

WHEN RECORDED MAIL TO:
ARIEL BASSE
235 MONTGOMERY STREET SUITE 801
SAN FRANCISCO, CALIFORNIA 94104

79 9808

JAN 22 1979

FOUNDERS TITLE COMPANY

JAN 22 1979

CONTRA COSTA COUNTY RECORDS

FEE 1/2 J. R. OLSSON
COUNTY RECORDER

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, GEORGE I. BENNY,

(hereinafter called "Grantor") is the owner of all that certain real property located in the City of Concord, County of Contra Costa, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, said property is a "project" within the meaning of Section 1350(3) of the California Civil Code, subject to the provisions of the California Condominium Act (Title VI, Part 4, Division Second of the Civil Code), and it is the intention and desire of Grantor to divide the project into condominiums by grant deed substantially in the form attached hereto and marked Exhibit "B" and as shown upon the Condominium Plan attached hereto and recorded concurrently herewith.

WHEREAS, it is Grantor's intention to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all said condominiums and the Owners thereof;

NOW, THEREFORE, Grantor hereby declares that the project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominiums and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the project and every part thereof. All covenants, conditions and restrictions shall run with the real property and shall be

binding upon 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 project or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the Owners thereof. This Declaration is made by the Grantor pursuant to section 1355 of the California Civil Code.

I

DEFINITIONS

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

(a) "Condominium" shall mean the entire property conveyed by the Deed to the grantee as defined by Section 783 of the Civil Code;

(b) "Common Areas" "Lot 1" shall mean the entire project excepting all units therein granted or reserved;

(c) "Owner" or "Owners" shall mean the owner of one or more condominiums; the word "Member" and "Owner" shall be interchangeable herein; the Declarant (sometimes referred to herein as Subdivider or Grantor) shall be specifically excluded from the class described as "Owner" or "Member".

(d) "Mortgagee" shall mean a beneficiary under or holder of a Deed of Trust as well as a mortgage;

(e) "Mortgage" shall mean a Deed of Trust as well as a mortgage;

(f) "Board" or "Board of Directors" shall mean the governing body of the project, elected pursuant to Article VI hereof.

II

PARTITION

Except as provided by Section 1354 of the Civil Code of California, there shall be no judicial partition of the project or any part thereof, nor shall Grantor or any person

9194 m573

acquiring an interest in the project or any part thereof seek any judicial partition, provided, however, that if any condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants.

III

VOTING

At any meeting of the Owners, each Owner shall be entitled to cast one (1) vote for each condominium owned by him. Any Owner may attend and vote at such meeting in person, or by an agent duly appointed by an instrument in writing signed by the Owner and filed with the Board or Manager. Any designation of an agent to act for an Owner may be revoked at any time by written notice to the Board or Manager, and shall be deemed revoked when the Board or Manager shall receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance by such Owner of his condominium. Where there is more than one record Owner, any and all such persons may attend any meetings of the Owners, but it shall be necessary for those present to act by majority in order to cast the votes to which they are entitled, although if only one co-owner is present in person or by proxy at any Owners' meeting, he may vote all of the shares jointly owned. Any designation of an agent to act as an agent for co-owners must be signed by a majority of such co-owners.

IV

MEETINGS

Quorum

The presence at any meeting in person or by proxy of the Owners having a majority of the total votes shall

constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Owners upon the affirmative vote of a majority of the voting power.

Annual Meeting

There shall be a meeting of the Owners on the second Tuesday of January of each year at 8:00 p.m. upon the Common Area or at such other reasonable place not outside the county in which the subdivision is located or time (not more than sixty (60) days before or after such date) as may be designated by written notice of the Board delivered to the Owners not less than ten (10) nor more than sixty (60) days prior to the date fixed for said meeting. At the annual meeting, the Board shall present an audit of the maintenance fund, itemizing receipts and disbursements for the preceding calendar year. Within ten (10) days after the annual meeting, said statement shall be delivered to the Owners not present at said meeting.

Special Meetings

A special meeting of the members of the Association shall be promptly called by the governing body upon:

- (1) The vote for such a meeting by a majority of a quorum of the governing body.
- (2) Receipt of a written request therefor signed by members representing 25% of the total voting power of the Association or by members representing 15% of the voting power residing in members other than the Subdivider. In the absence of a quorum of a member's meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. Such adjournment shall be to a date not less than

9194 REC 575

five (5) days and not more than thirty (30) days from the original meeting date. The quorum for such a meeting shall be 25% of the total voting power of the association.

V

NOTICES

Written notice of regular and special meetings shall be given to members by the governing body by any means which is appropriate given the physical setup of the subdivision. Except in emergency situations, at least ten (10) days notice of any meeting shall be provided. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken.

VI

ELECTION AND PROCEEDINGS OF THE BOARD

Election

At each annual meeting the Owners shall elect a Board of Directors for the forthcoming year, consisting of three (3) Owners, provided, however, that the first Board elected hereunder shall be elected at a special meeting duly called, said Board to serve until the first annual meeting. The first Board shall be elected within thirty (30) days after conveyance of the first condominium subject hereto to an Owner. Every Owner entitled to vote at any election of members of the Board may cumulate his votes and give one candidate a number of votes equal to the number of members of the Board to be elected, multiplied by the number of votes to which such Owners are otherwise entitled, or distribute his votes on the same principal among as many candidates as he thinks fit. The candidates receiving the highest number of votes up to the number of members of the Board to be elected shall be deemed elected. All of the votes shall be cast by secret written ballot.

BOOK 9194 PAGE 576

At any election in which the members other than the Declarant do not have a sufficient percentage of the voting power of the Association to elect at least one governing body member through the cumulating of all of their votes then one of the members will be appointed to the governing body. There shall at all time be at least one member on the governing body.

