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DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS

AND RESERVATION OF EASEMENTS

43 @ RACQUET CLUB - TRACT NO. 31940

A PLANNED RESIDENTIAL DEVELOPMENT

285



THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION WITH  
A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU MUST  
READ THE ARBITRATION PROVISION CAREFULLY (PAGE XIV-1 , ARTICLE XIV,  
SECTION 14.03), AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

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**EXECUTION PAGE**

**SUBORDINATION BY LIENHOLDER**

**EXHIBIT A - PROPERTY**

**EXHIBIT B - COMMON AREA LOTS**

**EXHIBIT C - ADDITIONAL PROPERTY**

**EXHIBIT D - ADDITIONAL PROPERTY NOT PRESENTLY OWNED BY DECLARANT**

**EXHIBIT E - ACCESS AND LANDSCAPE EASEMENTS**

**EXHIBIT F - EASEMENT AREA**

**EXHIBIT G - CITY OF PALM SPRINGS CONDITIONS OF APPROVAL**

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RESERVATION OF EASEMENTS FOR  
43 @ RACQUET CLUB**

**THIS DECLARATION** is dated this 25 day of August, 2005 (for reference purposes), by **PALM SPRINGS MODERN HOMES IV, LLC**, a California Limited Liability Company ("Declarant").

**RECITALS**

- A. Declarant is the owner in fee of the real property ("Original Property") in the City of **Palm Springs**, County of **Riverside**, State of California, legally described in attached Exhibit "A".
- B. Declarant intends to develop the Property into a residential planned development ("Development") under the provisions of California Civil Code Section 1351(k), et seq.
- C. Declarant also owns in fee certain additional real property ("Additional Property") which is adjacent to the Original Property and located in said City and County of the State of California, legally described in attached Exhibit "C".
- D. Declarant may also annex into the Project adjacent property (legally described in attached Exhibit "D", not presently owned by Declarant, and bring the adjacent property within the coverage of this Declaration and within the jurisdiction of the same Association that has been established to administer, operate and maintain the Common Areas of the Original Property.
- E. Declarant intends (without being obligated to do so) to later develop the Additional Property and to annex and bring the Additional Property within the coverage of this Declaration and within the jurisdiction of the same Association that has been established to administer, operate and maintain the Common Areas of the Original Property.
- F. Subject to the specific terms, covenants, conditions, restrictions and easements set forth herein, Declarant intends to cause to be created certain reciprocal exclusive and/or nonexclusive easements, rights, and/or licenses for particular purposes.
- G. If the Additional Property is annexed by utilizing the annexation procedures provided for herein, the term "Property" shall also mean the Original Property and the Additional Property so annexed.
- H. Declarant intends by this document to impose upon the Original Property, and any portions of the Additional Property that will be annexed in the future and brought within the coverage of this Declaration and the jurisdiction of the Association, mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Lots and the Owners thereof.
- I. Declarant further intends that this document will be a vehicle to ensure that Declarant and its successors in interest, will fully comply with all on-going and continuing obligations required by the City of Palm Springs as conditions of approval of the Development for the benefit of all of the Lots, the Owners, and the general public.

**NOW, THEREFORE**, Declarant hereby declares that the Original Property, and any portions of the Additional Property that will in the future be annexed and brought within the coverage of this Declaration and the jurisdiction of the Association, shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes in accordance with Civil Code Section 1354 and shall be binding upon Declarant and its successors and assignees, Owners, and all parties having or acquiring any right, title or interest in or to any part of the Property.

## ARTICLE I

### DEFINITIONS

The following definitions apply unless otherwise required by the context:

**"Additional Property"** - The real property described in Exhibit "C", all or any part of which may be annexed as part of this Development, and made subject to this Declaration.

**"Approval"** - Prior written approval.

**"Architectural Committee"** - The committee created pursuant to the Article herein entitled "Architectural Control".

**"Architectural Guidelines"** - The rules and standards adopted by the Board pursuant to the Section hereof entitled "Architectural Guidelines" in the Article hereof entitled "Architectural Control".

**"Articles"** - The Articles of Incorporation of the Association, including any amendments.

**"Association"** - **43 at Racquet Club, Inc.**, a California nonprofit mutual benefit corporation formed (or to be formed) to govern the Development, its successors and assignees. The term includes its agents, the Board or any committee as applicable.

**"Assessments"** - All types of Association charges and Assessments levied against the Owners and their respective Lots. The three (3) types of assessments are Regular Assessments, Special Assessments, and Compliance Assessments.

**"Beneficiary"** - The lender on the security of a promissory note and Deed of Trust.

**"Board"** or **"Board of Directors"** - The Board of Directors of the Association.

**"Bylaws"** - The Bylaws of the Association, including any amendments.

**"Code Section"** - Any reference to "Code Section" (e.g "Civil Code", "Vehicle Code") refers to Codes of the State of California. Reference to any specific Code Section shall include any future successor Code sections.

**"Common Area(s)"** and **"Common Facilities"** - All real property owned and maintained by the Association for the common use and enjoyment of the Owners and all Improvements. The Common Area(s) to be owned by the Association at the time of the conveyance to a purchaser of the first residential Lot within the Property is described in Exhibit "B".

**"Common Expenses"** - The actual and estimated expenses of the Association in performing its duties as set forth in the Governing Documents.

**"Compliance Assessment"** - An Assessment imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

**"Conditions of Approval"** - The conditions of approval imposed by the City of Palm Springs on Planned Development 304 and Tentative Tract Map No. 31940 (Case No. 5.1020), dated January 19, 2005, and attached to this Declaration as Exhibit "G."

**"Declarant"** - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein.

**"Declaration"** - This instrument and any amendments.

**"Deed of Trust"** - A three party security instrument conveying title to land as security for the repayment of a loan. Also called "Trust Deed". Reference to Deed of Trust includes a Mortgage.

**"Development"** and/or **"Property"** - The real property described in Exhibit "A" and any Additional Property which is annexed pursuant to this Declaration.

**"DRE"** - The California Department of Real Estate and any successors thereto.

**"Eligible First Mortgage"** - Any "First Mortgage" the holder of which has requested notice of certain matters from the Association in accordance with paragraph 9.11(b) of this Declaration.

**"Eligible First Mortgagee"** - Any holder of an "Eligible First Mortgage".

**"First Mortgage"** - Any recorded mortgage made in good faith and for value on any Lot, the Property or any portion of the Property, with first priority over other mortgages on that Lot, the Property or the affected portion of the Property.

**"First Mortgagee"** - Any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded First Mortgage on any Lot, the Property or any portion of the Property.

**"Foreclosure"** - The legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in that property is sold, pursuant to California Civil Code section 2924 et seq., or sale by the court pursuant to California Code of Civil Procedure section 725a et seq., and any other applicable law.

**"First Sale"** - The date on which the first deed is recorded conveying fee title to the first Owner pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the Department of Real Estate.

**"FHA"** - The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

**"FHLMC"** - The Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

**"FNMA"** - The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

**"GNMA"** - The Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

**"Governing Documents"** - All documents governing the Association and Property, including this Declaration, the Bylaws, the Articles, and any Rules and Regulations.

**"Grant Deed"** - A written instrument transferring title to real property.



**"Improvements"** - All structures and appurtenances thereto of every kind whatsoever, including, but not limited to, dwellings, outbuildings, swimming pools, spas, garages, retaining walls, walls, fences, rain gutters, downspouts, decorative or informative signs, mail kiosks, private utility lines and connections, private storm drains and sewer lines and laterals, all trees, shrubs and other forms of landscaping and all related irrigation systems. Improvements shall also mean any and all additions and/or exterior modifications to any Lot, including, but not limited to, (a) painting the exterior of any dwelling or other structure; (b) changing the roof material of any dwelling or other structure; (c) modifying any driveway or front entry walkway on any Lot; and/or (d) building, constructing, installing or planting (as the case may be), any swimming pools, spas, patio covers, decks, gazebos, stairs, trellises, sunshades, screening walls or fences, fences, awnings, screen doors, skylights, poles, signs, solar heating systems, air conditioning systems, water softening or refining systems, and all trees, shrubs and other forms of landscaping. Improvements shall also include all landscaping, street trees, irrigation, and exterior lighting located within any public right of way and installed by the Declarant pursuant to the Conditions of Approval.

**"Institutional Mortgagee"** - Any bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution holding a recorded First Mortgage on any Lot.

**"Lot"** - Any of the Lots in the Property as shown on the Tract Map designed and intended for construction of a Residence. "Lot" does not include Common Area Lots.

**"Manager" or "Managing Agent"** - The party contractually engaged by the Association or Declarant and charged with the management of the Common Area(s) and the performance of other duties of the Association.

**"Member"** - Any person who is a Member of the Association based upon the provisions of the Governing Documents.

**"Mortgage"** - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

**"Mortgagee"** - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust including a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

**"Mortgagor"** - The party executing a Mortgage. Reference to Mortgagor includes the Trustor under the Deed of Trust.

**"Notice and a Hearing"** - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

**"Occupant"** - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Residence.

**"Owner(s)"** - The parties (including Declarant) holding a recorded fee simple interest in a Lot, or the vendee of a Lot under an installment land sales contract. "Owner" does not include any party having an interest in a Lot merely as security for the performance of an obligation.

**"Person"** - A person, partnership, corporation, trustee or other legal entity.

**"Phase"** - That portion of the Property identified as a "Phase" in a DRE Final Subdivision Public Report.

**"Property" and/or "Development"** - The real property described in Exhibit "A" and any Additional Property which is annexed pursuant to this Declaration.

**"Quorum"** - Members entitled to vote (in person or by proxy) holding a majority of the Total Voting Power of the Association constitute specifically, a quorum for business transactions at all Member meetings (except as otherwise specifically provided for in this Declaration or the Bylaws of the Association).

**"Regular Assessments"** - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

**"Residence"** - Dwelling, garage and related Improvements constructed on a Lot for use and occupancy as a single family residence.

**"Restrictions"** - All of the terms, provisions and restrictions set forth in the Governing Documents.

**"Rules and Regulations"** - The rules as established and adopted by the Board and/or Architectural Committee as provided for in this Declaration.

**"Special Assessments"** - Assessments levied on an as-needed basis to meet expenses of any extraordinary or capital nature, or imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

**"Total Voting Power"** - One hundred percent (100%) of the votes by Owners which may potentially be cast. (Even if any Owner's voting rights have been suspended, the number of votes constituting the Total Voting Power would include any suspended vote(s).)

**"Trustor"** - The borrower from a Trust Deed lender, who deeds real property securing the loan to a Trustee to be held as security for the loan.

**"VA"** - The Department of Veterans Affairs of the United States and any department or agency of the federal government which succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREA(S)

2.01 Common Areas and Purposes.

- (a) Use of the Common Area(s) must be consistent with all reasonable provisions and limitations described in the Governing Documents.
- (b) Common Area(s) and related facilities and Improvements exist solely for use by the Lot Owners, their families, tenants, and guests.
- (c) Common Area(s) may only be used for purposes approved by the Association and compatible with usage customarily associated with common areas located within residential developments in California.

2.02 Easements of Enjoyment.

Each Lot Owner has a nonexclusive right and easement for use of the Common Area(s) appurtenant to the Lot.

2.03 Delegation of Use.

An Owner may delegate his/her rights of use and enjoyment of any Common Area facilities to the members of his/her immediate family, and guests and invitees. If an Owner has rented or leased his/her Lot, such rights shall be automatically delegated to the tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any such facilities for the duration of such tenancy. With respect to an installment land sales contract, the Declarant under the contract shall be deemed to have delegated his/her rights to use and enjoy any such facilities to the purchaser under the contract.

## ARTICLE III

### GENERAL RESTRICTIONS

#### 3.01 Single Family Residential Use.

A Lot may only be used for a single family dwelling.

#### 3.02 Business or Commercial Activity.

Subject to Declarant's rights herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Lot, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Lot affecting other residents.

#### 3.03 Temporary Structures.

A temporary structure is only permitted on a Lot with approval of the Architectural Committee and if it is incidental to construction actively in progress.

#### 3.04 Signs.

- (a) The Declarant may erect and maintain any signs, advertising devices or structures to conduct development, and sale or leasing operations while any Lot remains unsold.
- (b) An Owner may advertise a Lot for sale or lease with one (1) standard real estate sign of reasonable color and display qualities and with a maximum face area of six (6) square feet.
- (c) No other sign or advertising device may be displayed anywhere on the Property without the prior written consent of the Association.
- (d) Sign regulations are subject to California Civil Code Sections 712, 713, 1353.5, 1353.6, and any other applicable laws.

#### 3.05 Debris, Trash and Refuse.

- (a) Weeds, rubbish, debris, objects or materials that are unsanitary, unsightly, or offensive are not permitted on the Property.
- (b) Rubbish or storage containers, woodpiles, machinery, equipment and other unsightly objects are prohibited to be visible from other Lots or Common Area(s).
- (c) Rubbish containers may be placed temporarily for pick-up (not to exceed twenty-four (24) hours before and after scheduled trash collection hours, except with Board approval).
- (d) Driveways must be kept clean and free of oil stains.

#### 3.06 Exterior Clothes Lines.

Exterior clothes lines may not be erected and clothes may not be dried outdoors.

3.07 **Nuisances.**

- (a) Illegal, offensive, or obnoxious actions that interfere with an Occupant's quiet enjoyment, or may impair the structural integrity of any building, are not permitted on the Property.
- (b) Construction work on the property may only be done during hours determined by the Architectural Committee.

3.08 **Owner's Maintenance and Repair Obligations.**

- (a) Each Owner must maintain the Lot (including Improvements) in a neat, sanitary and attractive condition, and is solely responsible for the cost of repairs and Improvements.
- (b) The maintenance responsibility for common walls or fences between adjoining private Lots shall be shared jointly by the respective Lot Owners.
- (c) Each Owner shall comply with the storm water pollution prevention plan ("SWPPP") that was prepared by the Declarant and filed with the State of California, including, without limitation, any "best management practices" contained therein, and any other SWPPP or drainage area management plan prepared by the City. A copy of the SWPPP applicable to the Property shall be on file with the Association or its property manager.

3.09 **Restrictions on Exploration and Removal of Minerals.**

The surface area of the Property and to a depth of five hundred (500) feet below the surface may not be used for the exploration or removal of water, oil, natural gas, minerals, hydrocarbons, gravel or any earth substance.

3.10 **Indemnity of the Association by Owner.**

Each Owner shall defend and indemnify and hold the Declarant, Association, Managing Agent, and other Owners harmless without limitation on any claims arising from the Owner's negligence or willful misconduct (or the Owner's family members, relatives, guests or invitees) for damages sustained on the Common Area(s), including any costs incurred.

3.11 **Antennae and Satellite Dishes.**

No television or radio poles, antennae, satellite dishes, or technological evolutions of the foregoing, flag poles, clotheslines, or other external fixtures other than those originally installed by the Declarant or approved in accordance with this Declaration shall be constructed, erected or maintained on or within the Project; provided, however, that the foregoing restriction shall not be construed to limit the installation or use of video or television antennas within the Project, including a satellite dish (collectively "Antenna"), except as otherwise permitted by law, that is of a size and type consistent with the provisions of California Civil Code Section 1376 and with the provisions of Section 207 of the Telecommunications Act of 1996 (47 U.S.C. Section 303) or the regulations promulgated thereunder.

3.12 **Basketball Standards.**

No basketball standards or fixed sports apparatus shall be attached to any Residence except as approved by the Board. The Rules and Regulations may further limit the use or placement of portable basketball apparatus.

3.13 **Exterior Lighting.**

Any exterior electrical, gas or other artificial lighting installed on any Lot shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Lot. Further rules regarding exterior lighting may be promulgated by the Architectural Committee.

3.14 **Window Covers.**

Newspaper, aluminum foil or similar materials may not be used as window coverings.

3.15 **Leasing.**

An Owner may rent a Lot for residential purposes provided:

- (a) There is a written agreement;
- (b) The lease states it is subject to all the provisions of the Governing Documents;
- (c) Owners must give the Board the names and telephone numbers of all Occupants and tenants; and
- (d) The Association and each Owner shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.

3.16 **California Vehicle Code and Parking Regulations.**

- (a) All applicable provisions of the California Vehicle Code will be enforced on any private streets on the Property in accordance with California Vehicle Code Section 22658.2 (or any successor statute regarding removal of parked cars and required warning signs).
- (b) The Association (through the Board) may establish parking Rules and Regulations.
- (c) The Association has the right and obligation to enforce all parking restrictions and to remove any violating vehicles in accordance with the California Vehicle Code, or other applicable laws.
- (d) Parking is permitted in driveways, as long as it does not obstruct free traffic flow, constitute a nuisance, violate the Rules and Regulations, or otherwise create a safety hazard.
- (e) The following vehicles and actions are not permitted unless parked wholly within a garage with the doors closed:
  - (1) Commercial vehicles, buses, trailers, campers, boats, mobile homes, recreational vehicles and the like, inoperable vehicles, any vehicle weighing in excess of one-half ton, or any vehicle the Association deems a nuisance.
  - (2) Restoring or repairing vehicles on the Property, or any repair activity the Association deems a nuisance.
- (f) The Association may establish "Parking" and "No Parking" areas within the Common Area(s), in accordance with California Vehicle Code Section 22658.2 (or successor statute).
- (g) Garage doors, if any, may not be left open, except as temporarily necessary or while used for entering or exiting.

3.17 **Animal Limitations.**

- (a) Customary household pets may be kept in the Lot, provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times.
- (b) The Board may determine the total number and size of pets kept within a Lot.
- (c) Any animals that unreasonably bother or annoy other Owners may not be kept on the Property (for example, excessive barking).
- (d) Pets are not allowed in the Common Area(s) except as permitted by the Rules of the Association.
- (e) A dog may only enter the Common Area(s) while on a leash which is held by a person capable of controlling it.
- (f) Owners must prevent their pets from soiling the Common Area(s), and are responsible for any required clean-up.
- (g) Each Owner shall indemnify and hold harmless all other Owners, the management company, the Association and the Board of Directors from any and all losses, costs, and liability arising from having any pet on the Property.

3.18 **Common Fences.**

- (a) An easement exists appurtenant to any Lot for any "Common Fences" (fences on boundary lines between the Lots and/or Common Area(s)) originally installed by the Declarant, whether or not the fences are located precisely on the Lot boundary line.
- (b) Owners with a Common Fence have an equal right to use the fence, with the following provisions:
  - (1) Each Owner has exclusive right to use the interior surface of the fence facing the Residence;
  - (2) Owners may not drive nails, screws, bolts or other objects more than half way through any Common Fence;
  - (3) Owners may not interfere with the adjacent Owner's use and enjoyment of the Common Fence;
  - (4) Owners may not threaten or impair the structural integrity of the Common Fence; and
  - (5) If any portion of the fence (other than the interior surface of one (1) side) is damaged by any cause other than the act or negligence of either party, it must be repaired or rebuilt at the relevant Owners' joint expense.

3.19 **Air Conditioners and Other Equipment.**

- (a) Air conditioners, heating, cooling, ventilating equipment and all other mechanical, lighting, or electrical devices shall be so operated and located so that they do not disturb the peace, quiet, and comfort of neighboring residents and shall be screened, shielded and/or sound buffered from surrounding Lots, streets and other portions of the Common Area. All such equipment must be installed and operated in accordance with all applicable provisions of the local Codes and any other applicable requirements.

- (b) No wiring insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved in accordance with the requirements of this Declaration, and their replacements shall be constructed, erected or maintained on or within the Common Area including any structures on it.



