal year and shall deliver a copy of such audit to the owner of each unit within sixty (60) days of the end of the fiscal year. The membership register, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of The Association shall be made available for inspection and copying by any member of The Association or by his duly appointed representative at any reasonable time and for a purpose reasonably related to his interest as a member of the office of The Association or at such other place within the subdivision as the governing body shall prescribe.

Notice of an intention to review these documents is to be given to the custodian of the management document forty-eight (48) hours prior to inspection with inspection during working hours and on week days. Cost of any reproduction is to be paid by member requesting audit.

Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of The Association and the physical properties owned or controlled by The Association. The right of inspection by a Director includes the right to make extracts and copies of documents. The first mortgage shall also have the right to examine the books and records of the homeowners' association or of the condominium project.

9. DAMAGE OR DESTRUCTION:

- (a) The Association shall keep (i) all buildings in the project and (ii) all personalty owned in common by the owners insured for the interest of all owners and their mortgages, as their interests may appear. The amount of coverage of such insurance shall be the maximum insurable replacement value of said buildings and for market value of personalty as determined annually by an insurance carrier selected by the Board. Insurance proceeds (other than those paid to mortgagees) shall be payable to the Association.
- (b) The Association shall procure and keep in force during the term hereof insurance in the name of the Association and the owners against any liability to the public resulting from any occurrence in or about the Open Space in any amount not less than \$500,000 and to insure against property damage of not less than \$50,000.
- (c) Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by owners at any reasonable time(s). All such insurance policies shall provide that they shall not be cancellable by the insurer, without first giving at least ten days prior notice in writing to the Association.
- (d) Nothing contained herein shall be construed to supersede any provisions of the paragraph entitled, "partition."
- (e) In the event the project, or any portion thereof, is damaged by fire or casualty, the insurance proceeds shall be held by the Board for the benefit of the owners and their mortgages as their respective interests may appear. In such event:
 - (i) if the cost of repair or rebuilding does not exceed the amount of available insurance proceeds by more than five thousand dollars (\$5,000.00), the Board shall thereupon contract for repairs and reconstruction in accordance with the original plans and specifications therefor, and the insurance proceeds held by the Board shall be used for such repair and reconstruction.
 - (ii) if the cost of repair or rebuilding exceeds the amount of available insurance proceeds by more than five thousand dollars (\$5,000.00), and if more than fifty percent (50%) of the voting power of the owners agree to the repair or reconstruction of the project, then the Board shall contract as provided in subparagraph (a) above and the insurance proceeds held by the Board shall be used for such repair and reconstruction;
 - (iii) if the cost of repair or rebuilding exceeds the amount of available

insurance proceeds by more than five thousand dollars (\$5,000.00) and if more than fifty percent (50%) of the voting power does not so agree, then all insurance proceeds shall be paid to the owners and their mortgages as their respective interest shall appear.

- (iv) if a bid to repair or rebuild is accepted, the Board shall levy a special assessment against the living unit owners equal to the proportion that the market value of each owner's living unit bears to the total market value of all multiplicity area to be rebuilt (such market value determined immediately before such destruction) the aggregate amount of the difference between the total insurance proceeds and the cost of such repair and rebuilding. The assessment proceeds shall also be used for the repair and reconstruction. If any owner shall refuse to pay the special assessment within fifteen (15) days after the levy thereof, the Board shall be entitled to make up the deficiency by payment from the maintenance fund and the living unit owner shall be subject to levy as specified in Paragraph 4;
- (v) if three-fourths (3/4) or more of the project has been destroyed or substantially damaged and fifty percent (50%) of the living unit owners are opposed to repair and restoration of the project, or if three (3) years after such damage or destruction to the project which renders a material part thereof unfit for its use prior thereto, and the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, then in either of such events, the Board shall have an irrevocable power of attorney to sell the entire project for the benefit of all the owners thereof, in conformity with California Civil Code Section 1355 (b) 9.

