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## **NOTICE**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

ANTIGUA

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

110.00  
C

REMINGTON MONARCH BEACH  
1131 Harbor Bay Parkway  
Suite 201  
Alameda, CA 94501  
Attn: David P. Dolter

86-205264

RECORDING REQUESTED BY  
FIRST AMERICAN TITLE INS. CO.

RECORDED IN OFFICIAL RECORDS  
OF ORANGE COUNTY, CALIFORNIA

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

-4 00 PM MAY 19 86

Orange County Recorder

OF

ANTIGUA OWNERS ASSOCIATION OF MONARCH BEACH

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made on MAY 10, 1986, by REMINGTON MONARCH BEACH, a California Limited Partnership, hereafter referred to as "Declarant".

9/14/86 PWT

ARTICLE I

PREAMBLE

1.1 This Declaration is made with reference to the facts set forth in this Article.

1.2 Declarant is the owner in fee simple of that certain real property (the "Subject Property") situated in the County of Orange, State of California, described in Exhibit "A" attached hereto and is incorporated by reference herein.

1.3 It is the intention of Declarant to subdivide and develop all of the Subject Property, with all or a portion of the Additional Property, in phases as a planned unit development, to provide for the preservation of the values and amenities in the development of the Subject Property and to create and maintain thereon common community facilities. To that objective, Declarant intends to impose on the Subject Property, and the Additional Property if annexed hereunder, mutual beneficial restrictions, easements, assessments and liens under a general plan or scheme of improvement for the benefit of all of the Lots and Common Area and the future owners of said Lots and Common Area.

1.4 The Subject Property and the Additional Property are intended to be developed in phases as set forth in Exhibit "A" and Exhibit "B" which are attached hereto and are incorporated by reference herein. Phase I shall consist of the Subject Property described in Exhibit "A" and private streets. It is intended that, pursuant to Section 3.2 hereof, Declarant may (but shall have no obligation to) annex all, or any portion of the Additional Property to the Project as an additional phase or phases and that any annexed phase or increment of the Additional

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FIRST AMERICAN TITLE INSURANCE COMPANY AS AN  
ACCOMPLISHED ACT. IT HAS BEEN EXAMINED AS TO  
ITS EXPLANATION OR AS TO ITS EFFECT UPON THE TITLE.

Property shall be subject to this Declaration to the full extent as if said annexed property were originally subject to this Declaration.

## ARTICLE II

### DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article II shall, for all purposes of this Declaration, have the meanings herein specified.

2.1 ADDITIONAL PROPERTY: The term "Additional Property" shall mean: That certain real property in the County of Orange, State of California, described in Exhibit B to this Declaration.

2.2 ARCHITECTURAL COMMITTEE: The term "Architectural Committee" means the committee created pursuant to Article VIII.

2.3 ARCHITECTURAL COMMITTEE RULES: The term "Architectural Committee Rules" means rules adopted by the Architectural Committee pursuant to Section 8.5.

2.4 ARTICLES: The term "Articles" means the Articles of Incorporation of ANTIGUA HOMEOWNERS ASSOCIATION of Monarch Beach, which are or shall be filed in the Office of Secretary of State of the State of California.

2.5 ASSOCIATION: The term "Association" means ANTIGUA OWNERS ASSOCIATION OF MONARCH BEACH, the nonprofit mutual benefit corporation described in Article VI, including its successors and assigns.

2.6 BOARD: The term "Board" means the Board of Directors of the Association.

2.7 BY-LAWS: The term "By-Laws" means the By-Laws of the Association, which are or shall be adopted.

2.8 COMMON AREA: The term "Common Area" means Private Streets as shown on the Subdivision Map. The Common Area shall be owned by the Association for the use and enjoyment of the Owners and shall be conveyed to the Association prior to or at the time of the conveyance of the first Lot shown on the Subdivision Map to a member of the public. Common Area shall include all facilities and improvements located within the Common Area, including driveways, walkways, paths, parking areas, sewers, open spaces, planted and landscaped areas, streets and roads within the Subject Property, electrical, water, gas and telephone utility facilities, fire hydrants and all other improvements situated thereon. The term "Common Area"

also means that portions of the Project described or designated as Common Area in the Declaration of Annexation for any the Additional Property annexed as a subsequent phase pursuant to Section 3.2 of this Declaration.

2.9 COUNTY: The term "County" means the County of Orange, State of California.

2.10 DECLARANT: The term "Declarant" means REMINGTON MONARCH BEACH and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Subject Property or the Additional Property for the purpose of development or sale, and if Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to a portion of all of the project. For any successor or assign of "Declarant" to be deemed a Declarant under the terms hereof, Declarant shall record in the County a certificate designating said successor or assignee as Declarant.

2.11 DECLARATION: The term "Declaration" means the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ANTIGUA OWNER'S ASSOCIATION OF MONARCH BEACH, including amendments made from time to time.

2.12 ELIGIBLE HOLDER: The term "Eligible Holder" means any Institutional Mortgagee who has given written notice to the Association specifying its name, address and the Lot number or address of the property encumbered by the Mortgage and requesting written notice of any or all of the events specified in Section 10.6, below.

2.13 FIRST MORTGAGE: The term "First Mortgage" means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Lot in the Project.

2.14 FIRST MORTGAGEE: The term "First Mortgagee" means the Mortgagee of a First Mortgage.

2.15 IMPROVEMENTS: The term "Improvements" includes buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, sound attenuation barriers, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs and all other structures or landscaping improvements of every type and kind.

2.16 INSTITUTIONAL MORTGAGEE: The term "Institutional Mortgagee" means a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage

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including without limitation the Federal Housing Administration and/or the Veterans Administration; or (iii) the State of California as the vendor under an installment land sales contract covering a Lot.

2.17 LOT: The term "Lot" means the subdivided residential lots, whether improved or unimproved, designated as Phase I described in Exhibit "B". The term "Lot" also includes any Lots in the Additional Property after annexation thereof pursuant to the provisions of Section 3.2.

2.18 MANAGER: The term "Manager" means any person or entity appointed or hired as such, pursuant to Subsection 6.8.2.

2.19 MEMBER: The term "Member" means a person who is a Member of the Association pursuant to Section 6.2.

2.20 MORTGAGE: The term "Mortgage" means any recording mortgage or deed of trust encumbering a Lot in the Project.

2.21 MORTGAGEE: The term "Mortgagee" means a mortgagee under a Mortgage, as well as a beneficiary under a deed of trust.

2.22 OWNER: The term "Owner" means the record owner, or record owners, including Declarant, of the fee simple title to any Lot in the Project, excluding those having such interest merely as security for the performance of an obligation. The term "Owner" also includes the Vendee of a Lot under a contract of sale (Real Property Sales Contract).

2.23 PARKING AREA: The term "Parking Area" means those portions of the Common Area which have been established for the parking of motor vehicles.

2.24 PROJECT: The term "Project" means all of the real property described in Paragraph 1.2, above, with all improvements made thereon. The term "Project" also includes the additional increments or phases described as the Additional Property after annexation thereof pursuant to the provisions of Section 3.2.

2.25 RESIDENCE: The term "Residence" means a building or buildings used for residential purposes.

2.26 RESIDENTIAL AREA: The term "Residential Area" means Lots 131 through 190, inclusive, as shown on the Subdivision Map, and such other Lots, excluding Common Area, as may be annexed to the Project pursuant to Section 3.2.

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2.27 RULES: The term "Rules" means the rules adopted by the Board of the Association, as they may from time to time be in effect pursuant to the provisions of Section 6.10.

2.28 SUBDIVISION MAP: The term "Subdivision Map" means that certain Subdivision described as Phase I in Exhibit "A" attached, recorded in the Office of the County Recorder of Orange County, California on the 27th day of February, 1986, in Book 554 of Maps at Page 42, et seq., include both tracts 12545 and 12546. The term "Subdivision Map" as to any Additional Property annexed to the Project pursuant to Section 3.2 means the particular Subdivision Map described in the Declaration of Annexation for the Additional Property.

2.29 SUBJECT PROPERTY: The term "Subject Property" means all of the real property described in Paragraphs 1.2.

ARTICLE III

PROPERTY SUBJECT TO DECLARATION

3.1 THE PROJECT: The Subject Project shall be subject to this Declaration and shall initially constitute the Project. Declarant hereby declares that all of the Subject Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to this Declaration, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Subject Property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Subject Property and every part thereof. This Declaration shall run with the Project and shall be binding upon and inure to the benefit of Declarant, the Association, each Owner of a Lot and each successor in interest of such Owner. Each and all of the covenants, conditions, restrictions, limitations, easements, uses and obligations contained herein shall be deemed to be and shall be construed as equitable servitudes enforceable by any of the Owners of any Lot against other Owners, tenants or occupants of the Project, or any portion thereof. The Additional Property may be annexed to the Project in subsequent phases and, upon annexation, shall be made subject to this Declaration, all pursuant to Section 3.2.

3.2 ANNEXATION: Additional property may be annexed to the Project only as specified in the following Subsections:

3.2.1 Declarant's Annexation Rights: Declarant may, but shall not be required to, annex to the Project, in such phases as Declaration deems reasonable, any or all of the Additional Property at any time, and from time to time, without the vote or approval of any other Owners or Association;

provided, however, that if such annexation is not effected prior to the third anniversary of the original issuance of the most recent Final Subdivision Public Report issued by the State of California Department of Real Estate for a phase of the Project, such annexation shall require the vote or written assent of two-third (2/3) of the total votes residing in Members other than Declarant.

3.2.1.1 A final subdivision map or maps for the real property to be annexed shall be recorded; and

3.2.1.2 A Declaration of Annexation shall be recorded describing the property to be annexed, providing for such additional covenants, conditions and restrictions on such annexed property as may be necessary to include such property in the Project and specifying that all of the covenants, conditions and restrictions of this Declaration shall apply to such annexed property in the same manner as if it were originally covered by this Declaration as part of the Project. No Declaration of Annexation shall revoke any of the limitations, covenants, conditions and restrictions established by this Declaration, nor shall it discriminate between Owners of such property and Owners of any property within the Project, except as otherwise provided herein. No such amendment, addition, change or deletion shall alter or change the general common plan or scheme created by this Declaration, nor affect the provisions hereof or thereof as covenants running with the land or equitable servitudes, it being the express desire and intention of Declarant to establish a cohesive plan of such covenants, conditions and servitudes to be uniformly applicable to all portions of the Project, including those portions added by annexation.

3.2.2 Rental of Lots in Annexed Phase: The Declaration of Annexation for each phase shall also specify that (i) if the escrow does not close for the sale of a Lot in that phase within one year after the recordation of the Declaration of Annexation, and (ii) if Declarant has rented one or more Lots in said phase for a period of one year or more prior to the close of escrow of the first Lot in the phase, then Declarant shall pay to the Association, upon or prior to the first close of escrow for a Lot in the phase, appropriate amounts attributable to reserves for the replacement or deferred maintenance of Common Area improvements in the annexed phase necessitated by or arising out of the use and occupancy of Lots within the annexed phase.

3.2.3 Ownership of Annexed Property: Any portion of the Project added thereto by annexation pursuant to Subsection 3.2.1 of this Declaration shall be divided into Residential Area and Common Area. All that property designated as Residential Area shall be subject to all the covenants, conditions and restrictions on the use and ownership thereof

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contained in this Declaration and in any supplemental covenants, conditions and restrictions contained in the Declaration of Annexation applicable thereto. All that portion of the annexed property designated as Common Area shall be conveyed to, accepted by and owned by the Association prior to or concurrently with the transfer of title at the first Lot contained in the annexed property to a public purchaser. Said Common Area shall be conveyed to the Association on the same terms and conditions and subject only to those liens, restrictions and encumbrances as are provided in Section 5.1 of this Declaration; provided, however, that said Common Area shall also be subject to any additional or supplemental covenants, conditions and restrictions provided in the Declaration of Annexation pertaining thereto.

3.2.4 Rights and Obligations of Owners:

After the required annexation procedures are fulfilled, all Owners in the Project shall be entitled to use of the Common Area in such annexed property, subject to the provisions of this Declaration. Owners of the annexed property shall become subject to this Declaration, shall be entitled to membership in the Association, shall have the same membership and voting rights set forth in Section 6.2 and 6.3 and shall pay the assessments levied against their Lots as if said Additional Property had initially been subject to this Declaration. Votes shall not be cast separately by phase. After each annexation, the assessments shall be reassessed with the annexed property being assessed for a proportionate share of the total expenses of the project on the same basis as the other property in the Project.

3.2.5 Other Annexation of Property:

Additional Property adjacent to the Project which does not qualify for annexation pursuant to the terms of Subsection 3.2.1 above may be annexed to the Project upon the written vote or consent of not less than two-thirds (2/3) of the total votes of all Members of Association other than Declarant, upon the written consent of the Owner of such property and upon the fulfillment of procedures by the Owner of such property substantially similar to those set forth in Subsection 3.2.1. above.

ARTICLE IV

PROPERTY RIGHTS: RESIDENTIAL AREA

4.1 RESIDENTIAL AREA: PERMITTED USES AND LIMITATIONS:

Lots within the Residential Area shall be for the exclusive use and benefit of the Owners thereof; subject, however, to the following limitations and restrictions.

4.1.1 Residential Use: Each Lot within the Residential Area shall be improved and used exclusively for residential purposes. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot or in any building.

4.1.2 Animals: No animals of any kind shall be maintained, bred or kept on any Lot or in the Common Area except dogs, cats or other customary household pets in a reasonable number and size may be kept, bred or maintained for any commercial purposes, and provided further, that the Rules may limit or restrict the number, size and breed of such pets. The Board shall have the right to prohibit the maintenance of any pet which, in the opinion of the Board, after notice and hearing, constitutes a nuisance to any other Owner.

4.1.3 Structures for Animals: No structure for the car, housing or confinement of any horse or yard pet shall be maintained so as to be visible from neighboring property.

4.1.4 Antennas: No antenna for transmission or reception of television signals or other form of electronic radiation shall be erected, used or maintained outdoors, whether attached to a building or structure or otherwise.

4.1.5 Utility Service: No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other approved structures. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of approved buildings.

4.1.6 Improvements, Alterations and Repairs: No improvement, repair, excavation or other work which in any way alters the appearance of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval of the Architectural Committee given pursuant to the terms of Article VIII hereof, except as specifically authorized herein. Landscaping within a Lot, may be maintained by the Association, as provided in subsection 6.7.5.

4.1.7 Temporary Occupancy: No trailer, tent, shack, barn, garage, basement of any incomplete building or temporary building or structure of any kind shall be used at any time as a Residence, either temporary or permanent. Temporary buildings or structures used during the construction or

improvement of a Residence shall be expressly approved by the Architectural Committee and shall be removed immediately after the completion of construction.