**COMMONWEALTH LAND TITLE COMPANY**

1555 So. Palm Canyon Drive, Suite D-101, Palm Springs, CA 92264  
(760) 327-6523

**SELLERS CLOSING STATEMENT**

**Final**

*✓*

Seller: **Palm Springs Modern Homes IV, LLC**

Escrow No: **08401564-811 DZ1**

Close Date: **04/13/2007**

Proration Date: **04/13/2007**

Date Prepared: **05/17/2007**

*→ Class B*

*Membership Ends 4/13/09*

Property: **290 Cheryl Drive  
Palm Springs, CA 92262**

| Description   | Debit             | Credit            |
|---|-------------------|-------------------|
| <b>TOTAL CONSIDERATION:</b>                                     |                   |                   |
| Total Consideration   |                   | <b>[REDACTED]</b> |
| <b>PAYOFFS:</b>   |                   |                   |
| Payoff to Pacific Western Bank                                  | <b>[REDACTED]</b> |                   |
| <b>[REDACTED]</b> Principal Balance                             |                   |                   |
| \$30.00 Construction Demand Fee                                 |                   |                   |
| \$45.00 Reconveyance Fee  |                   |                   |
| <b>PRORATIONS AND ADJUSTMENTS:</b>                              |                   |                   |
| County Taxes From 04/13/07 To 07/01/07                          |                   | 87.84             |
| Based on the Semi - Annual amount of \$202.71                   |                   |                   |
| April HOA Dues From 04/13/07 To 05/01/07                        |                   | 75.90             |
| Based on the Monthly amount of \$126.50                         |                   |                   |
| flooring allowance  | 10,000.00         |                   |
| Upgrade pd to PS Modern Homes                                   | 755.00            |                   |
| Upgrage pd to PS Modern Homes                                   | 6,490.00          |                   |
| Upgrade pd to PS Modern Homes                                   | 7,100.00          |                   |
| Upgrade Credit C & C Flooring                                   | 10,000.00         |                   |
| Upgrade credit Alliance Protec                                  | 3,456.00          |                   |
| Balance due C & C Flooring                                      |                   | 9,992.78          |
| Balance due Alliance Protectio                                  |                   | 3,456.00          |
| Balance due Upgrade PS Modern                                   |                   | 1,950.00          |
| <b>COMMISSIONS:</b>   |                   |                   |
| Commission  | 32,940.00         |                   |
| \$16,470.00 to The House Store                                  |                   |                   |
| \$16,470.00 to Keller Williams Realty                           |                   |                   |
| <b>TITLE AND ESCROW CHARGES:</b>                                |                   |                   |
| Owners Policy to First American Title Company C                 | 820.88            |                   |
| Sub Escrow Fee to First American Title Company C                | 30.00             |                   |
| 1st and 2nd installment 06-07 to First American Title Company C | 465.96            |                   |
| Supplemental Taxes to First American Title Company C            | 32.21             |                   |
| <b>RECORDING FEES:</b>  |                   |                   |
| County Transfer Tax to First American Title Company C           | 640.20            |                   |
| <b>ADDITIONAL CHARGES:</b>                                      |                   |                   |
| Home Warranty Program to 2-10 HBW                               | 2,745.45          |                   |
| Property Disclosures Report to Property Disclosure Services,    | 30.00             |                   |
| Release of Initial Deposit to Palm Springs Modern IV            | 16,470.00         |                   |

1555 S. Palm Canyon Drive, Suite D-101, Palm Springs, CA 92264  
(760) 327-6523

### SELLERS CLOSING STATEMENT

**Final**

Seller: **Palm Springs Modern Homes IV, LLC**

Escrow No: **08401564-811 DZ1**  
Close Date: **04/13/2007**  
Proration Date: **04/13/2007**  
Date Prepared: **05/17/2007**

Property: **290 Cheryl Drive**  
**Palm Springs, CA 92262**

| Description         | Debit      | Credit     |
|---------------------|------------|------------|
| Sub Totals          | ██████████ | ██████████ |
| Proceeds Due Seller | 44,273.82  |            |
| Totals              | ██████████ | ██████████ |

ARTICLE IV

HOMEOWNERS ASSOCIATION

4.01 Organization.

The Association is a California nonprofit mutual benefit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Restrictions.

4.02 Membership.

Every Lot Owner has an indivisible interest in a single Membership in the Association.

4.03 Transfer of Membership.

- (a) Membership of each Owner shall be appurtenant to the Lot owned, and may only be (and is automatically) transferred upon conveyance of title to a Lot to the new Owner.
- (b) In connection with any transfer or change of ownership of any Lot, the Association and each Owner must comply with Civil Code Section 1368.

4.04 Co-Owners.

- (a) Each Lot is entitled to one (1) vote.
- (b) Each Lot's vote is cast as a single unit, without fraction.
- (c) If Co-Owners of a Lot cannot agree about how to cast the Lot's right to vote on the matter in question.
- (d) If a Co-Owner casts a vote representing a certain Lot, the Co-Owner proposes to be a vote with the authority and consent of all other Owners of the Lot.

4/13/09  
↑

4.05 Membership Classes and Voting Rights.

- (a) A Lot Owner has voting rights when the Lot becomes subject to Assessments.
- (b) Class A Members - All Lot Owners (other than Declarant). Each Lot is entitled to one (1) vote.
- (c) Class B Member - The Declarant, entitled to three (3) votes for each Lot owned.
- (d) Class B Membership ceases and converts to Class A Membership when either of the following occurs:

- (1) Two (2) years after the First Sale in the most recent phase; or
- (2) Four (4) years after the date of the First Sale in the Original Property.

- (e) After notice and hearing as provided herein, the Association may suspend the voting rights of any Owner delinquent in the payment of Assessments.

↓  
12/19/10

4.06 Voting Requirements.

- (a) If Membership approval of a prescribed majority of the voting power is required, the following rules apply:
  - (1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or
  - (2) After conversion to all Class A memberships, the required vote is a bare majority of the total voting power of the Association, and the prescribed majority of the total voting power of Members other than Declarant.
- (b) Unless otherwise specifically required, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (after conversion, Class A only).
- (c) With the exception of the provisions of the Article herein entitled "Enforcement of Declarant's Obligation to Complete Common Area Improvements", no provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Lots which Declarant owns.

## ARTICLE V

### DUTIES AND POWERS OF THE ASSOCIATION

#### 5.01 Duties and Powers of the Association.

The Association has all of the powers of a California nonprofit mutual benefit corporation, generally to act as necessary and proper for the peace, health, comfort, safety and general welfare of its Members, subject to the limitations set forth in the Restrictions.

#### 5.02 Maintenance Responsibilities.

The Association shall:

- (a) Maintain, and repair the Common Area(s) and any other real property acquired by the Association, including all related facilities, Improvements and landscaping. Association responsibility for maintenance and repair does not extend to damage caused by a willful or negligent act by an Owner, family member, guest, tenant, or invitee. The cost and responsibility for any and all such repair must be borne by the person causing the damage, or the relevant Lot Owner.
- (b) Maintain, repair, and keep in good condition the exterior surfaces of all private yard walls and gates next to common areas and/or private areas maintained by the Association. The responsibility for maintaining the structural integrity of all block walls and zinc-alum metal fences in the Project shall be fifty percent (50%) to the Association and fifty percent (50%) to the adjoining Lot Owners (whether inside or outside the Project).
- (c) Maintain in a good condition all front yard landscaping and driveways, including the exterior surfaces of all yard walls and gates.
- (d) Maintain landscaped area along Zanjero Road.
- (e) Maintain the water mains and laterals in private streets.
- (f) Pay real and personal property taxes or charges assessed against any part of the Common Area(s).
- (g) Have authority to obtain refuse collection, gardening, pool service, janitorial services, water, sewer, electrical, gas and other utility services for the benefit of the Common Area(s), to be paid for by Assessments levied and collected for the services.
- (h) Have authority to discharge by payment any lien against the Common Area(s), including any property taxes and Assessments which may become liens, and assess all costs and fees to the Member(s) responsible for the lien. Such a property tax or Assessment may be contested or compromised by the Association, provided that it is paid, or a bond insuring its payment is posted prior to the disposition of any property to satisfy the payment of taxes.
- (i) Have authority to obtain management services (the "Manager") to manage the Common Area(s) and any other personnel needed to perform the duties and responsibilities deemed advisable by the Association, with the following condition: If the Association enters into a management contract prior to the conversion of Class B to Class A memberships, the contract must include a right of termination after the conversion on thirty (30) days' written notice and must include a right of termination without cause and may not include the payment of any termination fee on ninety (90) days' written notice.
- (j) Have the power to establish and maintain working capital, reserve and/or contingency funds in reasonable amounts to be determined by the Board.

- (k) Have the authority to borrow money with the approval of sixty-seven percent (67%) of the voting power, excluding Declarant, and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.
- (l) Have the authority, through the Board, to enter into a maintenance agreement, as approved by DRE, with Declarant for temporary suspension of a portion of Regular Assessments.
- (m) Comply with the storm water pollution prevention plan ("SWPPP") that was prepared by the Declarant and filed with the State of California, including, without limitation, any "best management practices" contained therein, and any other SWPPP or drainage area management plan prepared by the City. A copy of the SWPPP applicable to the Property shall be on file with the Association or its property manager.

5.03 **Insurance.**

- (a) The Board shall obtain and maintain the following specified (or equivalent) insurance coverages provided it is reasonably prudent to do so:
  - (1) Fire insurance for one hundred percent (100%) of the full replacement value of all Common Area Improvements, without deduction for depreciation or coinsurance:
  - (2) Extended coverage that includes vandalism, malicious mischief, and replacement costs.
  - (3) Comprehensive public liability insurance in a reasonably prudent amount specified by Civil Code Section 1365.7 that covers the Association, Board, Managing Agent, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area(s) against physical injury, death and property damage arising out of a single occurrence. The Board should consider maintaining insurance in the amount specified by Section 1365.7 and the notification requirements of that Section.
  - (4) If available, an extended coverage endorsement clause known as "Special Form", and a clause that permits a cash settlement to cover the full value of Improvements in case of destruction and a subsequent decision not to rebuild.
  - (5) Each hazard insurance policy must be written by a carrier who meets FNMA requirements for an "Acceptable Rating".
  - (6) Workers' compensation insurance in compliance with all applicable laws.
  - (7) A fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months aggregate Assessments on all Lots and reserve funds) that could be affected by the dishonest act of any person who handles funds for the Owners' benefit.
- (b) Insurance proceeds are payable to the named insureds, except for the Owners' interests in such proceeds, which are payable to the Association as trustee for their benefit, as provided for below.
- (c) The Association is trustee of the Owners' interest in insurance proceeds paid on any policy and accordingly has full power to act.
- (d) All insurance policies must require a written thirty (30) day notice of modification or termination of coverage from the insurer to the Association, Declarant, Owners and their Mortgagees, and any interested party who requests such a notice.
- (e) Fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice.

- (f) The Association is not obligated to provide intra-Lot public liability insurance or any protection against risks customarily covered under "homeowners" or "broad form homeowners" policies. Owners may individually insure against such risks.
- (g) Any insurance policy the Association deems appropriate.
- (h) At least annually, the Board must review the Association's insurance policies.
- (i) Association insurance policies shall contain the following provisions, if available:
  - (1) Statements that the policies are primary and non-contributing;
  - (2) Statements that an Owner's conduct will not constitute grounds for avoiding liability;
  - (3) Inflation Guard Endorsement (if obtainable at a reasonable cost);
  - (4) Standard Mortgagee clause, and name as Mortgagee FNMAE or servicer (if applicable).

5.04 **Right of Entry.**

- (a) The Board has the right to authorize entry onto any Lot to determine compliance with the Governing Documents and to perform its duties.
- (b) In case of emergency, or by Court order, a Lot may be entered immediately. Otherwise, a Lot may only be entered at reasonable hours after the Owner has received three (3) days' notice, and if the entry will not result in a breach of the peace.
- (c) Entry must be made with as little inconvenience as possible to the Occupant.

5.05 **Budget, Financial Statements and Governing Documents.**

- (a) The Board of Directors of the Association must comply with all current requirements of California Civil Code Sections 1365 and 1365.5, or successor statutes pertaining to financial records, Governing Documents, etc.
- (b) In addition to the requirements of California Civil Code Sections 1365 and 1365.5, the Association shall make the following documents available for inspection and copying by a Member or his duly appointed representative at the office of the Association upon request during normal business hours or under other reasonable circumstances:
  - (1) Current copies of all Governing Documents, books, records and financial statements of the Association for lenders, holders, insurers and guarantors of a First Mortgage on any Lot; and
  - (2) Copies of relevant California Code Sections referenced in any Government Documents.
- (c) The Association may charge a fee to the requesting party for this service which may not exceed the reasonable cost to prepare and reproduce the requested items.
- (d) Members shall annually be provided a summary of the provisions of Section 1354, as set forth therein, which must include the following language: "Failure by any member of the association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the Governing Documents." This summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed, or in the manner specified in Section 5016 of the Corporations Code.

5.06 **Penalties for Non-Compliance.**

- (a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:
  - (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specifies the amounts of potential monetary penalties);
  - (2) Assess such penalties against any Owner found to be in violation of any provision of the Governing Documents; and
  - (3) Temporarily suspend an Owner's voting rights as a Member of the Association and/or rights to use Common Area facilities for as long as the violation continues.
- (b) All procedures relating to the imposition of any penalties or discipline for violation of any provision in the Governing Documents shall be, at minimum, in compliance with Civil Code Section 1363 and Corporations Code Section 7341.
- (c) If the Board establishes a policy imposing any monetary penalty, including any fee on any member for a violation of the Governing Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a member, the Board shall adopt and distribute to each member by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the Governing Documents. (The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members.)
- (d) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, such penalties and costs shall not be treated as an assessment that may become a prejudgment lien enforceable by Civil Code Section 2924.
- (e) Notwithstanding the foregoing, the Owner shall be given, at a minimum, the rights set forth in Corporations Code Section 7341 or any successor statute.

5.07 **Board Powers and Limitations.**

The powers and duties of the Board shall normally include, but shall not be limited to, the following:

- (a) Enforcement of applicable provisions of the Covenants, Conditions and Restrictions, Articles, Bylaws and other instruments for the ownership, management and control of the Project.
- (b) Contracting for casualty, liability and other insurance on behalf of the Association.
- (c) Delegating its powers to committees, officers or employees of the Association as expressly authorized by the Governing Documents.
- (d) Preparation of budgets and financial statements for the Association as prescribed in the Governing Documents.
- (e) Formulation of rules of operation of the common areas and facilities owned or controlled by the Association.
- (f) Election of officers of the Board of Directors.



- (g) Filling of vacancies on the Board of Directors, except for vacancies created by removal of a director.
- (h) The Board is authorized to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to:
  - (1) Enforcement of the governing instruments;
  - (2) Damage to the Common Area(s);
  - (3) Damage to the separate interests which the Association is obligated to maintain or repair; or
  - (4) Damage to the separate interests which arises out of, or is integrally related to, damage to the Common Area(s) or separate interests that the Association is obligated to maintain or repair.
- (i) The Board may not ordinarily take any of the following actions unless approved by a majority of Members (other than Declarant) constituting a quorum, at a meeting or by written ballot without a meeting, pursuant to Corporations Code Section 7513:
  - (1) Enter into a contract for a term longer than one (1) year with a third person who furnishes goods or services for the Common Area(s) or the Association, with the following exceptions:
    - (A) A management contract with terms approved by the FHA or VA;
    - (B) A contract with a public utility company if the Public Utilities Commission regulates rates charged for materials or services, provided that the contract term does not exceed the shortest term for which the supplier will contract at the regulated rate;
    - (C) Prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration, provided that the policy permits short-rate cancellation by the insured;
    - (D) Agreements for satellite dishes or cable television services and equipment, not to exceed five (5) years duration, provided that the Declarant's ownership interest in the entity does not exceed ten percent (10%);
    - (E) Agreements for sale, lease, installation or services of burglar and fire alarm equipment, not to exceed five (5) years duration, provided that Declarant's ownership interest in any entity involved does not exceed ten percent (10%); and
    - (F) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days' written notice of termination to the other party.
  - (2) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
  - (3) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

- (4) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.
- (j) Except with the vote or written assent of the Members holding more than two-thirds (2/3) of the voting rights of each class of Members, if two classes exist, or, if only one class exists, more than two-thirds (2/3) of the voting rights of all Members and more than two-thirds of the voting rights of all Members other than Declarant, the Board shall not initiate any claim under California Civil code Section 895 et seq. as it pertains to Improvements in the Common Areas, and Declarant, and its representatives on the Board, shall have no control over the issue to decide whether to initiate a claim under such statutory provisions.
- (k) The Board is authorized to:
  - (1) Adopt and enforce reasonable Rules and Regulations, not inconsistent with this Declaration, concerning the Property;
  - (2) Pay taxes and assessments which are, or could become, a lien on the Common Area or a portion thereof;
  - (3) Contract for goods and/or services for the Common Area(s) and facilities for the Association subject to the limitations set forth above;
  - (4) Delegate its powers to committees, officers or employees of the Association as expressly authorized by the governing instruments;
  - (5) Formulate rules of operation of the Common Area(s) and facilities owned or controlled by the Association;
  - (6) Initiate and execute disciplinary proceedings against members of the Association for violations of provisions of the governing instruments in accordance with procedures set forth in the governing instruments; and
  - (7) Enter upon any privately owned Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Area(s) or the Owners in common.

5.08 **Commencement of Association Management Responsibility.**

The Association's obligations specified in this Article are effective as of the First Sale of a Lot.

## ARTICLE VI

### COVENANTS FOR ASSESSMENT

#### 6.01 Assessments.

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area(s), administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) Each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in any deed, covenants and agrees to pay all Assessments to the Association.
- (c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner and binds heirs, devisees, representatives, successors and assignees, but does not pass to successors in title unless expressly assumed by them. The Lot does remain subject to any Assessment liens of record, except upon Foreclosure of a First Mortgage as stated in the Article entitled "Mortgagee Protection".
- (d) Pursuant to Civil Code Section 1366.1, the Association may not collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

#### 6.02 Commencement; Due Dates of Assessments.

- (a) Except for the partial first year, Regular Assessments shall be due and payable in any reasonable manner established by the Board. Regular Assessments against the Lots within a particular DRE phase commence on the first of the month immediately after the First Sale in that particular phase to a purchaser.
- (b) If model dwellings for sales purposes have been constructed, the closing of escrows for the sales of these Lots where the models are located will not be deemed to be a First Sale and will not start the commencement of Assessments within that phase, if Declarant is leasing back these Lots for purposes of using the Lots as models. Therefore, assessments will commence only upon the First Sale of a Lot in this phase, other than a Lot where the models are located.

#### 6.03 Assessment Rate.

- (a) Regular Assessments and Special Assessments must be fixed at a uniform rate for all subject Lots, except as otherwise provided.
- (b) Each subject Lot is liable for a pro rata share (the fractional number one (1) over the total number of Lots subject to Assessment by the Association at that time).

#### 6.04 Assessment Duties of the Board of Directors.

- (a) The Board must levy Regular and Special Assessments in compliance with Civil Code Section 1366.
- (b) The Board must establish separate bank accounts for operating monies and reserve monies.

#### 6.05 Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association.

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:

- (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 1366 (or any successor statutes);
  - (2) Reasonable collection costs and attorney's fees; and
  - (3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Lot when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Lot.
- (c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Association as a disciplinary measure for failure of an Owner to comply with the Governing Documents 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 Owner was allegedly responsible or in bringing the Owner and his Lot into compliance with the Governing Documents, may not become a lien against the Owner's Lot enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. However, this does 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 or for costs reasonably incurred (including attorney's fees) in its efforts to collect other delinquent assessments.
- (d) In addition to all other legal rights and remedies, the Association may:
- (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);
  - (2) Judicially foreclose the lien against the Lot, including the Assessment, interest, collection costs and late charges;
  - (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
  - (4) Bid on the Lot through authorized agents at the Foreclosure sale, to acquire and thereafter to hold, lease, Mortgage or convey; or
  - (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.
- (e) Foreclosure action may not proceed until thirty (30) days after a Notice of Delinquent Assessment is duly recorded with the relevant County Recorder that meets the requirements of Civil Code Section 1367.
- (f) A copy of the Notice of Delinquent Assessment must be sent by certified or registered prepaid United States mail, addressed to the Owner or his designated agent previously given in writing to the Association at the Lot (or an address that the Owner has previously given in writing to the Association which address must be within the United States).
- (g) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.
- (h) No transfer of an Owner's interest in a Lot as a result of a Foreclosure or exercise of a power of sale shall relieve the new Owner whether it be the former beneficiary of the First Mortgage or another person, from liability for any assessment thereafter becoming due or from the lien thereof.

6.06 **Nonuse and Abandonment.**

An Owner does not waive or otherwise escape liability for Assessments by nonuse of the Common Area(s) or abandonment of a Lot.