10. PARTITION. Each of the living unit owners, whether such ownership is in fee simple or as a tenant in common or otherwise, is hereby prohibited from participating or in any way severing or separating such ownership from any of the other ownerships in said real property. However, an action may be brought by anyone or more owners of the living units for partition thereof by sale of the entire project, as if all of the owners of the living units in such project were tenants in common in the entire project in the same proportion to the number of living units which the owners of the project as compared with the total number of units before the damage or destruction, upon the showing and only upon the showing that:

- (a) Three (3) years after the damage or destruction to the project which renders a material part thereof unfit for its use, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or

(b) Three-fourths (3/4) or more of the project has been destroyed or substantially damaged, and the living unit owners holding or record more than fifty percent (50%) interest in the living units prior to the damage or destruction are opposed to repair or restoration of the project; or

(c) The project has been in existence in excess of fifty (50) years, it is obsolete and uneconomic, and the living unit owners holding of record more than fifty percent (50%) of the living units prior to the damage or destruction are opposed to repair or restoration of the project.

The foregoing shall not be deemed to prevent partition of a co-tenancy in a living unit.

11. ATTORNEYS' FEES: In the event that any litigation is commenced for the enforcement or defense of any of the provisions of this Declaration of Restrictions, then the prevailing party in any such action shall be entitled to recover from the adverse party a reasonable sum for attorneys' fees.

12. WAIVER. Failure to enforce any provision of this Declaration of Restrictions or any waiver of any breach shall not constitute a waiver of that or any other provision of any future breach, or of the future right to enforce that or any other provisions.

13. MORTGAGE PROTECTION. A breach of any of the provisions of this Declaration of Restrictions shall not affect or impair the lien or charge of any bona fide first mortgage or first Deed of Trust made in good faith and for value encumbering any of the living units. In addition to other bona fide first mortgages or first Deeds of Trust made in good faith of a value including but not limited to, first mortgages or first Deeds of Trust given upon the initial sale, subsequent sale or refinancing of a living unit, any mortgage or Deed of Trust given to facilitate the resale of any living unit after foreclosure is a mortgage or Deed of Trust made in good faith and for value and entitled to all of the rights and protections afforded to other mortgages or beneficiaries under Deeds of Trust. All liens created by this Declaration of Restrictions, including, but not limited to, to any regular or special assessments for the payment of money, shall be subordinated to the lien created by any such bona fide first mortgagee or beneficiary under a first Deed of Trust; provided that after the foreclosure of any such mortgage or Deed of Trust there may be a lien created pursuant to the provisions of this Declaration of Restrictions on the interest of the purchaser at the foreclosure sale to secure all assessments, whether regular or special, assessed thereafter.

Without the prior written approval of, in the case of FHLMC, seventy-five percent (75%), and, in the case of FNMA, seventy-five percent (75%) of the institutional lenders, based upon one (1) vote for each mortgage or deed of trust owned, the Condominium Documents shall not be amended so as to:

- (a) Change the undivided interests in the Common Area, or the share of assessments charged to any Unit;
- (b) Terminate or abandon the condominium status of the project;
- (c) Allow partition;
- (d) Change the interest of any Unit in the allocation of distributions of hazard insurance proceeds or condemnation awards;
- (e) Permit or allow the owners by act or omission to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause);
- (f) Permit the use of hazard insurance proceeds for losses or damages to any portion of the property to be used for other than the repair, replacement or reconstruction thereof, except as provided by California Code of Civil Procedure Section 752(b) or to be deposited to the general funds of the Association;
- (g) Change the provisions of the condominium documents so as to give a unit owner, or any other party, priority over any rights of institutional lenders pursuant to their mortgages in the case of a distribution to unit owners of insurance proceeds or condemnation awards or losses to or taking of units and/or common area.
- (h) Materially change the Declaration or By-Laws or permit termination of professional management of the project (FNMA).

Notwithstanding any language contained in this Declaration to the contrary, no unit owner and no other party shall have priority over any rights of institutional lenders pursuant to their mortgages in the case of a distribution to unit owners of insurance proceeds or condemnation awards for losses to or taking of condominium units and/or common areas.

