

3296465

Declaration of Restrictions

This Declaration made and dated this 2nd day of October, 1967 by VALLEY TITLE COMPANY, a corporation.

WHEREAS said Declaration is the Owner of a certain tract of land situated in the city of San Jose, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN tract entitled, "TRACT NO. 4017 MONTEVIDEO," which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on August 15, 1967 in book 226 of maps, at pages 52 and 53, to which said map and the purchasers of said thereof, references is hereby made, and

WHEREAS, said Declaration is about to sell property shown on said Map, which they desire to subject to certain restrictions, conditions, covenants and agreements between themselves and the purchasers of said property, as hereinafter set forth:

HOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions all of which are for the purpose of enhancing and proctoring the value, desirability and attractiveness of the real property. These easements, 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 in the described properties or any part thereof, and shall insure to benefit of each owner thereof.

ARTICLE I

SECTION 1. "Association" shall mean and refer to Montevideo Improvement Association No. 1, its successors and assigns.

SECTION 2. "Properties" shall mean and refer to the certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 3. "Community Facility" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the members of the Association.

SECTION 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the community Facility.

SECTION 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 7. "Declaration" shall mean and refer to Valley Title Company, its successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association as defined in its Articles and By-Laws. The forgoing is not intended to include person or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership of any Lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

ARTICLE III

SECTION 1. Members' Easement of Enjoyment

Every member shall have a right and easement of enjoyment in and to the community Facility and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- a. The right of the Association to limit the number of guests or members
- b. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Community Facility.
- c. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Community Facility and facilities and in aid thereof to mortgage said property, and the rights of such mortgages in said properties shall be subordinated to the rights of the home owners hereunder.
- d. The right of the Association to suspend the voting rights and the rights to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 30 days for any Infraction of its published rules and regulations.
- e. The right of the Association to dedicate or transfer all or any part of the Community Facility to any public agency, authority or utility for with purposes and subject to such conditions as may be agreed to by the members.

SECTION 2. Delegation of use

Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the Community Facility and Facilities to the members of his family, his tenants or contract purchasers who reside on the property.

SECTION 3. Title to the common Area

The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Community Facility to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments

The Declarant, for each lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges, and (2) Special Assessments for capital for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessments is made. Each such assessment, together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in the title unless expressly assumed by them.

SECTION 2. Purpose of Assessments

The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health and safety and welfare of the residents in the properties and in particular for the improvements and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Community Facility, and of the homes situated upon the properties.

SECTION 3. Basis and Maximum of Annual Assessment

Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be Ninety-six and No/100 Dollars (\$96.00) per lot.

- a. From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any of the Consumer Price Index (Published by the Department of Labor, Washington D.C.) for the preceding month of July.
- b. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding two (2) years and at the end of each such period of two (2) years, for each succeeding period of two (2) years, provided that any change shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- c. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

SECTION 4. Special Assessments for Capital Improvements

In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, unexpected repair or replacement of a described capital improvement upon the Community Facility, including the necessary fixture and personal property related thereto, provided that any assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. Uniform Rate of Assessment

Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

SECTION 6. Date of Commencement of Annual Assessments: Due Dates

The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Community Facility. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each assessment period. Written notice of the annual assessment shall be, sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

SECTION 7. Effect of Nonpayment of Assessment: Remedies of the Association

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of seven per cent (7%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, cost and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community Facility or abandonment of his Lot.

SECTION 8. Subordination of Lien to Mortgages

The lien of the assessment provided for herein shall be subordinated to the lien of any mortgage or mortgages. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the line of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 9. Exempt Property

The following property subject to this Declaration shall be exempt from the assessments created herein:

- a. All properties dedicated to and accepted by a local public authority.
- b. The Community Facility, and
- c. All Properties owned by a charitable or nonprofit organization exempt from taxation by the law of the state of California. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

SECTION 10. F.H.A./V.A. Approval

As long as there is any mortgage outstanding and insured by the F.H.A. or V.A. on any lot of any member of this association, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Community Facility, and amendment of this Declaration of covenants, condition, and Restrictions.

PART A. RESIDENTIAL LAND USE RESTRICTIONS

A-1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than two cars.

A-2. Architectural Control. No building shall be erected, placed or altered on any lot until construction plans and specifications and a plan showing the location of the structures have been approved by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. Approval shall be as provided in part B.

A-3. Dwelling Costs, quality and Size. No dwelling shall be permitted on any lot at a cost of less than \$16,000.00 based upon cost levels prevailing on the date these comments are recorded, it being the intention and purpose of the covenant to assure that all dwellings, shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size.

The ground floor area of the main structure, exclusive of one-story open porches and garage, shall be not less than 1,400.00 square feet for a one-story dwelling, nor less than 1,000.00 square feet for a dwelling of more than one story.

A-4. Building Location. No building shall be located on any lot nearer to the front line or nearer to the side street one than the minimum building setback lines shown on the recorded plat. In any event no building shall be located on any lot nearer than 25 feet to the front lot line, or nearer than 12 feet to any side street line. No building shall be located nearer than 5 feet to and interior lot line. Except that no side yard shall be required for a garage or other permitted accessory building located 40 feet or more from the minimum building setback line. No dwelling shall be located on any interior lot nearer than 20 feet to the rear lot line. For purpose of this covenant, eaves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be constructed to permit any portion of a building on a lot to encroach upon another lot.