Term

Members of the Board shall serve for a term of one (1) year until their respective successors are elected, or until their death, resignation, or removal; provided that if any member ceases to be an Owner, his membership on the Board shall thereupon terminate.

Resignation and Removal

Any member of the Board may resign at any time by giving written notice to the Secretary, and any member may be removed from membership on the Board by a vote of the Owners; provided that unless the entire Board is removed, an individual member shall not be removed if the number of shares voted against his removal exceeds the quotient arrived at when the total number of outstanding shares entitled to vote is divided by one plus the authorized number of members of the Board. A Board member who has been elected to office solely by the votes of members of the Association other than the Subdivider may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in members other than the Subdivider.

Vacancies

Vacancies on the Board shall be filled by appointment by the remaining Board members.

Proceedings

A majority of the members of the Board shall constitute a quorum and, if the quorum is present, the decision of a

BOOK 9194 PAGE 577

majority of those present shall be the act of the Board. The Board shall elect a president, who shall preside both over its meetings and those of the Owners. Meetings of the Board may be called, held, and conducted in accordance with such rules as the Board may from time to time adopt. The Board may also act without a meeting by unanimous written consent of its members.

BOOK 9194 PAGE 578

Regular and special meetings of the governing body shall be open to all members of the Association provided, however, that Association members who are not on the governing body may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the governing body.

The governing body may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Grantor Performs Functions

Until the first election of the Board, the rights, duties and functions of the Board shall be exercised by Grantor.

Notice of Election

After the first election of the Board, Grantor shall execute, acknowledge, and record an affidavit stating the names of all of the persons elected to membership on the Board. Thereafter, any two (2) persons who are designated of record as being members of the most recent Board (regardless of whether or not they shall still be members) may execute, acknowledge, and record an affidavit stating the names of all of the members of the then current Board. The most recently recorded of such

affidavits shall be prima facie evidence the persons named therein are all of the incumbent members of the Board and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

VII

AUTHORITY OF THE BOARD

The Board of Directors, for the benefit of the condominium project and the individual condominium owners, shall enforce the provisions hereof and shall acquire and pay for out of the maintenance fund hereinafter provided for, the following:

(a) Water, sewer, garbage, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Units;

(b) 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 XVI herein, or such other fire and casualty insurance as the Board shall determine give substantially equal or greater protection to the Owners, and their mortgagees, as their respective interests may appear;

(c) 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 person injured, \$1,000,000.00 for any one accident, and \$100,000 for property damage. Such limits and coverage shall 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

BOOK 9194 PAGE 579

cross-liability endorsement where the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her, or their action against another named insured;

(d) Worker's compensation insurance to the extent necessary to comply with any applicable laws;

(e) The services of such personnel as the Board shall determine to be necessary or proper for the operation of the Common Area;

(f) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration;

(g) Exterior painting, maintenance, repair, and all of the landscaping of the Common Area, and such furnishings and equipment for the Common Area and at least to the standards of maintenance prevalent in the neighborhood. The Board shall have the exclusive right and duty to acquire the same for the Common Area; provided, however, that the interior surfaces of each Unit (and the interior surfaces of other areas, the exclusive use of which is reserved to the Owner by easement) shall be painted, maintained, and repaired by the Owners thereof, all such maintenance to be at the sole cost and expense of the particular Owner;

(h) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enforcement of this Declaration, provided that if such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations

9194 MAR 580

BOOK 9194 PAGE 581

insurance, taxes, or assessments are provided for particular units, the cost thereof shall be specifically assessed to the Owners of such Units.

(i) The Board shall also pay any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which may in the opinion of the Board constitute a lien against the Common Area, rather than merely against the interests therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the costs of discharging it and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said Owners.

(j) Maintenance and repair of any Unit, including yard, if such maintenance and repair is reasonably necessary in the discretion of the Board to protect the Common Area or preserve the appearance and value of the project, and the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice and hearing of the necessity of said maintenance or repair delivered by the Board to said Owner or Owners. The Board shall levy a special assessment against the condominium of such Owner or Owners for the cost of said maintenance or repair, only after notice to such Owner or Owners and after a hearing has been held at which time such Owner or Owners may explain their failure to repair.

Limitations on Board's Power

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 the Subdivider:

BOOK 9194 PAGE 582

- (1) Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or the Owners' Association for a term longer than one (1) 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 (3) 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 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.

VIII

EXCLUSIVE BOARD POWERS

The Board shall have the exclusive right to contract for all goods, services, and insurance, payment for which is to be made from the maintenance fund except as expressly provided herein. No service contract shall be for a longer period than one (1) year, unless approved by a majority of the Owners other than Declarant.

IX

OWNER'S OBLIGATION TO REPAIR

Except for those portions which the Board is required to maintain and repair hereunder, if any, each Owner shall, at his sole cost and expense, maintain and repair his Unit, keeping the same in good condition and appearance.

X

MAINTENANCE FUND: ASSESSMENTS

Procedure

Regular assessments against all units in the subdivision shall commence on the first day of the month following the closing of said first sale of a subdivision interest.

Within sixty (60) days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during such year, including a reasonable provision for contingencies and replacements with adjustments made for any expected income and surplus from the prior year's fund. Such estimated cash requirement shall be assessed to the Owners pursuant to the schedule attached hereto and marked Exhibit "C". Grantor shall be liable for payment of any assessment against condominiums owned by Grantor. If the estimated assessment proves inadequate for any reason, including the nonpayment of an assessment by an individual Owner, the Board may at any

time levy a further assessment, which shall be assessed to the Owners in like proportions, unless otherwise provided herein. Each Owner shall be obligated to pay assessments made pursuant to this paragraph to the Board in equal monthly installments on or before the first day of each month during the year, or in such other reasonable manner as the Board shall designate.