4.1.8 Trailers, Boats and Motor Vehicles: No boat, mobile home, recreational motor home, trailer of any kind, truck camper larger than a half (1/2) ton pick-up truck, dilapidated motor vehicle or permanent tent or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired upon any Lot or the Common Area within the Project in such a manner as will be visible from neighboring property or adjacent streets, provided, however, that the provisions of this Subsection shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement approved by the Architectural Committee. No commercial vehicles of any nature shall be parked or stored on any Lot or on the streets of the Project, except for commercial vehicles providing services to the Owners of Lots or the Association, and in that event only for the duration necessary to provide such services.

4.1.9 Nuisances: No rubbish or debris of any kind shall be placed or permitted to accumulate on or adjacent to a Lot or on the Common Area, and no odors shall be permitted to arise therefrom which might render any Lot or portion thereof unsanitary, unsightly, harmful or detrimental to any of the property in the vicinity thereof or the the occupants thereof. No nuisance shall be permitted to exist or operate upon any Lot which might be harmful or detrimental to any property in the vicinity thereof or to its occupants. Without limiting any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on a Lot.

4.1.10 Trash Containers and Collection: All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Architectural Committee. In no event shall such containers be maintained so as to be visible from neighboring property.

4.1.11 Clothes Drying Facilities: No outside clotheslines or other outside clothes drying or airing facilities shall be maintained on any Lot unless the Architectural Committee finds such facilities to be adequately concealed so as not to be seen from any adjacent property.

4.1.12 Fences: No fences, hedges or walls shall be erected or maintained on any Lot, other than as are initially installed by Declarant, unless first approved by the Architectural Committee.

4.1.13 Fires: There shall be no exterior fires whatsoever except barbeque fires contained with receptacles designed for such purposes.

4.1.14 Mailboxes: There shall be no exterior newspaper tubes or freestanding mail boxes except as may have been initially installed by Declarant or thereafter approved by the Architectural Committee.

4.1.15 Basketball Standards: No basketball standards or fixed sports apparatus shall be attached to any Residence or Garage or be erected on any Lot except as approved by the Architectural Committee.

4.1.16 Parking: There shall be no parking along any driveway or street in the project except in those areas designated as "Parking Areas".

4.1.17 Mineral Exploration: No property within the Residential Area shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance or other mineral of any kind.

4.1.18 Machinery and Equipment: No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot within the Residential Area except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Residence or appurtenant structures in the Project.

4.1.19 Diseases and Insects: No Owner shall permit any thing or condition to exist upon his Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects.

4.1.20 Restrictions on Further Subdivision: No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof. No easement or other interest in a Lot shall be given without the prior written approval of the Architectural Committee.

4.1.21 Signs: No signs whatsoever (including but not without limitation, commercial, political and similar signs) which are visible from neighboring property shall be erected or maintained on any Lot except:

(1) Such signs as may be required by legal proceedings;

(2) Residential identification signs, subject to the approval of the Architectural Committee as to suitability;

(3) During the time of construction of any Residence or other improvement by Declarant, job identification signs; and

(4) Not more than one "for sale" or "for rent" sign per Lot not to exceed five (5) square feet, pursuant to the Rules of the Association or the Architectural Committee.

4.1.22 Right of Entry: Upon forty-eight (48) hours written notice (emergencies excepted) and during reasonable hours, the Board or any authorized representative thereof shall have the right to enter upon any Lot and the improvements thereon for the purpose of construction, maintenance or repair of any sound attenuation barrier, and, in addition, for the benefit of the Common Area or the Owners in common. Such persons shall not be deemed guilty of trespass by reason of such entry.

4.2 CONSTRUCTION AND ALTERATION OF IMPROVEMENTS: No construction or alteration of improvements or landscaping may be undertaken on a Residence without prior approval of the Architectural Committee pursuant to Article VIII of this Declaration, or without the prior obtaining of approvals to which reference is made in Subsection 8.17, or which are required by law. Each Lot Owner, however, shall be permitted to landscape or make other structural improvements without securing prior or final approval of the Architectural Committee; provided, however, that any other such structural improvements shall not obstruct any views from any other Lots and provided that such landscaping or structural improvements shall not interfere in any manner with any drainage or utility easements created or to be created by Declarant as provided in Subsection 5.3.5 of this Declaration.

4.3 PARTY WALLS AND FENCES: GENERAL RULES OF LAW TO APPLY: Each wall and each fence which is built as a part of the original construction of the Residences in the Project and placed on the dividing line between the Lots shall constitute, respectively, a party wall, or party fence, and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Owner of a Lot upon which a party wall or fence exists shall own to the center of such wall. The

Owner of each Lot upon which a party wall or party fence, is located shall have a reciprocal non-exclusive easement to each contiguous Lot for the purpose of maintaining the party wall or party fence. The costs of reasonable repair and maintenance of a party wall or party fence, shall be shared by the Owners who make such use of the wall, fence in proportion to such use. If a party wall or fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall, fence may restore it, and if the other Owners thereafter make use of the wall or fence they shall contribute to the cost of restoration thereof in proportion to such use. Such contribution shall be made without prejudice, however, to the right of the Owner who originally restored the wall or fence to call for a larger contribution from such other Owners under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes a party wall to be exposed to elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contributions from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### 4.4 OWNER'S EASEMENTS:

4.4.1 Easement to Common Area: Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, as more particularly stated in Section 5.3.1.

4.4.2 Reciprocal Appurtenant Easements: Some Lots may be served by utilities which are located on or under another Lot or Lots. There is hereby created appurtenant easements for the use and benefit of the respective Lots served, as dominant tenements, on, under and across the Lots burdened thereby, as servient tenements, for ingress and egress for pedestrians and vehicles, utility, telephone, sewer and drainage pipes, water and sprinkler systems, lines, conduits and culverts, and utility meters. The specific location of each such utility shall be determined by the physical location of the improvements thereon and thereunder installed, constructed and completed at the time of the first conveyance of each respective servient tenement.

4.4.3 Easements for Party Walls and Encroachments: Whenever two Residences are located adjacent to each other with two separate walls, or whenever Residences are located adjacent to the Common Area, such Residences are hereby granted exclusive appurtenant easements for encroachments for overhanging eaves or roofs as originally constructed and for encroachments due to settlement or shifting of structures for cause whatsoever and encroachments due to construction, reconstruction or repair of the Residence which may so encroach, and for utility meters,

lines, wires, pipes and conduits, over and on the adjoining Lot or Common Area, as servient tenement, with the contiguous Lot as dominant tenement.

**4.5 REPAIR AND RECONSTRUCTION:** "Repair or reconstruction" shall mean repairing or restoring the property to substantially the same condition as it existed prior to the fire or other casualty, to the end that each improvement, to the extent possible, shall have the same vertical and horizontal boundaries and location as before. If any improvements on a Lot are damaged or destroyed by fire or any other casualty, the Owner of the Lot shall accomplish the repair or reconstruction thereof in a diligent manner.

If the Owner does not commence such reconstruction or repair within a reasonable time, and thereafter complete the repair or reconstruction diligently, the Association may bring suit to compel the Owner to perform said reconstruction or repair.

#### ARTICLE V

##### PROPERTY RIGHTS: COMMON AREA

**5.1 COMMON AREA OWNERSHIP:** The Common Area shall be conveyed to and owned by the Association and the Association shall accept the conveyance of the Common Area transferred to it pursuant to this Section. The Common Area of each phase shall be transferred to the Association prior to or concurrently with the transfer by Declarant of title to a Lot in that phase of the Project to a member of the public.

Until the third (3rd) anniversary of the original issuance of the Final Subdivision Public Report of the most recent phase of the Project, Declarant reserves the right to establish and/or grant over and across said Common Area such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the county and/or city in which the Project is located or any other political subdivision or public organization, or any public utility entity, for the purpose of constructing, erecting, operating and maintaining facilities and improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets, walks, driveways, parkways and park areas; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Project and for the necessary attachments in connection therewith, and (iii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any and all equipment in connection therewith. The Common Area shall be subject to any dedication stated in the

Subdivision Map for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Common Area. Said public utilities easement shall inure and run to all franchised utility companies shall include the right of ingress and egress over the Common Area by Vehicles of such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company for maintenance or operation of any of the Common Area or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies of the utility facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Common Area by utility companies, the Common Area subject to the public utility easement shall be kept open and free from buildings and structures. The County furthermore is granted an easement across the Common Area for ingress and egress for use by emergency vehicles.

**5.2 COMMON AREA: PERMITTED USES, CONSTRUCTION AND ALTERATION OF IMPROVEMENTS:** The Common Area shall be held, maintained and used to meet the common interests of the members of the Association, their tenants and guests as provided by this Declaration.

**5.2.1 Limitation on Construction:** No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, shall make or create any excavation or fill upon or shall destroy or remove any tree, shrub or other vegetation upon any Common Area.

**5.2.2 Damage or Destruction of Common Area:** "Repair or reconstruction" shall mean repairing or restoring the property to substantially the same condition as it existed prior to the fire or other casualty with each improvement, to the extent possible, having the same vertical or horizontal boundaries and location as before. Any damage or destruction to the Common Area shall be repaired or reconstructed by the Association. The Board shall contract to repair or reconstruct the damaged or destroyed portions of the Common Area. If there are insurance proceeds which exceed the costs of repair or reconstruction, the excess proceeds shall be paid to the Reserve Account(s) of the Association. If the insurance proceeds are insufficient to pay all of the costs of repair and reconstruction and if there is an existing balance in the Reserve Account designated for the repair or reconstruction of the capital improvement which has been damaged, the Board may use the Reserve to repair or reconstruct the improvement. If

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the available proceeds are insufficient to pay the cost of repair or reconstruction, the Board shall levy a Special Assessment against all Owners.

**5.3 OWNERS' BASEMENTS OF ENJOYMENT IN COMMON AREA:**

5.3.1 Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, including easements for ingress and egress to said Owner's Lot for pedestrians, vehicles, utility lines, pipes, wires and conduits which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

5.3.1.1 The Board, after giving notice of and an opportunity to be heard to an Owner, shall have the right to suspend the voting rights and right to use the Common Area by an Owner and his tenants and guests pursuant to Section 6.11 of this Declaration.

5.3.1.2 The right of every Owner to enjoy free and unobstructed passage between every such Owner's Residence and all publicly dedicated streets bordering the Project shall be subject to any restrictions imposed by any municipal, state or federal government.

5.3.1.3 The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility, or to any assessment, maintenance or other special district, for such purposes and subject to such conditions as may agreed to by the Owners. Except for property offered for dedication prior to the conveyance thereof to the Association, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been signed by seventy-five (75%) of each class of members entitled to vote and has been recorded, provided that until the expiration of Class B Membership.

5.3.1.4 There shall be no obstruction of any part of the Common Area and nothing shall be stored, kept or parked in the Common Area except in the areas designated as Parking Areas without the prior written consent of the Association. Each Owner shall avoid any damage to the Common Area and shall be responsible for repairing any damage or injury to the Common Area caused by him, his tenants or guests.

5.3.1.5 Nothing shall be done or kept in the Common Area which will increase the rate of insurance on any of the Common Area without the prior written consent of the Association. No Owner shall permit anything to be done or kept in the Common Area or which will result in the cancellation of insurance on the Common Area or which would be in violation of

any governmental statute, ordinance, rules or regulations. No waste shall be committed in the Common Area.

5.3.2 Each Lot adjacent to the Common Area is hereby declared to have an easement over all adjoining Lots and the Common Area and the Common Area is hereby declared to have an easement over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, original construction, settlement, shifting, repair or reconstruction of the building, any other similar cause or any encroachment due to building or balcony overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; 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 misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners or each Lot agree that minor encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

5.3.3 There is hereby reserved to Declarant, the Association or their duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association as are set forth in this Declaration, or in the By-Laws, Articles, Rules or the Architectural Committee Rules.

5.3.4 Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots and the Common Area, as the case may be, superior to all other encumbrances applied against or in favor of any portion of the properties which are the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual grant deeds of Lots may, but shall not be required to, set forth said easements.

5.3.5 Notwithstanding anything herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are necessary for the development of the Project.

5.4 DELEGATION OF RIGHT OF USE: Any Owner may delegate his rights of enjoyment in the Common Area and in the privileges of the Association to the members of his family who reside

within his Lot, to any of his tenants who reside therein under a leasehold interest and to his guests, subject however, to the provisions of this Declaration and to the Articles, By-Laws and Rule of the Association. The rights and privileges of such persons are subject to suspension for the same reasons and in the same manner as this Declaration provides regarding the suspension of the rights and privileges of Owners in the Project. Each Owner shall notify the Secretary of the Association in writing of the name of the family members, tenants, contract purchasers or guests staying with the Owner for a period of more than five (5) days who are so authorized to use the Common Areas and facilities and of the relationship of such person to Owner.

**5.5 CONDEMNATION OF COMMON AREA:** If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, then the entire award shall be paid to the Association. The award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds proportionately to all Owners in the Project as their interests appear according to the respective fair market values of the Lots and Residences at the time of condemnation, as determined by Appraisal. The Association shall represent the interests of all Owners in any proceeding relating to condemnation of Common Area.

**5.6 RESTRICTION OF SEVERABILITY OF COMMON AREA:** The interest of each Owner in the use and benefit of the Common Area owned by the Association shall be appurtenant to Lot owned by said Owner and shall not be sold, conveyed or otherwise transferred by said Owner separately from the ownership interest in said Lot. Any sale, transfer or conveyance of such Common Area without the requirement of express reference thereto, and the transferee shall thereupon be permitted the use and benefit of said Common Area and the facilities located hereon. There shall be no judicial partition of the Common Area or any part thereof, and each Owner, for his own benefit and for the benefit of all other Owners specifically waives and abandons all rights, interests and causes of action for a judicial partition of any ownership interest in the Common Area and does further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

## ARTICLE VI

### THE ASSOCIATION

**6.1 THE ORGANIZATION:** The Association is a non-profit mutual benefit corporation charged with the duties and empowered with the rights set forth herein and in the Articles, and its

affairs shall be governed by this Declaration, the Articles and the By-Laws.

**6.2 MEMBERSHIP:**

**6.2.1 Classes of Members:** The Association shall have two (2) classes of Members: Class A Members and Class B Members.

**6.2.1.1 Class A Members:** Each Owner with the exception of Declarant, by virtue of being an Owner shall be a Class A Member of the Association, or, in the event of its dissolution, a Class A Member of the unincorporated association succeeding to the Association. The membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to assessment by the Association. Upon termination of lot ownership, membership in the Association shall also terminate. Ownership of a Lot shall be the sole qualification for Association membership. The membership of an Owner shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot and then only to the transferee of title of such Lot. Any attempt to make a prohibited transfer is void. Declarant shall become a Class A Member upon the occurrence of the events specified in Subsection 6.3.2.

**6.2.1.2 Class B Members:** The sole Class B Member shall be Declarant. Declarant shall hold one Class B membership for each Lot in the Project to which Declarant has title, until the occurrence of the events specified in Subsection 6.3.2.

**6.2.2 Member's Rights and Duties:** The rights, duties, privileges and obligations of all Members of the Association, or of the succeeding unincorporated association, shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of this Declaration, the Articles, By-Laws and Rules.