6.07 **Waiver of Exemptions.**

With respect to Assessment liens, each Owner waives (to the extent permitted by law) the benefit of any California homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

6.08 **Assessment of Lots Owned by Declarant; Uncompleted Lot Exemption.**

- (a) The Declarant is an Owner subject to the payment of Assessments for Lot(s) owned by Declarant.
- (b) Any Owner (including Declarant) of a Lot which does not include a dwelling is exempt from any Assessment or monetary obligation which is for the purpose of defraying expenses and reserves directly attributable to the existence of the dwelling, including without limitation:
- (1) Roof replacement reserves;
  - (2) Exterior maintenance, painting and reserve expense;
  - (3) Cable television;
  - (4) Minor repairs;
  - (5) Fire insurance;
  - (6) Walkway and carport lighting;
  - (7) Refuse disposal; and
  - (8) Domestic water supplied to dwellings.

The above exemption remains in effect until the earliest of the following:

- (1) A notice of completion for the dwelling has been recorded;
  - (2) Occupation or use of the dwelling; or
  - (3) Completion of all elements of the dwelling if the Association is obligated to maintain it.
- (c) Any Owner (including Declarant) is exempt from payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time Assessment commences. This exemption shall be in effect only until the earliest of the following:
- (1) A notice of completion of the common facility has been recorded; or
  - (2) The common facility has been placed into use.

## ARTICLE VII

### ARCHITECTURAL CONTROL

#### 7.01 Architectural Committee.

- (a) The Architectural Committee shall consist of not fewer than three (3) persons nor more than five (5) persons as fixed from time to time by resolution of the Board.
- (b) Declarant shall initially appoint the Architectural Committee. Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until one (1) year after the occurrence of the First Sale within the Property, at which time the Board may appoint members, as further described herein.
- (c) Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until i) five (5) years after the occurrence of the First Sale within the Property, or ii) Close of Escrow has occurred on ninety percent (90%) of the Lots within the Development, whichever of i) or ii) shall first occur, at which time the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board.
- (d) As long as Declarant has the right to appoint some but not all of the members of the Architectural Committee, the Board shall have the right but not the obligation to fill the remaining vacancies on the Architectural Committee.
- (e) Persons appointed by the Board to the Architectural Committee must be Members; however, persons appointed by Declarant to the Architectural Committee need not be Members, in Declarant's sole discretion.
- (f) The address of the Architectural Committee shall be the address established for giving notice to the Association unless another address is specified for such purpose in the Architectural Guidelines or Architectural Committee Rules. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Guidelines shall be kept.

#### 7.02 Architectural Guidelines.

The Board may, from time to time, adopt and promulgate Architectural Guidelines to be administered through the Architectural Committee. The Architectural Guidelines may include among other things those restrictions and limitations upon the Owners set forth below:

- (a) Time limitations for the completion of the Improvements for which approval is required pursuant to the Architectural Guidelines;
- (b) Conformity of completed Improvements to plans and specifications approved by the Architectural Committee;
- (c) Such other limitations and restrictions on Improvements as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the placement, kind, shape, height, materials, species and location of any Improvement; and
- (d) A description of the Improvements which, if completed in conformity with the Architectural Guidelines, do not require the approval of the Architectural Committee.

#### 7.03 Functions of Architectural Committee.

- (a) It shall be the duty of the Architectural Committee to consider and act upon proposals or plans submitted pursuant to the terms of this Declaration or the Architectural Guidelines, and to perform such other duties delegated to it by the Board.

- (b) The Architectural Committee may delegate its plan review responsibilities to one or more members of such Architectural Committee or to an architect or landscape architect licensed in the State of California. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee.
- (c) The Architectural Committee may, from time to time, subject to the approval of the Board, adopt, amend and repeal Architectural Committee Rules, may require the prepayment of a deposit to be applied toward the payment of any Special Assessment levied by the Board if such Owner fails to restore any portion of the Property to a clean and attractive condition and may assess a reasonable fee as appropriate for the type and nature of the Improvement, to cover the cost of inspections that may be necessary to insure compliance and in connection with the review of plans and specifications for proposed Improvements, including, without limitation, a procedure for approval of preliminary plans and drawings as well as final approval, the number of sets of plans to be submitted, and may require such detail as it deems proper, including without limitation, floor plans, site plans, elevation drawings, and descriptions or samples of exterior material and colors, landscape planting plans, drainage plans, lighting plans, electrical plans, mechanical plans, etc.
- (d) Unless all of the rules of the Architectural Committee have been complied with, such plans and specifications shall be deemed not submitted.

7.04 **Approval.**

- (a) Declarant is not subject to the provisions of the Governing Documents pertaining to architectural control. Any Improvements constructed by Declarant shall automatically be in compliance with the Governing Documents and shall not be subject to further architectural control until and unless there has been a change or alteration made by a successor in title to Declarant as to any Residence in the material, texture, color or appearance of any such Improvement upon such Residence.
- (b) Other than Declarant, as set forth in paragraph (a) above, no Improvements shall be made upon the Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee except as may otherwise be provided for in the Architectural Guidelines.
- (c) The Architectural Committee or its designated representative, i.e., an architect or landscape architect licensed in the State of California, shall review plans and specifications submitted for its approval as to style, exterior design, appearance and location and shall approve such plans and specifications only if it deems that the proposed Improvement will not be detrimental to the appearance of the Development as a whole; that the Improvement complies with the Architectural Guidelines; that the appearance of any Improvements will be in harmony with the surrounding structures; that the construction of any Improvement will not detract from the beauty and attractiveness of the Development or the enjoyment thereof by the Owners; and that the upkeep and maintenance of any Improvement will not become a burden on the Association.
- (d) The Architectural Committee may i) determine that such Improvement cannot be approved because of its effect on existing drainage, utility or other easements, ii) require submission of additional plans and specifications or other information or materials prior to approving or disapproving plans and specifications submitted, or iii) condition its approval of plans and specifications for any Improvement on such changes therein as it deems appropriate such as, and without limitation, the approval of such Improvement by a holder of an easement which may be impaired thereby or upon approval of any such Improvement by the appropriate Governmental Agency.

- (e) Any Architectural Committee approval conditioned upon the approval by a Governmental Agency or an easement holder shall not imply the Association is enforcing any government codes or regulations or provisions of any easement agreement, nor shall the failure to make such conditional approval imply that any such Governmental Agency or easement holder approval is not required.

7.05 **Non-liability for Approval.**

Plans and specifications are not approved for i) engineering design, ii) compliance with zoning and building ordinances, and other applicable statutes, ordinances or governmental rules or regulations, iii) compliance with the requirements of any public utility, iv) any easements or other agreement, or v) preservation of any view, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Owners, the Board nor the Declarant, nor agents, employees, attorneys or consultants of any of the foregoing, assume liability or responsibility therefor, or for any defect in any Improvement constructed from such plans and specifications or for any obstruction or impairment of view caused or created as the result of any Improvements approved by the Architectural Committee.

7.06 **Appeal.**

In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board within the time limitation stated in the Section entitled "Performance Dates" of this Article. The Board shall submit such request to the Architectural Committee for review, whose written recommendations are to be submitted to the Board.

7.07 **Evidence of Approval.**

- (a) Normal maintenance, repair or reconstruction by any successor in title to Declarant in the event of a destruction, in substantial conformance with the Improvements constructed by Declarant, shall not be deemed to be an Improvement that requires approval pursuant to the provisions of this Article.
- (b) If the Improvements upon such Residence comply with the provisions of the Governing Documents, the Architectural Committee shall, upon request, issue a statement (hereinafter a "Compliance Statement") which will evidence such compliance.
- (c) If any of the Improvements upon such Residence do not comply with the provisions of the Governing Documents, the Architectural Committee shall issue a statement (hereinafter a "Noncompliance Statement") delineating the corrective action that is required to bring such Improvements into compliance with the Governing Documents.
- (d) The Compliance Statement or Noncompliance Statement, as applicable, must be provided within the time limitation set forth in the Section of this Article entitled "Performance Dates".
- (e) In the event the Architectural Committee has issued a Noncompliance Statement as to any such Residence, the Architectural Committee shall provide a Compliance Statement, upon request, after the corrective work has been satisfactorily completed which shall then evidence that the Improvements upon such Residence comply with the provisions of the Governing Documents.
- (f) Any Compliance or Noncompliance Statement issued by the Architectural Committee shall be executed by any person or persons authorized by resolution of the Board or by the president and secretary of the Association. A Compliance Statement shall be conclusive evidence of compliance with the provisions of the Governing Documents as to the Improvements described in the Compliance Statement and further approval of any such Improvements shall not be required unless there is a change or alteration in material, exterior appearance, color or texture in such Improvements.



7.08 **Performance Dates.**

Failure to make the inspections and responses required to be made pursuant to the provisions of this Article shall have the effect indicated below in this Section.

- (a) In the event the Architectural Committee fails to approve or disapprove plans and specifications within sixty (60) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Architectural Committee, such plans and specifications will be deemed approved.
- (b) The written request for an appeal to the Board of a decision rendered by the Architectural Committee must be received via certified mail with return receipt by the Board not more than fifteen (15) days following the final decision of the Architectural Committee.
- (c) The Board shall render its written decision in connection with a written appeal to the Board of a final decision of the Architectural Committee within forty-five (45) days following receipt of the request for appeal. Failure of the Board to render such decision within such period of time shall be deemed a decision in favor of the appellant.
- (d) If for any reason an inspection has not been made within forty-five (45) days of notification by the Owner of the completion of an Improvement or the Owner requesting such inspection has not been notified of any noncompliance within thirty (30) days after such inspection, the Improvement shall be deemed to be completed in substantial conformance with approved plans and specifications.
- (e) The Architectural Committee shall provide to any Owner, prospective Owner, Mortgagee or prospective Mortgagee of a Residence who has submitted a written request therefor a statement as to the compliance or noncompliance, as the case may be, of the Improvements upon such Residence made by Owners other than Declarant with the provisions of the Governing Documents provided that the Architectural Committee, after not less than three (3) days' notice was delivered to the Owner of such Residence, was afforded the right to enter upon the affected Residence at a reasonable time specified by the Architectural Committee.

7.09 **Nonconformity.**

In the event an Improvement was commenced without the required approval of the Architectural Committee, or, if such Improvement was not completed within the time limitation established for such Improvement in the Architectural Guidelines or in substantial conformance with the approved plans and specifications, the Board shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance, and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If the noncompliance is not cured within such thirty (30) day period, the Board, after notice and hearing as provided herein, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance and the Architectural Committee shall correct the violation or take other appropriate action.

7.10 **Variances.**

The Board may authorize a variance from compliance with the architectural controls set forth in this Article when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental consideration may require. Written evidence of such variance must be delivered to such Owner and a copy of the resolution of the Board authorizing such variance must be retained in the permanent records of the Association. If such variances are granted, no violation of the covenants, conditions and restrictions contained in the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of the Governing Documents for any purpose except as to the particular Residence and particular provision of this Article covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all government laws and regulations affecting use of the Residence including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by any governmental or municipal authority.

7.11 **No Guarantee of Views.**

- (a) Some Lots in the Development depending upon location may enjoy some unique view potential. The view, if any, from a Lot in the Development is subject to the limitations and disclaimers set forth herein.
- (b) The term "view" as used in this Declaration shall refer to the field of vision from the front or rear of the Lot (however, in the case of a corner Lot, the field of vision may also be oriented toward the exposed side yard), shall be limited solely to the area located between the prolongation of the side property lines (and may not be widened to extend at an angle across the side yard of an adjoining Lot on either side), and shall extend straight out from the finished grade of the Lot. Notwithstanding the foregoing field of vision parameters, there are no express or implied easements for views or for the passage of light and air to any Lot in the Development.
- (c) Although the provisions of the Article herein entitled "Architectural Review" may have some effect on preserving views from and providing for the passage of light and air to an individual Lot, Declarant, the Architectural Review Committee, and the directors, officers, employees, consultants, agents and contractors of the foregoing, do not make any representations or warranties, express or implied, concerning the view, if any, that a particular Lot will enjoy. Furthermore, the payment by any Owner of any "premium" does not constitute a representation or warranty, express or implied, concerning the view, if any, the Lot will enjoy.
- (d) Each owner, by accepting a deed to his respective Lots, expressly acknowledges and agrees that any view which his Lot may enjoy as of the date of purchase may be impaired or obstructed by the installation of trees, other landscaping or other types of barriers, the growth or relocation of landscaping, the construction or other installation of Improvements in the Development and/or on any property adjoining the Development in accordance with applicable laws, codes, ordinances and regulations, and each Owner expressly consents to any such obstructions.
- (e) Each Owner further understands that the provisions of this Declaration establish certain architectural and landscaping controls applicable to the Development, and that each Owner has the right to enforce such controls. Except as expressly set forth in this Declaration, there are no rights concerning the preservation of any view.

## ARTICLE VIII

### ESTABLISHMENT AND RESERVATION OF EASEMENTS

#### 8.01 Easements for Vehicular and Pedestrian Traffic.

Declarant hereby reserves a nonexclusive easement appurtenant to each Lot for the benefit of each and every Owner, the members of his family, his lessees and tenants, and their respective guests and invitees, for vehicular and pedestrian traffic over all private streets, drives, walkways, and sidewalks within the Common Area(s).

#### 8.02 Yard Easements.

- (a) Declarant does hereby create, establish, and reserve permanent and perpetual exclusive easements for yard purposes ("Yard Easement Areas") in favor of and appurtenant to certain Lots ("Dominant Tenement") and over portions of other Lots ("Servient Tenements") as shown on attached Exhibit "E", incorporated herein by this reference. Owners of the Dominant Tenement may, subject to Article VIII entitled "Architectural Control", and subject to the restrictions set forth in this Section 8.02, use the Yard Easement Areas for purposes and uses customarily associated with yard areas for single family homes, including but not limited to landscaping, and recreational and personal uses. All or portions of the outside boundaries of certain Yard Easement Areas may abut the wall of the dwelling structure of the Servient Tenement ("Adjoining Dwelling") facing the Dominant Tenement.
- (b) The Owner of a Dominant Tenement may not attach anything to the surface of the Adjoining Dwelling, including, but not limited to, nails, wires, plants or trellises, or any other structures or objects whatsoever. The Owner of a Dominant Tenement may not lean ladders or other objects against, or cause any objects to be supported by, any part of the fascia, trim or other architectural features of the Adjoining Dwelling, as any pressure applied by such actions may cause damage to the fascia, trim or other architectural features of the Adjoining Dwelling.
- (c) The Owner of a Dominant Tenement may not paint the surface of the Adjoining Dwelling. The Owner of a Dominant Tenement may not change or alter the existing drainage pattern of the Yard Easement Area. (The Yard Easement Area may be graded to create a swale for the purpose of absorbing rainwater from the roof of the Adjoining Dwelling.)
- (d) The Owner of a Dominant Tenement may not remove or interfere in any way with the operation of the roof gutters and/or drains, if any, draining water from the Adjoining Dwelling.
- (e) The Owner of the Dominant Tenement shall be responsible for maintenance and repair of all portions of the Yard Easement Areas.
- (f) The Owner or occupant of the Servient Tenement has the right to enter into the Yard Easement Areas as reasonably necessary to perform maintenance and repair to the Adjoining Dwelling.

#### 8.03 Zero Lot Line Walls and Easements.

- (a) Some of the dwelling structures may be situated within the boundaries of the Lot with "Zero Lot Line Walls", wherein one side wall of the residential structure is on or close to the boundary line with an adjacent Lot.
- (b) Declarant does hereby create, establish and reserve permanent and perpetual non-exclusive easements appurtenant to Lots with Zero Lot Line Walls ("Dominant Tenement") on, over and across those certain portions of the adjacent Lots abutting the Zero Lot Line Walls of the Dominant Tenements ("Servient Tenement"), as shown on attached Exhibit "E", for maintenance purposes and for encroaching roof overhangs, window boxes and/or fireplaces and chimneys, if any.

- (c) The "Easement Area" shall consist of a 5 foot strip of land within the Servient Tenement abutting the Zero Lot Line Wall of the Dominant Tenement. The non-exclusive easement rights created, established and reserved herein are for ingress, egress and access in, on, over and across the Easement Area as may be reasonably necessary to allow the Owner of the Dominant Tenement to paint, maintain and repair the Zero Lot Line Wall and the exterior surfaces of the residential structure within any Dominant Tenement.
- (d) The easement rights reserved herein are non-exclusive. The Dominant Tenement Owner has the right to use the Easement Area, so long as The Dominant Tenement Owner's use of the Easement Area does not materially interfere with the use of the Easement Area by the Servient Tenement Owner, subject to the conditions and provisions set forth in this Section. Likewise, the Servient Tenement Owner has the right to use the Easement Area, so long as the Servient Tenement Owner's use of the Easement Area does not materially interfere with the use of the Easement Area by the Dominant Tenement Owner, subject to the conditions and provisions set forth in this Section.
- (e) The Owner of the Dominant Tenement shall paint, maintain, and repair the Zero Lot Line Wall in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof.
- (f) In the event any painting, maintenance or repair is required due to the fault of the Owner of the Servient Tenement, the Owner of the Servient Tenement shall promptly cause said work to be performed and shall bear all costs thereof.
- (g) Except in the case of a bona fide emergency, the Owner of the Dominant Tenement shall give the Owner of the Servient Tenement at least twenty-four (24) hours prior written notice of his intention to enter upon the Servient Tenement Owner's Lot and 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 Dominant Tenement shall use his best efforts to minimize the duration of the work and the inconvenience to the Owner of the Servient Tenement.
- (h) In the event that the Dominant Tenement Owner shall fail to maintain the Zero Lot Line Wall, the Association, after Notice and Hearing, shall have the right, but not the obligation, to enter on any Lot and Easement Area for the purpose of remedying the condition. The Dominant Tenement Owner shall promptly reimburse the Association for the cost thereof. Such cost may be levied by the Board as a Special Assessment.
- (i) The Servient Tenement Owner shall not plant any tree, shrub, vines or other landscaping upon the Easement Area which would: (a) impair or otherwise threaten the structural integrity of the adjacent residential structure of any Dominant Tenement; or (b) interfere or impede necessary access for maintenance and repair to the Zero Lot Line Wall. 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 Committee. The Owner of the Dominant Tenement shall not drive any nails, screws, bolts or other objects into the Zero Lot Line Wall, or permit anything to damage the appearance or structural integrity of the Zero Lot Line Wall.

#### 8.04 **Easements for Construction and Marketing Activities.**

There is hereby reserved to Declarant, together with the right to grant and transfer same:

- (a) Improvements. Easements over i) the Common Area for the purpose of constructing, erecting, operating and maintaining thereon, therein or thereunder roads, streets, walks, and driveways, as long as any Lot remains unsold; and ii) the Property for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation lines, sanitary sewer lines and drainage facilities;

- (b) Cable Television. The right to place on, under or across the Property transmission lines and other facilities for a cable television or a community antenna television system and the right to enter upon the Property to service, maintain, repair, reconstruct and replace said lines or facilities;
- (c) Construction and Sales. Easements for construction, display, maintenance, sales and exhibit purposes over the Common Area, other than Exclusive Use Common Area if any, in connection with the erection and sale or lease of Residences within the Property provided, however, that such use shall not be for a period beyond the sale by Declarant of all Lots within the Development;
- (d) Utilities Shown on Tract Map. Easements over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on any recorded final tract or parcel map covering the Property;
- (e) Completing Improvements. Easements over the Common Area for the purpose of completing Improvements required to be made by Declarant provided that access for such purpose is not otherwise reasonably available; and
- (f) The easements reserved to Declarant, or granted and conveyed by Declarant pursuant to this Section shall not unreasonably interfere with the use and enjoyment by the Owners of the Property and any damage, repair or restoration necessitated by any such installation, construction or maintenance shall be completed by the holder of the easement that has entered upon the Property for any such purpose within a reasonable time after the occurrence of such damage or need for restoration.

