

Office copy

DECLARATION OF RESTRICTIONS

THIS DECLARATION made this 22nd day of May, 1957, by MAXWELL HARDWARE COMPANY, a corporation, hereinafter called and included in the term "Declarant";

W I T N E S S E T H: *

THAT, WHEREAS, Declarant is the owner of all that certain real property (hereinafter sometimes referred to as "said property") situated in the County of Alameda, State of California, described as follows:

LOTS 1 to 131, inclusive, as said lots are shown on the map of "Tract 1734, San Leandro, Alameda County, California", filed February 28th, 1957 in book 38 of Maps at pages 11, 12 and 13, in the office of the County Recorder of Alameda County;

AND WHEREAS, it is the purpose of Declarant by the provisions hereof, to insure the most appropriate development and improvement of said property; to protect the owner of any portion thereof, against improper or undesirable use of any other portion thereof to the end that the sound value of all of said property may be maintained; to guard against the erection upon any of said property of poorly designed or proportioned structures or structures built of improper or unsuitable materials; to encourage the erection of attractive homes on said property and to enforce the appropriate location thereof upon their respective building sites; to secure and maintain proper setbacks from streets and adequate free spaces between structures, to restrict the use and occupancy of said property to persons of a cultural status conducive to the creation and stimulation of congenial friendship and fraternization between and among the occupants of said property and in general to provide and maintain well designed and high quality improvements upon said property and thereby maintain and enhance the values of investments made by purchasers of building sites therein;

NOW, THEREFORE, Declarant hereby declares that said property and every part thereof shall be held, transferred, sold and conveyed subject to the restrictions, covenants, and reservations set forth as follows, to-wit:

RESTRICTIONS

(1) SUBJECT PROPERTY. The property subject to this declaration is all of the above described real property together with such other real property as may from time to time be subjected to the restrictions, covenants and reservations herein set forth by appropriate reference hereto.

(2) IMPROVEMENTS PERMITTED. No building or structure to be used or intended or designed to be used for any purpose except that of a detached single-family dwelling house shall be erected, placed or maintained upon said property or any part thereof, provided, however, that concurrently with or subsequent to the construction of such dwelling house a garage (either separate from or attached to said dwelling house) and other outbuildings usually or customarily appurtenant to a single-family dwelling house may be erected, placed or maintained upon said property for the sole use of the occupant of such dwelling house.

(3) NOTHING contained in any provision of this Declaration of Restrictions shall be understood or construed to prevent the placement, erection, maintenance or operation by Declarant, its duly authorized agent, licensee, or any public utility corporation upon any part of said property owned or controlled by Declarant, of any equipment, structure, building, sign or business related to or connected with the subdivision, development or sale of the real property described or any part thereof, or used by any public utility serving any part of said real property. Declarant hereby reserves, and Declarant, its duly authorized agent, licensee, or such public utility corporation, shall have, the express right and authority to place, erect, maintain and operate any such equipment, structure, building, sign or business as above referred to.

(4) SITE LIMITATION. Not more than one single-family dwelling house, together with appurtenant outbuildings above referred to, shall be erected, placed or maintained on any one lot as delineated and designated upon the map hereinabove referred to, except that Declarant may by written instrument consent to the resubdivision of any of such lots when in its opinion such consent will not adversely affect the character of said tract, but in no event shall a lot contain less than 6,000 square feet.

(5) APPROVAL OF IMPROVEMENTS. No dwelling house, garage, outbuilding, fence, wall or other structure shall be erected, placed or maintained upon any of said lots, nor shall any alteration thereof for which it is necessary to secure a municipal or governmental permit be made to the exterior of any of said structures unless, prior to the commencement of any construction, excavation or other work, two sets of complete plans and specifications therefor, including front, side and rear elevations and floor plans for each floor and basement and two plot plans indicating and fixing the exact location of such structure (either as to be constructed initially or as proposed to be altered) on the building site with reference to the exterior boundaries thereof and together with a grading plan, if requested, first shall have been submitted in writing for approval of and approved in writing by Declarant. Declarant may require the payment of a fee of not to exceed \$15 to be paid concurrently with the submission of such plans. Such dwelling house, garage, outbuilding, fence, wall, structure and alteration shall be erected, placed and maintained in strict conformity with such plans and specifications

(over)

so approved, except that the interior design may be modified without consent of Declarant.