**6.3 VOTING:** Only Members of the Association shall be entitled to vote. The voting privileges of each class of Members shall be as provided herein. Any action by the Association which must have the approval of the Members before being undertaken shall expressly require the vote or written consent of a prescribed percentage of each class of Members during the time that there are two (2) outstanding classes of Members, as more particularly stated in this Declaration.

**6.3.1 Class A Members:** Class A Members shall have one (1) vote for each Lot owned. When more than one person owns a Lot, all Owners shall be Members of the Association. However, the vote for each Lot must be cast as an undivided unit and

fractional votes shall not be allowed. The vote, or action, for each lot shall be as a majority of co-Owners of the Lot agree. No vote shall be cast or action taken if the majority of Owners present and representing said Lot cannot agree.

6.3.2 Class B Members: The sole Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in the Project to which it holds title, provided that the Class B membership shall cease and be converted to Class A membership on the happening of the following events, whichever occurs earlier:

(i) When the votes outstanding in the Class A membership equal the votes outstanding in the Class B membership;

(ii) The date which is the second (2nd) anniversary of the original issuance of the California Department of Real Estate's most recent Subdivision Public Report for a phase of the Project.

(iii) The date which is the fourth (4th) anniversary of the original issuance of the Final Subdivision Public Report for the first phase of the Project.

6.3.3 Voting Upon Termination of Class B: Upon the expiration of the Class B membership, each provision of this Declaration which requires the vote of each class of Members shall be read as requiring both (a) the vote of the prescribed percentage of all of the Class A Members and (b) the vote of the prescribed percentage of the Class A Members other than Declarant.

6.3.4 Accrual of Voting Rights: No voting rights shall accrue to any Owner until Regular Assessments have been levied against his Lot.

6.4 ASSESSMENTS AND DUES: Any assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of Article VII of this Declaration and shall be enforced pursuant to the provisions of Section 7.6 of this Declaration.

6.5 INITIAL BOARD OF DIRECTORS: The initial Board of Directors of the Association consisting of five (5) Directors shall be appointed by Declarant upon the incorporation of the Association and shall hold office until the first meeting of the Members. The first meeting of the Members shall be held within six (6) months after the closing of the first sale by Declarant of a Lot in the Project, or within forty-five (45) days after the closing of the sale of the Lot which is the fifty-first

percentile (51%) of their Lots in the project to have been sold and closed, whichever occurs first.

**6.6 SUBSEQUENT BOARD OF DIRECTORS:** At the first meeting of the Members, a new Board consisting of five (5) directors shall be elected. Such Board shall serve until the first annual meeting of the Association. At the first annual meeting, the Members of the Association shall elect a Board consisting of five (5) Directors. Each Director shall serve for the term prescribed in the By-Laws. At each subsequent annual meeting, Directors shall be elected to replace those Directors whose terms have expired. Each such Director shall be an Owner and a Member of the Association, provided that at no time shall the Board of Directors consist of less than five (5) members, unless otherwise provided by the By-Laws. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Members.

**6.7 DUTIES OF THE ASSOCIATION:** The Association shall have the obligations and duties, subject to and in accordance with this Declaration, to do and perform the following acts for the benefit of its Members and for the maintenance and improvement of the Subject Property:

**6.7.1 Members:** The Association shall accept all Lot Owners as Members. Upon annexation of any of the Additional Property pursuant to Section 3.2, the Owners of Lots in such annexed property shall become Members in the Association.

**6.7.2 Annual Membership Meetings:** The Association shall hold an annual meeting of the Members in accordance with the By-Laws of the Association.

**6.7.3 Common Area Maintenance:** The Association shall maintain, or provide for the maintenance of all Common Areas and all improvements of whatever kind and for whatever purpose located thereon.

**6.7.4 Operation of Common Area:** The Association shall operate and maintain or provide for the operation and maintenance of Common Areas as such property is conveyed or otherwise transferred to the Association. The Association shall keep all improvements of whatever kind and for whatever purpose from time to time located on the Common Areas, including all landscaping, paving, curbs, gutters and sidewalks, utility lines, pipes, conduits and facilities located thereon and owned by the Association, in good order and repair.

**6.7.5 Maintenance on Lots:** The Association also may provide landscaping maintenance for that portion of Lots in the Project subject to a slope easement, provided, however, that

the maintenance of landscaping on any Residence shall be the responsibility of the Owner of the Lot within which the Residence is located. The Association shall have the absolute discretion to determine (a) if any landscaping maintenance for the Lots in the Project will be provided; and (b) the extent, frequency and nature of landscaping maintenance provided for the Lots.

6.7.6 Maintenance of Common Area Landscaping: The Association shall provide maintenance for the landscaping throughout the Common Areas of the Project.

6.7.7 Payment of Taxes: The Association shall have the authority to pay all real property taxes and assessments levied upon any property conveyed, leased or otherwise transferred to it, to the extent not separately assessed to the Owners. Such taxes and assessments may be contested or compromised by the Association; provided, however, that any such taxes are paid or that a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes.

6.7.8 Insurance: Insurance shall be obtained and maintained as provided in this Section.

6.7.8.1 General Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative.

(b) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(c) Contributions: In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by the Owners or their Mortgagees.

(d) General Provisions: To the extent possible the Board is required to make every reasonable effort to secure insurance policies providing for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Board, the Managers, the Owners and their respective servants, agents, and guests;

(ii) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(iii) that no policy may be cancelled, invalidated, or suspended on account of the acts of any one or more individual Owners.;

(iv) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any manager, Director, officer, or employee of the Association without prior demand in writing delivered to the Association requiring remedying of the defect and allowing a reasonable time within which the defect may be cured by the Association, its Manager, any Owner, or Mortgagees;

(v) that any "other insurance" clause in any policy excludes individual Owners' policies from consideration;

(vi) that no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association;

(vii) an agreed amount endorsement;

and

(viii) an inflation guard endorsement.

(e) Annual Review: The Board shall review the adequacy of all insurance at least once every year. The review shall include a replacement cost appraisal of all insurable Common Area improvements without respect to depreciation. The Board shall adjust the policies to provide coverage and protection that is customarily carried by prudent owners of similar property in the area in which the Project is situated.

(f) Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

6.7.8.2 Types of Coverage: The following kinds and amounts of insurance shall be obtained:

(a) Property Insurance: A policy or policies or all risk property insurance for all insurable Common Area improvements against loss or damage by fire or other

casualty, in an amount equal to ninety percent (90%) of the current full replacement costs, without respect to depreciation, of the Common Area, and improvements exclusive of land, foundations, excavation and other items normally excluded from coverage.

(b) Liability Insurance: A combined single limit policy of public liability insurance in an amount not less than One Million Dollars (1,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Owners incident to the use of or resulting from any accident or intentional or unintentional act occurring in or about the Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(d) Fidelity Bond: A fidelity bond naming the Board, the Members, the Association and such other person as a majority of the Members may designate as obligees, in an amount equal to at least one-fourth (1/4) of the total sum budgeted for the Maintenance and Operation Account(s) and Reserve Account(s) for the current fiscal year. The fidelity bond shall contain a waiver of any defense based upon the exclusion of persons serving without compensation.

(e) Other Insurance: Other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

6.7.9 Rule Making: The Association shall have the duty to make, amend and repeal the Rules as provided in Section 6.10.

6.7.10 Architectural Committee: Subject to the provisions of Section 8.2, the Association, through the Board, shall have the duty to appoint and remove members of the Architectural Committee and to insure that there is a duly constituted and appointed Architectural Committee.

6.7.11 Enforcement of Restrictions and Rules: The Association shall have the duty to take such other action, whether or not expressly authorized by this Declaration, including the hiring of legal counsel and undertaking legal

action, as may be reasonably necessary to enforce the Declaration, the Rules and the Architectural Committee Rules.

6.7.12 Budget and Annual Report: In the first fiscal year of the Association which commences after July 1, 1987, and in each subsequent fiscal year of the Association, the Board shall prepare and distribute financial statements to all Owners, as follows:

6.7.12.1 A pro forma operating budget for the ensuing fiscal year shall be distributed not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the next fiscal year. The budget shall include all of the following:

(a) The estimated revenue and expenses on an accrual basis.

(b) The identification of the total cash reserves currently set aside.

(c) The identification of the estimated remaining life and the methods of funds used to defray the future repair, replacement, or additions to those major components that are attributable to the areas for which the Association is obligated.

(d) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that are attributable to the areas for which the Association is obligated.

6.7.12.2 A copy of a review of the financial statement of the Association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000.00). The review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

6.7.12.3 A statement as to the Association's policies and practices in enforcing the lien rights or other legal remedies for the default in the payment of its assessments against its members shall be delivered within 60 days prior to the beginning of the next fiscal year.

6.7.12.4 The requirements of Section 6.7.12 shall be in addition to the budgeting provisions of Section 7.2.1.

6.7.13 Examination and Copies of Records: The Association shall maintain the membership register, books of account and minutes of meetings of the Members, of the Board and of committees of the Board available for inspection and copying by any Member, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the Project as the Board may prescribe.

Upon written request the Board shall within 10 days of the mailing or delivery of such request, provide an Owner with a copy of the Declaration, By-Laws, Articles and Rules, together with a true statement in writing as to the amount of any delinquent assessments, penalties, attorneys's fees, and other charges therein as provided by the Declaration, Articles, By-Laws and Rules on the Owner's Lot as of the date of the request. The Board may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

The provisions of the foregoing paragraph, except those provisions relating to a written statement of delinquent assessments and such other charges as may be authorized by the Declaration, Articles, By-Laws or Rules shall not apply to the transfer of a lot or unit the transfer of which is required to be preceded by the furnishing to a prospective purchaser of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code.

The Board shall establish reasonable rules with respect to the notice to be given to the custodian of the records by the Members desiring to make the inspection, the hours and days when such inspection can be made, and the payment to be made by a Member for the costs of reproducing documents.

6.7.14 Other: The Association shall carry out the duties of the Association as set forth in other sections of this Declaration, the Articles and By-Laws.

6.8 POWERS AND AUTHORITY OF THE ASSOCIATION: The Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in operating for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, By-Laws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of said Declaration, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general

welfare of the Owners. Without in any way limiting the generality of the foregoing, the Board of Directors, on behalf of the Association, shall have the power and authority to:

6.8.1 Easements and Rights of Way: Grant and convey to any third party easements and licenses for use and rights of way, on, over or under any Common Area conveyed or otherwise transferred to said Association or under its jurisdiction upon the affirmative vote or written consent of seventy-five percent (75%) of each class of its voting Members.

6.8.2 Employment of Manager: Employ the services of a manager or other employee, or management company, subject to the direction and control of the Board of Directors, to manage and carry out the affairs of the Association, and, to the extent not inconsistent with the laws of the State of California and upon such conditions as are otherwise deemed advisable by the Board, to delegate to the manager any of its powers; provided, however, that the Board may not delegate to any manager its responsibility to levy fines, hold hearings or impose discipline. Any contract with such manager or management company for a term greater than one (1) year, including any compensation to be paid, must be approved by a majority of each class of Members. In no event shall any management agreement be for a term greater than three (3) years and said agreement shall provide for termination without cause and without payment of a termination fee on a maximum of ninety (90) days written notice.

6.8.3 Services: Provide for or engage the services of others, to provide for the maintenance, protection and preservation of the Common Area and Lots (if an to the extent the Association has undertaken landscaping maintenance of the Lots as provided in Subsection 6.7.4(a)) as the nature and character of the Common Area and Lots may require; provided, however, that no contract for such services shall be for a duration of more than one year unless approved by a majority of each class of Members. In no event shall such contract be for a term greater than three (3) years. Said contract shall provide of a termination fee of a maximum of ninety (90) days written notice.

6.8.4 Utilities: Contract, use and pay for utility services to the Common Area and its facilities; provided, however, that any such contract shall not exceed the shortest term for which the supplier will contract at the regular rate.

6.8.5 Other Property: Acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise.

6.8.6 Dedication: Dedicate any of its property to an appropriate public authority for public use, provided that any such dedication shall have the approval either by affirmative vote or written consent of seventy-five percent (75%) of each class of Members.

6.8.7 Maintenance of Project: Use of the operating fund of the Association for the maintenance, repair, care, and preservation of the Common Area improvements and for maintenance of landscaping on the Lots, (if and to the extent the Association has undertaken such landscaping maintenance as provided in Subsection 6.7.5), as required by Section 6.7.4. Said operating fund may also be used to pay for the purchase of such equipment, tools, supplies and other personal property as the Board deems necessary for use in such maintenance and report.

6.8.8 Delegation: Delegate any of its powers, other than those established pursuant to Section 6.11, to any such committees, officers or employes as it deems necessary and proper.

6.9 CAPITAL IMPROVEMENTS: The Board may, on its own motion or acting on a petition signed by a majority of the Owners, approve the construction, installation or acquisition of a particular capital improvement of the Common Area; provided, however, that if any expenditures for capital improvements approved in that fiscal year is to exceed an amount equal to five percent (5%) of the total budgeted gross expenses of the Association for the most recent fiscal year, such expenditure must be approved by a majority of each class of Members. For any capital improvement so approved, the Board shall obtain firm bids on the total cost of constructing, installing or acquiring said capital improvement. The lowest acceptable bid or bids shall be deemed the estimated cost of such capital improvements. Such cost shall be levied as a capital improvement assessment pursuant to Section 7.5. The Board shall establish a capital improvements account in a financial institution selected by the Board in which the capital improvement assessments shall be deposited, separate and apart from all other funds collected by the Association.

#### 6.10 PROJECT RULES:

6.10.1 Rulemaking Power: Subject to the provisions of this Declaration, the Board may from time to time enact and amend such Rules as the Board deems necessary for the management of the Project. Any rules which relate to the management, operation and control of the Association and/or the Common Area shall become effective and binding on all Owners only after adoption by Owners representing a majority of each class of Members at a meeting duly called for that purpose, or by the

written consent of a majority of Owners appended to a copy of the proposed Rules. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, signs, collection and disposal of refuse, parking and traffic restrictions, limitations on maintenance of landscaping or other improvements on any property which obstructs the vision of motorists or which creates a hazard for vehicular or pedestrian traffic, and any other subject or matter within the jurisdiction of the Association as provided in this Declaration. Said Rules may restrict and govern the use of Common Areas by any Member or his family, guest, licensee or lessee of such Member.

**6.10.2 Distribution of Rules:** A copy of the Rules, as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. No Rules may be adopted which materially affect the rights, preferences or privileges of any Owner as specifically set forth herein. Where the provisions of this Declaration and any Rule adopted by the Association are in conflict, the provisions of this Declaration shall prevail.

**6.10.3 Amendment of Rules:** Any Rules adopted by the Board may be amended from time to time by the Board by a majority vote thereof; provided, however, that any rule which was adopted by a majority vote of each class of Members shall require the same majority vote for the amendment thereof. Amendments to the Rules shall be distributed to the Owners either by mail or by personal delivery. Any duly adopted amendment to the Rules shall become effective thirty (30) days from the date of adoption thereof by the Board, and ratification thereof by the Members if so required, or at such later date as the Board may deem appropriate upon its adoption of said amendment to the Rules.