8.05 **Establishment of Utility and Drainage Easements.**

Owner rights and duties with respect to drainage facilities, sanitary sewer, water, electricity, gas, telephone, cable television, security system lines, and other service lines and facilities ("Service Lines and Facilities") are as follows:

- (a) Easements for Service Lines and Facilities on Lots or Common Area(s) is granted in favor of the Owner of a Lot or Association served by said Service Lines and Facilities to the full extent necessary for the maintenance and repair by the Owner, Association, or servicing company;
- (b) If Service Lines and Facilities serve more than one Lot, each Owner served is entitled to reasonable use and enjoyment and access for repair, replacement and maintenance of all necessary portions of the Service Lines and Facilities. In the event of a dispute between Owners respecting the repair, replacement or maintenance of the Service Lines and Facilities, or the sharing of the cost thereof, said Owners shall first contact the appropriate utility company in an effort to resolve the dispute; provided however, if said dispute remains unresolved, the matter shall be submitted to the Board who shall decide the dispute and the decision of the Board shall be final and conclusive on the Owners.

8.06 **Reservation of Utility and Drainage Easements.**

- (a) Declarant reserves the right to grant and transfer easements over the Lots and Common Area(s) for installation, maintenance and repair of the Service Lines and Facilities.
- (b) Any such easement may not unreasonably interfere with an Owner's use and enjoyment of the Lots and Common Area(s).
- (c) Notwithstanding that an Owner may install Improvements within said easement area with the approval of the Architectural Control Committee, each Owner acknowledges that such Improvements may be removed by the respective utility or Public Agency to maintain, repair or replace any of the foregoing facilities without any liability to the Owner to repair or restore such Improvements.

- (d) Declarant has reserved the right to enter upon a Lot for a period of twelve (12) months following the recordation of the deed conveying the Lot to the Owner in order to construct, install, maintain, repair, replace and/or reconstruct utilities (including but not limited to electrical, telephone, cable television, gas, water and sewer lines, utility meters and storm drains), street lights, traffic signs, landscaping and/or other Improvements in order for Declarant to comply with any requirement or condition imposed by a public agency in connection with the development of the community. This right of entry may be exercised by the employees, contractors, subcontractors or other designees of Declarant. Declarant will give the Owner reasonable notice prior to exercising such right of entry; provided, however, such right of entry shall be immediate in the event of an emergency. In the event any damage to the Owner's property is proximately caused by or results from this right of entry, Declarant shall, at Declarant's expense, repair and restore the Lot to substantially the same condition as existed prior to exercising such right of entry. Each Owner covenants and agrees not to obstruct or otherwise interfere with Declarant's right of entry. Declarant shall be entitled to specifically enforce this covenant and each Owner will be liable for all costs, expenses, damages, and other liability, including actual attorney's fees and court costs, arising from an Owner's breach of this covenant. This right to enter upon each Lot is in addition to all other rights of Declarant to enter upon a Lot as specified in this Declaration.

8.07 **Encroachment Easements.**

Each Lot possesses an appurtenant easement over all adjoining Property (including Lots and Common Areas) to accommodate minor encroachments due to:

- (a) Original engineering or survey errors;
- (b) Errors in original construction;
- (c) Overhanging roofs, fireplace structures, and other structural components as originally constructed by the Declarant or, if partially or totally destroyed, as subsequently rebuilt or repaired in accordance with the original plans and specifications; or
- (d) Settlement or shifting of a building, wall or structure.

8.08 **Drainage System.**

- (a) The Association and each Owner accept the drainage facilities and pattern for the Lots and Common Area(s) established by the final grading of the Property originally undertaken by Declarant (including "crosslot" drainage from adjacent Lots and Common Areas).
- (b) The established drainage pattern may not be altered without prior written approval by the Association and/or Architectural Committee.
- (c) If the drainage pattern must be altered, the party requesting the alteration must make reasonable and adequate provisions for proper drainage and pay for its costs.
- (d) In the event Declarant shall have installed any drainage lines or other facilities which serve two or more Lots, the Owners of said Lots shall jointly maintain and repair said lines and facilities so as to keep same in proper operating condition at all times.

8.09 **Easements for Maintenance of the Common Area(s).**

The Association has a nonexclusive easement for ingress, egress and access to all portions of the Property as reasonably required to perform its maintenance obligations and other duties established in this Declaration.

8.10 Creation of Easements.

- (a) Easements referred to herein are established upon the First Sale in the Development.
- (b) Individual grant deeds to Lots should state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

## ARTICLE IX

### MORTGAGEE PROTECTION

#### 9.01 Subordination of Lien and Foreclosure.

- (a) Any lien created by or claimed under this Declaration:
  - (1) Is subject and subordinate to the rights of any First Mortgage that encumbers any part of the Property made for value in good faith; and
  - (2) May not in any way impair or invalidate the obligation or priority of a First Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgagee to the Subordination by Lienholder included in this Declaration shall not constitute said lienholder's subordination to any existing or future Assessment lien.
- (b) No breach of any provision of Declaration, nor the enforcement of any of its lien provisions, nor the Foreclosure of any lien created by or claimed under this Declaration shall invalidate, affect or impair the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through Foreclosure sale, trustee's sale, or otherwise.
- (c) Upon Foreclosure of a First Mortgage, the purchaser:
  - (1) Will take title to the Lot free of any Assessment lien accrued up to the time of the Foreclosure sale (provided that nothing herein is intended to impair the rights of the Association to receive payment on any Assessment lien in the event the net sale proceeds are in excess of what is owed on all encumbrances prior to the Assessment lien);
  - (2) Is only obligated to pay Assessments or other Association charges accruing after title to the Lot is acquired; and
  - (3) Where the Mortgagee obtains title with a deed in lieu of Foreclosure, any Assessment lien will not be extinguished.

#### 9.02 Mortgagees Are Not Required to Cure Certain Breaches.

A First Mortgagee who acquires title by Foreclosure or by a deed in lieu of Foreclosure or assignment in lieu of Foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

#### 9.03 Effect of Breach of Declaration.

- (a) Breach of this Declaration may not:
  - (1) Cause any forfeiture or reversion of title; or
  - (2) Bestow any right of reentry.
- (b) Breach of this Declaration may be enjoined or abated by court action by the Association, Declarant, or any Lot Owner, and damages may also be awarded provided that:
  - (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and



- (2) This Declaration binds any Owner whose title is derived through Foreclosure, trustee's sale or otherwise.

9.04 **Exemption From Right of First Refusal.**

- (a) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Lot, unless a Mortgagee of the Property grants written consent to the Association.
- (b) Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other party) may not impair the rights of a First Mortgagee to do any of the following:
  - (1) Foreclose or take title to a Lot, pursuant to the remedies provided in the Mortgage;
  - (2) Accept a deed (or assignment) in lieu of Foreclosure in the event of default under the Mortgage; or
  - (3) Sell or lease a Lot acquired by the Mortgagee.

9.05 **Restrictions on Certain Changes.**

- (a) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees must give written approval before the Association may, by act or omission, do any of the following:
  - (1) Alter the method of determining Assessments or other charges levied against an Owner.
  - (2) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Lots or the Common Area(s).
  - (3) Fail to maintain Fire and Extended Coverage on insurable Common Area(s) as specified in this Declaration.
  - (4) Amend the Governing Documents concerning any material provision (which includes, but is not limited to, the following):
    - (A) Voting rights;
    - (B) Reserves and responsibility for maintenance, repair and replacement of the Common Property;
    - (C) Lot boundaries;
    - (D) Convertibility of Common Area into Lots or Lots into Common Area;
    - (E) Lot leasing;
    - (F) Establishment of self-management by the Association where professional management has been required by any beneficiary, insurer or guarantor of a first Mortgage;
    - (G) Annexation or deannexation of real property;
    - (H) Casualty and liability insurance (or other insurance or fidelity bonds);
    - (I) Imposition of a right of first refusal or similar restriction of an Owner's right to sell, transfer or otherwise convey the Lot;

- (J) Restoration or repair of the Property after hazard damage or partial condemnation;
  - (K) Action to terminate the legal status of the Property after substantial destruction or condemnation; and
- (5) Change, waive or abandon the provisions of this Declaration (and their enforcement) pertaining to architectural design and control of the exterior appearance of structures, maintenance of the Common Area(s), walks, fences, driveways, lawns and plantings on the Property.
- (b) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of the Eligible First Mortgagees (based on one vote for each Eligible First Mortgage held) must give written approval before the Association may, by act or omission, do any of the following:
- (1) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Lot or Common Area (other than granting easements as specified in this Declaration);
  - (2) Partition or subdivide any Lot;
  - (3) Seek to abandon or terminate the legal status of the Property;
  - (4) Use hazard insurance proceeds for losses to the Property (Lot or Common Area) for other than repair, replacement or reconstruction of the Property;
  - (5) Change the pro rata interest or obligation of any Lot for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of each Owner in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;
  - (6) Change or alter the priority of any liens created by or claimed under this Declaration;
  - (7) Modify or amend any provisions that are for the express benefit of First Mortgagees, insurers or governmental guarantors of First Mortgages;
  - (8) Modify or amend any provisions of this Declaration regarding insurance;
  - (9) Modify or amend any provisions of this Declaration which is a requirement of the GNMA, FHLMC or FNMA.
- (c) An Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within thirty (30) days after it receives notice of the proposed action, provided notice was delivered personally or by certified or registered mail, return receipt requested.

**9.06 Inspection of Association Books and Records.**

Any First Mortgage holder has the right to examine the books and records of the Association including without limitation the Governing Documents, upon request, during normal business hours or under other reasonable circumstances. Any First Mortgagee shall be entitled, upon written request, to have an audited financial statement for the immediately preceding year, free of charge to the party so requesting.

9.07 **Condemnation Awards and Insurance Proceeds.**

- (a) First Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in a case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Lots or Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.
- (b) All applicable fire, physical loss or extended coverage insurance policy must contain loss payable clauses acceptable to the affected First Mortgagee, naming them Mortgagees as their interests may appear.

9.08 **Mortgagee's Right to Attend Meetings.**

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote.

9.09 **Payments by Mortgagees.**

- (a) First Mortgagees may pay the following jointly or severally:
  - (1) Taxes or other charges in default which may be a charge against any part of the Common Area(s); and
  - (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s).
- (b) Upon making such payments, the Association:
  - (1) Owes immediate reimbursement to First Mortgagees making such payments; and
  - (2) Must, upon Mortgagee's request, execute an agreement that reflects the First Mortgagees' entitlement to such reimbursement.

9.10 **Loss Payable Endorsement.**

All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the Lots.

9.11 **Notices to Mortgagees.**

- (a) Each Eligible First Mortgagee is entitled to timely written notice of:
  - (1) Any condemnation or casualty loss that affects a material portion of the Development or the Lot securing its mortgage;
  - (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage or any other breach or default under the Governing Documents by the Owner of any Lot on which it holds the mortgage;
  - (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
  - (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgage Holders.

- (b) To obtain the information above, the mortgage holder, insurer or guarantor must send a written request to the Association, stating its name and address, and referencing the Lot number or address of the Lot for which it holds the mortgage.

9.12 **Loan to Facilitate Resale.**

Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by Foreclosure, or by a deed in lieu of Foreclosure or by an assignment in lieu in Foreclosure, shall be deemed to be a loan made for value in good faith and entitled to all of the rights and protections of First Mortgages under this Declaration.

9.13 **Control if Mortgagee Protections Conflict With Other Provisions.**

In the event of any conflict between any of the provisions of this Article IX and any other provisions of this Declaration or the Governing Documents, whether now or as hereafter amended, the provisions of this Article IX shall control.

9.14 **Reserves.**

Fees, dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those Improvements that the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special Assessments.

9.15 **Termination of Professional Management.**

When professional management has been previously required by the Governing Documents or by an Eligible First Mortgagee or insurer or guarantor, any decision to establish self-management by the Association shall require the prior consent of at least sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of Eligible First Mortgagees.

## ARTICLE X

### DAMAGE AND DESTRUCTION TO IMPROVEMENTS

#### 10.01 Alternatives in the Event of Damage and Destruction to Common Area Improvements.

In case of casualty damage to Common Area Improvements, the Association will repair and substantially restore the Common Area Improvements to the same manner as existed before:

- (a) If insurance proceeds paid to the Association are sufficient;
- (b) If insurance proceeds cover at least eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners to make up the balance of costs (according to the Article "Covenant for Assessments").
- (c) If insurance proceeds cover less than eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners unless at least sixty-seven (67%) percent of the Owners (other than Declarant) determine either:
  - (1) To rebuild in a less expensive manner than substantial replacement, utilizing all available insurance proceeds. The Association will levy a reconstruction Assessment equally against the Owners to raise any rebuilding cost in excess of insurance proceeds; or
  - (2) Not to rebuild. All net insurance proceeds for the damage (after expenses of clearing debris and making the damaged area aesthetically pleasing) are at the Association's discretion to perform its functions according to the Restrictions or to distribute equally to the Owners (subject to the rights of Mortgagees of record).

#### 10.02 Method of Paying Reconstruction Assessments for Reconstruction of the Improvements.

- (a) Reconstruction Assessments will be due:
  - (1) In a lump sum or in installments; and
  - (2) On any date(s) the Association designates within twenty (20) years.
- (b) To cover the difference between the cost of restoring damaged Improvements and the available insurance proceeds, the Association may borrow money secured by:
  - (1) An assignment of its right to collect such Assessments; or
  - (2) A pledge of its interest in any assets.

#### 10.03 Damage to Dwellings.

- (a) If a Lot Improvement (other than the Common Area) is damaged by fire or other casualty, the relevant Owner must proceed with due diligence to repair or reconstruct the Improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Architectural Committee.
- (b) Repair or reconstruction must commence within ninety (90) days after damage or destruction, and must be completed within one hundred and eighty (180) days after such date, subject to delays that are beyond the Owner's control.
- (c) Notwithstanding the foregoing, the Owner must immediately take reasonable steps as required to secure any hazardous conditions resulting from the damage or destruction.

ARTICLE XI

CONDEMNATION

11.01 Condemnation.

- (a) If any portion of a Common Area is to be condemned or sold by eminent domain, the Board (or its delegation) will:
  - (1) Represent Owners in the proceedings;
  - (2) Immediately give notice of the condemnation threat to all Beneficiaries, insurers and guarantors of First Mortgages who have filed written requests for notices; and
  - (3) Be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.
- (b) Any award(s) received shall be paid to the Association.
- (c) If only part of a Common Area is affected, the rules regarding restoration and replacement of the Common Area and Improvements apply as if in the case of destruction.
- (d) If any of the net condemnation award is not used to restore the remaining Common Area, the Association will handle the award in accordance with the Article entitled, "Damage and Destruction to Improvements Located Within the Property".

## ARTICLE XII

### ANNEXATION

#### 12.01 Annexation of Additional Property.

Additional Property may be annexed to the Original Property and become subject to this Declaration by any of the following methods:

- (a) Declarant may annex any portion of the Additional Property without approval by the Association, Board, or Owners if the plan for phased development includes the following:
  - (1) Proof satisfactory to the DRE that no proposed annexation will result in an overburdening of common facilities;
  - (2) Proof satisfactory to the DRE that no proposed annexation will cause a substantial increase in assessments against existing Owners which was not disclosed in subdivision public reports under which pre-existing Owners purchased their interests;
  - (3) Identification of the land proposed to be annexed and the total number of residential Lots then contemplated by Declarant for the overall subdivision development; and
  - (4) A written commitment by Declarant to pay to the Association, concurrently with the closing of the escrow for the first sale of a subdivision interest in an annexed Phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Area Improvements in the annexed Phase necessitated by or arising out of the use and occupancy of residential Lots under a rental program conducted by the subdivider which has been in effect for a period of at least one year as of the date of closing of the escrow for the first sale of a residential Lot in the annexed Phase.
- (b) By majority vote of sixty-six and two-thirds percent (66 2/3%) of the voting power of the Owners (other than Declarant).

#### 12.02 Contents of Annexation Document.

The Annexation Document may not revoke or modify the provisions of this Declaration affecting the Original Property (except as provided for in this Declaration, eg., subparagraph (d) of this section) and must contain all of the following:

- (a) Reference to this Declaration stating the recordation date and recording information contained in the Official Records of the relevant county;
- (b) A statement that this Declaration (or certain specified portions) apply to the annexed real property;
- (c) An exact description of the real property comprising the annexed real property; and
- (d) Any modification of this Declaration Declarant deems necessary to reflect the development or different character of the added property (but consistent with the general plan and scheme of this Declaration).

#### 12.03 Conveyance of Common Area(s).

Before any Lot in the annexed property is conveyed, title to the annexed Common Area(s) must be conveyed to the Association, free and clear of any and all encumbrances and liens (except current real property taxes and reservations, easements, covenants, conditions and restrictions of record).

12.04 **Declarant Under No Obligation to Continue Development; Effect of Annexation.**

- (a) Declarant is not obligated to develop or annex additional real property.
- (b) The Annexation Document must provide that Lot Owners in the annexed property will become Association members, and the Association will manage, administer and maintain the annexed Common Area(s) as provided for in this Declaration.
- (c) On becoming an Association member, each annexed Lot Owner will be assessed a pro rata share of the Association's aggregate Common Expenses for all subsequent Association developments.

12.05 **Deannexation.**

Declarant may deannex any portion of the annexed property from coverage of this Declaration and the jurisdiction of the Association, provided that:

- (a) Declarant owns the annexed property;
- (b) A Document of Deannexation of Territory is recorded in the same manner as the Annexation Document;
- (c) Declarant has not exercised any Association vote regarding any portion of the annexed property;
- (d) Assessments have not commenced for any portion of the annexed property;
- (e) A First Sale has not occurred for any Lot in the annexed property; and
- (f) The Association has not made expenditures or incurred obligations regarding any portion of the annexed property.

12.06 **Association's Merger or Consolidation.**

- (a) The Association may merge or consolidate with another homeowners' association (as permitted by law) upon approval by sixty-seven percent (67%) of the voting power of the Owners (other than Declarant).
- (b) Association properties, rights and obligations may be:
  - (1) Transferred to another homeowner's association; or
  - (2) Added to a surviving corporation through a merger.
- (c) To the extent reasonably possible, the resultant association will administer the provisions of this Declaration and the restrictions of any other property as a uniform plan.



ARTICLE XIII

SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF DECLARANT'S  
OBLIGATION TO COMPLETE COMMON AREA IMPROVEMENTS

13.01 Enforcement of Declarant's Obligation to Complete Common Area Improvements.

- (a) The Board must consider and vote on Association action to enforce bond obligations regarding any Common Area Improvement if the following factors apply:
  - (1) The Association is the obligee under a bond or other arrangement securing completion; and
  - (2) A Notice of Completion has not been filed within sixty (60) days of the completion date specified in the planned construction statement appended to the bond.
- (b) The Association may grant a written extension for a Common Area completion.
- (c) If a Notice of Completion has not been filed within thirty (30) days after the extension expires, the Board will meet and vote on enforcement options.
- (d) Owners may submit a petition signed by at least five percent (5%) of Association voting power calling for a Special Meeting to be held between thirty-five (35) and forty-five (45) days after the Board receives the petition.
- (e) At the Special Meeting, a majority vote of Owners (other than Declarant) overrides the Board's decision and causes the Board to enforce bond obligations through appropriate action in the name of the Association.

## ARTICLE XIV

### DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE (DECLARANT DISPUTES); WAIVERS

#### 14.01 Enforcement and Nonwaiver.

- (a) Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Rules and Regulations, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- (b) Procedure for Enforcement. Notwithstanding anything to the contrary set forth in subparagraph (a) above, in enforcing any action under the Governing Documents for monetary damages, the parties shall comply with the provisions of California Civil Code Section 1363.810 and 1369.520, and any successor statutes or laws. The Board shall annually provide to the Owners a summary of the provisions of California Civil Code Section 1369.590 and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365.

#### 14.02 Notice of Actions Against Declarant.

To the extent applicable, the Association shall comply with the provisions of California Civil Code Section 1368.4, Civil Code Sections 910 through 938, and any successor statutes or laws.

#### 14.03 Alternative Dispute Resolution.

The purpose of this section is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between i) Owner or the Association, and ii) Declarant concerning the Property that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as "*Dispute*" and collectively as "*Disputes*").

- (a) Mediation – Construction Defect Disputes Subject to Mediation. Except for construction defect claims which are to be resolved through the non-adversarial statutory provisions set forth in Sections 910 through 938 of the California Civil Code, any Disputes arising out of or relating to the Property may not be commenced until the matter has been submitted to Judicial Arbitration and Mediation Services ("JAMS"), or its successor, for mediation.

(b) Arbitration.