Institutional lenders shall have the right to examine the books and records of the association.

A first mortgagee, upon request, will be entitled to written notification from the Homeowner's Association of any default in the performance by the individual borrower of any obligation under the Condominium Constituent documents which is not cured within 60 days.

14. ENFORCEMENT. If the Board of Directors should determine, by a majority vote, that any person or persons, whether an owner, an individual living in an owner's living unit or any guest of an owner, shall be in violation of any of the provisions or terms of these Restrictions, the Board shall notify

such person or persons and any first mortgagee or holder of a first deed of trust securing the living unit owned or occupied by such person in writing of the alleged violation, and shall give such person or persons thirty (30) days to cure such default. Thereupon such person or persons may request a hearing before the Board of Directors; provided, however, if such person or persons fail to request a hearing before the Board of Directors within forty (40) days from receipt of such notice from the Board of Directors, the Board of Directors may levy monetary penalties, remove one or more of the privileges (including, but not limited to the use of part of the common areas) and suspend the voting privilege, if any, of such person or persons. If the person or persons alleged to have violated the provisions or terms of these Restrictions shall request a hearing before the Board of Directors, such hearing shall be held within five (5) days of the receipt by the Board of Directors of the request for hearing. Thereupon, the Board of Directors shall hold a hearing at which witnesses may appear and testimony may be taken. After such hearing the Board of Directors may exonerate such person or persons or, if such person or persons are found to have violated the terms or provisions of these Restrictions, the Board of Directors may remove one or more of the person's or persons' privileges (including but not limited to the use of part of the Common Areas), may suspend the voting rights or may levy monetary penalties. No person's or persons' privileges may be suspended hereunder for a period in excess of thirty (30) days for each violation of the provisions or terms of these Restrictions; provided, however, this 30 day limitation shall not apply to a failure to pay assessments when due. Notwithstanding any provision of this paragraph, the Board of Directors may not levy a monetary penalty against any person or persons unless such person or persons are found to have caused monetary damage to the project, then further, such monetary penalty levied by the Board shall not exceed the amount of such monetary damage:

15. AMENDMENTS.

(1) This Declaration of Restrictions may be amended from time to time by a majority of the members of The Association; provided, however, as long as Class A and Class B memberships exist, any amendment must require the vote or written assent of the majority of each class of membership, provided, however, no amendment shall be effective without the written consent of seventy-five percent (75%) of the lien holders. The amendment shall become effective when the instrument, including counterparts thereto, is signed by the requisite number of owners, and recorded in the office of the County Recorder of San Diego County.

(2) Amendments of the By-Laws may be enacted by requiring the vote or written assent of:

(a) at least a bare majority of a quorum but not more than a bare majority of the voting power of the Association; and

such person or persons and any first mortgagee or holder of a first deed of trust securing the living unit owned or occupied by such person in writing of the alleged violation, and shall give such person or persons thirty (30) days to cure such default. Thereupon such person or persons may request a hearing before the Board of Directors; provided, however, if such person or persons fail to request a hearing before the Board of Directors within forty (40) days from receipt of such notice from the Board of Directors, the Board of Directors may levy monetary penalties, remove one or more of the privileges (including, but not limited to the use of part of the common areas) and suspend the voting privilege, if any, of such person or persons. If the person or persons alleged to have violated the provisions or terms of these Restrictions shall request a hearing before the Board of Directors, such hearing shall be held within five (5) days of the receipt by the Board of Directors of the request for hearing. Thereupon, the Board of Directors shall hold a hearing at which witnesses may appear and testimony may be taken. After such hearing the Board of Directors may exonerate such person or persons or, if such person or persons are found to have violated the terms or provisions of these Restrictions, the Board of Directors may remove one or more of the person's or persons' privileges (including but not limited to the use of part of the Common Areas), may suspend the voting rights or may levy monetary penalties. No person's or persons' privileges may be suspended hereunder for a period in excess of thirty (30) days for each violation of the provisions or terms of these Restrictions; provided, however, this 30 day limitation shall not apply to a failure to pay assessments when due. Notwithstanding any provision of this paragraph, the Board of Directors may not levy a monetary penalty against any person or persons unless such person or persons are found to have caused monetary damage to the project, then further, such monetary penalty levied by the Board shall not exceed the amount of such monetary damage.