**6.11 BREACH OF RULES OR REGULATIONS:** In the event of a breach of any Rule or any of the Restrictions contained in this Declaration by an Owner, his family, guests, employees, invitees, licensees or tenants, the Board, for and on behalf of all other Owners, shall enforce the obligations of each Owner to obey such Rules or restrictions in any manner provided by law or inequity, including, but not limited to hiring of legal counsel, the pursuing of legal action, or suspension of the Owner's voting rights; provided, however that such suspension may not be for a period in excess of thirty (30) days, after notice and hearing as herein provided, for an infraction of such Rules. In addition to the other remedies herein set forth, the Board, by majority vote, may levy a fine against such Owner, after appropriate notice and hearing as herein provided, in an amount not to exceed Fifty Dollars (\$50.00) for each such violation; provided, however, that such fines are not assessments, and shall not be enforceable by the lien and power of sale provisions of Article VII.

A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the member was allegedly responsible or in bringing the member and his subdivision interest into compliance with the governing instruments may not be characterized or treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest.

The provisions of subdivision (c) do not apply to charges imposed against an owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Prior to imposing any penalty provided herein, other than suspension of voting rights, for breach of any Rules enacted hereunder or restrictions contained in this Declaration, the Board shall send written notice to the Owner specifying the nature of the infraction and provide an opportunity to the Owner for a hearing before the Board regarding such infraction and the penalty to be imposed. The Board may vote to suspend an Owner's voting rights prior to providing notice of and an opportunity to the Owner to a hearing before the Board, but such suspension shall not become effective until fifteen (15) days after the Owner receives notice of such suspension and unless the Owner is provided notice of and an opportunity for a hearing before the Board at least five (5) days before the effective date of such suspension. In the event that the Board determines that said infraction has occurred and that a penalty shall be imposed, after a reasonable opportunity for a hearing has been provided, the determination of the Board shall be final. In the event legal counsel is retained or legal action is instituted by the Board pursuant to this paragraph, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

**6.12 LIABILITY OF MEMBERS OF BOARD:** No member of the Board shall be personally liable to any Owner or to any other person, including Declarant, for any error or omission of the Association, its representatives and employees, or of the Architectural Committee, provided that such Board member has, upon the basis of such information as may be possessed by him, acted in good faith.

**6.13 ENFORCEMENT OF BONDED OBLIGATIONS:** When Common Area improvements have not been completed prior to the issuance of the Final Subdivision Public Report for any phase of the Project and the Association is the obligee under a bond or other arrangement (hereafter "Bond") to secure performance of the commitment of Declarant to complete the improvements, the following provisions relative to the initiation of action to enforce the obligations of Declarant and the surety under the Bond shall pertain:

6.13.1 The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvements, the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of any such extension.

6.13.2 If the Board decides not to initiate enforcement action, notice shall be given to all Members of such decision. Upon receipt of the petition referred to below, other shall be a special meeting of the Members for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or, upon the failure of the Board to consider and vote on the question, for the purpose of voting whether to enforce such obligations. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing not less than five percent (5%) of the total voting power of the Association.

6.13.3 There shall be a vote by Members of the Association other than Declarant at the special meeting called for the purpose set forth in Subsection 6.13.2, above.

6.13.4 A vote of a majority of the voting power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

**6.14 DISSOLUTION OF INCORPORATED ASSOCIATION:**

6.14.1 **Successor Association:** In the event that the Association as a corporate entity is dissolved, a non-profit, unincorporated association shall forthwith and

without further action or notice be formed to succeed to all the rights and duties of the Association hereunder. The affairs of such unincorporated association shall be governed by the laws of the State of California and, to the extent not inconsistent therewith, by this Declaration and the By-Laws of the Association as if they were created for the purpose of governing the affairs of an unincorporated association.

6.14.2 Title to Property: Immediately prior to the dissolution of the Association as a corporate entity, the Association shall convey to an independent institutional corporate trustee all real property vested in it to hold such real property in trust for the benefit of the unincorporated association formed pursuant to Subsection 6.14.1 and for the benefit of the Owners pursuant to the terms of this Declaration and the By-Laws of the Association.

6.14.3 Members' Rights: Upon dissolution of the Association and the formation of an unincorporated association, each Owner in the Project shall become a Member of the unincorporated association and shall have an underlying beneficial interest in all of the property of the Association transferred to or for the account or benefit of said unincorporated association, such interest being in direct proportion to the number of Lots owned by such Member; provided, however, that there shall be no judicial partition of such property or any part thereof, nor shall any such Member or other person acquiring any interest in said property, or any part hereof, seek judicial partition, the right to do so expressly waived.

## ARTICLE VII

### FUNDS AND ASSESSMENTS

7.1 FUNDS: The Association shall maintain an operating fund (the "Maintenance and Operation Account") into which the Board shall deposit all funds paid to the Association as maintenance and operation assessments. The Association shall also maintain a reserve fund ("Reserve Account") into which the Board shall deposit all funds collected as reserves for contingencies and the repair and replacement of capital improvements. All funds shall be held in trust by the Association for the use and benefit of its individual Members and shall only be used for an applied to the common specific purposes of the Members as herein set forth.

#### 7.2 REGULAR ASSESSMENTS:

7.2.1 Budgeting: Prior to the first day of the month following the closing of the first sale of a Lot by

Declarant, the Board shall estimate (i) the total charges to be paid out of the Maintenance and Operation Account and (ii) reasonable reserves for contingencies and the repair and replacement of capital improvements for the remainder of the fiscal year and shall assess said charges pro rata to all of the Lot Owners, including Declarant, based on the number of Lots owned. Regular assessments against all Lots in the Project shall commence for each phase in the Project on the first day of the month following the closing of said first sale of a Lot in that phase.

Thereafter, not less than sixty (60) days prior to the beginning of each subsequent fiscal year, the Board shall again estimate the total charges to be paid out of the Maintenance and Operation Account during such year and reasonable reserves for contingencies and capital improvements. The Board shall allocate and assess said estimate of total charges to each Lot Owner equally by dividing said estimate by the number of Lots owned by each Lot Owner. All funds of the Association shall be budgeted, allocated, assessed and collected for the Maintenance and Operation Account or for contingencies or deferred maintenance and replacement of capital improvements and shall be designated for those specific purposes. Said funds shall then be used solely for the specific purpose for which they have been designated.

Within one hundred twenty (120) days after the end of each fiscal year, the Lot Owners shall receive an accounting of assessment receipts and disbursements for the last-ended fiscal year.

Upon annexation of any Additional Property to the Project pursuant to Section 3.2 hereof, the allocation and assessment of the total charges for the Project, including the annexed property, shall be allocated among all Lots in the Project in the same proportions as set forth herein. Such allocation and assessments shall be specifically set forth as a part of the Declaration of Annexation for each phase of the Project.

**7.2.2 Increase in Regular Assessments:** 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. In addition to any limitations placed on the Board by the governing documents, the Board of Directors of the Association may not impose, except as provided in this subdivision, a Regular Assessment that is more than ten (10%) percent greater than the Regular Assessment for the Association's preceding fiscal year or impose special

assessments which, in the aggregate, exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7513 of the Corporations Code.

The provisions of this subdivision do not limit assessment increases for the following purposes:

(1) The maintenance or repair of the common areas or other areas which the Association is obligated to maintain or repair, including, but not limited to, the payment of insurance premiums, the payment of utility bills, the costs incurred in maintaining or repairing structures or improvements, and funding reserves.

(2) Addressing emergency situations.

**7.2.3 Time and Manner of Payment of Assessments:** Assessments shall be due and payable by the Owners to the Association during the fiscal year in equal monthly installments, on or before the first day of each month, or in such other manner as the Board shall designate. If not paid within thirty (30) days after its due date, each such charge shall thereafter bear interest at the rate of ten percent (10%) per annum until paid, but the Board may, in its discretion, waive interest in any particular instance. If any suit or action is brought to collect any such charge, there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment in any such suit or action.

**7.3 SPECIAL ASSESSMENTS:** If at any time during any fiscal year the maintenance assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or for unexpected repair, replacement or reconstruction of the improvements in the Common Area for which the Association has responsibility, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a special assessment in the amount of such actual or estimated inadequacy, which amount shall be assessed to the Owners individually in the manner set forth in Subsection 7.2.1 above.

In any fiscal year, 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, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year.

**7.4 REIMBURSEMENT ASSESSMENT:** The Board shall levy an assessment against any Owner whose failure to comply with this Declaration, the Rules or the Architectural Committee Rules, resulted in (i) the imposition of a fine and/or penalty or (ii) monies being expended by the Association from the operating fund in performing its functions under this Declaration. Such assessments shall be due and payable to the Association when levied. Reimbursement Assessments shall not be enforceable by the alien and private power of sale provisions of Section 7.6 hereof.

**7.5 CAPITAL IMPROVEMENT ASSESSMENT:**

7.5.1 Upon approval of a proposed capital improvement and the estimated total cost thereof pursuant to Section 6.9, such estimated total cost shall be levied and assessed equally to each Lot as a capital improvement assessment.

7.5.2 If at any time and from time to time a capital improvement assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a Special Assessment pursuant to Section 7.3 above.

7.5.3 Capital improvement assessments shall be due and payable by all Owners in such installments and during such period of periods as the Board shall designate.

**7.6 DEFAULT IN PAYMENT OF ASSESSMENTS:**

7.6.1 Regular and special assessments levied pursuant to the governing documents are delinquent fifteen (15) days after they become due. If an assessment is delinquent, the Association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(2) A late charge not exceeding ten (10%) percent of the delinquent assessment or ten dollars (\$10.00), whichever is greater, unless the Declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the Declaration.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed twelve (12%) percent interest, commencing thirty (30) days after the assessment becomes due.

7.6.2 The assessments levied by the Board on behalf of the Association under this Article VII shall constitute separate assessments. A regular or special assessment levied under this Article, together with any late charges, reasonable costs of collection and interest, as assessed in accordance with Section 1366 of the California Civil Code, shall be a debt of the Owner of the separate interest at the time the assessment or other sums are levied and shall bind his heirs, devisees, personal representatives and assigns. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by the successor, but the lien for such delinquent assessment shall remain, and if unpaid by the successor, may be foreclosed as herein provided. No such assumption of personal liability by a successor Owner shall relieve any Owner personally obligated hereby for delinquent assessments. The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366 of the Civil Code, shall be a lien on the Owner's interest in the common interest of the county in which the separate interest is located. The priority of all such liens on each Lot shall be in inverse order, so that upon the foreclosure of the lien for any particular month's charge on any Lot, any such sale of such Lot pursuant to such foreclosure will be made subject to all liens securing the respective monthly charges on such Lot for succeeding months.

7.6.3 The Board shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any Lot, and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness on the date of certificate. The Board shall furnish a copy of such certificate to any Owner upon request. A reasonable fee may be charged for the preparation of such statement.

7.6.4 Prior to the transfer of the Common Area to the Association, Declarant shall pay all of the costs of operation and maintenance of the Common Area and facilities that are incurred or expended. After the transfer of the Common Area to the Association, Declarant hereby covenants for each Lot owned within the subject property and each purchaser of any Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association each assessment under this Article, as such assessments are fixed, established and collected from time to time, as herein provided.

7.6.5 Purchasers of any Lot subject to this Declaration by acceptance of a deed or other conveyance therefor, whether from declarant or subsequent Owners of Lots,

shall become personally obligated and agree to pay such charges that accrue after receiving title thereto, plus costs of suit and reasonable attorneys' fees as above provided, and shall thereby vest in the Association the right and power to bring all actions for the collection of such charges, costs of suit and attorneys' fees and for the enforcement of such liens. Such right and power shall continue in the Association and such obligations shall run with the land so that the successive Owner or Owners of record of any Lot within the Project shall in turn become liable to pay all such charges which shall become a lien thereon during the time they are the Record Owner of such Lot within the Project. After a Record Owner transfers of record any Lot owned by him, he shall not be liable for any charges thereafter to accrue against such Lot. He shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer. A contract seller of any Lot shall continue to be liable for all such charges until a conveyance by deed of such property is recorded in the official records of the county.

7.6.6 The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with California Civil Code Section 1366, shall be a lien on the Owner's interest in the common interest development from and after the time the Association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with California Civil Code Section 1366, a description of the Owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in Section 7.6.7, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the Declaration or by the Association for that purpose, or if no one is designated, by the President of the Association. Upon payment of the sums specified in the notice of delinquent assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

7.6.7 A lien for regular or special assessments against an Owner may be made subordinate by this Declaration to the lien of any first mortgage or first deed of trust (hereinafter collectively "first encumbrance") against subdivision interests of the Owner. In the case of a subordination of a lien for assessments to a first encumbrance, the transfer of a subdivision interest as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first encumbrance shall extinguish the lien of assessments which were due and payable prior to the transfer of the subdivision interests. A lien created pursuant to this Article may be

enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a of the California Civil Code. Any sale by the trustee shall be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. Such sale shall not relieve the Lot from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment. The Board may agree to subordinate the lien of said assessments to the interests of the Department of Veterans' Affairs of the State of California under any Cal-Vet financing contract to the same extent as said liens are made subordinate to liens of mortgages under this provision.

7.6.8 Any assessment not paid within thirty (30) days after the due date shall be deemed to be in default and shall bear interest from the due date at the rate of ten percent (10%) per annum and the Board on behalf of the Association may bring an action at law against the Owner personally obligated to pay the same or foreclosure the lien against the property. No action shall be brought to foreclose the lien securing any assessment under this Article less than thirty (30) days following the mailing of a notice of delinquent assessment.

7.6.9 Each of the Owners does hereby appoint the Association trustee to enforce and to foreclose such lien by private power of sale as provided in Division III, Part 4, Title XIV, Chapter 2, Article I of the Civil Code of the State of California and does further grant to the Board on behalf of the Association and authority and power to sell the Lot of such defaulting Owner, or any part thereof, for lawful money to the United States, to the highest bidder to satisfy said lien. The Board as trustee for the remaining Owners, or any other Owner, may purchase at said sale. The Board may commence any procedure for collection upon its own decision, and it must so proceed upon the written request therefor signed by any five (5) Owners.

7.6.10 Upon payment of the delinquent assessment or the satisfaction thereof, the Board shall cause to be recorded in the same manner as the notice of assessment a further certificate stating the satisfaction and release of the lien thereof. A failure to record said certificate of discharge within thirty (30) days after written demand by the Owner of such Lot shall entitle him to recover a penalty of ONE HUNDRED DOLLARS (\$100.00) from the Association, plus his actual damages.