- (1) Agreement to Arbitrate. If a dispute is not resolved through mediation or the statutory non-adversarial procedure, Owner/Association and Declarant shall agree to resolve any and all Disputes exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought. Alternatively, Owner/Association or Declarant may elect to resolve such Disputes through a small claims court proceeding, in which case the party filing the small claims action will have waived the right to any relief in excess of the jurisdiction of the small claims court.
- (2) Waiver of Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, Owner/ Association and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury.
- (3) Rules Applicable to All Cases. The arbitration will be conducted by JAMS in accordance with the JAMS rules ("**JAMS Rules**") then applicable to the claims presented, as supplemented by this Declaration. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.
- (4) Qualifications of Arbitrators. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least fifteen (15) years experience as a practicing lawyer.
- (5) Appointment of Arbitrator. The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.
- (6) Expenses. All fees charged by JAMS and the arbitrator shall be advanced by Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may direct Owner/Association, as applicable, to reimburse Declarant for up to fifty percent (50%) of the JAMS fee and arbitrator's fee advanced by Declarant within sixty (60) days after the final arbitration award.
- (7) Preliminary Procedures. If state or federal law requires Declarant or Owner/Association to take steps or procedures before commencing an action in court, then Declarant or Owner/Association must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 et. seq., as hereafter amended shall be subject to the non- adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceedings against Declarant. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.
- (8) Participation by Other Parties. Declarant or Owner/Association, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.
- (9) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but may receive hearsay evidence. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.
- (10) Attorneys' Fees and Costs. Each party shall bear its own attorneys' fees and costs (including expert witness costs) in the arbitration.

- (c) Procedure for Appeal of Certain Cases. In any arbitration in which a claim of Declarant or Owner/Association exceeds \$250,000 in value, each party shall have a limited right to appeal the arbitration award as set forth below.

- (1) Right of Appeal. There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner that it can be converted to an accurate and reliable written transcript.
- (2) Appellate Arbitration. An appeal shall be decided by one (1) neutral appeal arbitrator appointed by JAMS under the rules that govern appointment of arbitrators. The appeal arbitrator must be a retired judge.
- (3) Issues on Appeal. The only issues that may be considered on appeal are: (i) the award of money was excessive; (ii) the award of money was insufficient; (iii) the arbitrator awarded non-monetary relief that was inappropriate; (iv) a party who received non-monetary relief should have received other or additional relief. The appeal arbitrator may affirm the arbitration award or make any alternative award he or she finds to be just, but must not reject the arbitrator's decisions a) that a particular party is entitled to relief of some nature or amount or b) that a particular party is responsible to provide relief of some nature or amount.
- (4) Notice of Appeal. To appeal an arbitration award, a party must serve written notice of the appeal on JAMS and all parties to the arbitration within thirty (30) days after mailing of the arbitrator's award to the parties. The written notice of appeal must include a general description of the grounds for appeal and the relief requested. A party who has received a timely notice of appeal may thereafter file and serve its own notice of appeal within sixty (60) days after mailing of the arbitration award to the parties.
- (5) Expenses and Costs on Appeal. The appealing party must advance all fees for the appeal and provide JAMS with a written transcript of the oral testimony, copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the JAMS fees and the cost of preparing and copying the transcript and all other evidence received by the arbitrator. The appeal arbitrator may award costs of the nature provided in the Federal Rules of Appellate Procedure provided that the maximum, which may be awarded to Declarant as the prevailing party, is fifty percent (50%) of the total costs of the arbitration appeal.
- (6) Appellate Briefs. The appeal arbitrator may receive written briefs from the parties and hear oral argument, but must not receive new evidence. The appeal arbitrator must make his or her decision based only on the evidence that was presented to the arbitrator, except the appeal arbitrator may visit any site involved in the Dispute.
- (7) Decision on Appeal. The decision of the appeal arbitrators shall be the final award in the case and shall be treated as the arbitration award for all purposes.
- (8) Federal Arbitration Act. Declarant and Owner/Association acknowledge that because many of the materials and products incorporated into the home are manufactured in other states, the conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

(d) Agreement to Arbitration and Waiver of Jury Trial.

- (1) Arbitration of Disputes. By executing this Declaration, and by accepting a deed as defined herein, Declarant and Owner/Association agree to have any dispute decided by neutral arbitration in accordance with the Federal Arbitration Act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act, and Declarant and Owner/Association are giving up any rights Declarant and Owner/Association might possess to have the dispute litigated in a court or jury trial. Declarant and Owner/Association are giving up their respective judicial rights to discovery and appeal, unless those rights are specifically included in this section. If Declarant or Owner/ Association refuse(s) to submit to arbitration after agreeing to this provision, such party may be compelled to arbitrate under the Federal Arbitration act and the California Arbitration Act, to the extent the California Arbitration Act is consistent with the Federal Arbitration Act.
  - (2) Waiver of Jury Trial. In the event the foregoing arbitration provision is held not to apply or is held invalid, void or unenforceable in its entirety for any reason, all Disputes shall be tried before a judge in a court of competent jurisdiction without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. Declarant, by executing this Declaration and Owner/Association by accepting a deed to any portion of the Property, hereby waive and covenant not to assert their constitutional right to trial by jury of any Disputes, including, but not limited to, Disputes relating to construction defects, misrepresentation or Declarant's failure to disclose material facts. This mutual waiver of jury trial shall be binding upon the respective successors and assigns of such parties and upon all persons and entities asserting rights or claims or otherwise acting on behalf of Declarant and Owner/Association or their respective successors and assigns.
- (e) Final and Binding Award. The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the County in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.
- (f) Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this section is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Declaration shall be conducted under the remaining enforceable terms of this section.

## ARTICLE XV

### GENERAL PROVISIONS

#### 15.01 Duration.

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Lots record a signed, written instrument:
  - (1) At least one (1) year before the beginning of any ten (10) year period; and
  - (2) Agreeing to change or terminate this Declaration.
- (c) Notwithstanding any other provision of this Section 15.01, any change to this Declaration or the termination of this Declaration shall not become effective until the City of Palm Springs has approved such change or termination. The City may impose appropriate conditions on its approval reasonably necessary to ensure that the Conditions of Approval will continue to be applicable to and enforceable on the Development, the Lots, and the Owners.

#### 15.02 Amendment.

- (a) Before the First Sale, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration (subject to the Article entitled "Mortgagee Protection") by recording an instrument of amendment in the relevant County Recorder's Office.
- (b) After the First Sale, this Declaration may only be amended in the following ways (and subject to the Article entitled "Mortgagee Protection"):
  - (1) If there is only one Membership Class, approval by at least sixty-seven percent (67%) of Members other than Declarant, and by at least sixty-seven percent (67%) of the total voting power, including Declarant; and an instrument signed by two (2) Association officers certifying that the amendment was approved by at least sixty-seven percent (67%) of Members other than Declarant, and also approved by at least sixty-seven percent (67%) of the total voting power, including Declarant.
  - (2) If Class B Membership exists, approval by at least sixty-seven percent (67%) of the Members of each Class, and an instrument signed by two (2) Association officers certifying that the amendment was approved by sixty-seven percent (67%) of the Members of each Class.
  - (3) Notwithstanding any other provision in this Declaration to the contrary, any amendment to the provisions of Articles III, VII, VIII, XV, or XVI shall not become effective until such amendment has been approved in writing by the City of Palm Springs.
- (c) Any amendment must be properly recorded in the County Recorder's Office.
- (d) The percentage of Owners needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 1356, or any successor statutes).

- (f) While the Declarant holds or directly controls at least twenty-five percent (25%) of the votes, any proposed amendment to any Governing Documents must comply with Business and Professions Code Section 11018.7.
- (g) No amendments to any provisions in this Declaration including but not limited to, the Article entitled "Dispute Notification and Resolution Procedure (Declarant Disputes); Waivers", Article IV, Section 5.07(j), Article VII, and Section 8.04, or other Governing Documents which specifically benefit Declarant as Developer, shall be made without the written consent of the Declarant.

15.03 **Notices.**

Any required notice must be given by:

- (a) Personal delivery to the location of the address of the recipient of the Notice; or
- (b) Mailing by first-class, registered or certified pre-paid U.S. mail (deemed given five (5) days after deposit in the mail);
- (c) Delivery by a reputable overnight courier service such as Federal Express, United Parcel Service, etc. (deemed given upon delivery to the location of the address of the recipient of the Notice); or
- (d) Facsimile transmission (deemed given upon date of transmission upon confirmation of receipt).

15.04 **Partial Invalidity.**

If any of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.

15.05 **Number.**

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

15.06 **Attorneys' Fees.**

In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs, and damages, to reasonable attorneys' fees.

ARTICLE XVI

RIGHTS OF THE CITY OF PALM SPRINGS

In addition to all other rights granted to the City pursuant to the provisions of this Declaration, the City shall have the following additional rights:

16.01 Compliance With Law.

Declarant, the Association, and each Owner shall comply with all ordinances, regulations and standards of the City applicable to the Property. Declarant, the Association, and each Owner shall comply with all rules and regulations of any assessment district of the City that the Property is subject to. In addition, Declarant, the Association, and each Owner shall comply with the following special conditions:

- (a) Each Owner and the Association shall be responsible for the maintenance of all improvements that may exist on said Owner's Unit or the Common Area from time to time, including, without limitation, buildings, sidewalks, parking lots, lighting, signs, planters, irrigation and drainage facilities, walls and facades, at all times in first class condition or repair, and in good working order, and shall keep the Property neat, clean and sanitary, free from any accumulation of debris or waste materials. Each Owner and the Association, as the case may be, shall promptly make all necessary replacements, repairs and alterations. All sidewalks and parking areas shall be promptly swept and cleaned. All asphalt and concrete paved areas shall be repaired, replaced, and re-stripped, as necessary, to maintain said pavement at all times in a level and smooth condition.
- (b) All landscaping, including vegetation, irrigation systems and earth mounding, shall be installed as provided in the landscape plan and shall be permanently maintained in good, first class condition, healthy, without deterioration, and free of waste and debris. Dead or diseased plants shall be promptly replaced with landscaping similar in type, size and quality. The automatic irrigation systems shall be properly maintained and other reasonable and adequate landscape maintenance facilities shall be provided to fill the foregoing requirements.
- (c) The Property shall be maintained in such manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to public health, safety or general welfare, or such condition or deterioration or disrepair causes appreciable harm or has been truly detrimental to Property or improvements without one thousand (1,000) feet of such portion of the Property. The Property shall be kept and maintained to be in conformity with the landscaping maintenance standards of the City.

16.02 Parking and Driveways.

The driveways and traffic aisles on the Property shall be kept clear and unobstructed at all times. No vehicles or other construction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Property, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Property shall park solely on the Property and shall not park on streets or adjacent Property.



16.03 **Enforcement By the City.**

The Public Parcel consists of fee ownership and easement interests in streets, sidewalks, open space, parks and other areas located around and adjacent to the Property. Each Owner acknowledges by acceptance of the Deed or other conveyance therefor, whether or not it shall be expressed in any such Deed or other instrument, that each of the covenants, conditions and restrictions set forth in this Article benefit the Public Parcel and the City, and that the City has a substantial interest to be protected with regard to assuring compliance with, and enforcement or, these covenants, conditions and restrictions and any amendments thereto. All such covenants, conditions and restrictions shall be enforceable by the City by proceedings at law or in equity or my any method available to the Association as provided elsewhere in this Declaration.

In furtherance thereof, the City shall have the same rights and remedies to enforce a breach of a provision of this Declaration that is enforceable by the City that the Association has to enforce a breach of this Declaration, including the right to enter upon all or any portion of the Property to remedy said breach at the expense of the violating party and to charge an assessment against an Owner or the Association for a breach of a provision of this Declaration that is enforceable by the City, upon providing the Owner or the Association with such notices and hearing opportunities as the Association is obligated to provide an Owner for such a breach as more particularly set forth elsewhere in this Declaration. In the event said breach has been committed by an Owner, the City may enforce the foregoing rights against either the Association or the breaching Owner. If the City exercises its enforcement rights against the Association for a breach by an Owner, the City shall extend the time in which the Association must cure the breach by the Owner for so long as the Association is diligently attempting to cause the breaching Owner to cure the breach. If the Association has the right to assess the breaching Owner for such a breach and if said breach by the Owner has not been cured by the Association or the breaching Owner within the times provided herein, the City may elect either to assess the Association or the breaching Owner for the breach. If the City elects to assess the Association for breach committed by an Owner, the Association shall have the right to pass the assessment on to the breaching Owner. Upon the failure of the Owner or the Association to pay such assessment to the City, the City shall have the same rights against said Owner or the Association that the Association would have against an Owner for failure to pay such an assessment, as more particularly set forth elsewhere in this Declaration, including any lien rights. Any lien against the Association shall be a lien against the entire Common Areas.

16.04 **Other Rights of the City.**

In the event of any violation or threatened violation of any of the provisions of this Declaration, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions hereof, the City shall have the right to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licences and similar matters or approvals pertaining to the Property or any part thereof or interests therein as to the violating person or one threatening violation.

16.05 **No City Liability.**

The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Declaration. The failure of the City to enforce this Declaration shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to the Declarant, the Association, or any Owner, for any default or breach by the City under this Declaration.

16.06 **Amendments.**

Any amendment to any provision of this Article or to any other provisions of this Declaration enforceable by the City shall require the prior written consent of the City.

16.07 **Covenants Running With the Land.**

Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the restrictions, covenants, conditions and equitable servitude set forth in this Article, all of which are for the purpose of uniformly enhancing or protecting the value, attractiveness and desirability of the Property. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall run with the Property and shall be binding upon all persons having any right, title, or interest in the Property, or any part thereof, their heirs, successive Owners and assignees; shall inure to the benefit of every portion of the Public Parcel and any interest therein; and shall inure to the benefit of and be binding upon Declarant, the City and their successors and assigns and successors-in-interest; and may be enforced by the City.

16.08 **Agreement Between Declarant and the City.**

Declarant, in exchange for the granting of the City's Approval of this Declaration, hereby agrees to hold, sell and convey the Property subject to the covenants, conditions, restrictions and reservations contained in this Article. Declarant also grants to the City the right and power to enforce the covenants, conditions, restrictions and reservations contained in this Article against the Declarant and all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive Owners and assigns and successors-in-interest.

16.09 **Notices.**

Any notices to be provided to the City as provided in this Declaration, shall be provided to the following addresses:

To City:           City of Palm Springs  
                      3200 Tahquitz Canyon  
                      Palm Springs, CA 92263  
                      Attn: City Manager

With Copy To: Woodruff, Spradlin & Smart  
                      701 So. Parker Street, Suite 8000  
                      Orange, CA 92868-4760  
                      Attn: Douglas C. Holland, Esq.

16.10 **Miscellaneous.**

- (a) Notwithstanding anything in this Declaration to the contrary, the City's Director of Planning shall have the right to approve all construction, repair, modification, or alteration of any buildings, equipment, structures, or improvements in the Property.
- (b) The Association shall be required, on January 1<sup>st</sup> of each year, to file with the City's Director of Planning the names, addresses, and telephone numbers of the Association's Property management company and responsible Property manager and each member of the Association's Board of Directors.

- (c) Pursuant to Grant of Easement from Whitewater Mutual Water Company to Declarant dated August 31, 2005 and recorded on November 07, 2005 as Instrument No. 2005-0922754, Official Records of Riverside County ("Easement") the Association shall maintain all landscaping over the easement area described in said Grant of Easement and shown on Exhibit "F" attached hereto, and shall accept a grant to the Association of Declarant's rights and obligations as grantee under the Easement upon Declarant's completion of all improvements required under Easement, including, but not limited to, the installation of all landscaping and related irrigation improvements.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Tract No. 31940 on the day and year first written above.

"Declarant"

PALM SPRINGS MODERN HOMES IV, LLC,  
a California Limited Liability Company

By: 5 KDS CORP.  
a California Corporation  
its Managing Member

X  
By: DENNIS A. CUNNINGHAM  
its: President

STATE OF CALIFORNIA )  
COUNTY OF Riverside ) ss.

On 8/26/05, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared:

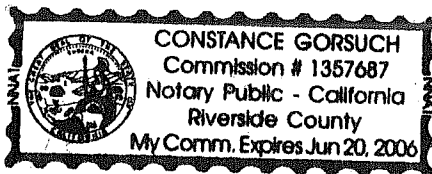
Dennis A. Cunningham

[  Personally known to me - OR - [ ] Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Constance Gorsuch  
Notary Public

(SEAL)



**SUBORDINATION BY LIENHOLDER**

**PACIFIC WESTERN NATIONAL BANK**, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Easements for Tract No. **31940** ("Declaration") to which this instrument is attached, hereby subordinates the lien of said Deed of Trust to the recording of this Declaration, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by any Mortgagee shall not constitute said Lienholder's subordination to any future Assessment liens.

Deed of Trust recorded on **July 19, 2005** as Instrument No. **2005-575814** of the Official Records of the **Riverside County** Recorder.

**PACIFIC WESTERN NATIONAL BANK**

X *[Signature]*  
By: \_\_\_\_\_  
its: **SENIOR VICE PRESIDENT**

X \_\_\_\_\_  
By: \_\_\_\_\_  
its: \_\_\_\_\_

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ ) ss.

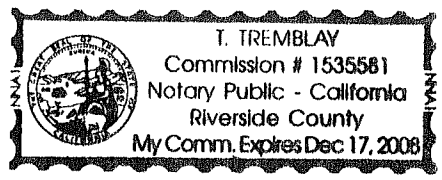
On August 29, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared:

David Dangwillo  
 Personally known to me - OR -  Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

*[Signature]*  
Notary Public



**EXHIBIT "A"**

**PROPERTY**

Lots 18 through 36, inclusive, and Lots F, G, J, K, and L, of Tract No. 31940, in the City of Palm Springs, as per Map filed in Book 392, Pages 28 through 32, inclusive, of Maps, in the Office of the County Recorder of Riverside County.

**EXHIBIT "B"**

**COMMON AREA LOTS  
(PHASE I)**

Lots F, G, J, K, and L of Tract No. 31940, in the City of Palm Springs,  
as per Map filed in Book 392, Pages 28 through 32, inclusive, of Maps,  
in the Office of the County Recorder of Riverside County.

**EXHIBIT "C"**

**ADDITIONAL PROPERTY**

Lots 1 through 17, inclusive, Lots 37 through 43, inclusive, and Lots B, C, D, E, H, I, N, M, O, and P, of Tract No. 31940, in the City of Palm Springs, as per Map filed in Book 392, Pages 28 through 32, inclusive, of Maps, in the Office of the County Recorder of Riverside County.



EXHIBIT "D"

ADDITIONAL PROPERTY NOT PRESENTLY OWNED BY DECLARANT

ALL THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF THE SOUTH LINE OF SAID NORTHEAST QUARTER WHICH BEARS NORTH 89° 38' WEST 1281.92 FEET FROM THE QUARTER CORNER ON EAST LINE OF SAID SECTION; THENCE NORTH 00° 22' EAST, 224.05 FEET TO A POINT; THENCE NORTH 89° 38' WEST, 100 FEET; THENCE SOUTH 00° 22' WEST, 224.05 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 89° 38' EAST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 100 FEET TO THE POINT OF THE BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS OR OTHER HYDROCARBON SUBSTANCES AS RESERVED IN DEED RECORDED APRIL 4, 1936 IN BOOK 273 PAGE 213 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; AND

THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID NORTHEAST QUARTER WHICH BEARS NORTH 89° 38' WEST, 1,181.92 FEET FROM THE QUARTER CORNER ON THE EAST LINE OF SAID SECTION; THENCE NORTH 0° 22' EAST 224.06 FEET; THENCE NORTH 89° 38' WEST 100 FEET; THENCE SOUTH 0° 22' WEST 224.05 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 89° 38' EAST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 100 FEET, TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM ANY DEPOSITS OF OIL, GAS OR OTHER HYDROCARBON SUBSTANCES AND WATER UNDERLYING THE HEREIN DESCRIBED PROPERTY, WITHOUT THE RIGHT OF ENTRY AS RESERVED IN DEED FROM SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, RECORDED APRIL 4, 1936 IN BOOK 273, PAGE 213 OF OFFICIAL RECORDS, RIVERSIDE COUNTY RECORDS.