Exercise by Grantor

The rights, duties, and functions of the Board set forth in this paragraph may be exercised by Grantor for the period ending at the time of the election of the first Board hereunder.

Use of Funds

All funds collected hereunder shall be expended for the purposes designated herein.

No Owner may waive or otherwise escape liability for the assessments otherwise provided for herein by nonuse of the Common Area or abandonment of his or her condominium.

XI

DEFAULT IN PAYMENT OF ASSESSMENTS

Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed. The amount of any assessment, whether regular or special, assessed to the Owner of any condominium, including interest at nine (9) percent and costs, including reasonable attorney's fees, shall become a lien upon such condominium when a notice of assessment as provided in Section 1356 of the California Civil Code is duly recorded. A certificate executed and acknowledged by a majority of the Board stating the indebtedness secured by a lien on any

BOOK 9194 PAGE 584

condominium created hereunder shall be conclusive upon the Board and the Owners as to the amount of such indebtedness on the date of the certificate in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon request at a reasonable fee not to exceed fifteen dollars (\$15.00).

Any such lien may be foreclosed by an appropriate action in Court or in the manner provided by law for the foreclosure of a mortgage under power of sale. Any action in Court brought to foreclose such a lien shall be commenced within ninety (90) days following such recordation. In the event the foreclosure is under a power of sale, as in the case of a mortgage, the Board, or any person designed by it in writing, shall be deemed to be acting as the agent of the lienor and shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted.

Such sale shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c applicable to the exercise powers of sale and mortgages and deeds of trust, or in any other manner permitted by law. The certificate of sale shall be executed and acknowledged by any two (2) members of the Board or by the person conducting the sale. A deed upon Court foreclosure shall be executed in a like manner after the elapse of the period of redemption then required by statute.

XII

MORTGAGE PROTECTION

Subordination of Liens

Notwithstanding all other provisions in this Declaration, liens created hereunder upon any condominium shall be subject and subordinate to, and shall not affect the rights of

BOOK 9194 PAGE 585

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 XI 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 said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

BOOK 9194 PAGE 586

It is further provided that a breach of any of the conditions contained herein or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or Deed of Trust made in good faith and for value as to said premises or any part thereof; but said conditions shall be binding upon and effective against any Owner of said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Amendments

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.

XIII

LIMITATIONS ON THE USE OF UNITS AND COMMON AREA

(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 except as hereinafter expressly provided or in designate storage areas.

(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 condominium, provided, however, that reasonable amounts in metal containers may be stored in the storage spaces.)

(d) No sign of any kind shall be displayed to the public view on 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 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 on 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 removed from the Common Area.

(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 in a space designated for the Owner by the Owner's Grant Deed.

(j) None of the rights and obligations of the Owners created herein, or by the deed creating the condominiums 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.

BOOK 9194 PAGE 588

XIV

ENTRY FOR REPAIRS

The Board or its agents may, after giving 24 hours notice, excepting in emergency, enter 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.

XV

EXCLUSIVE OWNERSHIP AND POSSESSION BY OWNER

Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner shall be entitled to an undivided interest in the Common Area in the percentage expressed in Article XX of this Declaration. The percentage of the undivided interest in the Common Area shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though

such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners.

An Owner shall not be deemed to own the undecorated and/or unfinished interior surface of the perimeter walls, floors, ceilings, windows and doors bounding the Unit, nor shall the Owner be deemed to own the utilities running through his Unit which are utilized for, or serve more than one Unit, except as a tenant-in-common with the other Owners. An Owner, however, shall be deemed to own and shall have the exclusive right to paint, repaint, title, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, floors, ceilings, windows and doors bounding the Unit.

XVI

DAMAGE AND DESTRUCTION

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 to the 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 therefor. If such damage extends to two or more Units, or extends to any part of the Common Area:

(a) If the cost of rebuilding or repairing does not exceed the available insurance proceeds initially offered or paid by the insurer by Five Thousand Dollars (\$5,000.00), such insurance proceeds shall be paid to the insurance trustee

BOOK 9194 PAGE 589

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 in an amount equal to the estimated deficiency.

BOOK 9194 PAGE 590

(b) If subparagraph (a) is inapplicable, then:

(1) All insurance proceeds shall be paid to Title Insurance and Trust, or to such other bank or trust company 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 insurance trustee, relating to its powers, duties, and compensation as the Board may approve;

(2) The Board shall obtain firm bids (including the obligation to obtain a performance bond) from two (2) 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 66-2/3% vote elect to reject

all of such bids and thus not to rebuild, or by 51% vote elect to reject all such bids requiring amounts more than Five Hundred Dollars (\$500.00) in excess of available insurance proceeds. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable.

(3) 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 assessment and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to said insurance trustee to be used for such rebuilding. If any Owner shall fail to pay the special 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;

(4) 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;

(c) 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;

(d) 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 Manager, 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 decreeing such partition, these Restrictions shall terminate.

The provisions of this Article cannot be amended without the consent in writing of the Owners of 75% of the Common Area.

XVII

CHANGES IN THE COMMON AREA

The governing body of the Association may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than the Subdivider, impose a regular annual assessment per subdivision interest which is more than 20% greater than the regular assessment for the immediately preceding fiscal year, or levy special assessments to defray the costs of any action or undertaking on

BOOK 9194 PAGE 592

behalf of the Association which in the aggregate exceed 5% of the budgeted gross expense of the Association for that fiscal year.