7.7 **ASSOCIATION FUNDS:** The assessments collected by the Association shall be properly deposited into two separate accounts with a savings and loan association or bank selected by the Board, which accounts shall be clearly designed as the Maintenance and Operation Account and the Reserve Account. The

funds collected shall be deposited, as allocated, into the appropriate accounts and said accounts shall be separately maintained by the Association. Upon sale or transfer of any Lot by any Owner, any interest of the transfer or in the funds shall be deemed automatically transferred to the transferee of such Owner. In the event that Board retains a management agent, the Board may delegate the authority to deposit or withdraw funds to responsible representatives of the management agent. Said management agent may additionally be authorized to establish a common trust account for deposit of assessments as collected. Any funds deposited in such a common trust account shall be allocated as previously specified herein.

**7.8 FAILURE TO FIX MAINTENANCE ASSESSMENTS:** The omission by the Board to fix the maintenance assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

**7.9 PROPERTY EXEMPT FROM ASSESSMENTS:** The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

(a) That portion of any property subject to any easement or other interests dedicated and accepted by the County or other local public authority and devoted to public use; and

(b) All Common Areas.

## ARTICLE VIII

### ARCHITECTURAL COMMITTEE

**8.1 ORGANIZATION:** There shall be an Architectural Committee consisting of three (3) persons. There may also be one alternate member designed to act as substitute on the Committee in the event of absence or disability of any member.

#### **8.2 DESIGNATION OF MEMBERS AND TERMS OF OFFICE:**

**8.2.1 Initial Members:** The initial members of the Architectural Committee shall be appointed by Declarant prior to the conveyance of the first Lot to a member of the Public. Such designation shall be reflected in the Minutes of the Association. Declarant shall designate one member to serve a term of one (1) year; one member to serve a term of (2) years

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and one member to serve a term of three (3) years from the date of appointment. The alternate member shall serve a term of three (3) years. Each of said Committee members shall serve the length of said terms specified unless they have resigned or have been removed from office. Thereafter, the terms of all Architectural Committee members appointed shall be three (3) years. Any member appointed to replace a member who has resigned or been removed shall serve such members's unexpired term. Committee members who have resigned, been removed or whose terms have expired may be reappointed, provided, however, that no person shall serve as a member of the Architectural Committee, either regular or alternate, for a period in excess of six (6) years in any ten (10) year period.

8.2.2 Appointment and Removal: Until such time as the Owners other than Declarant own ninety percent (90%) or more of the Lots within the Project, or five (5) years after the original issuance of the Final Subdivision Public Report of the Department of Real Estate for the first phase of the Project, (whichever is earlier) the right to appoint and remove all Committee members and alternate committee members of the Architectural Committee shall be, and is hereby vested solely in Declarant unless prior to said time Declarant waives its rights hereunder by notice in writing to the Association, provided, however, that after one year from the issuance of the Final Subdivision Public Report for the first phase of the Project, the Board shall have the right to appoint one member to the Committee. When Declarant waives or no longer has the right to appoint and remove the members of the Committee, said right shall be vested solely in the Board. All members appointed by the Board shall be Owners. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced in the Minutes of the Association.

8.2.3 Resignations: Any member or alternate member of the Architectural Committee may at any time resign from the Committee upon written notice delivered to Declarant or to the Board, whichever then has the right to appoint Committee members.

8.2.4 Vacancies: Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint Committee members.

8.3 DUTIES: It shall be the duty of the Architectural Committee to consider and act upon proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Committee rules, to perform other duties delegated to it by the Association and to carry out all other duties imposed upon it by this Declaration.

**8.4 MEETINGS:** The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of two (2) members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Committee shall keep and maintain a record of all actions taken by it. The Architectural Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred in the performance of any Architectural Committee function.

**8.5 ARCHITECTURAL COMMITTEE RULES:** The Architectural Committee, from time to time and in its sole discretion, may adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Committee Rules." Said rules shall interpret and implement the provisions hereof by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design, placement of buildings, and materials and similar features which are recommended for use in the Project, provided, however, that said rules shall not be in derogation of the minimum standards required by this Declaration. \*

**8.6 APPLICATION FOR APPROVAL OF IMPROVEMENTS:** Any Owner, except Declarant and its designated agents, proposing to perform any work of any kind whatever which requires the prior approval of the Architectural Committee shall apply to such Committee for approval by notifying the Architectural Committee of the nature of the proposed work in writing and furnishing such information as the Committee may require.

**8.7 BASIS FOR APPROVAL OF IMPROVEMENTS:** The Architectural Committee shall grant the requested approval only if:

8.7.1 The Owner has complied with the provisions of Section 8.6 above;

8.7.2 The Architectural Committee finds that the plans and specifications conform to this Declaration and to the Architectural Committee Rules in effect at the time such plans were submitted to such Committee; and

8.7.3 The members of the Architectural Committee, in their sole discretion, determine that the proposed improvements would be consistent with the standards of the Project and the purposes of this Declaration as to quality of workmanship and materials, as to harmony of exterior design with the existing structures and as to location with respect to topography and finished grade elevations.

**8.8 FORM OF APPROVAL:** All approvals given under Section 8.7 shall be in writing; provided, however, that any request for approval which has not been rejected within thirty (30) days from the date of submission thereof to the Architectural Committee shall be deemed approved.

**8.9 PROCEEDING WITH WORK:** Upon approval from the Architectural Committee pursuant to Section 8.8 above, the Owner, as soon as practicable, shall satisfy all conditions hereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations, and excavation pursuant to said approval, said commencement to be, in all cases, within one year from the date of such approval. If the Owner shall fail to comply with this paragraph, any approval given pursuant to Section 8.8 above, shall be deemed revoked unless the Architectural Committee, upon written request of the Owner made prior to the expiration of said one year period, extends the time for such commencement. No such extension shall be granted, except upon a finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted.

**8.10 FAILURE TO COMPLETE WORK:** The Owner shall complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof, plus the period of time during which completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If the Owner fails to so complete the work, the Architectural Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 8.11 below as though the failure to complete the improvement were a non-compliance with approved plans.

**8.11 DETERMINATION OF COMPLIANCE:** All work performed for which approval of the Architectural Committee was required shall be inspected and a determination of compliance shall be made as follows:

**8.11.1** Upon the completion of any construction, reconstruction, alteration or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Architectural Committee. If the Owner fails to give such notice within ten (10) days, the Architectural Committee may proceed on its own motion.

**8.11.2** Within sixty (60) days thereafter, the Architectural Committee, or its duly authorized representatives, may inspect such improvement to determine whether it was

constructed, reconstructed, altered or refinished to substantial compliance with approved plans. If the Architectural Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

8.11.3 If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Architectural Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Architectural Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Architectural Committee and, in the discretion of the Board, to any other interested party.

8.11.4 At the hearing, the Owner, the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a reimbursement assessment against such Owner pursuant to Section 7.4 hereof.

8.11.5 If for any reason the Architectural Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

**8.12 APPLICATION FOR PRELIMINARY APPROVAL:** Any Owner proposing to construct improvements requiring the prior approval of the Architectural Committee may apply to the Committee for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Architectural

Committee rules. The purpose of the preliminary approval procedure is to allow an Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as follows:

8.12.1 Within thirty (30) days after proper application for preliminary approval, the Architectural Committee shall consider and act upon such request. The Architectural Committee shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. Failure of the Architectural Committee to act within said thirty (30) day period shall constitute an approval. In granting or denying approval, the Architectural Committee may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.

8.12.2 Any preliminary approval granted by the Architectural Committee shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists of proposed improvements in accordance with the provision of the preliminary approval, and is otherwise acceptable under the terms of this Declaration, shall be approved by the Architectural Committee.

8.12.3 In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

8.13 WAIVER: The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

8.14 COMPLETION CERTIFICATE: Within thirty (30) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Architectural Committee shall record a completion certificate, executed by any two (2) of its members, certifying (with respect to any Lot of said Owner) that as of the date thereof, either: (a) all improvements made and other work complete by said Owner comply with this Declaration, or (b)

such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matter being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

**8.15 LIABILITY:** Neither the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any Damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of a certificate pursuant to Section 8.14, whether or not the facts therein are correct; provided, however, that such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural Committee.

**8.16 NON-APPLICABILITY TO DECLARANT:** The provisions of this Article shall not apply to any Lot owned by Declarant or prior to his first conveyance of a Lot to a member of the public.

**8.17 GOVERNMENTAL REQUIREMENTS:** The application to and the review and approval by the Architectural Committee of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the respective Owner.

## ARTICLE IX

### LIMITATION OF RESTRICTIONS ON DECLARANT

**9.1 LIMITATIONS OF RESTRICTIONS:** Declarant is undertaking the work of constructing upon the Lots in the Project and the Additional Property various Residences and other incidental improvements. The completion of that work and the sale, and other disposal of Lots is essential to the establishment and welfare of the Subject Property and the Additional Property as a residential community. In order that the work may be completed

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and the property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to deny Declarant the rights set forth in this Article IX.

**9.2 RIGHTS OF ACCESS; COMPLETION OF CONSTRUCTION:** Until the third (3rd) anniversary of the original issuance of the Final Subdivision Public Report for the most recent phase of the Project, Declarant, its contractors and subcontractors shall have the right to:

9.2.1 Obtain reasonable access over and across the Common Area of the Project and do whatever is reasonably necessary or advisable in connection with the completion of the Project; and

9.2.2 Erect, construct and maintain such structures as may be reasonably necessary for the conduct of its business to complete said work, establish said property as a residential community and dispose of the same in parcels by sale, lease, or otherwise.

**9.3 MARKETING RIGHTS:**

9.3.1 Declarant shall have the right to:

9.3.1.1 Maintain model homes, sales offices, storage facilities and related facilities on any unsold Lots within the Project or the Additional Property whichever necessary or convenient, in the opinion of Declarant, for sale or disposition of said Lots;

9.3.1.2 Make reasonable use of the Common Areas and Common Area facilities for sale of Lots; and

9.3.1.3 Conduct its business of dispose of the Lots by sale, lease or otherwise.

9.3.2 Should Declarant, after the expiration of a period of one year after the close of escrow for the sale of a Lot in any given phase, require access to and use of the Common Area in that phase for marketing purposes beyond that which Declaration otherwise is permitted, such use shall be permitted only if an agreement is entered into between Declarant and the Association, which agreement specifically provides for such use for a limited duration and provides for a reasonable rate of compensation to the Association by Declarant commensurate with the nature, extent and duration of such use by Declarant. Notwithstanding any other provision hereof, however, Declarant shall under no circumstances be denied his full rights as an

Owner (as provided in this Declaration) to make such use of the Common Area and any Lots owned by Declarant in the manner to which Declarant is entitled by virtue of being an Owner.

**9.4 NATURE OF PROJECT:** Declarant shall not be prevented from increasing or decreasing the number of Lots that may be annexed to the Project pursuant to Section 3.2 hereof or from any other action directly or indirectly connected with the Project in the manner deemed desirable by Declarant; provided, however, that Declarant obtains governmental consents where required by law, including, where appropriate, the consent of the Department of Real Estate.

**9.5 TITLE RIGHTS:** This Declaration shall not in any manner constitute a limitation on Declarant's title rights to the Additional Property prior to annexation to the Project, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any of the Additional Property.

The rights of Declarant under this Declaration to all or part of Declarant's interest in the Project and the Additional Property may be assigned to any successor(s) by an express assignment incorporated in a recorded deed of option, as the case may be, transferring such interest to such successor. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on any part of the Project additional licenses, reservations and rights-of-way to itself, to utility companies or to others as, from time to time, may be reasonably necessary to the proper development and disposal of the Lot and the Additional Property.

#### ARTICLE X

##### RIGHTS OF MORTGAGEES

**10.1 CONFLICT:** Notwithstanding any contrary provision contained elsewhere in this Declaration, or in the By-Laws, Articles or Rules, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

**10.2 LIABILITY FOR UNPAID ASSESSMENTS:** Any Institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage, shall take the property free of any claims for unpaid assessments or charges against the Lot which accrue prior to the acquisition of title to the Lot by the Institutional Mortgagee.

**10.3 PAYMENT OF TAXES AND INSURANCE:** Institutional Mortgagees may, jointly and singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

**10.4 TERMINATION OF CONTRACTS AND AGREEMENTS:**

10.4.1 Any contract or lease, including any contract providing for the services of Declarant, entered into by the Association while Declarant controls the Association shall provide that the Association has the right to terminate such contract or lease without cause and without penalty or the payment of a termination fee at any time after the transfer of control of the Association from Declarant upon not more than ninety (90) days notice to the other party. For purpose of this Subsection, the term "control" shall mean the right of Declarant to exercise unilateral control over the Association, the Board, the Project or the Owners in any manner other than by Declarant's exercise of votes allocated to Declarant on the same basis as votes are allocated to other Owners.

10.4.2 The term of any agreement for management of the Project or any agreement providing for services of the Declarant, shall not exceed one (1) year unless the agreement and its term are approved by the vote or written assent of a majority of each class of Members; provided, however, that in no event shall such an agreement exceed (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

**10.5 NOTICE TO ELIGIBLE HOLDERS:** An Eligible Holder is entitled to timely written notice of:

10.5.1 Any condemnation loss or casualty loss which affects a material portion of the Common Area;

10.5.2 Any delinquency in the payment of assessments or charges owned by the Owner of a Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

10.5.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

10.5.4 Any proposal to take any action specified in this Article or in Section 11.1 below;

10.5.5 Any default by an Owner-mortgagor of a Lot in the performance of his obligations under this Declaration or the By-Laws, which is not cured within sixty (60) days.

10.6 INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, this Declaration, the By-Laws, the Articles and the Rules and any amendments thereto during normal business hours or under other reasonable circumstances.

10.7 VOTING RIGHTS OF MORTGAGEES: For purposes of this Section 10.9, a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

10.7.1 Unless at least sixty-seven percent (67%) of the Institutional Mortgagees or sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

10.7.1.1 By act or omission to abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the property by the Association and Owners shall not be deemed a transfer within the meaning of this Subsection.

10.7.1.2 By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, or the upkeep of lawns, plantings or other landscaping in the Common Area.

10.7.1.3 Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than ninety percent (90%) of the current replacement cost;

10.7.1.4 Use hazard insurance proceeds for losses to any property or improvements owned by the Association other than for the repair, replacement or reconstruction of the property and improvements.

10.7.2 Any election to terminate the legal status of the Project as a Planned Development Project shall require:

10.7.2.1 The approval of a majority of the Eligible Holders if the election to terminate the legal status is a result of substantial destruction or a substantial taking condemnation of the property within the Project; or

10.7.2.2 The approval of sixty-seven percent (67%) of the total voting power of the Association and sixty-seven percent (67%) of the Eligible Holders, if Section 10.7.2.1, above, is not applicable.

10.7.2.3 In the event a portion of the Common Area is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the Project, unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Association.

10.7.3 In the event a portion of the Common Area is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the Project, unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Association.