SAID PROPERTY IS ALSO SHOWN ON LICENSED LAND SURVEYOR'S MAP ON FILE IN BOOK 10, PAGE 72 OF RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS; AND

ALL THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID NORTHEAST QUARTER WHICH BEARS NORTH 89° 38' WEST, 981.92 FEET FROM THE QUARTER CORNER ON EAST LINE OF SAID SECTION; THENCE NORTH 00° 22' EAST, 224.05 FEET TO A POINT; THENCE NORTH 89° 38' WEST, 100 FEET; THENCE SOUTH 00° 22' WEST 224.05 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 100 FEET TO THE POINT OF BEGINNING.

SAID PROPERTY IS ALSO SHOWN ON LICENCED LAND SURVEYOR'S MAP ON FILE IN BOOK 10, PAGE 72, OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; AND

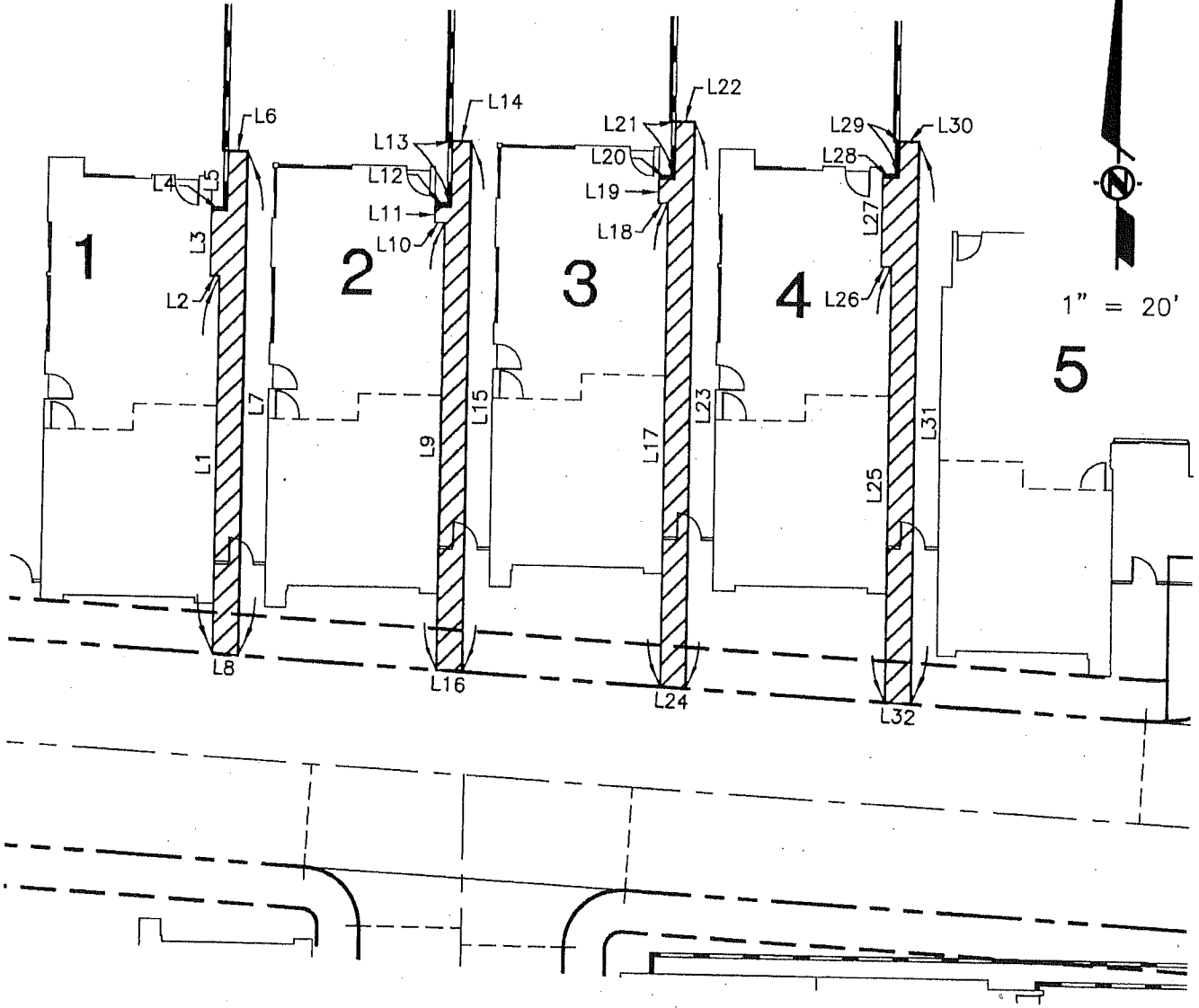
ALL THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID NORTHEAST QUARTER WHICH BEARS NORTH 89° 38' WEST, 1081.92 FEET FROM THE QUARTER CORNER ON THE EAST LINE OF SAID SECTION; THENCE NORTH 0° 22' EAST, 224.05 FEET TO A POINT; THENCE NORTH 89° 38' WEST, 10 FEET; THENCE SOUTH 0° 22' WEST, 224.05 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 89° 38' EAST ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 100 FEET TO THE POINT OF BEGINNING;

SAID PROPERTY IS ALSO SHOWN ON LICENSED LAND SURVEYORS MAP ON FILE IN BOOK 10 PAGES 72 OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

# EXHIBIT "E"

## ACCESS AND LANDSCAPE EASEMENTS



| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | N 00°00'00" E | 45.28' |
| L2        | N 90°00'00" E | 1.17'  |
| L3        | N 00°00'00" E | 7.93'  |
| L4        | N 90°00'00" E | 1.96'  |
| L5        | N 00°00'00" E | 7.20'  |
| L6        | N 90°00'00" W | 2.33'  |
| L7        | N 00°00'00" E | 60.56' |
| L8        | N 87°00'00" W | 3.13'  |
| L9        | N 00°00'00" E | 53.77' |
| L10       | N 90°00'00" E | 1.17'  |
| L11       | N 00°00'00" E | 1.92'  |
| L12       | N 90°00'00" E | 1.97'  |
| L13       | N 00°00'00" E | 7.92'  |
| L14       | N 90°00'00" E | 2.32'  |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L15       | N 00°00'00" E | 63.77' |
| L16       | N 87°00'00" W | 3.13'  |
| L17       | N 00°00'00" E | 58.20' |
| L18       | N 90°00'00" E | 1.17'  |
| L19       | N 00°00'00" E | 2.92'  |
| L20       | N 90°00'00" E | 1.96'  |
| L21       | N 00°00'00" E | 6.92'  |
| L22       | N 90°00'00" W | 2.33'  |
| L23       | N 00°00'00" E | 68.19' |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L24       | N 87°00'00" W | 3.13'  |
| L25       | N 00°00'00" E | 52.43' |
| L26       | N 90°00'00" E | 1.17'  |
| L27       | N 00°00'00" E | 10.77' |
| L28       | N 90°00'00" E | 1.96'  |
| L29       | N 00°00'00" E | 4.35'  |
| L30       | N 90°00'00" E | 2.33'  |
| L31       | N 00°00'00" E | 67.72' |
| L32       | N 87°00'00" W | 3.13'  |



**MSA CONSULTING, INC.**

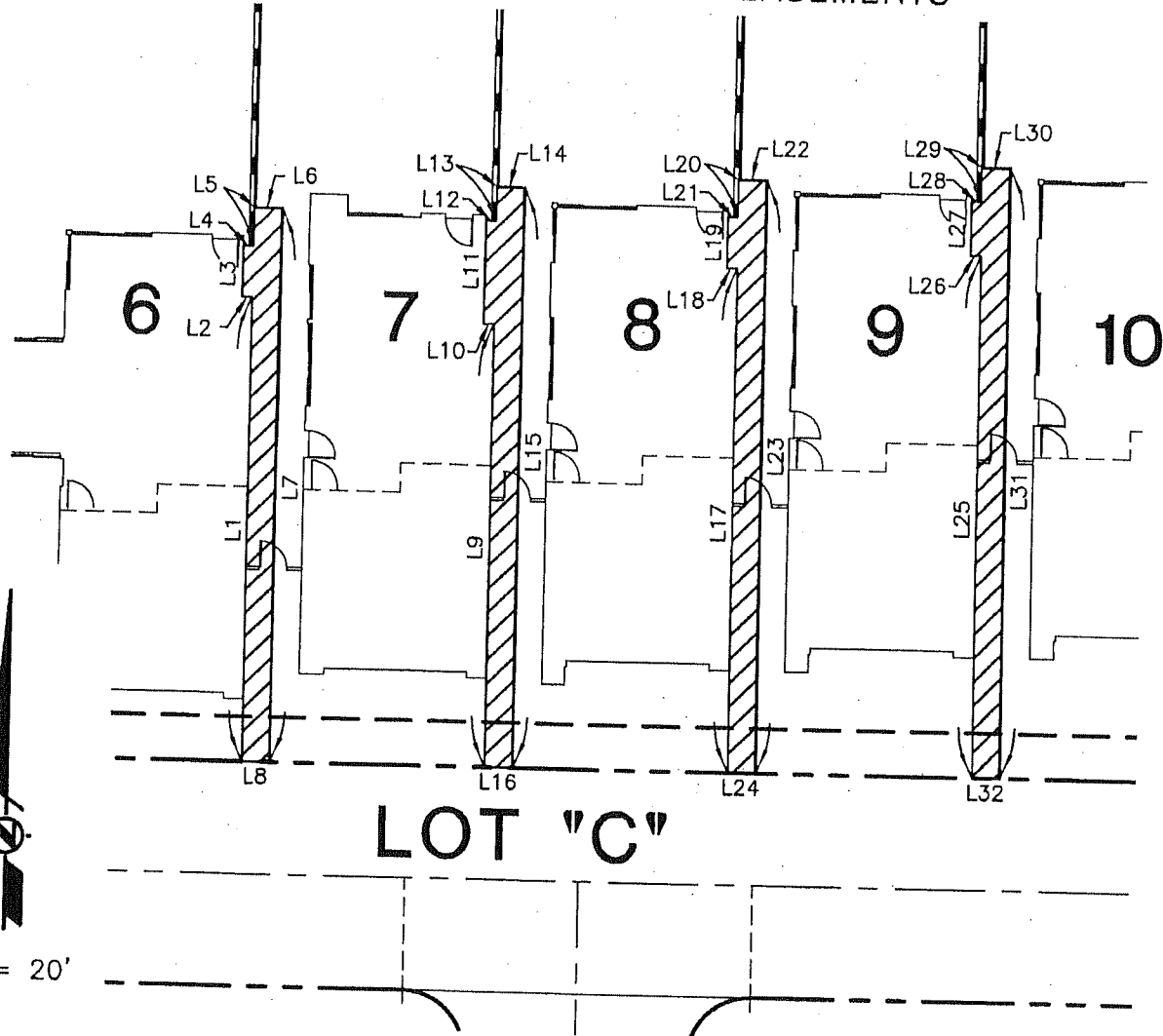
**MAINIERO, SMITH & ASSOCIATES, INC.**  
 PLANNING ■ CIVIL ENGINEERING ■ LAND SURVEYING  
 34200 BOB HOPE DRIVE ■ RANCHO MIRAGE ■ CA 92270  
 TELEPHONE (760) 320-9811 ■ FAX (760) 323-7893

J.N. 1676

SHEET 1 OF 11

# EXHIBIT "E"

## ACCESS AND LANDSCAPE EASEMENTS



1" = 20'

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | N 00°00'00" E | 51.43' |
| L2        | N 90°00'00" E | 1.17'  |
| L3        | N 00°00'00" E | 5.57'  |
| L4        | N 90°00'00" E | 1.14'  |
| L5        | N 00°00'00" E | 4.30'  |
| L6        | N 90°00'00" W | 3.15'  |
| L7        | N 00°00'00" E | 61.31' |
| L8        | N 90°00'00" E | 3.12'  |
| L9        | N 00°00'00" E | 49.14' |
| L10       | N 90°00'00" E | 1.17'  |
| L11       | N 00°00'00" E | 11.41' |
| L12       | N 90°00'00" E | 1.16'  |
| L13       | N 00°00'00" E | 3.72'  |
| L14       | N 90°00'00" W | 3.13'  |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L15       | N 00°00'00" E | 64.26' |
| L16       | N 90°00'00" E | 3.12'  |
| L17       | N 00°00'00" W | 55.96' |
| L18       | N 90°00'00" E | 1.17'  |
| L19       | N 00°00'00" E | 5.69'  |
| L20       | N 90°00'00" E | 1.10'  |
| L21       | N 00°00'00" E | 4.14'  |
| L22       | N 90°00'00" E | 3.19'  |
| L23       | N 00°00'00" E | 65.79' |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L24       | N 90°00'00" W | 3.12'  |
| L25       | N 00°00'00" E | 57.96' |
| L26       | N 90°00'00" E | 1.17'  |
| L27       | N 00°00'00" E | 6.03'  |
| L28       | N 90°00'00" E | 1.04'  |
| L29       | N 00°00'00" E | 3.81'  |
| L30       | N 90°00'00" E | 3.26'  |
| L31       | N 00°00'00" E | 67.79' |
| L32       | N 90°00'00" W | 3.12'  |



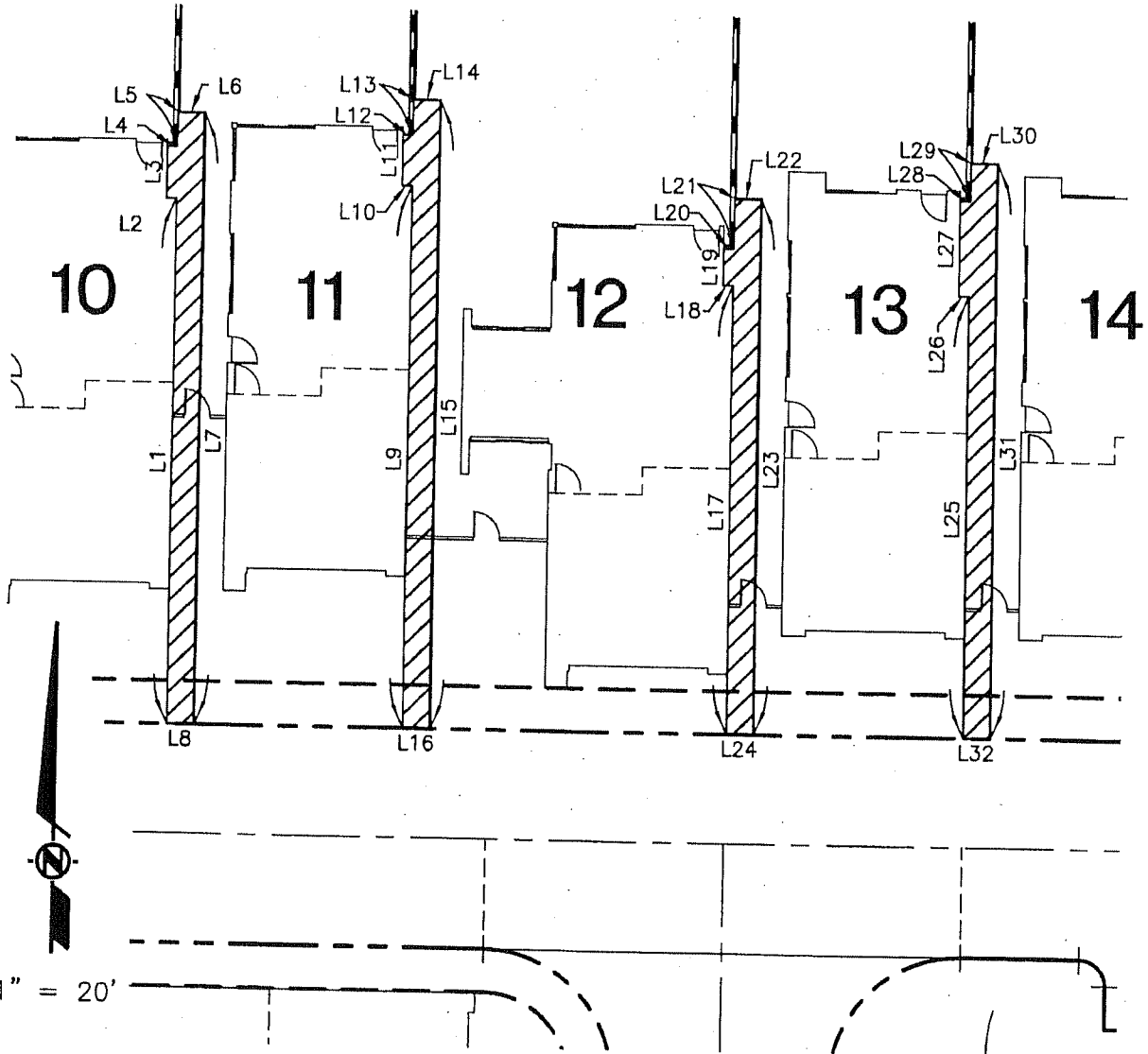
**MSA CONSULTING, INC.**

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 TELEPHONE (760) 320-9811 ■ FAX (760) 323-7893

J.N. 1676

# EXHIBIT "E"

## ACCESS AND LANDSCAPE EASEMENTS



| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | N 00°00'00" E | 59.96' |
| L2        | N 90°00'00" E | 1.17'  |
| L3        | N 00°00'00" E | 5.93'  |
| L4        | N 90°00'00" E | 1.16'  |
| L5        | N 00°00'00" E | 3.91'  |
| L6        | N 90°00'00" W | 3.13'  |
| L7        | N 00°00'00" W | 69.79' |
| L8        | N 90°00'00" E | 3.12'  |
| L9        | N 00°00'00" E | 61.96' |
| L10       | N 90°00'00" E | 1.17'  |
| L11       | N 00°00'00" E | 5.75'  |
| L12       | N 90°00'00" E | 1.11'  |
| L13       | N 00°00'00" E | 4.08'  |
| L14       | N 90°00'00" E | 3.18'  |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L15       | N 00°00'00" E | 71.79' |
| L16       | N 90°00'00" W | 3.12'  |
| L17       | N 00°00'00" E | 51.43' |
| L18       | N 90°00'00" E | 1.17'  |
| L19       | N 00°00'00" E | 4.17'  |
| L20       | N 90°00'00" E | 1.19'  |
| L21       | N 00°00'00" E | 5.70'  |
| L22       | N 90°00'00" W | 3.10'  |
| L23       | N 00°00'00" E | 61.31' |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L24       | N 90°00'00" E | 3.12'  |
| L25       | N 00°00'00" E | 50.71' |
| L26       | N 90°00'00" E | 1.17'  |
| L27       | N 00°00'00" E | 10.76' |
| L28       | N 90°00'00" E | 1.16'  |
| L29       | N 00°00'00" E | 4.36'  |
| L30       | N 90°00'00" E | 3.13'  |
| L31       | N 00°00'00" E | 65.84' |
| L32       | N 90°00'00" E | 3.12'  |