A-5. Lot Area and Width. No dwelling shall be erected or placed on any lot having a width of less than 60 feet at the minimum building setback line, nor shall a dwelling be erected or placed on any lot having an area of less than 8,000 square feet, except that a dwelling may be erected or placed on any lot shown on the recorded plat.

A-6. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear five feet of each lot.

A-7. Nuisance. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

A-8. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any lot at any time as a residence either temporarily or permanently.

A-9. Signs. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during construction and sales period.

A-10. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes.

A-11. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary conditions.

A-12. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring oil or natural gas shall be erected, maintained or permitted upon any lot.

A-13. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street line, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

A-14. Slope Control Areas. Slope Control Areas are reserved as shown on the plan titled "Erosion Control Planting Plan for Track No. 4017 Montevideo Unit No 4" prepared by Edmund D Fowler, Registered Landscaped Architect, and recorded as a part of these covenants. Affected lots are 310 thru 322 inclusive, 325 thru 329 inclusive, 332 and 333, 348 thru 352 inclusive, Lot 367 and 368 inclusive, Lots 370, 371, 374 thru 376, inclusive, Lots 379, 380, 381, 386 thru 392 inclusive, Lot 395 thru 401 inclusive as shown on the recorded subdivision plat. Within these slope control areas, no structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with establishment slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each lot and all improvements in them shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority of utility company is responsible.

PART B. ARCHITECTURAL CONTROL COMMITTEE

B-1. Membership. The Architectural Control Committee is composed of: JACK R. BLACKWELL L.H. SCHULTE and KENNETH M. BLACKWELL, all located at 125 East Sunnyoaks Avenue, Campbell, California.

A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this this covenant. At any time, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties.

B-2. Procedure. The committee's approval or disapproval as required in designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event if no suit enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

PART C. GENERAL PROVISIONS

C-1. Terms. All of the restrictions, conditions, covenants and agreements shall affect all of the lots as hereinabove set forth and are made for the direct and reciprocal benefit thereof and in furtherance of a general plan for the improvement of said tract, and the covenants shall attach to and be run with the land. Said restrictions, conditions, and covenants shall be binding on all parties and all persons claiming under them for a period of 25 years from the date hereof, after which time they shall be automatically extended for successive periods of ten years, provided, however, that such restrictions, conditions, covenants and agreements, or any of them may be supplemented, changed, or rescinded in any or all particulars at any time after 35 years from date hereof, by the owners of 51% of the number lots comprising the area incorporated in this declaration, exclusive of streets evidenced by an instrument in writing executed by the said owners in the manner provided by law for the conveyance of real property and duly recorded in the office of the recorder aforesaid, and upon such recordation shall be valid and binding upon the sellers and owners of said lots in said tract and upon all other persons.

C-2. Enforcement. If the parties hereof, or their successors shall violate or attempt to violate any of the covenants herein during the period for which they are in force, or during any of the extended periods for which they are in force, it shall be lawful for any person owning any real property subject thereto, and/or the association, and for the purposes of enforcement each and every owner of each and every lot subject to these covenants and restrictions does hereby appoint the association, as his agent for the enforcement hereof, to prosecute any proceedings at law or in equity against the persons or person violating or attempting to violate any such covenants and prevent him or them from so doing or to recover damages or other for such violation.

C-3. Subordination. It is further provided that any breach of these covenants or any action or proceeding undertaken by reason thereof shall not defeat or render invalid the lien of any mortgage or Deed of Trust made in good faith and for value as to the said promises or any part thereof, provided, however, that these covenants and conditions shall be binding upon and effective against any owner of the said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

C-4. Severability. Invalidation of any one or more of these covenants by judgement or court order shall in no wise affect any of the provisions which shall remain in full force and effect.

PART D. COMMUNITY FACILITY

D-1. Property of the Association. The real property on which the Community Facility will be located is Lo no. 1 of Tract No. 3871, a Map of which said Tract was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on the 30th day of April 1965, in book 194 of Maps, at page 7 and 8, official Records of said county.

D-2. Property to be Served. The Community Facility will serve the following properties:

- a. Lots 2 thru 134 inclusive of "Tract No.3971", a Map of which said Tract was files for record in the office of the Recorder of the County of Santa Clara, State of California, on the 30th of April, 19645, in Book 194 of Maps, at pages 7 and 8 of Official Records of said County.
- b. Lots 135 thru 227 inclusive of Track No.3972, a Map of which said Track was filed for record in the office of the County Recorder of the County of Santa Clara, State of California, on the 14th day of September 1965 in Book 199 of Maps, at pages 42 and 43. Official Records of said County.
- c. Lots 228 thru 306 inclusive of "Tract No 4016", a Map of which said Tract was filed for record in the office of the County Recorder of the County of Santa Clara, State of California, on the 5th day of October, 1966, in Book 215 of Maps, at pages 16 and 17, of Official Records of said County.
- d. Lots 307 thru 401 inclusive of "Tract No. 4017", a Map of which said Tract was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on the 15th day of August 1967, in Book 226 of Maps, at pages 52 and 53, Official Records of said County.

IN WITNESS WHEREOF, the undersigned have hereunto set their hand and seal the day and year first hereinabove written.

VALLEY TITLE COMPANY, a Corporation