Approval of such plans, specifications and location of structures by Declarant shall be endorsed upon both sets of said plans and specifications, and one set thereof forthwith shall be returned by Declarant to the person submitting the same and the other shall be retained by Declarant as a permanent record.

Approval of any plans and specifications as above set forth shall not be deemed to be a waiver by Declarant of the right to object to any feature or element embodied therein, if and when the same feature or element is embodied in any subsequent plans or specifications submitted for approval for use on other building sites.

Any duly authorized agent of Declarant may at any reasonable time enter and inspect any building or building site upon or in said property in the event Declarant in good faith believes that a violation of any part of this declaration of restrictions is occurring or has occurred therein or thereon.

Declarant from time to time may delegate to any person or persons the right to consider and investigate and to approve or disapprove any plans and specifications, plot plan and grading plan as hereinabove referred to.

(6) SETBACKS. No building shall be located on any lot nearer than twenty (20) feet to the front lot line; nor nearer than ten (10) feet to any side street line; nor nearer than ten (10%) per cent of the width of the lot to any inside lot line; nor shall any dwelling on any interior lot be nearer than fifteen (15) feet to the rear lot line; provided, however, that Declarant may permit an erection, placement or maintenance of a structure contrary to such setback provisions if permission is deemed necessary, advisable or equitable by reason of land contour, but provided further, however, that no such permission shall be granted in the absence of a clear demonstration that the proposed placement is not in violation of the requirements of any local ordinance.

For purposes of this paragraph, eaves, fireplaces, steps and open porches shall not be considered as part of a building.

(7) WALLS, FENCES, HEDGES AND TREES. No wall, fence or hedge shall be erected or maintained at greater height than two (2) feet above finish grade of the lot within the frontage setback area established by Paragraph (6) of this Declaration, or by provision of any local ordinance, nor shall any wall, fence or hedge be erected or maintained within any other setback area established by Paragraph (6) of this Declaration, or by provision of any local ordinance, at greater height than six (6) feet except that retaining walls may be erected and maintained within said setback areas provided they are not higher than two (2) feet above finish grade of the lot or of adjoining property, whichever is higher.

(over)

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, 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 ten (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.

No tree or shrub which is capable of attaining a greater height than ten (10) feet or which is apt to impair or obstruct the view from any other lot in said property shall be planted, installed or maintained in or on said property without the written consent of Declarant first had and obtained.

(8) AREA OF IMPROVEMENTS. No dwelling houses having a ground floor square foot area (exclusive of porches, terraces, porticos, patios and garages) of less than 1500 square feet, shall be erected or placed upon any of said lots. The term "ground floor" as used herein shall refer to the principal or main floor of such house.

(9) DILIGENT CONSTRUCTION. Any building or structure commenced to be erected or placed upon any of said property shall be prosecuted to completion with due diligence. No temporary structure regardless of its use or intended use shall be erected or placed upon any of said property. No building or structure shall be erected or placed upon any of said property by anyone other than a contractor who is duly licensed under the laws of the State of California.

(10) GENERAL LIMITATIONS. No trade, traffic or business of any kind, whether professional, commercial, industrial or manufacturing, shall be engaged in or carried on upon any part of said property.

No factory, hospital, sanitarium or institution of similar character shall be conducted or maintained upon any part of said property.

No noxious, dangerous or offensive thing, activity or nuisance shall be erected, maintained, operated, carried on, permitted or conducted upon any part of said property.

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

(over)

of such material shall be kept in a clean and sanitary condition.

(11) ANIMALS. No cows, goats, hogs, pigs, rabbits, pigeons, chickens, poultry or livestock of any kind shall be held or permitted on any of said property, provided, however, that these restrictions shall not prohibit the keeping of dogs, cats or caged birds in reasonable numbers, as ordinary household pets.

(12) SIGNS. Except as permitted by paragraph numbered (3) hereof, no signs, placards, or notices shall be erected, placed or maintained upon any part of said property except that not more than one "for sale" or "for rent" sign may be placed on any lot then held for sale or for rent, and such sign shall not exceed 18 inches by 24 inches in dimensions.