XVIII

ACCOUNTING AND AUDIT

Financial statements for the Association shall be regularly prepared and copies shall be distributed to each member of the Association as follows:

- (1) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year.
- (2) 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 the first sale of an interest in the subdivision -- and an operating statement for the period from the date of the first 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.
- (3) A balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year shall be distributed within ninety (90) days after the close of the fiscal year.

An external audit by an independent public accountant shall be required for fiscal year financial statements (other than budgets) for any fiscal year in which the gross income to the Association exceeds \$75,000.

BOOK 9194 PAGE 593

XIX

AMENDMENT

Amendments of these Covenants, Conditions and Restrictions may be enacted by the vote of written assent of members representing both:

(a) A bare majority of the total voting power of the Association; and

(b) A bare majority of the votes of members other than the Subdivider. The percentage of voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

No provision of Article VIII(g) and (h) and Article X of this Declaration may be amended or revoked without the prior express written consent of the City of Concord.

XX

OWNERSHIP INTERESTS

Condominium Unit	Percentage of Ownership of Common Area	Voting Shares
1	1/10	1
2	1/10	1
3	1/10	1
4	1/10	1
5	1/10	1
6	1/10	1
7	1/10	1
8	1/10	1
9	1/10	1
10	1/10	1

9194 MC594

XXI

SEVERABILITY

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

XXII

INTERPRETATION

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

XXIII

LIMITATION OF LIABILITY

The liability of any Owner for performance of any of the provisions hereof, excepting unpaid assessments, shall terminate upon the sale, transfer or other divestiture of said Owner's entire interest in his or her condominium with respect to obligations arising hereunder from and after the date of such divestiture.

BOOK 9194 PAGE 535

SPECIAL FEDERAL HOME LOAN MORTGAGE CORPORATION WARRANTIES

Notwithstanding any provisions to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (FHLMC) to participate in the financing of the sale of the units, the following provisions are included:

a. A first mortgagee, upon request, will be entitled to written notification from the homeowners association of any default in the performance by the individual unit Borrower of any obligation under the condominium constituent documents which is not cured within sixty days. Seller further warrants that: (i) such request has been made by Seller, (ii) as of the Delivery Date Seller has received no notice of any such outstanding default and (iii) subsequent to the Delivery Date, Seller, as Servicer, will notify FHLMC of any notice of such default, as prescribed in the Servicer's Guide.

b. Any first mortgagee who obtains title to the Condominium Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure will be exempt from any "right of first refusal" contained in the condominium constituent documents.

c. Any first mortgagee who obtains title to the Condominium Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such unit's unpaid dues or charges which accrue prior to the acquisition of title to such unit by the mortgagee.

d. Unless at least seventy-five per cent of the

BOOK 9194 PAGE 596

first mortgagees (based upon one vote for each first mortgage owned) or owners (other than the sponsor, developer, or builder) of the individual Condominium Units have given their prior written approval, the Condominium homeowners association shall not be entitled to:

(1) by act or omission, seek to abandon or terminate the condominium project;

(2) change the pro rata interest or obligations of any individual Condominium Unit 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 Condominium Unit in the common elements;

(3) partition or subdivide any Condominium Unit;

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements.

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 a transfer within the meaning of this clause;

(5) use hazard insurance proceeds for losses to any condominium property whether to units or to common elements for other than the repair, replacements or reconstruction of such condominium property, except as provided by statute in case of substantial loss to the units and/or common elements of the condominium project.

In the case of a condominium project subject to additions or expansions, in which sections or phases are established by the condominium constituent documents (hereafter referred to as "phasing" or "add-ons", satisfying the

BOOK 9194 PAGE 597

requirements of Section 3.207d(2) and (4) and 3.207n will be deemed waived to the extent necessary to allow the phasing or add-ons in accordance with the condominium constituent documents.

(e) First mortgagees shall have the right to examine the books and records of the condominium homeowners association or the condominium project.

(f) Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis, and shall be payable in regular installments rather than be special assessments.

(g) All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominium Units and not to the condominium project as a whole.

(h) No provision of the condominium constituent documents gives a Condominium Unit owner, or any other party, priority over any rights of first mortgagees of Condominium Units pursuant to their mortgages in the case of a distribution to Condominium Unit owners of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or common elements.

SELLER FURTHER WARRANTS (except as to the extent that Seller requests and recommends a waiver or modification of the following, as provided above):

(i) All amenities (such as parking, recreation and service areas) are a part of the condominium project and are covered by the mortgage at least to the same extent as are the common elements. All such amenities are fully installed, completed and in operation for use by Condominium

BOOK 9194 PAGE 598

Unit owners. If such amenities are not common or special elements under the condominium project, but are part of a PUD of which the condominium project is a part, such an arrangement is acceptable provided that the warranties applicable to PUD units are also satisfied or waivers obtained.

FHLMC reserves the right to reject any Condominium Unit mortgage if FHLMC determines in its sole discretion that the number of units in the condominium project is insufficient to support the common elements.

(j) The condominium project has been created and is existing in full compliance with requirements of the condominium enabling statute of the jurisdiction in which the condominium project is located and all other applicable laws.

(k) 70 per cent of the units in the condominium project have been sold to bona fide purchasers who have closed or who are legally obligated to close. Multiple purchases of Condominium Units by one owner are to be counted as one sale when counting the number of sales within a condominium project to determine if this sales requirement has been met. FHLMC may reduce this 70 per cent sales requirement to 51 per cent for those condominium project where Seller can document to FHLMC's satisfaction adequate reasons for such a waiver. In a condominium project subject to phasing or add-ons, in which sections or phases are established by the condominium constituent documents and under a common homeowners association, a section or phase may be combined with other completed, sold and occupied sections or phases.