10.8 MORTGAGE PROTECTION: A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any Mortgage made in good faith and for value as to any Lot in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

11.1 AMENDMENT: After the conveyance of the first Lot, amendments may be made as follows:

11.1.1 Material Provisions of Declaration and By-Laws: The vote or written consent of sixty-seven percent (67%) of each class of Members shall be required to add to, amend or modify, whether by formal amendment or otherwise, any material provision of this Declaration or the By-Laws which establish, provide for, govern or regulate any of the following subjects:

11.1.1.1. Voting;

11.1.1.2 Assessments, assessment liens, or subordination of assessment liens;

11.1.1.3 Reserves for maintenance, repair and replacement of Common Areas;

11.1.1.4 Insurance policies or fidelity bonds;

11.1.1.5 Rights to use the Common Area;

11.1.1.6 Responsibilities for maintenance and repair of any portion of the Common Area;

11.1.1.7 Expansion or contraction of the Project or the addition or annexation of property to or withdrawal of property from the Project;

11.1.1.8 The boundaries of a Lot;

11.1.1.9 Convertibility of Lots into Common Area or of Common Area into Lots;

11.1.1.10 The provisions of Section 7.6.5, Article X and this Section 11.1.1;

11.1.1.11 Any change in the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

11.1.2 Other Provisions of Declaration: Any other provision of this Declaration may be amended by the vote or written consent of the Owners constituting not less than seventy-five percent (75%) of each class of Members.

11.1.3 Recordation: Any amendment shall be effective upon the recordation in the Official records of the County instrument setting forth the terms of the amendment, and the vote or written consent by which it was adopted, duly certified and executed by the President and Secretary of the Association.

11.2 DURATION: The provisions of this Declaration, including the covenants, conditions and restrictions contained herein shall continue to be effective for a period of sixty (60) years from the date of recordation and shall be automatically extended for successive periods of ten (10) years or until a majority vote of the Owners of all of the Lots in the Project shall determine that they shall terminate.

**11.3 ENFORCEMENT AND NONWAIVER:**

**11.3.1 Right of Enforcement:** Except as otherwise provided herein, Declarant, the Association or any Owner or Owners shall have the right to enforce any and all of the provisions of this Declaration, the By-Laws, the Articles and the Rules, including any decision made by the Association upon the Owners property in the Project.

**11.3.2 Violation of Law:** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

**11.3.3 Remedies Cumulative:** Each remedy provided by this Declaration is cumulative and not exclusive.

**11.3.4 Nonwaiver:** The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of said Declaration.

**11.4 OBLIGATIONS OF OWNERS:** No owner may avoid the burdens or obligations imposed on him by this Declaration through non-use of any Common Area of the facilities located thereon or by abandonment of his Lot. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date of such transfer, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of any Owner under this Declaration.

**11.5 CONSTRUCTION AND SEVERABILITY; SINGULAR AND PLURAL; TITLES:**

**11.5.1 Restrictions Construed Together:** All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Project as set forth in the Preamble of this Declaration.

**11.5.2 Restrictions Severable:** Notwithstanding the provisions of Subsection 11.5.1, above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

86-205264

11.5.3 Singular Includes Plural: The singular shall include the plural and the plural, the singular, unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

11.5.4: Captions: All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the terms or provisions of said Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

REMINGTON MONARCH BEACH, a  
California Limited Partnership

By: 

Title: President, H. R. REMINGTON  
PROPERTIES, INC.

THE REMINGTON - OAKWOOD FINANCIAL  
JOINT VENTURE, General Partner

By: 

Title: President, OAKWOOD JOINT  
VENTURE, General Partner

STATE OF CALIFORNIA )  
COUNTY OF Alameda ) ss

On this 8 day of May 1986 before me, the undersigned, Notary Public in and for said County and State, personally appeared:

Michael J. Farley

personally known to me (or proved to me on the basis of satisfactory evidence)

to be the persons who executed the within instrument as \_\_\_\_\_

President ~~and XXXXXXXXXXXXXXXXXXXXXXX~~ on behalf of H.R. Remington Properties, Inc.

the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or resolution of its board of directors, said corporation being known to me to be one of the partners of:

The Remington - Oakwood Joint Venture

said partnership being known to me to be one of the partners of

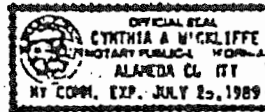
Remington Monarch Beach, a California Limited Partnership

the partnership that executed the within instrument, and acknowledged to me that

such corporation executed the same as such partner and that such partnership executed the same.

Witness my hand and official seal.

Cynthia A. Wickliffe  
Notary Public in and for said County and State.



STATE OF CALIFORNIA )  
COUNTY OF Alameda ) ss

On this 8 day of May 1986 before me, the undersigned, Notary Public in and for said County and State, personally appeared:

Donald E. Weyant

personally known to me (or proved to me on the basis of satisfactory evidence)

to be the persons who executed the within instrument as \_\_\_\_\_

President ~~and XXXXXXXXXXXXXXXXXXXXXXX~~ on behalf of Oakwood Financial Service Corp.

the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or resolution of its board of directors, said corporation being known to me to be one of the partners of:

The Remington - Oakwood Joint Venture

said partnership being known to me to be one of the partners of

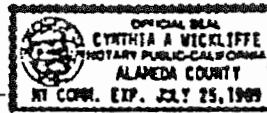
Remington Monarch Beach, a California Limited Partnership

the partnership that executed the within instrument, and acknowledged to me that

such corporation executed the same as such partner and that such partnership executed the same.

Witness my hand and official seal.

Cynthia A. Wickliffe  
Notary Public in and for said County and State.



Affidavit for notary shown herein

I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary CYNTHIA A. WICKLIFFE  
Date Commission Expires JULY 25, 1989  
County Where Bond is Filed ALAMEDA COUNTY  
Place of Execution Santa Ana, California

Paul J. [Signature] 5-19-86

86-205264

EXHIBIT "A"

"SUBJECT PROPERTY"

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DESCRIBED AS FOLLOWS:

PHASE 1:

LOTS 1 THROUGH 5, 11 THROUGH 15 AND LOT A OF TRACT 12545, AS SHOWN ON A MAP RECORDED IN BOOK 554, PAGES 42, 43 & 44 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

AND

LOTS 1 THROUGH 45 AND LOT A OF TRACT 12546, AS SHOWN ON A MAP RECORDED IN BOOK 554, PAGES 45, 46 & 47 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXHIBIT "A"

## "ADDITIONAL PROPERTY"

## PHASE II:

LOTS 1 THROUGH 57 AND LOT A OF PROPOSED TRACT 12376, BEING A SUBDIVISION OF:

LOT 1 OF TRACT NO. 12270, AS SHOWN ON A MAP FILED IN BOOK 540, PAGES 45, 46 AND 47 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, ALSO BEING A PORTION OF PARCEL 1, AS SHOWN ON EXHIBIT "B" OF THAT CERTAIN "LOT LINE ADJUSTMENT LL 85-40" RECORDED NOVEMBER 22, 1985 AS INSTRUMENT NO. 85-473031 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY.

## PHASE III:

LOTS 1 THROUGH 22 AND LOT A OF PROPOSED TRACT 12548, BEING A SUBDIVISION OF:

LOT 1 OF TRACT NO. 12270, AS SHOWN ON A MAP FILED IN BOOK 540, PAGES 45, 46 AND 47 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, ALSO BEING A PORTION OF PARCEL 1, AS SHOWN ON EXHIBIT "B" OF THAT CERTAIN "LOT LINE ADJUSTMENT LL 85-40" RECORDED NOVEMBER 22, 1985 AS INSTRUMENT NO. 85-473031 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY.

## PHASE IV:

LOTS 1 THROUGH 30 AND LOT A OF PROPOSED TRACT 12547, BEING A SUBDIVISION OF:

LOT 1 OF TRACT NO. 12270, AS SHOWN ON A MAP FILED IN BOOK 540, PAGES 45, 46 AND 47 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, ALSO BEING A PORTION OF PARCEL 1, AS SHOWN ON EXHIBIT "B" OF THAT CERTAIN "LOT LINE ADJUSTMENT LL 85-40" RECORDED NOVEMBER 22, 1985 AS INSTRUMENT NO. 85-473031 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY.

AND

LOTS 6 THROUGH 10 OF TRACT 12545, AS SHOWN ON A MAP RECORDED IN BOOK 554, PAGES 42, 43 & 44, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

86-208194

TO: COUNTY RECORDER  
COUNTY OF ORANGE

Recorded in the presence of  
FIRST AMER. TITLE INS. CO.

8:00 MAY 21 1986  
A.M.

Official Records  
Orange County California

*John A. Beach* Recorder

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

REMINGTON MONARCH BEACH  
c/o THE REMINGTON-OAKWOOD  
JOINT VENTURE  
1131 Harbor Bay Parkway, Suite 206 \$13.00  
Alameda, C. 94501  
Attn: David P. Dolter

91446 RJC

NOTICE OF ANNEXATION

FOR PHASE V OF

MONARCH BEACH MASTER HOMEOWNERS ASSOCIATION  
(FORMERLY THE SALT CREEK MASTER COMMUNITY)

(PHASE I OF ANTIGUA AT MONARCH BEACH)

THIS IS A COPY OF THE INSTRUMENT AS RECORDED IN THE OFFICE OF THE COUNTY CLERK OF ORANGE COUNTY, CALIFORNIA. IT IS NOT A COPY OF THE INSTRUMENT AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

NOTE TO COUNTY RECORDER

This document notices the annexation of additional property and serves to annex Lots 1 through 5, inclusive, 11 through 15, inclusive, and Lot A of Tract 12545, as shown on a map recorded as Instrument # 86-079564, Book 554, page 42 of miscellaneous maps, records of Orange County, California, and Lots 1 through 45, inclusive, and Lot A of Tract 12546, as shown on a map recorded as Instrument # 86-079751, Book 554, Page 43 of miscellaneous maps, records of Orange County, California, to the Monarch Beach Master Community (formerly the Salt Creek Master Community), to the jurisdiction of the Monarch Beach Master Homeowners Association, and to the covenants set forth in the master declaration of covenants, conditions and restrictions for Salt Creek recorded on February 11, 1982 as instrument # 82-051-387, records of Orange County, California.

NOTICE OF ANNEXATIONFOR PHASE V OFMONARCH BEACH MASTER HOMEOWNERS ASSOCIATION(FORMERLY THE SALT CREEK MASTER COMMUNITY)(PHASE I OF ANTIQUA AT MONARCH BEACH)

THIS DECLARATION OF ANNEXATION is made this 15th day of May, 1986, by Stein-Brief Group, Inc., a California Corporation, hereinafter referred to as "Declarant" with reference to the following facts:

A. Declarant's predecessor in interest to the Master Community, executed a declaration entitled Master Declaration of Covenants, Conditions and Restrictions for Salt Creek which was recorded on the 11th day of February, 1982, as Instrument No. 82-031587, of Official Records of the County of Orange, State of California, covering all that real property located in the County of Orange, State of California, described in Exhibit "A" attached hereto and made part of the Declaration;

B. The Declaration provides in Article II, paragraph 2.01 thereof, that Declarant may annex additional property and thereby make such additional property subject to the Declaration and subject to the jurisdiction of the Association as provided for in the Declaration. If such annexation is not effected prior to the third anniversary of the original issuance of the most recent Final Subdivision Public Report issued by the State of California Department of Real Estate for a phase of the Project, such annexation shall require the vote or written assent of two-thirds (2/3) of the total votes residing in Members other than Declarant;

C. Remington Monarch Beach, A California Limited Partnership, Subdeclarant, is the owner of the real property located in the County of Orange, State of California, described in Exhibit "B". Subdeclarant desires to annex said property to the property, known and described in Exhibit "A", and thereby make said property subject to the terms, conditions and restrictions of the Declaration;

D. Owners of the annexed property shall pay the assessments levied against their Lots as if said additional property had initially been subject to the Declaration. Said assessments shall be due and payable by the Owners to the Association during the fiscal year in equal monthly installments, on or before the first day of each month, or in such other manner as the Board shall designate. Said assessment shall commence on all lots in this phase on the first day of the month following the first sale.

NOW, THEREFORE, Declarant declares as follows:

1. Pursuant to the terms of the Declaration, Declarant, as the owner of the property in Exhibit "A" declares that all of the real property described in Exhibit "B" is hereby annexed to and made a part of the property described in Exhibit "A". All the real property described in Exhibit "B" shall be held, sold, leased, transferred, occupied and conveyed, subject to the terms, provisions, covenants, conditions, restrictions, and easements of the Declaration, as amended or as hereafter amended.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Annexation this 15th day of May, 1986.

STEIN-BRIEF GROUP, INC.,  
a California corporation

By Chris A. Downey,  
Executive Vice-president

STATE OF CALIFORNIA  
COUNTY OF ORANGE  
On May 15, 1986

before me, the undersigned, a Notary Public in and for said State, personally appeared Chris A. Downey

Executive Vice President of STEIN-BRIEF GROUP, INC., the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Diane C. Lambert



(This area for official notarial seal)

Notary Public  
I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary DIANE G. LAMBERT  
Date Commission Expires OCTOBER 30, 1989  
County Where Bond is Filed ORANGE COUNTY  
PLACE OF EXECUTION SANTA ANA, CALIF.

Donald J. [Signature] 519-X  
First American Title Insurance Co.

## EXHIBIT "A"

PHASE I

Lots 1 through 30, inclusive, and Lots A through E inclusive, of Tract No. 11223, shown on a Map recorded on March 9, 1981, as Instrument No. 81-11704, in Book 486, Pages 34 through 38, inclusive, of Miscellaneous Maps, in the Office of the County Recorder for the County of Orange.

PHASE II

"Lots 1 through 6, inclusive, and Lots A and B, of Tract 11073, as shown on a Map recorded on February 2, 1981, as Instrument No. 82-039621, in Book 498, Pages 38 and 39, of Miscellaneous Maps, in the Office of the County Recorder for the County of Orange.

PHASE III

"Lots 1 through 44, inclusive, and Lots A through G, inclusive, of Tract 11548, as shown on a Map recorded on June 19, 1982, as Instrument No. 84-252696, in Book 526, Pages 19 through 21, inclusive, of Miscellaneous Maps, in the Office of the County Recorder for the County of Orange.

PHASE IV

Lots 1 through 30, inclusive, and Lots A through E inclusive, of Tract 11222, as shown on a Map recorded on March 9, 1981, as Instrument No. 81-11703, in Book 486, Pages 30 through 33, inclusive, of Miscellaneous Maps, in the Office of the County Recorder for the County of Orange.

EXHIBIT "A"

EXHIBIT "B"

SUBJECT PROPERTY

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA,  
COUNTY OF ORANGE, DESCRIBED AS FOLLOWS:

PHASE 1:

LOTS 1 THROUGH 5, INCLUSIVE, 11 THROUGH 15, INCLUSIVE, AND LOT A  
OF TRACT 12545, AS SHOWN ON A MAP RECORDED AS INSTRUMENT  
#86-079564 IN BOOK 554, PAGE 42, OF MISCELLANEOUS MAPS, RECORDS  
OF ORANGE COUNTY, CALIFORNIA.