GENERAL PROVISIONS

(13) MODIFICATION. Any of the covenants, restrictions, and reservations contained in paragraphs numbered (6), (7) and (8) hereof may be annulled, waived, changed or modified with respect to all or any part of said real property by Declarant with the written consent of the Owner or Owners of record of the property to which such annulment, waiver, change or modification shall apply.

(14) SCOPE AND DURATION HEREOF. All of the covenants, restrictions and reservations set forth herein are imposed upon said property and every part thereof for the direct benefit thereof and of the Owners thereof or any part thereof as a part of the general plan of development, improvement and maintenance of said property.

Each grantee or purchaser under a contract of sale or agreement of purchase, by accepting a deed or contract of sale or agreement of purchase, accepts the same subject to all of the covenants, restrictions and reservations herein contained, and agrees to be bound by each and all thereof. Said covenants, restrictions and reservations shall run with the land and each and every part thereof and shall continue in full force and effect until December 31, 1980, at which time each and all of the same shall automatically be extended for successive periods of 25 years unless, within six (6) months prior to the expiration of any successive 25-year period thereafter, a written agreement executed by the then record Owners of not less than 60% in area of the real property then subject hereto (exclusive of area thereof theretofore dedicated to public use) shall be placed of record in the office of the County Recorder of Alameda County, California, in which such agreement, any or all of the covenants, restrictions or reservations herein contained may be changed, modified, waived or extinguished in whole or in part as to all or any of the property then subject thereto.

(15) IF any party hereto or the heirs, executors, administrator, personal representative, successor in interest, or assigns of any party hereto shall

(over)

shall violate or attempt to violate any of the covenants, restrictions, or reservations herein prior to said December 31, 1980, and thereafter as extended pursuant hereto, then such violation or attempted violation is hereby declared to constitute a nuisance and every remedy allowed by law or equity to prevent or prohibit such violation or attempted violation may be exercised by Declarant or by the Owner of any portion of said property, and may be prohibited and enjoined by injunction. The remedy of injunction shall be deemed cumulative and not exclusive, and in the event of any such violation or attempted violation Declarant or any persons owning any portion of said property shall have the lawful right to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, restriction or reservation, and either to prevent him or them from so doing or to recover damages for such violation or attempted violation. In the event of the institution of any such proceedings in law or in equity resulting in any judgment against such violator or attempted violator then the Court in which such action or proceeding is instituted shall require the person or persons violating or attempting to violate any covenants, restrictions or reservation herein contained to pay to the other party to such proceeding or action a reasonable attorney's fee as may be incurred by the latter in such proceeding or action.

(16) SUBORDINATION. No breach of any of the covenants, restrictions, or reservations herein contained shall defeat or affect the lien of any mortgage or deed of trust at any time made in good faith and for valuable consideration upon said property or any part thereof, but the rights and remedies herein granted to Declarant and to the Owner or Owners of any part of said property may be enforced against the Owner of the portion of said property subject to said mortgage or deed of trust notwithstanding such mortgage or deed of trust, and the purchaser at any trustee's sale or sales upon foreclosure shall be bound by all of the covenants, restrictions, and reservation herein contained.

(17) PARTIAL INVALIDITY. In the event any covenant, restriction, or reservation herein contained or part thereof for any reason shall be held to be invalid or unenforceable in whole or in part, by any order, judgment or decree of any Court, then such decision shall in nowise affect the validity of any of the other covenants, restrictions or reservations, or part thereof herein contained, and they shall remain in full force and effect.

(18) ASSIGNMENT. Declarant reserves the right at any time to assign and transfer to any person, persons, association or corporation any one or more of the rights and powers herein reserved to it and such assignment or assignments shall become effective when recorded in the office of the County Recorder of Alameda County.

(over)

(19) DEFINITION. The term "Declarant" when used herein shall refer to and include MAXWELL HARDWARE COMPANY.

IN WITNESS WHEREOF this instrument is executed on the day and year first hereinabove written.

MAXWELL HARDWARE COMPANY

BY: John M. Bryan
Its President

BY: Florence E. Bryan
Its Assistant Secretary

WE HEREBY certify that this is a true and correct copy of the original of this instrument, recorded May 23, 1957 under Recorder's Series No. AM-51703, in the office of the County Recorder of Alameda County.

OAKLAND TITLE INSURANCE COMPANY

BY: A. W. Meiklejohn
A. W. Meiklejohn.