9194 RMC 599

A section/phase is one which is of sufficient size to contain an adequate number of units to support any common elements or recreational facilities which are included in the sale price or appraised value of the individual unit, and in a condominium project, the section/phase is generally established by the condominium constituent documents.

(l) In a new or newly converted condominium project, at least 80 per cent of the units sold in the condominium projects are sold to individuals for use as their primary year-round residences. In an existing condominium project, at least 80 per cent of the units in the condominium project are occupied by unit owners as their primary year-round residences.

(m) If the condominium project is on a leasehold estate, the Condominium Unit lease is a lease of the fee, and the provisions of the Condominium Unit lease comply with the requirements herein applicable to Multifamily Mortgage leaseholds (See Part IV, Section 4.206). In addition, such lease does not contain any provision providing for any increases in the ground rent (lease payment) earlier than ten years after the maturity date of the note and mortgage.

(n) Any proposal or plan pursuant to which the condominium project is subject to phasing or add-ons complies with the following limitations:

(1) Condominium Unit owners shall have a minimum percentage undivided interest in the common elements and a corresponding maximum interest subject to diminution to no less than such minimum, and each such percentage interest must be stated in the Declaration of Condominium

BOOK 9194 PAGE 600

(or Master Deed or similar instrument);

(2) The conditions whereby any change in such percentage of undivided interest in common elements may take place are fully described in the Declaration of Condominium (or Master Deed), together with a description of the real property which will become subject to the condominium project if such alternative percentage interest becomes effective; and

(3) No change in the percentage interests in the common elements may be effected pursuant to such phasing or add-on plan more than seven years after the Declaration of Condominium (or Master Deed) becomes effective.

(o) Any agreement for professional management of the 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 a termination fee on 90 days or less written notice and a maximum contract term of three years.

(p) The condominium homeowners association has agreed to give FHLMC notice (c/o Servicer at Servicer's address) in writing of any loss to, or taking of, the common elements of the condominium project if such loss or taking exceeds \$10,000 or damage to a Condominium Unit covered by a mortgage purchased in whole or in part by FHLMC exceeds \$1,000.

IN WITNESS WHEREOF the undersigned being the Declarant herein, has hereunto set his hand and seal this 4th day of December, 1978.

Grantor

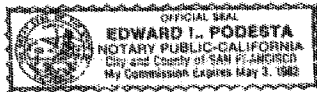
George I. Benny
George I. Benny

9194 MC 601

STATE OF CALIFORNIA }
COUNTY OF CONTRA COSTA } SS

On December 4, 1978, before me
Edward I. Podesta, personally appeared
GEORGE I. BENNY, known to me to be the person who
executed the within instrument and acknowledged to
me that he executed the same.

Dated:



Edward I. Podesta
Notary Public

900 9194 100 682

EXHIBIT "A"

Description:

All that certain real property in the
County of Contra Costa, State of California,
described as follows:

Subdivision 5212 as shown on the map filed
March 9, 1978, in map book 209, page 5
Official Records, Contra Costa County.

500-9194 REC 603

EXHIBIT "B"

GRANT DEED

I

GEORGE I. BENNY, (hereinafter called "GRANTOR") grants to _____
(hereinafter called "GRANTEE") Condominium Number _____ in LANDANA VILLAGE, consisting of that certain real property located in the County of Contra Costa, State of California, described as follows.

PARCEL A:

Unit _____ as shown on that certain Condominium Plan hereinafter referred to as "The Plan"

EXCEPTING AND RESERVING, however, the following:

1. Any portion of the Common Area lying within said Unit; and
2. Easements through said Unit appurtenant to the Common Area and all other Units for support and repair of the Common Area and all other Units.

PARCEL B:

TOGETHER WITH the following appurtenant easements:

1. Non-exclusive easements for support of said Parcel A through the Common Area for repair of said Parcel A through all other Units and through the Common Area; and
2. An exclusive easement to use parking stall P- _____ as shown on the Plan.

EXCEPTING AND RESERVING, however, the non-exclusive easements described herein as Parcel D.

PARCEL C:

An undivided 1/10th interest as tenant-in-common in and to the Common Area, and shown on the Plan (Exhibit attached to Declaration of Restrictions).

EXCEPTING AND RESERVING, however, the following:

1. Non-exclusive easements appurtenant to all Units for support and repair of the Common Area and other Units;
2. Exclusive easements appurtenant to the other Units for use of Parking Spaces not granted herein, for use of the other Units and/or the Homeowners' Association, as shown on the Plan, and the exclusive right of the Board to control or license the use of Parking Stalls not assigned or deeded by Declarant.

PARCEL D:

TOGETHER WITH, non-exclusive easements appurtenant to the Common Area through each Unit, Parking Stall, for support and repair of the Common Area and other Units.

BOOK 9194 PAGE 604

II

Each of the foregoing grants is subject to the lien of real property taxes and Assessments not delinquent, the Restrictions referred to in III-B below and all covenants, conditions, easements, restrictions and liens of record. The property herein granted is a Condominium as defined in Section 1350 (1) of the California Civil Code and the Project as hereinafter defined is subject to the provisions of the California Condominium Act, Title 6, Part 4, Division Second of said Code.

III

Terms used in this Deed are defined as follows:

A. "Unit", "Common Area", "Parking Stalls", "Plan" and "Project" each have the same meaning as in the Restrictions.

B. "Restrictions" means that certain Declaration of Covenants, Conditions and Restrictions Establishing a Plan of LANDANA VILLAGE, executed by Grantor on _____, 1978, and recorded in the Office of the Recorder of the County of Contra Costa, State of California, in Book _____, Page _____; the Restrictions apply to the subdivided property set forth on that certain Subdivision Map entitled Subdivision 5212, filed in the Office of the Recorder of the County of Contra Costa, State of California, on 3-9-78, 1978, Map Book 209, Page 5.