15. AMENDMENTS.

(1) This Declaration of Restrictions may be amended from time to time by a majority of the members of the Association; provided, however, as long as Class A and Class B memberships exist, any amendment must require the vote or written assent of the majority of each class of membership, provided, however, amendments to provisions governing the following subjects:

- (a) The percentage interest of the unit owners in the common elements of the project.
- (b) The fundamental purpose for which the project was created
- (c) Voting
- (d) Assessments, assessment liens, and subordination thereof.
- (e) The reserve for repair and replacement of common elements

- (f) Property maintenance obligations
- (g) Casualty and liability insurance
- (h) Reconstruction in the event of damage or destruction
- (i) Rights to use the common elements
- (j) Annexation
- (k) Any provision, which by its terms, is specifically for the benefit of first mortgagees, or specifically confers rights on first mortgagees shall not be effective without the written consent of seventy-five percent (75%) of the lienholders. The amendment shall become effective when the instrument, including counterparts thereto, is signed by the requisite number of owners, and recorded in the office of the County Recorder of San Diego County.

(2) Amendments of the By-Laws may be enacted by requiring the vote or written assent of:

- (a) at least a bare majority of a quorum but not more than a bare majority of the voting power of the Association; and
- (b) at least a bare majority of the votes of members other than the subdivider.

Notwithstanding the above, the percentage of a quorum or of the voting power of the Association or of members other than the subdivider necessary to amend a specific clause or provision in the By-Laws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under the clause.

16. INTERPRETATION. The provisions of these restrictions shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of a condominium project.

17. SEVERABILITY. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

18. EASEMENTS. Easements for the installation and maintenance of utilities and drainage facilities are reserved both with respect to the running of any and all utilities from beneath the slab of each and every living unit. Within these easements no structure, planting or other material shall be placed or permitted to remain which will damage or interfere with the installation and maintenance of utilities, or which may change the direction of the flow of drainage channels in the easements, or which may obstruct or retard the flow of water, through drainage channels in easements. The easement area of each parcel and all improvements in and upon it shall be maintained continuously by the owners of said parcel, except those improvements for which a public authority or utility company is responsible.

19. TERM. The restrictions, conditions and covenants herein contained shall be binding and in full force and effect until January 1, 2034, unless modified, altered, or changed by a written document executed and duly recorded by the voting owners of three-fourths (3/4) of the total living units in the project.

20. INCORPORATION OF BY-LAWS. Adjoining property may be annexed and become subject to this Declaration of Restrictions by the methods set forth below:

- (1) Annexation pursuant to approval. Upon approval by seventy-five percent (75%) of the voting power of the living unit owners, at a meeting duly called or by the written consent of such members, the owners of any property who desires to add such property to this Declaration of Restrictions may file a Declaration of Annexation of such property as set forth below.
- (2) Declaration of Annexation. The additions authorized in the foregoing paragraphs shall be made by filing of record of Declaration of Annexation with respect to the additional properties which shall extend the scheme of this Declaration of Restrictions to such properties. Such Declaration of Annexation may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration of Restrictions as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration of Restrictions. In no event, however, shall any supplementary declarations, mergers or consolidations, revoke, modify or add to the covenants established by this Declaration of Restrictions with the existing project, except as hereinabove otherwise provided.

IN WITNESS WHEREOF, the undersigned has executed this instrument on the date first above written.

Louis Feller
Louis Feller

Samuel Feller
Samuel Feller

SAN DIEGO } ..

1979 before me, the undersigned, a Notary Public in and for

FELLER

(Attach to Declaration of Restrictions)

EXHIBIT "A"

Lot 3 of AMHERST ESTATES, Map No. 6598, Filed in
The Office of The County Recorder, San Diego County,
State of California, Recorded February 24, 1970.