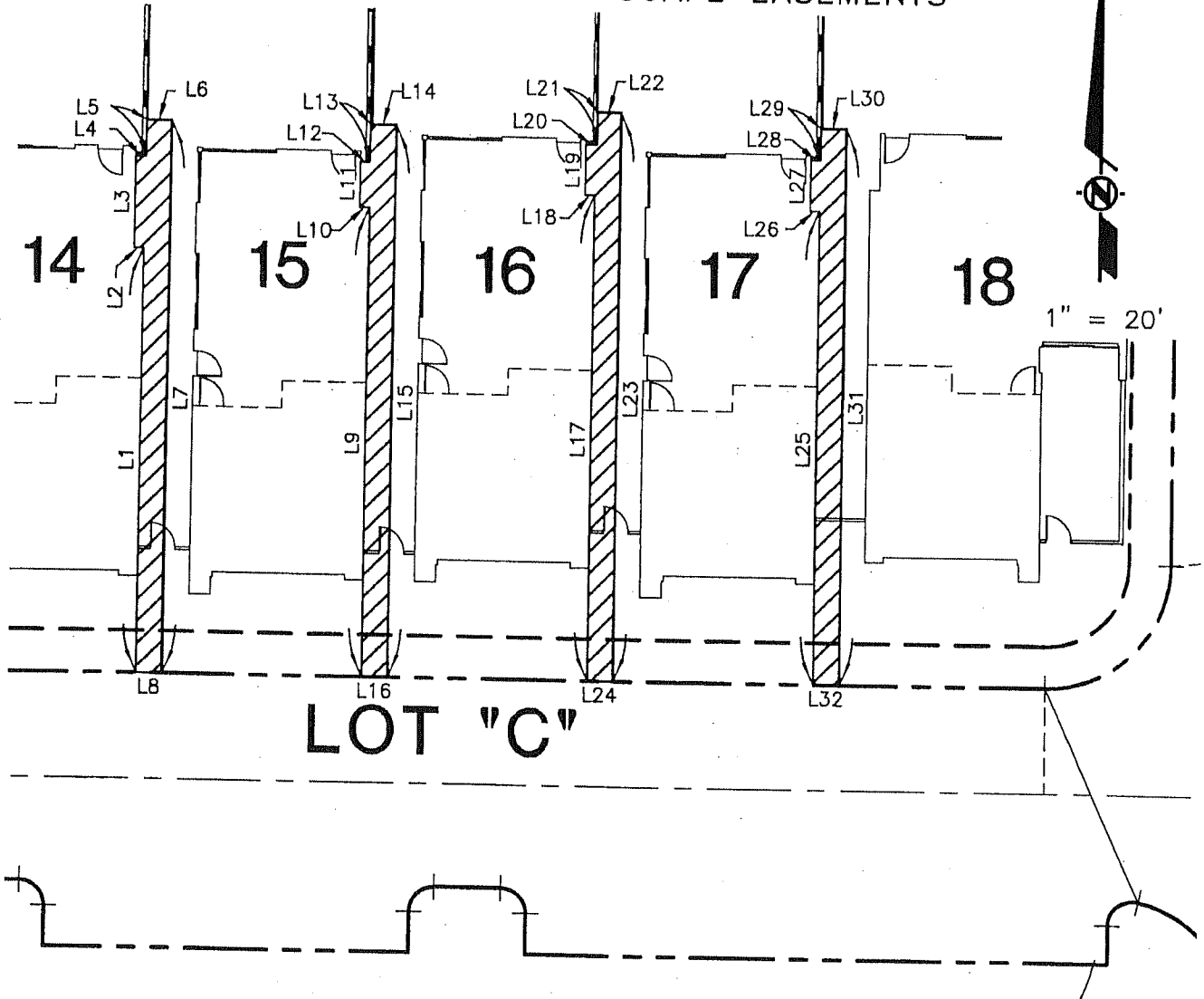


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J.N. 1676

# EXHIBIT "E"

## ACCESS AND LANDSCAPE EASEMENTS



| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | N 00°00'00" E | 50.66' |
| L2        | N 90°00'00" E | 1.17'  |
| L3        | N 00°00'00" E | 10.81' |
| L4        | N 90°00'00" E | 1.23'  |
| L5        | N 00°00'00" E | 4.31'  |
| L6        | N 90°00'00" E | 3.06'  |
| L7        | N 00°00'00" W | 65.79' |
| L8        | N 90°00'00" E | 3.12'  |
| L9        | N 00°00'00" E | 55.96' |
| L10       | N 90°00'00" E | 1.17'  |
| L11       | N 00°00'00" E | 5.38'  |
| L12       | N 90°00'00" E | 1.11'  |
| L13       | N 00°00'00" E | 4.45'  |
| L14       | N 90°00'00" W | 3.18'  |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L15       | N 00°00'00" W | 65.79' |
| L16       | N 90°00'00" E | 3.12'  |
| L17       | N 00°00'00" E | 57.96' |
| L18       | N 90°00'00" E | 1.17'  |
| L19       | N 00°00'00" E | 5.98'  |
| L20       | N 90°00'00" E | 1.38'  |
| L21       | N 00°00'00" E | 3.85'  |
| L22       | N 90°00'00" E | 2.92'  |
| L23       | N 00°00'00" W | 67.79' |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L24       | N 90°00'00" E | 3.12'  |
| L25       | N 00°00'00" E | 56.53' |
| L26       | N 90°00'00" E | 1.17'  |
| L27       | N 00°00'00" E | 6.08'  |
| L28       | N 90°00'00" E | 1.17'  |
| L29       | N 00°00'00" E | 3.76'  |
| L30       | N 90°00'00" W | 3.12'  |
| L31       | N 00°00'00" W | 66.36' |
| L32       | N 90°00'00" E | 3.12'  |



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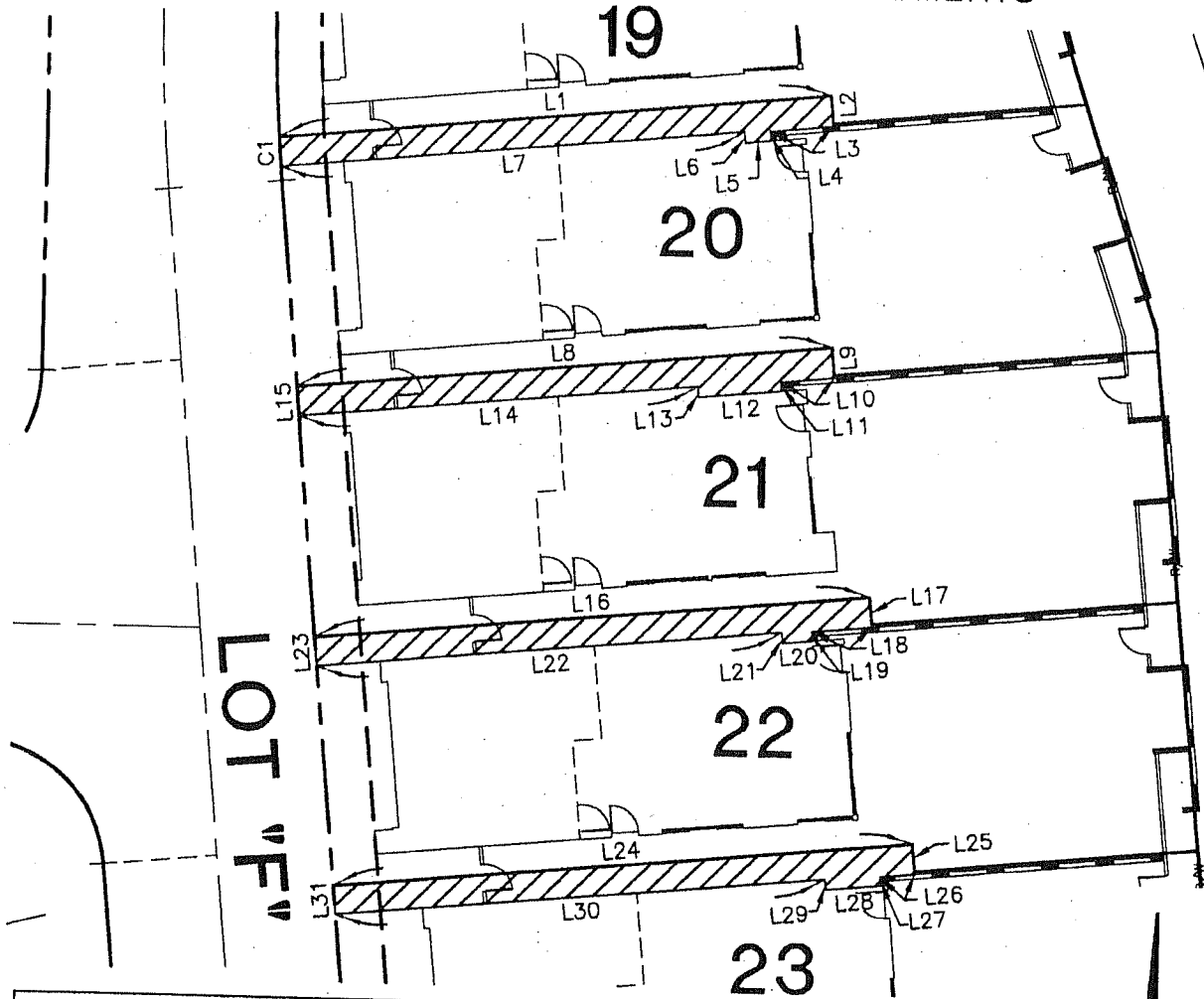
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J.N. 1676

SHEET 4 OF 11

# EXHIBIT 'E'

## ACCESS AND LANDSCAPE EASEMENTS



| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | N 84°29'08" E | 61.24' |
| L2        | N 05°30'52" W | 3.30'  |
| L3        | N 84°29'06" E | 6.97'  |
| L4        | N 05°30'37" W | 0.99'  |
| L5        | N 84°29'08" E | 2.86'  |
| L6        | N 05°30'52" W | 1.17'  |
| L7        | N 84°29'08" E | 51.46' |
| L8        | N 84°29'08" E | 59.29' |
| L9        | N 05°30'52" W | 3.30'  |
| L10       | N 84°29'07" E | 5.88'  |
| L11       | N 05°30'40" W | 0.99'  |
| L12       | N 84°29'08" E | 9.25'  |
| L13       | N 05°30'52" W | 1.17'  |
| L14       | N 84°29'08" E | 44.17' |
| L15       | N 05°30'52" W | 3.12'  |
| L16       | N 84°29'08" E | 61.30' |
| L17       | N 05°30'52" W | 3.30'  |
| L18       | N 84°29'07" E | 6.56'  |
| L19       | N 05°30'43" W | 0.99'  |
| L20       | N 84°29'08" E | 3.28'  |
| L21       | N 05°30'52" W | 1.17'  |
| L22       | N 84°29'08" E | 51.46' |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L23       | N 05°30'52" W | 3.12'  |
| L24       | N 84°29'08" E | 63.92' |
| L25       | N 05°30'52" W | 3.30'  |
| L26       | N 84°29'07" E | 3.84'  |
| L27       | N 05°30'44" W | 0.99'  |
| L28       | N 84°29'08" E | 5.99'  |
| L29       | N 05°30'52" W | 1.17'  |
| L30       | N 84°29'08" E | 54.08' |
| L31       | N 05°30'52" W | 3.12'  |

| CURVE DATA |           |         |        |         |
|------------|-----------|---------|--------|---------|
| NO.        | DELTA     | RADIUS  | LENGTH | TANGENT |
| C1         | 00°53'51" | 199.50' | 3.13'  | 1.56'   |

1" = 20'



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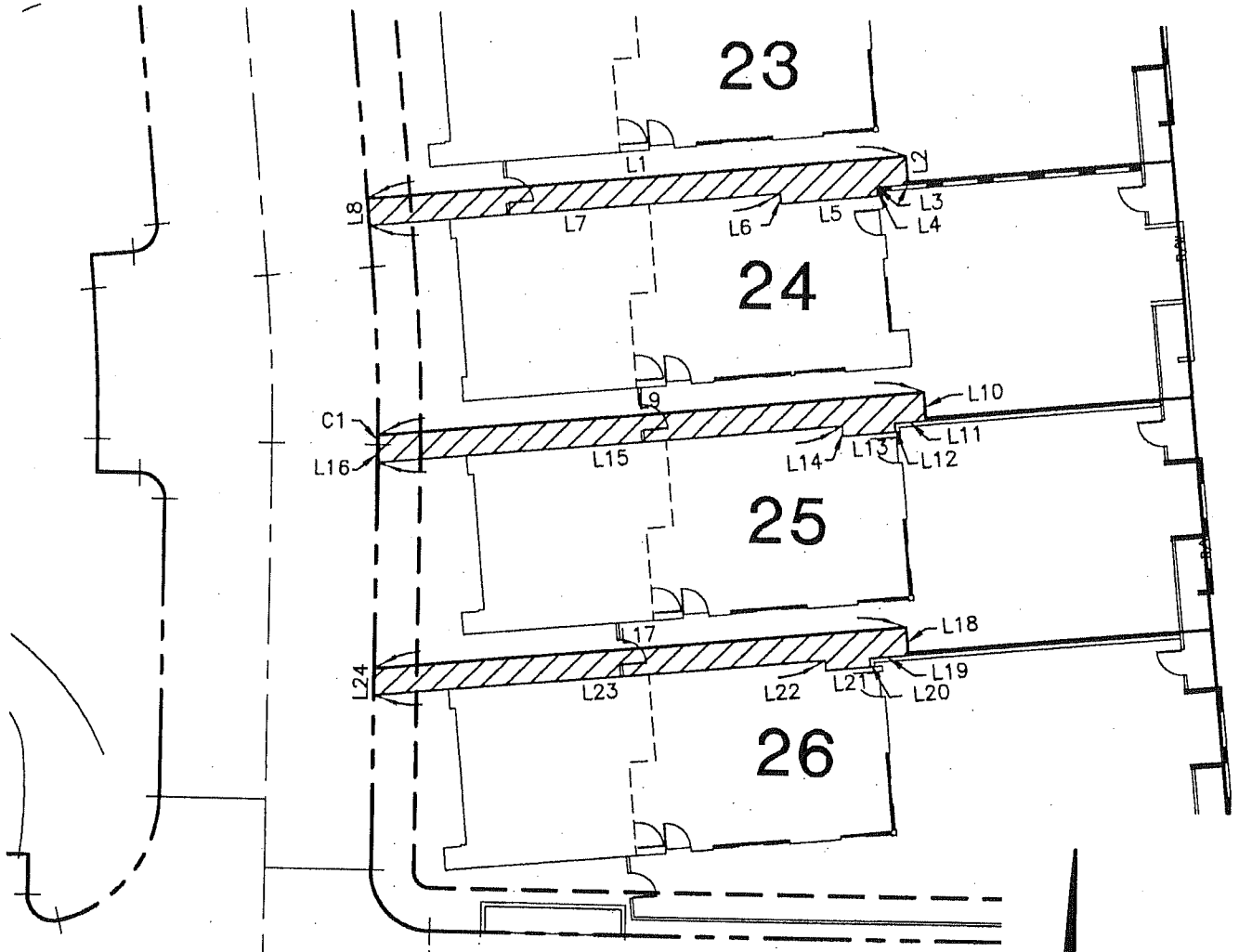
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SHEET 5 OF 11

# EXHIBIT "E"

## ACCESS AND LANDSCAPE EASEMENTS



| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | N 84°29'08" E | 63.73' |
| L2        | N 05°30'52" W | 3.31'  |
| L3        | N 84°29'07" E | 3.64'  |
| L4        | N 05°31'07" W | 0.99'  |
| L5        | N 84°29'08" E | 11.48' |
| L6        | N 05°30'52" W | 1.17'  |
| L7        | N 84°29'08" E | 48.60' |
| L8        | N 05°30'52" W | 3.12'  |
| L9        | N 84°29'08" E | 64.46' |
| L10       | N 05°30'52" W | 3.30'  |
| L11       | N 84°29'06" E | 3.63'  |
| L12       | N 05°30'37" W | 0.99'  |
| L13       | N 84°29'08" E | 6.21'  |
| L14       | N 05°30'52" W | 1.17'  |
| L15       | N 84°29'08" E | 54.92' |
| L16       | N 00°00'00" E | 2.04'  |
| L17       | N 84°29'08" E | 62.80' |
| L18       | N 05°30'52" W | 3.30'  |
| L19       | N 84°29'07" E | 4.55'  |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L20       | N 05°30'43" W | 0.99'  |
| L21       | N 84°29'08" E | 5.29'  |
| L22       | N 05°30'52" W | 1.17'  |
| L23       | N 84°29'08" E | 53.27' |
| L24       | N 00°00'00" E | 3.14'  |



1" = 20'

| CURVE DATA |           |         |        |         |
|------------|-----------|---------|--------|---------|
| NO.        | DELTA     | RADIUS  | LENGTH | TANGENT |
| C1         | 00°17'48" | 212.50' | 1.10'  | 0.55'   |



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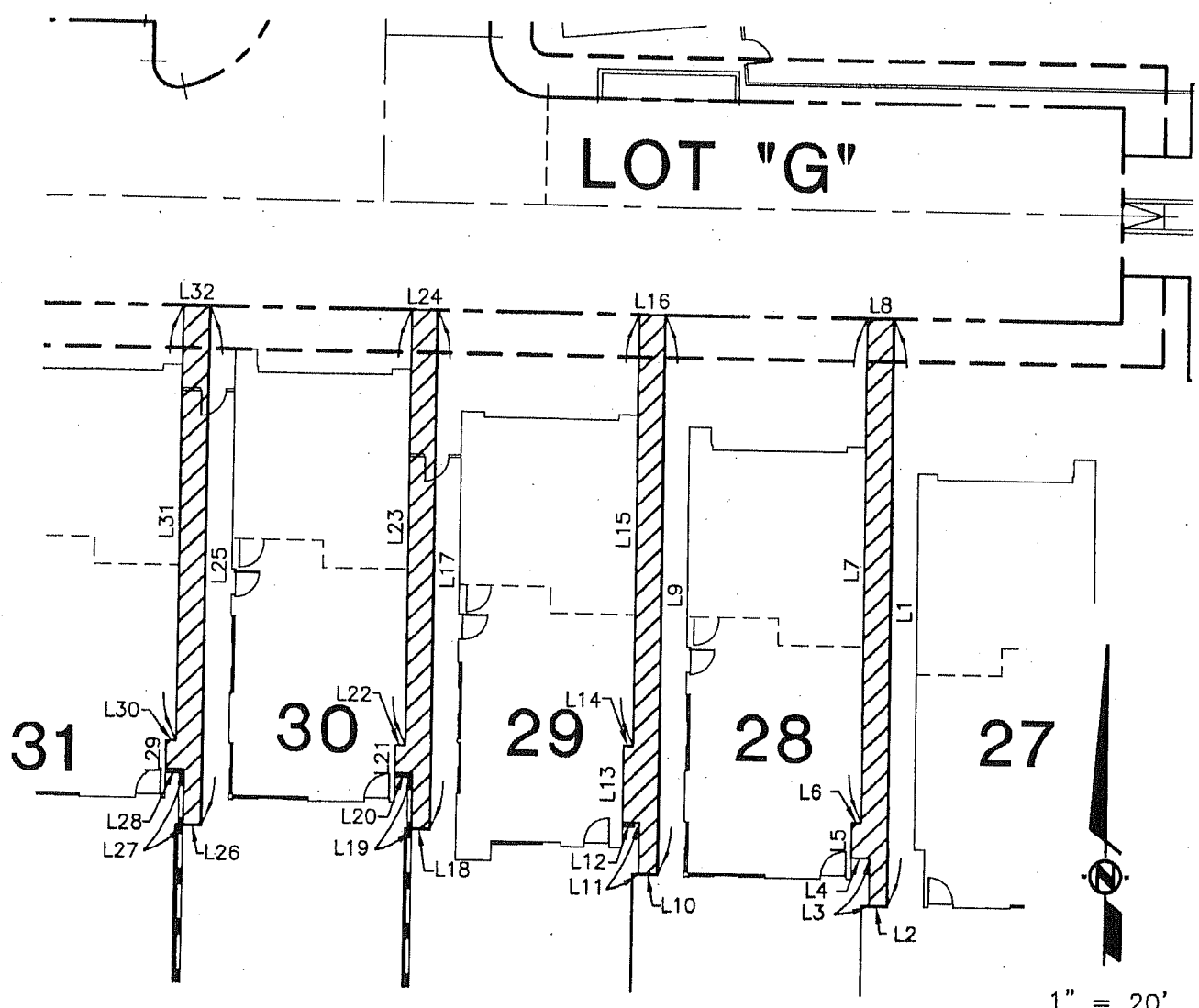
J.N. 1676