IV

This Deed is made and accepted subject to all the provisions contained in that certain document defined herein as "Restrictions", all of which are incorporated herein by reference with the same effect as though fully set forth herein.

IN WITNESS WHEREOF, the undersigned has executed the within Deed this _____ day of _____, 1978

(Acknowledgement)

GEORGE I. BENNY

GRANTOR

We, the undersigned Grantees, hereby accept the foregoing Deed subject to all of the terms, conditions and restrictions contained therein.

(Acknowledgement)

GRANTEE

GRANTEE

BOOK 9194 PAGE 605

PART III -- BUDGET WORK SHEET AND CHECK SHEET

100 <u>FIXED COSTS</u>	<u>Per Unit Per Mo.</u>	<u>Total Monthly</u>	<u>Total Annual</u>
101. Property Taxes			
102. Corp. Franchise Taxes	<u>2.00</u>	<u>20.00</u>	<u>240.00</u>
103. Insurance	<u>5.00</u>	<u>50.00</u>	<u>600.00</u>
104. Business Licenses, etc.			
SUB TOTAL	<u>7.00</u>	<u>84.00</u>	<u>1,008.00</u>
 200 <u>OPERATING COSTS</u>			
201. Electricity			
Lighting (206)			
Leased No. _____	<u>3.00</u>	<u>30.00</u>	<u>360.00</u>
Owned KWH _____			
Elevator (210)			
Air Conditioning (212)			
Swimming Pool (213)			
Tennis Courts (214)			
202. Gas			
Hot Water (204)			
Central Heating			
SWIMMING POOL (213) Jacuzzi	<u>.50</u>	<u>5.00</u>	<u>60.00</u>
203. Water			
Irrigation			
Domestic			
Conditioning (Softener)			
205. Television Cable Service			
207. Custodial			
208. Landscape Area _____			
Service	<u>8.00</u>	<u>80.00</u>	<u>960.00</u>
Supplies			
209. Refuse Disposal _____ Cans			
Bins			
210. Elevator			
No. _____ Type _____			
211. Streets and Drives -			
Sweeping Area _____	<u>1.00</u>	<u>10.00</u>	<u>120.00</u>
212. Air-Conditioning			
Area _____			

9191 R/E 606

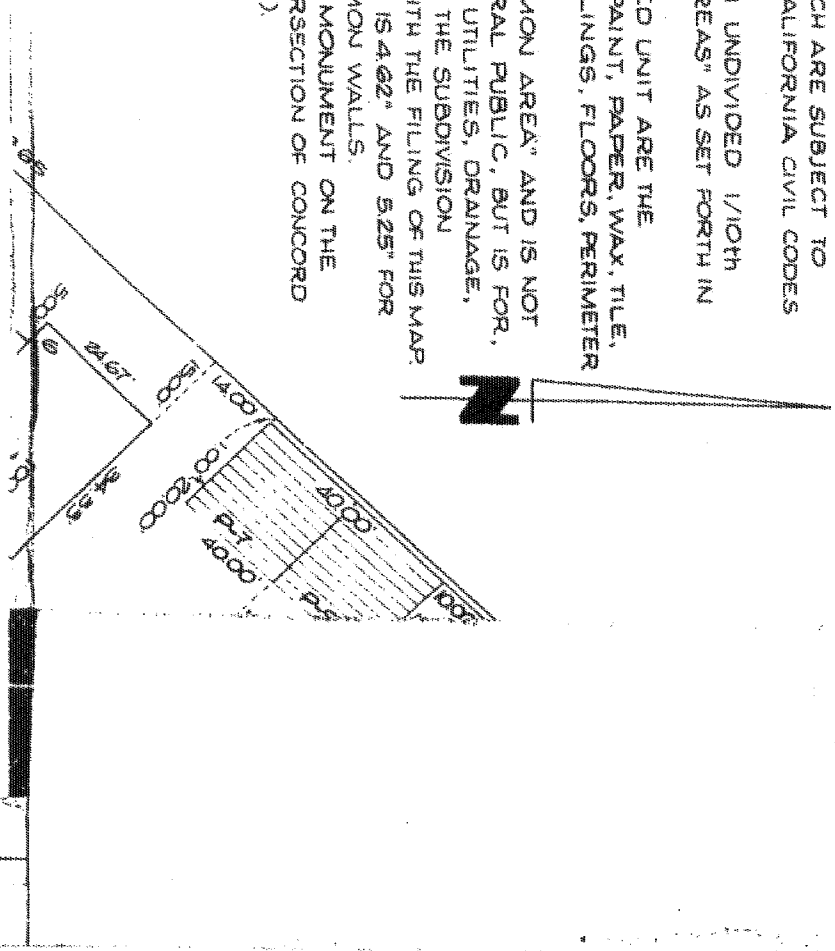
		Per Unit Per No.	Total Monthly	Total Annual
213.	Swimming Pool Surface Area			
214.	Tennis Court Maintenance			
215.	Security Guard Hours Per Day Motorized			
216.	Miscellaneous Minor Repairs Pest Control Snow Removal	2.00	20.00	240.00
	SUB TOTAL	18.50	185.00	2,220.00
300	RESERVES			
301.	Painting, area	3.50	35.00	420.00
302.	Roofing, area	2.50	25.00	300.00
303.	Water Heaters, No.			
304.	Lights, area or No.	.50	5.00	60.00
305.	Carpets & Flooring, area Rec. bldg.	.50	5.00	60.00
306.	Elevator, No. Type			
307.	Streets & Driveways, area	.50	5.00	60.00
308.	Central Heating & Air Conditioning Area	.25	2.50	30.00
309.	Swimming Pool, Size			
310.	Tennis Courts, No. Type			
311.	Furnishings & Equipment Rec. bldg.	.25	2.50	30.00
312.	Misc. Reserve Underground utility services	.50	5.00	60.00
	SUB TOTAL	8.50	85.00	1,020.00
400	ADMINISTRATION			
401.	Professional Management	20.00	200.00	2,400.00
402.	Legal	2.00	20.00	240.00
403.	Accounting	2.00	20.00	240.00
404.	Miscellaneous, office Expense	.50	5.00	60.00
	SUB TOTAL	24.50	245.00	2,940.00
500	CONTINGENCY			
501.	New Construction			
502.	Conversions			
	SUB TOTAL			
	TOTAL BUDGET	58.50		