AND

LOTS 1 THROUGH 45, INCLUSIVE, AND LOT A OF TRACT 12546, AS SHOWN  
ON A MAP RECORDED AS INSTRUMENT # 86-079751 IN BOOK 554, PAGE  
45, OF MISCELLANEOUS MAP, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXHIBIT "B"

87-085446

RECORDING REQUESTED BY AND WHEN RECORDED, MAIL TO:

\$23.00  
C10

FIRST AMERICAN TITLE INS. CO.

Remington Monarch Beach  
1131 Harbor Bay Parkway, Suite 201  
Alameda, California 94501  
Attn: David P. Dolter

RECORDED IN OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA

2:25 PM FEB 17 '87

*Sheila A. Bianchi* COUNTY RECORDER

95654/RB

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

ANTIGUA OWNERS ASSOCIATION OF MONARCH BEACH

The DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ANTIGUA OWNERS ASSOCIATION OF MONARCH BEACH, dated May 10, 1986 and recorded May 19, 1986 as Instrument No. 86-205264, in the Office of the County Recorder of the County of Orange, State of California, is hereby amended by the Declarant, REMINGTON MONARCH BEACH, a California limited partnership, as follows:

FIRST: Article 4.3 entitled "PARTY WALLS AND FENCES: GENERAL RULES OF LAW TO APPLY:" is hereby amended to read as follows:

4.3 ZERO LOT LINE WALLS AND EASEMENTS:

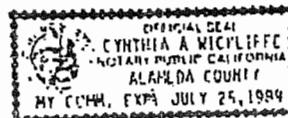
4.3.1 Introduction. ANTIGUA is a single-family planned development of a "zero lot line" design, where each residence is situated upon its respective Lot in such a manner as to create a front yard, back yard, and one (1) side yard. As described in this Article, this design utilizes two (2) types of boundary walls and fences: Zero Lot Line Walls and Decorative Walls, which are described and defined hereinbelow. The rights and responsibilities of all Owners with respect to Zero Lot Line Walls and Decorative Walls shall be as set forth in this Article.

4.3.2 Zero Lot Line Walls. The particular structural wall of a Residence which is located upon the "effective" Lot line shall be referred to as a "Zero Lot Line Wall". Zero Lot Line Walls serve as the effective boundary between certain contiguous and adjacent Lots in the Project. Each Residence shall be constructed with its Zero Lot Line Wall located parallel to and within approximately five feet (5') of

THIS INSTRUMENT FILED FOR RECORD BY FIRST AMERICAN TITLE INSURANCE COMPANY AS AN ACCOMMODATION ONLY. IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION OR AS TO ITS EFFECT UPON THE TITLE.

Witness my hand and official seal.

*Cynthia A. Wickliffe*  
Notary Public in and for said County and State.



Tenement to which such Easement Area is appurtenant. Accordingly, each Owner shall maintain and perform all structural repairs of any Decorative Wall, or portion thereof, which bounds any Easement Area appurtenant to such Owner's Lot. Each Owner shall keep his respective Decorative Walls in a neat, clean, safe, sanitary and attractive condition at all times and shall bear all costs thereof. Each Owner shall remain secondarily liable for the maintenance of any Decorative Wall, or portion thereof, located upon such Owner's Lot for which the Owner of an adjacent Lot is primarily responsible, pursuant to this paragraph. In the event it becomes necessary for such Owner to perform any maintenance for which he is only secondarily liable, said Owner shall have a right of indemnification for all costs incurred in the performance of such maintenance from the Owner who is primarily liable.

Notwithstanding the foregoing, in the event any maintenance or repair is required due to the fault of any other Owner, such Owner shall bear all the costs of such maintenance. Each Owner shall maintain any and all Decorative Walls for which he is primarily responsible in a uniform color scheme and may construct, erect, raise, remove or otherwise alter any such Wall, including any portion thereof which is owned by an adjacent Lot Owner, only in accordance with the provisions of that Article herein entitled "Architectural Control - Approval".

**4.3.11 Indemnification by Dominant Tenement Owner.** Each Owner of a Dominant Tenement shall indemnify and save the Owner of the respective Servient Tenement harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the Owner of the Dominant Tenement relating to the exercise of its rights or the performance of its obligations hereunder.

**4.3.12 Indemnification by Servient Tenement Owner.** Each Owner of a Servient Tenement shall indemnify and save the Owner of the respective Dominant Tenement harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the Owner of the Servient Tenement relating to the exercise of its rights or the performance of its obligations hereunder.

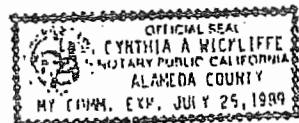
**4.3.13 Right of Contribution.** The right of any Owner to contribution from any other Owner for work performed pursuant to this Article shall be appurtenant to and shall run with the land, and shall be binding upon the Owners and their successors, assigns and grantees.

**4.3.14 Other Party Walls and Fences: General Rules of Law to Apply:** Any other party wall or fence not specifically provided for above which is built as a part of the original

4

Witness my hand and official seal.

*Cynthia A. Wiclyffe*  
Notary Public In and for said County and State.



LEGEND  
 [5] Lot Number  
 [Hatched Box] Sideyard Easement

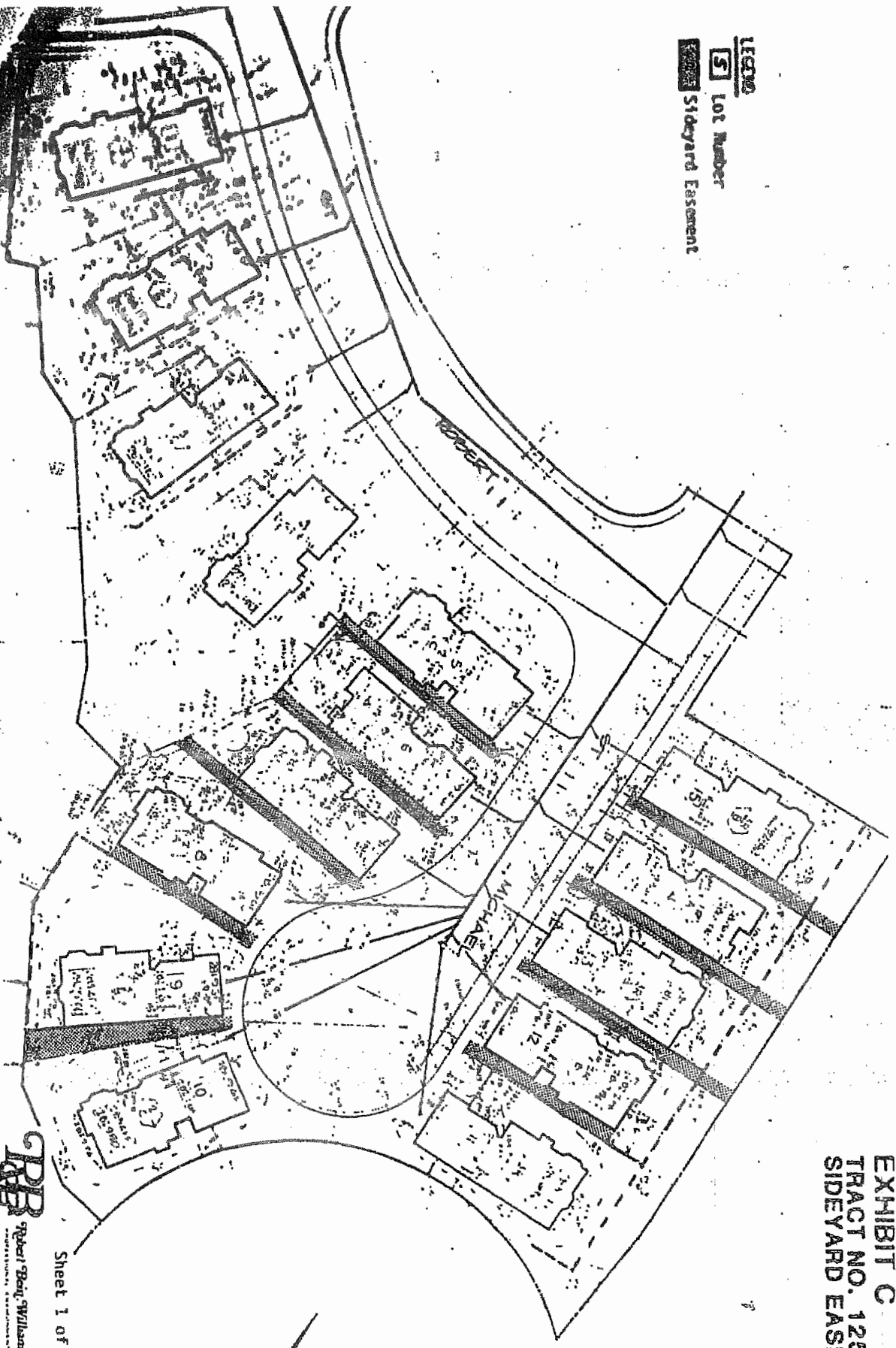


EXHIBIT C  
 TRACT NO. 125480  
 SIDEYARD EASEMENTS

Revised February 6, 1987

January 8, 1987

J.N. 23127



Robert Beag, William Fredrik Skasona  
 Registered Professional Engineer, State of Wisconsin

Sheet 1 of 1

the actual property line between said Lots. The zero lot line system of ownership is created by the establishment of permanent easements appurtenant to the Lots, as more particularly described hereinbelow.

4.3.3 Establishment of Zero Lot Line Easements. In order to create and establish a zero lot line system of ownership within the Project, Declarant shall create, establish and reserve permanent and perpetual easements appurtenant to certain Lots (hereinafter referred to as the "Dominant Tenements") on, over and across those certain portions of their respective adjacent Lots (hereinafter referred to as the "Servient Tenements"), which are more particularly shown and explained on Exhibit "C". Said easements shall be used for landscaping purposes only, and shall be subject to each and all of the covenants set forth in this Declaration.

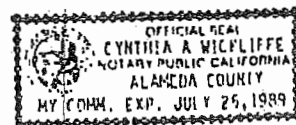
4.3.4 Ownership of Zero Lot Line Walls. Ownership of each Zero Lot Line Wall shall be vested in the Owner of the Servient Tenement upon which the Zero Lot Line Wall is located. Notwithstanding said vesting of ownership, the rights and obligations of the Owners with respect to the use, enjoyment, maintenance and repair of the Zero Lot Line Walls shall be as set forth herein.

4.3.5 Maintenance of Zero Lot Line Walls. The Owner of the Servient Tenement shall paint, maintain, and repair the Zero Lot Line Wall, including that portion which faces the Dominant Tenement Owner's Lot, in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof. Notwithstanding the foregoing, in the event any painting, maintenance or repair is required due to the fault of the Owner of the Dominant Tenement, the Owner of the Dominant Tenement shall promptly cause said work to be performed and shall bear all costs thereof.

4.3.6 Use and Maintenance of Easement Areas. Each Dominant Tenement Owner shall have the right and responsibility to landscape and otherwise maintain the Easement Area appurtenant to his Lot in a neat, clean, safe, sanitary and attractive condition at all times and shall bear all costs thereof. Said Owner shall not, however, plant any tree, shrub or other landscaping upon the Easement Area which would: (a) impair or otherwise threaten the structural integrity of any adjacent Residence; or (b) interfere with the Servient Tenement Owner's right of access, as more particularly set forth hereinbelow. Neither the Dominant Tenement Owner nor the Servient Tenement Owner shall construct, install or erect any improvement upon any Easement Area, except as expressly permitted by the Architectural Control Committee. The Owner of

Witness by hand and official seal.

*Cynthia A. Wickliffe*  
Notary Public in and for said County and State.



the Dominant Tenement shall not drive any nail, screw or other object into the Zero Lot Line Wall or otherwise damage the appearance or structural integrity thereof.

4.3.7 Servient Tenement Owner's Access Rights. The Owner of the Servient Tenement shall have an easement for ingress, egress and access on, over and across the Easement Area and the Dominant Tenement Owner's Lot as may be reasonably necessary to allow the Owner of the Servient Tenement to paint, maintain, and repair the Zero Lot Line Wall and his Residence. Except in the case of a bona fide emergency, the Owner of the Servient Tenement shall give the Owner of the Dominant Tenement at least twenty-four (24) hours prior written notice of his intention to enter upon the Dominant Tenement Owner's Lot and the Easement Area, and shall perform all necessary work during reasonable daylight hours. In the event of an emergency, such entry may be made at any time and without notice. Under all circumstances, the Owner of the Servient Tenement shall use his best efforts to minimize the duration of the work and the inconvenience to the Owner of the Dominant Tenement.

4.3.8 Decorative Walls. Any wall or fence which: (a) generally parallels the street in front of any Zero Lot Line Residence or connects any such front wall and the Residence, or (b) borders the side yard of any Zero Lot Line Lot on a corner Lot is referred to in this Declaration as a "Decorative Wall".

4.3.9 Ownership of Decorative Walls. Ownership of each Decorative Wall, or portion thereof, shall be vested in the Owner of the Lot upon which said Wall, or portion thereof, is located. Notwithstanding said vesting of ownership, the rights and obligations of the Owners with respect to the use, enjoyment, maintenance and repair of the Decorative Walls shall be as set forth herein.

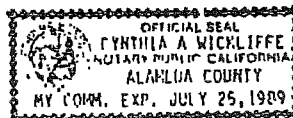
4.3.10 Maintenance of Decorative Walls. The rights and responsibilities of the Owners of Zero Lot Line Lots with respect to the maintenance and repair of Decorative Walls shall be as follows:

4.3.10.1 Corner Lot Side Walls. The Owner of each Zero Lot Line Lot on a corner Lot shall maintain any Decorative Wall located along his side yard in a neat, clean, safe, sanitary and attractive condition at all times, shall perform all structural repairs and shall bear all costs thereof.

4.3.10.2 Front Walls. As a result of the zero lot line system of ownership, that portion of any Decorative Wall which bounds the Easement Area portion of any Servient Tenement Lot is of primary benefit to the Owner of the Dominant

Witness my hand and official seal.

*Cynthia A. Wickliffe*  
Notary Public In and for said County and State.



struction of the residences in the Project, and placed on the dividing line between the Lots, shall constitute, respectively, a party wall or party fence and to the extent not inconsistent with the provisions of this Section 4.3 the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

SECOND: Subparagraph 6.7.14 is hereby added to Article VI Section 6.7, of the Declarations of Covenants, Conditions and Restrictions of Antigua Owners Association of Monarch Beach, and shall provide as follows:

6.7.14 As contemplated by Subparagraph 6.7.5. herein, the Association shall maintain, in addition to the Common Areas, all slope areas (and the landscaping thereon) shown as shaded in Exhibit D attached hereto ("Association Maintained Slopes"). The cost of the maintenance of the Association Maintained Slopes shall be allocated to all the lots on a uniform basis, even though certain lots that contain areas which form part of the Association Maintained Slopes will receive greater benefits by reason of their proper maintenance.

IN WITNESS WHEREOF, Declarant has executed this First Amendment to Declaration of Covenants, Conditions and Restrictions of Antigua Owners Association of Monarch Beach, effective January , 1987.

DECLARANT:

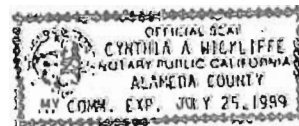
REMINGTON MONARCH BEACH, a California Limited Partnership

By: Michael J. Farley  
MICHAEL J. FARLEY, President  
H. R. REMINGTON PROPERTIES, INC.

THE REMINGTON-OAKWOOD JOINT VENTURE,  
General Partner

By: Donald E. Weyant  
DONALD E. WEYANT, President  
REMINGTON-OAKWOOD JOINT VENTURE,  
General Partner

Witness my hand and official seal,  
Cynthia A. Wycliffe  
Notary Public in and for said County and State,



STATE OF CALIFORNIA )  
COUNTY OF Alameda ) ss

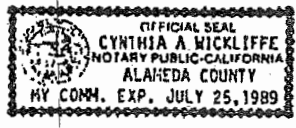
On this 27 day of January 1987, before me, the undersigned, Notary Public in and for said County and State, personally appeared:

Michael J. Farley

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as President ~~XXXXXXXXXXXXXXXXXXXX~~ on behalf of H.R. Remington Properties, Inc.

the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or resolution of its board of directors, said corporation being known to me to be one of the partners of: The Remington - Oakwood Joint Venture said partnership being known to me to be one of the partners of Remington Monarch Beach, a California Limited Partnership the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

Witness my hand and official seal.  
Cynthia A. Wickliffe  
Notary Public in and for said County and State.



STATE OF CALIFORNIA )  
COUNTY OF Alameda ) ss

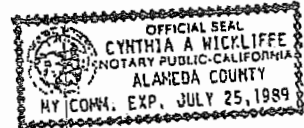
On this 27 day of January 1987, before me, the undersigned, Notary Public in and for said County and State, personally appeared:

Donald E. Weyant

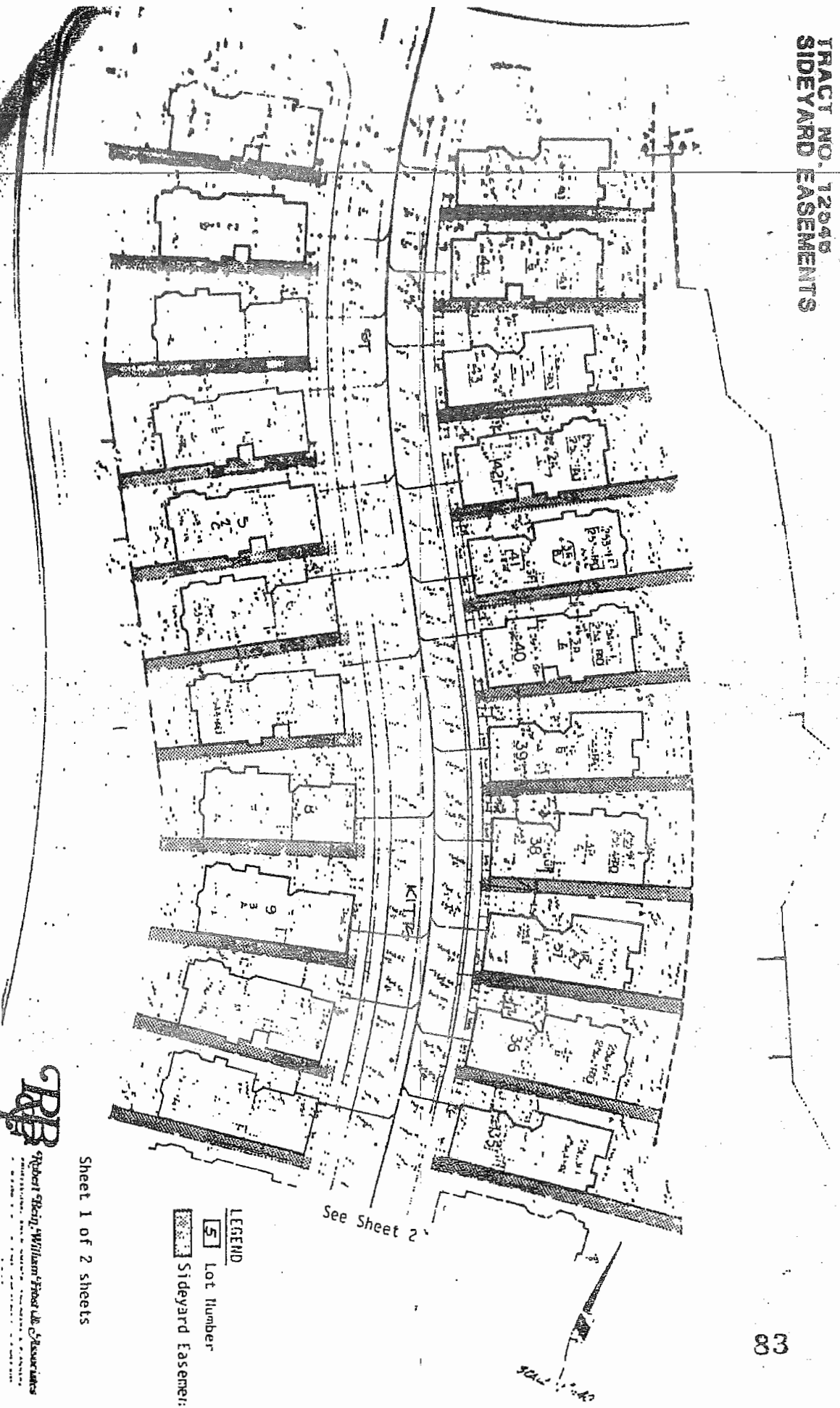
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as President ~~XXXXXXXXXXXXXXXXXXXX~~ on behalf of Oakwood Financial Service Corp.

the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or resolution of its board of directors, said corporation being known to me to be one of the partners of: The Remington - Oakwood Joint Venture said partnership being known to me to be one of the partners of Remington Monarch Beach, a California Limited Partnership the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

Witness my hand and official seal.  
Cynthia A. Wickliffe  
Notary Public in and for said County and State.



TRACT NO. 12846  
SIDEYARD EASEMENTS



See Sheet 2

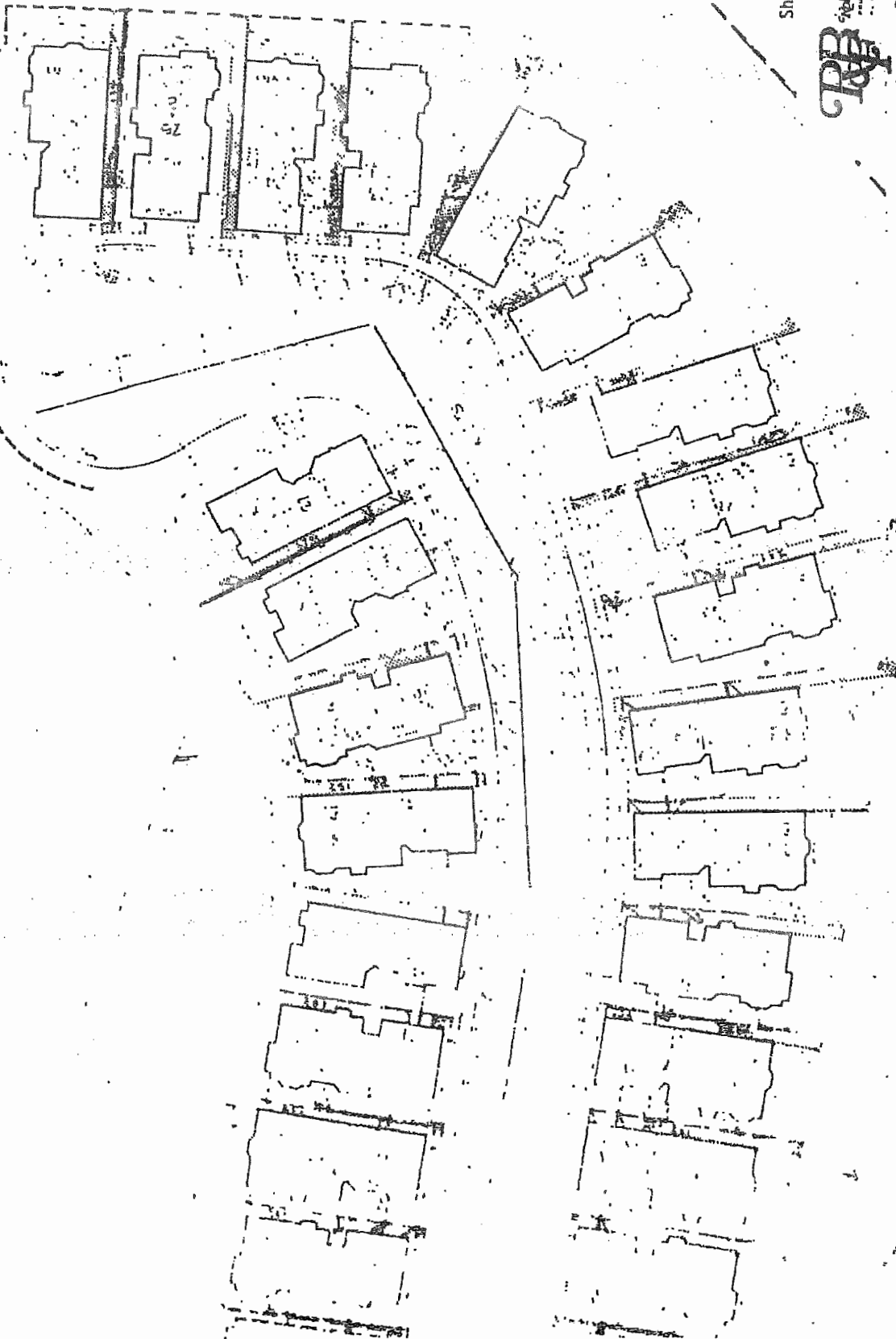
LEGEND  
 [5] Lot Number  
 [Shaded Box] Sideyard Easement

Sheet 1 of 2 sheets



Revised February 6, 1987  
 January 8, 1987  
 J N 24127

EXHIBIT C  
TRACT NO. 12546  
SIDEYARD EASEMENTS



5  
Lct. Turner  
Sideyard Easement

Sheet 2 of 2 sheets



Revised February 6, 1987  
January 8, 1987  
J. H. 231

87-3545

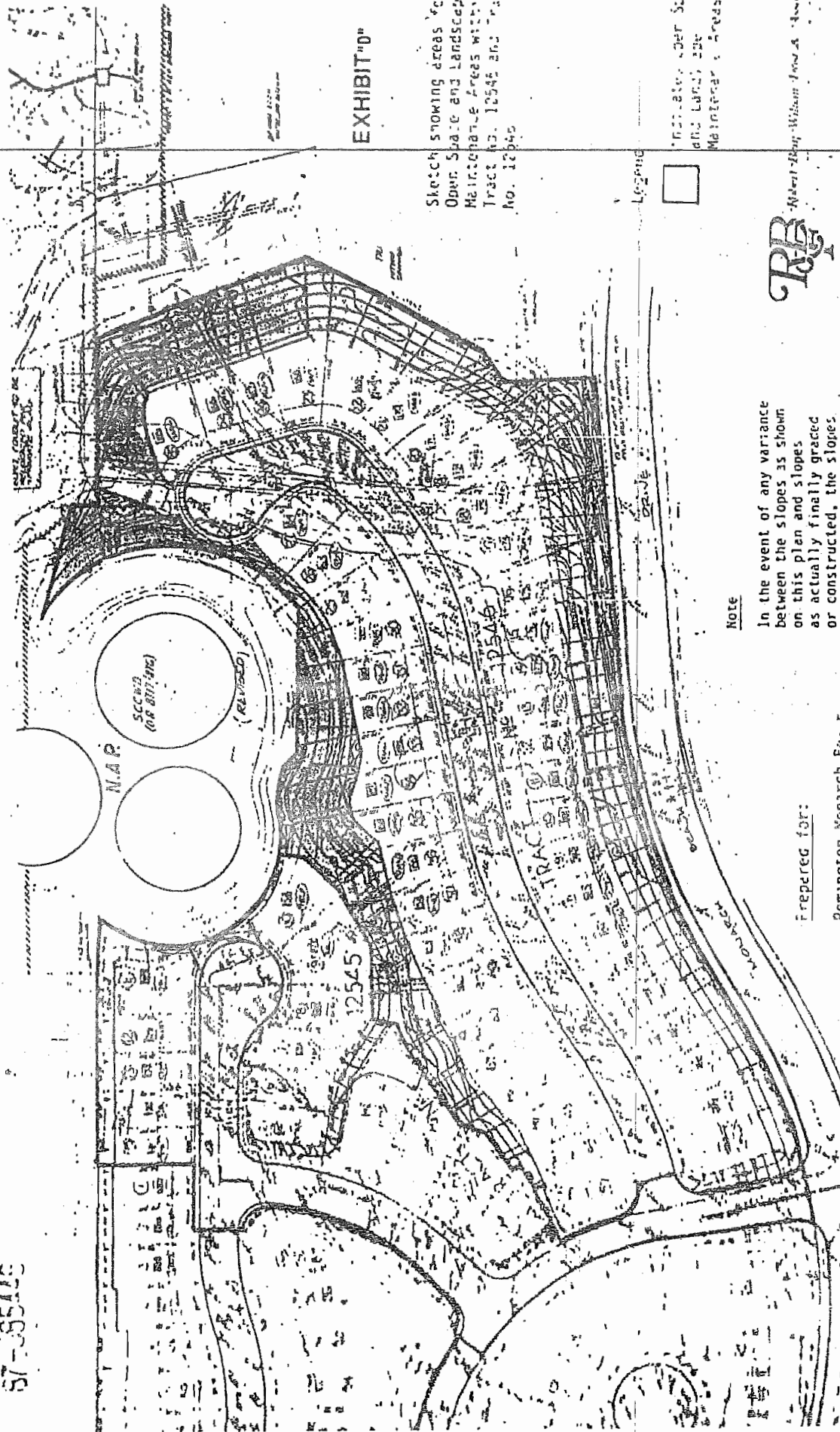


EXHIBIT "D"

Sketch showing areas for  
Open Space and Landscaping  
Maintenance Areas within  
Tract No. 12545 and 12546  
No. 12545

Indicator for Slopes  
and Landscaping  
Maintenance Areas

Note

In the event of any variance  
between the slopes as shown  
on this plan and slopes  
as actually finally graded  
or constructed, the slopes  
will be as finally graded and constructed  
will supersede those shown on  
this plan.

Prepared for:

Pennington Monarch Basin  
3 Monarch Bay Plaza  
Sausalito, CA 94967



Robertson-Randall-Brown

January 21, 1986  
Revised. January 12, 1987

JN 23127