R/E Form 623
Revised: 7-6-77

BOOK 9194 PAGE 607

GENERAL NOTES

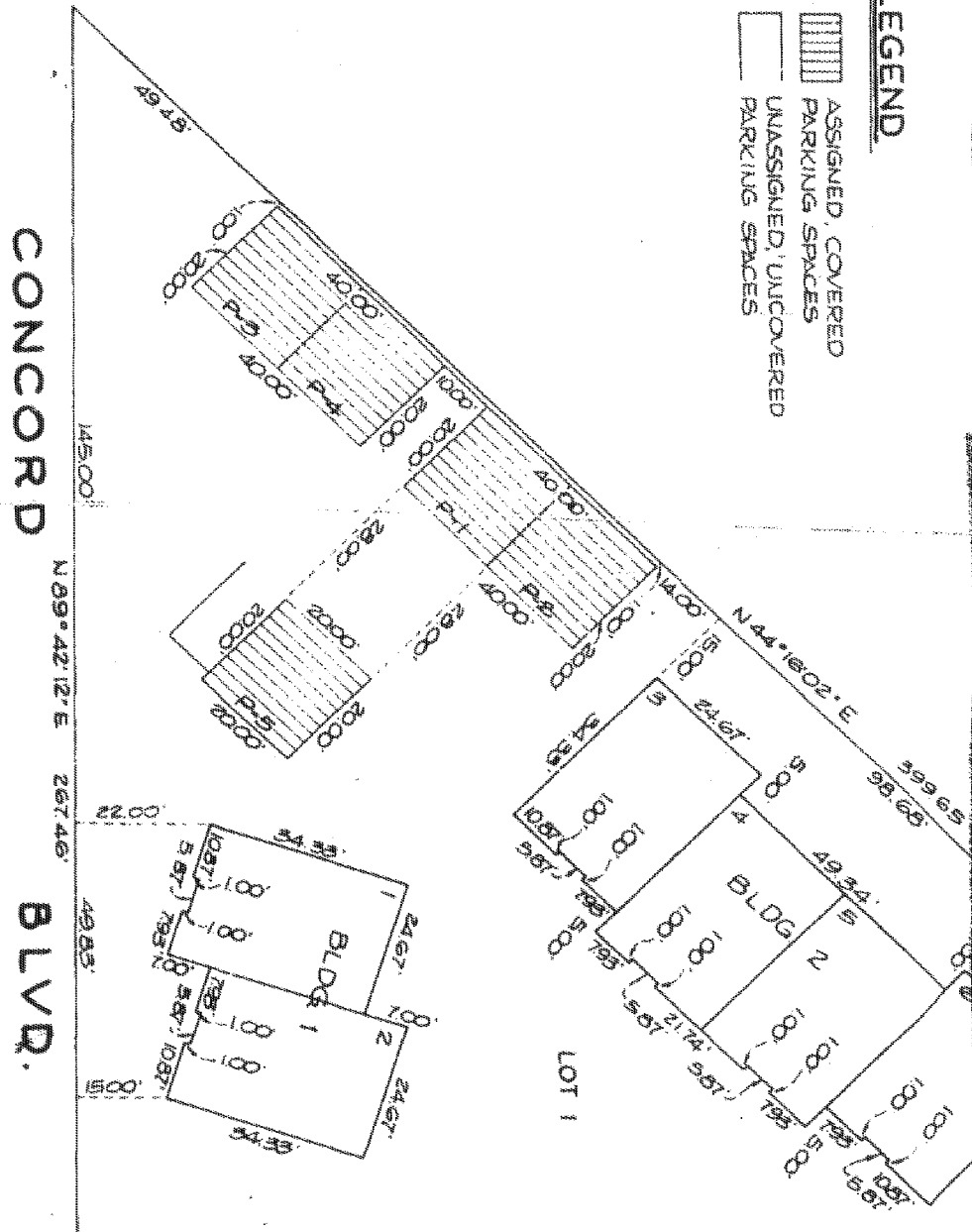
- 1 UNITS 1 THROUGH 10 ARE THREE DIMENSIONAL SINGLE FAMILY RESIDENTIAL CONDOMINIUMS, AND AS SUCH ARE SUBJECT TO ALL OF THE PROVISIONS OF THE STATE OF CALIFORNIA CIVIL CODES APPLICABLE TO CONDOMINIUMS.
- 2 THE OWNER OF EACH UNIT SHALL OWN AN UNDIVIDED 1/10TH PERCENTAGE INTEREST IN THE "COMMON AREAS" AS SET FORTH IN THE DECLARATION OF RESTRICTIONS.
- 3 THE BOUNDARY LINES OF EACH NUMBERED UNIT ARE THE UNFINISHED SURFACES (NOT INCLUDING PAINT, PAPER, WAX, TILE, ENAMEL OR OTHER FINISHES) OF THE CEILINGS, FLOORS, PERIMETER WALLS, WINDOWS AND DOORS THEREOF.
- 4 THE AREA DESIGNATED LOT 1 IS THE "COMMON AREA" AND IS NOT HEREBY DEDICATED FOR USE BY THE GENERAL PUBLIC, BUT IS FOR, BUT NOT LIMITED TO, RECREATION, PARKING, UTILITIES, DRAINAGE, INGRESS AND EGRESS IN ACCORDANCE WITH THE SUBDIVISION RESTRICTIONS RECORDED CONCURRENTLY WITH THE FILING OF THIS MAP.
- 5 WALL THICKNESS FOR THE INTERIOR WALLS IS 4.02" AND 5.25" FOR THE EXTERIOR WALLS, AND 10.00" FOR COMMON WALLS.
- 6 THE BENCHMARK: CITY OF CONCORD STANDARD MONUMENT ON THE SOUTH SIDE OF CONCORD BLVD. AT THE INTERSECTION OF CONCORD BLVD. AND LANDANA DRIVE (ELEV = 155.079).



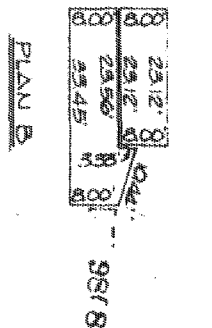
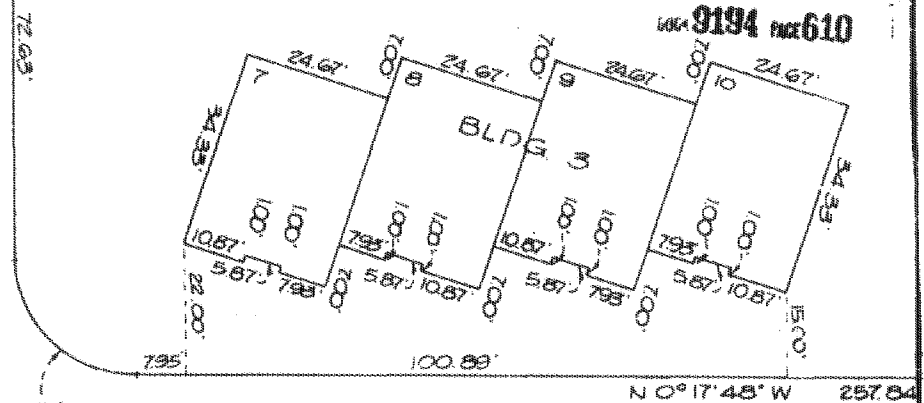
LEGEND

[illegible]

ASSIGNED, COVERED
PARKING SPACES

UNASSIGNED, UNCOVERED
PARKING SPACES

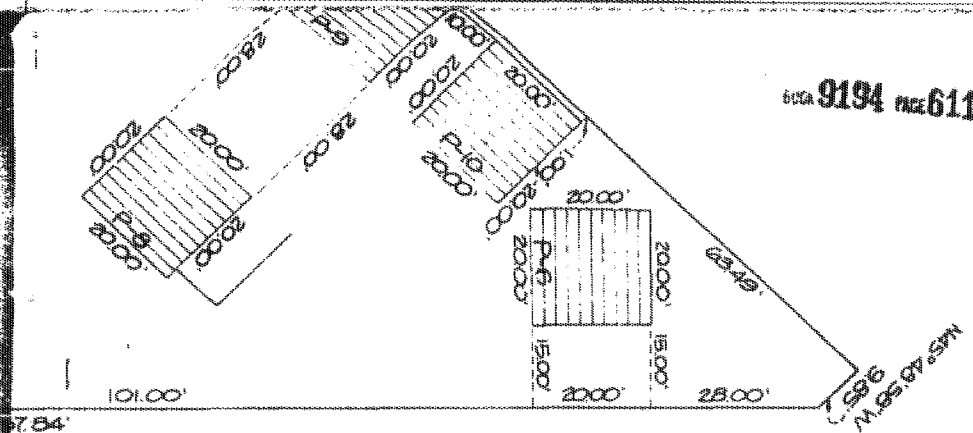
LANDANA



UNIT	PLAN	ELEVATIONS		UNIT	PLAN	ELEVATIONS	
		FLOOR	CEILING			FLOOR	CEILING
1	AR	156.15	164.15	6	A	156.73	164.73
	A2R	164.86	172.86		A2	165.41	173.41
2	A	156.15	164.15	7	AR	156.53	164.53
	A2	164.86	172.86		A2R	165.01	173.01
3	AR	156.73	164.73	8	A	156.93	164.93
	A2R	165.41	173.41		A2	165.01	173.01
4	A	156.73	164.73	9	AR	156.93	164.93
	A2	165.41	173.41		A2R	165.01	173.01
5	AR	156.73	164.73	10	A	156.93	164.93
	A2R	165.41	173.41		A2	165.01	173.01

NOTES:
 PLANS A & A2 ARE OF GROUND FLOORS.
 PLANS A2 & A2R ARE OF SECOND FLOORS.
 UNITS WITH FLOOR PLANS DENOTED A2 & A2R HAVE THE SAME
 DIMENSIONS IN REVERSE CONFIGURATION AS THE CORRESPONDING
 PLANS SHOWN ABOVE.
 PLAN B IS THE INTERIOR PROFILE OF ALL U.ITS.

Δ=90°00'00"
 R=20'
 L=3142'



DRIVE



SUBDIVISION 5212
CONDOMINIUM PLAN
GILBERT A. FITCH CIVIL ENGINEER
CONCORD CALIFORNIA
NOVEMBER, 1977
SCALE: 1" = 20'

END OF DOCUMENT