SHEET 6 OF 11



# EXHIBIT "E"

## ACCESS AND LANDSCAPE EASEMENTS



| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | N 00°00'00" W | 69.45' |
| L2        | N 90°00'00" E | 2.13'  |
| L3        | N 00°00'00" E | 5.68'  |
| L4        | N 90°00'00" E | 2.16'  |
| L5        | N 00°00'00" E | 4.15'  |
| L6        | N 90°00'00" E | 1.17'  |
| L7        | N 00°00'00" E | 59.62' |
| L8        | N 90°00'00" E | 3.12'  |
| L9        | N 00°00'00" W | 66.14' |
| L10       | N 90°00'00" E | 2.28'  |
| L11       | N 00°00'00" E | 6.08'  |
| L12       | N 90°00'00" E | 2.01'  |
| L13       | N 00°00'00" E | 9.04'  |
| L14       | N 90°00'00" E | 1.17'  |
| L15       | N 00°00'00" E | 51.02' |
| L16       | N 90°00'00" W | 3.12'  |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L17       | N 00°00'00" W | 61.30' |
| L18       | N 90°00'00" W | 2.22'  |
| L19       | N 00°00'00" E | 6.55'  |
| L20       | N 90°00'00" E | 2.08'  |
| L21       | N 00°00'00" E | 3.29'  |
| L22       | N 90°00'00" E | 1.17'  |
| L23       | N 00°00'00" E | 51.46' |
| L24       | N 90°00'00" W | 3.12'  |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L25       | N 00°00'00" W | 61.31' |
| L26       | N 90°00'00" E | 2.17'  |
| L27       | N 00°00'00" E | 6.56'  |
| L28       | N 90°00'00" E | 2.13'  |
| L29       | N 00°00'00" E | 3.32'  |
| L30       | N 90°00'00" E | 1.17'  |
| L31       | N 00°00'00" E | 51.43' |
| L32       | N 90°00'00" W | 3.12'  |

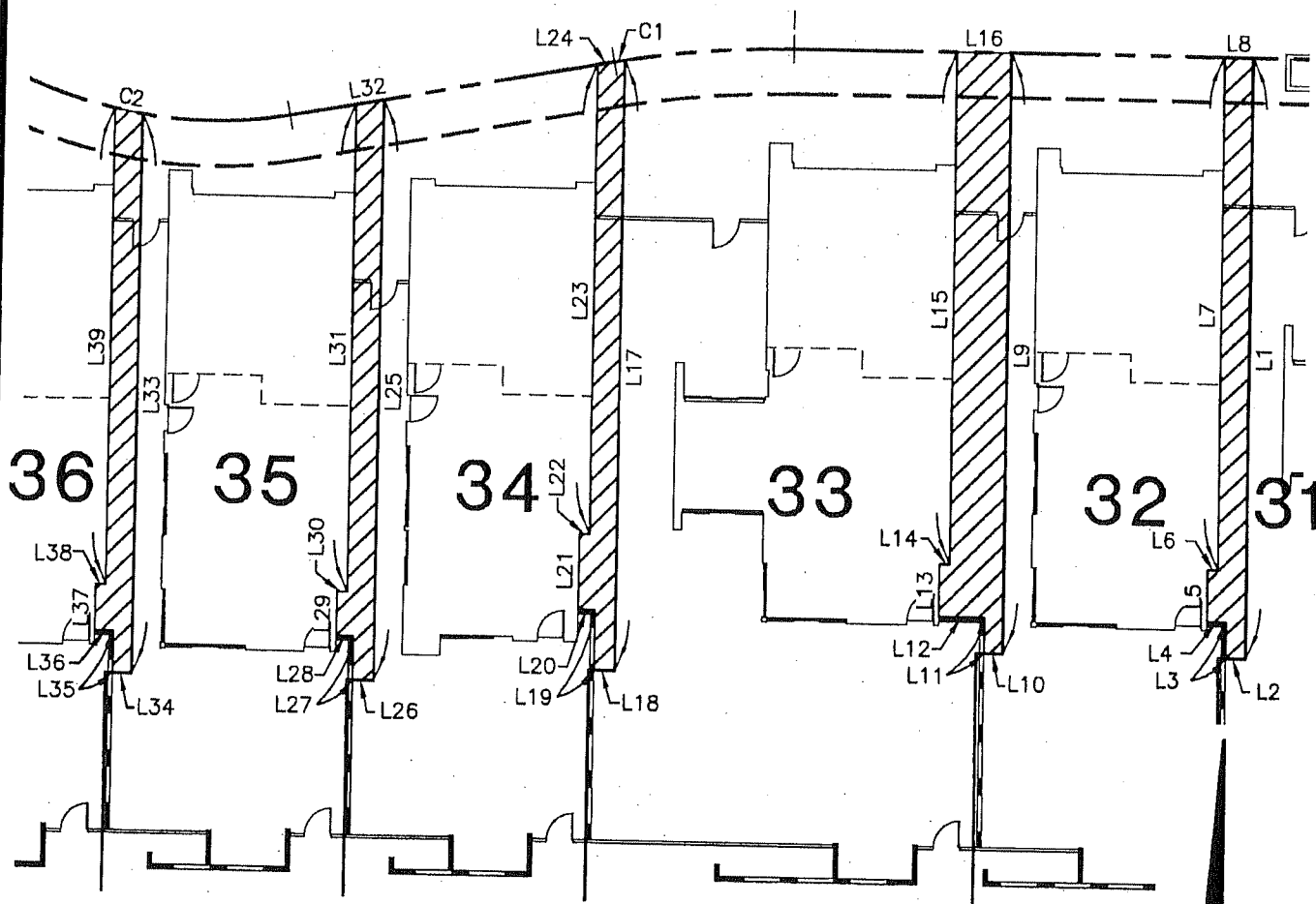


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J.N. 1676

# EXHIBIT 'E'

## ACCESS AND LANDSCAPE EASEMENTS



### LINE DATA

| NO. | BEARING       | LENGTH |
|-----|---------------|--------|
| L1  | N 00°00'00" W | 66.80' |
| L2  | N 90°00'00" W | 2.18'  |
| L3  | N 00°00'00" E | 4.06'  |
| L4  | N 90°00'00" E | 2.11'  |
| L5  | N 00°00'00" E | 5.78'  |
| L6  | N 90°00'00" E | 1.17'  |
| L7  | N 00°00'00" E | 56.97' |
| L8  | N 90°00'00" E | 3.12'  |
| L9  | N 00°00'00" W | 66.80' |
| L10 | N 90°00'00" E | 2.10'  |
| L11 | N 00°00'00" E | 4.03'  |
| L12 | N 90°00'00" E | 5.19'  |
| L13 | N 00°00'00" E | 5.84'  |
| L14 | N 90°00'00" E | 1.17'  |
| L15 | N 00°00'00" E | 56.93' |
| L16 | N 90°00'00" W | 6.12'  |
| L17 | N 00°00'00" E | 67.91' |
| L18 | N 90°00'00" E | 2.35'  |
| L19 | N 00°00'00" E | 6.77'  |
| L20 | N 90°00'00" E | 1.94'  |
| L21 | N 00°00'00" W | 8.35'  |
| L22 | N 90°00'00" E | 1.17'  |
| L23 | N 00°00'00" E | 52.21' |

### CURVE DATA

| NO. | DELTA     | RADIUS  | LENGTH | TANGENT |
|-----|-----------|---------|--------|---------|
| C1  | 00°37'26" | 113.00' | 1.23'  | 0.62'   |
| C2  | 03°38'38" | 50.00'  | 3.18'  | 1.59'   |

1" = 20'

### LINE DATA

| NO. | BEARING       | LENGTH |
|-----|---------------|--------|
| L24 | N 79°36'39" E | 1.95'  |
| L25 | N 00°00'00" E | 64.58' |
| L26 | N 90°00'00" E | 2.35'  |
| L27 | N 00°00'00" E | 4.92'  |
| L28 | N 90°00'00" E | 1.94'  |
| L29 | N 00°00'00" E | 4.91'  |
| L30 | N 90°00'00" E | 1.17'  |
| L31 | N 00°00'00" E | 54.17' |

### LINE DATA

| NO. | BEARING       | LENGTH |
|-----|---------------|--------|
| L32 | N 79°36'39" E | 3.18'  |
| L33 | N 00°00'00" W | 62.18' |
| L34 | N 90°00'00" E | 2.17'  |
| L35 | N 00°00'00" E | 4.70'  |
| L36 | N 90°00'00" E | 2.13'  |
| L37 | N 00°00'00" E | 5.17'  |
| L38 | N 90°00'00" E | 1.17'  |
| L39 | N 00°00'00" E | 52.89' |



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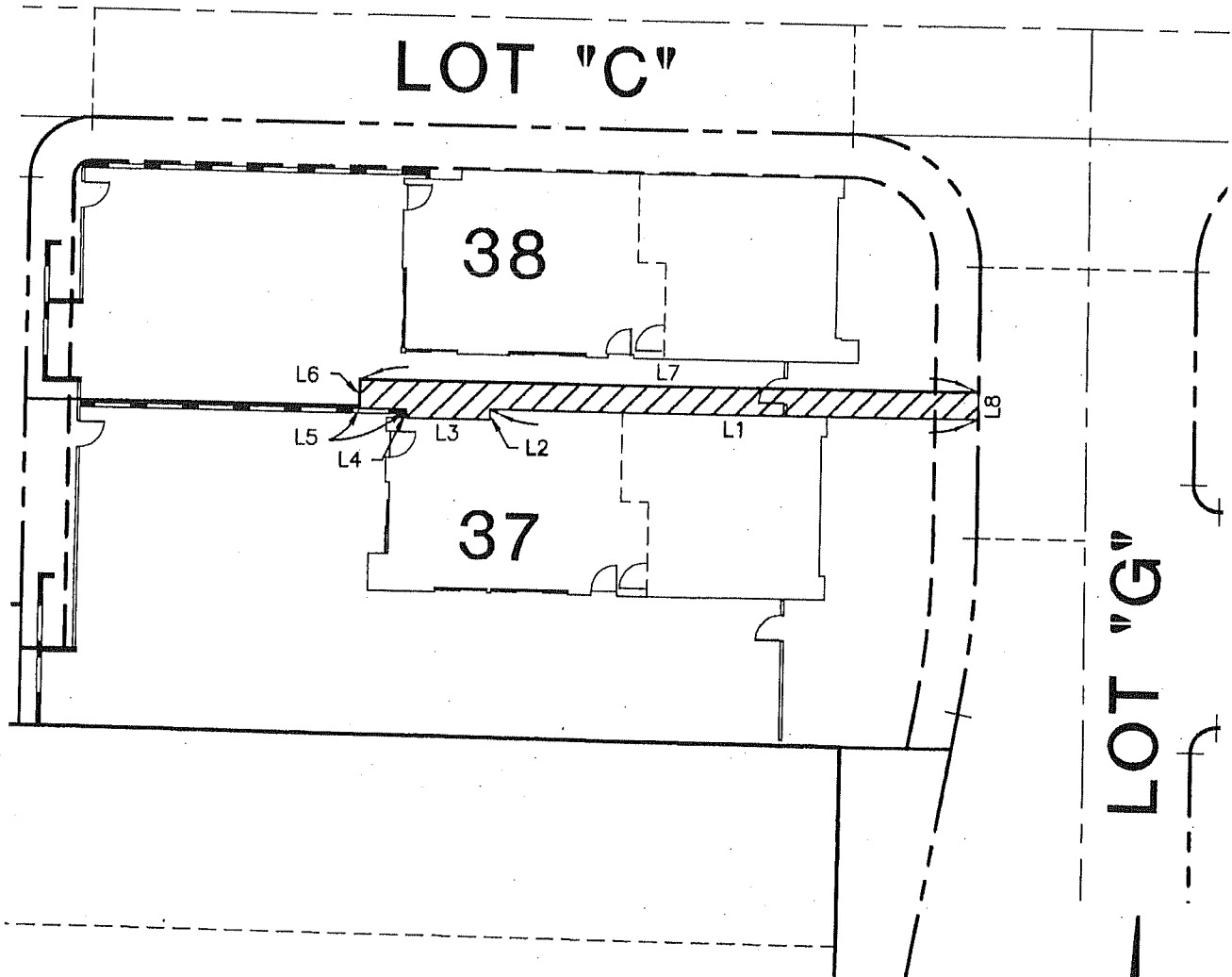
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SHEET 8 OF 11

# EXHIBIT "E"

## ACCESS AND LANDSCAPE EASEMENTS



### LINE DATA

| NO. | BEARING       | LENGTH |
|-----|---------------|--------|
| L1  | N 90°00'00" E | 56.60' |
| L2  | N 00°00'00" E | 1.17'  |
| L3  | N 90°00'00" E | 9.75'  |
| L4  | N 00°00'00" E | 0.96'  |
| L5  | N 90°00'00" E | 5.37'  |
| L6  | N 00°00'00" W | 3.33'  |
| L7  | N 90°00'00" E | 71.73' |
| L8  | N 00°00'00" E | 3.12'  |



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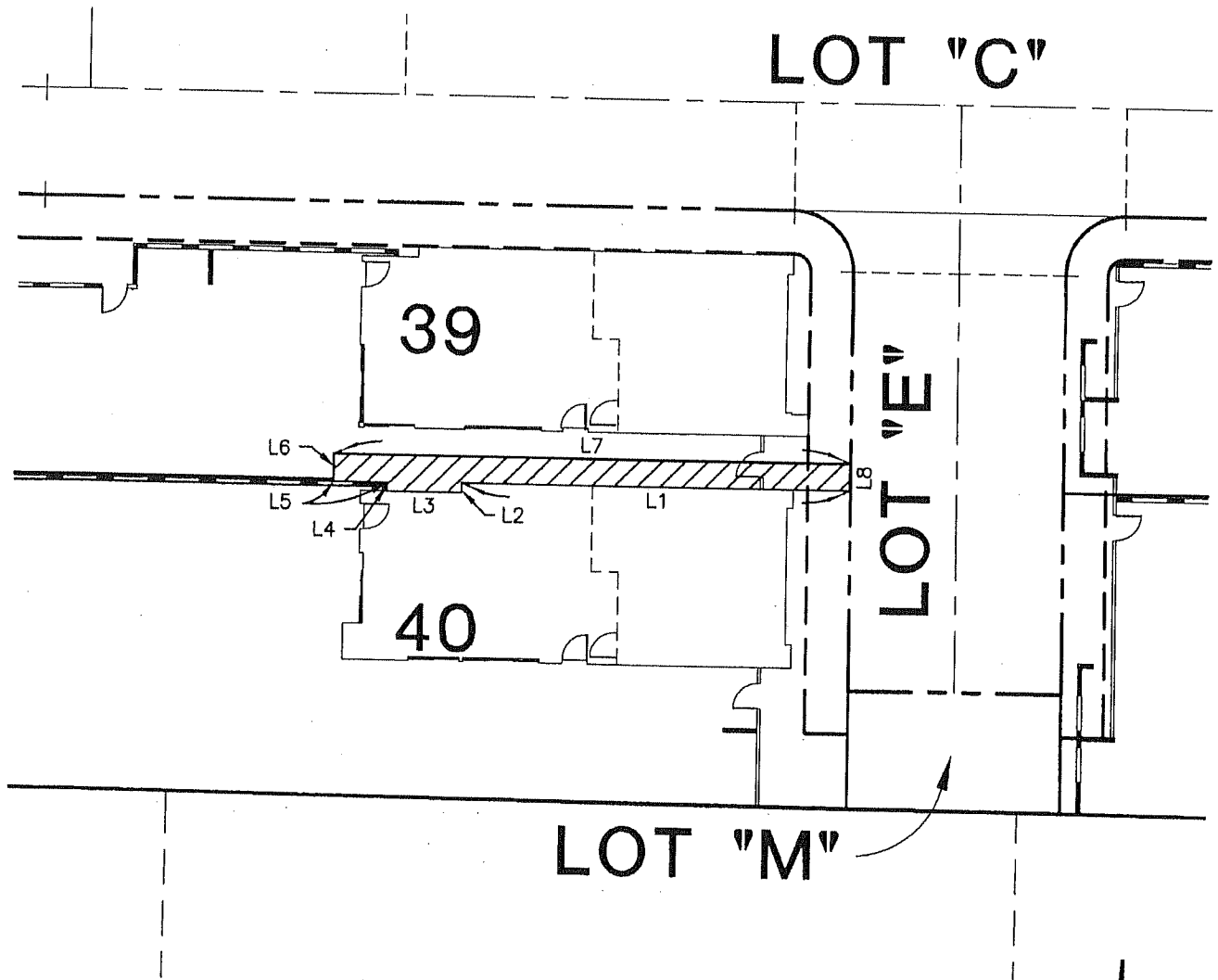
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SHEET 9 OF 11

# EXHIBIT "E"

## ACCESS AND LANDSCAPE EASEMENTS



LOT "M"

LOT "C"

LOT "E"

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | N 90°00'00" W | 45.87' |
| L2        | N 00°00'00" E | 1.17'  |
| L3        | N 90°00'00" E | 8.88'  |
| L4        | N 00°00'00" E | 1.02'  |
| L5        | N 90°00'00" E | 6.24'  |
| L6        | N 00°00'00" W | 3.27'  |
| L7        | N 90°00'00" W | 61.00' |
| L8        | N 00°00'00" E | 3.13'  |



1" = 20'



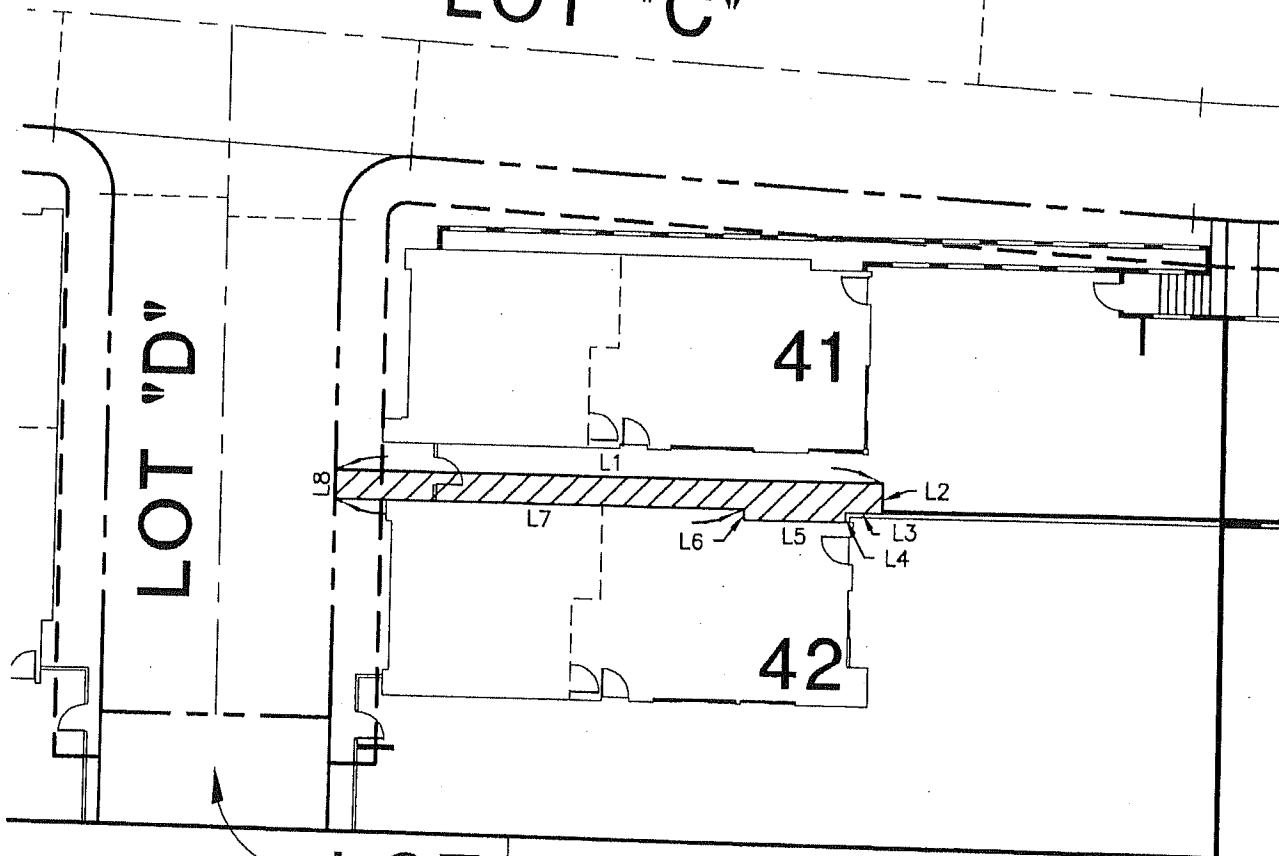
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# EXHIBIT "E"

## ACCESS AND LANDSCAPE EASEMENTS

### LOT "C"



### LOT "N"

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | N 90°00'00" W | 59.84' |
| L2        | N 00°00'00" W | 3.24'  |
| L3        | N 90°00'00" E | 4.05'  |
| L4        | N 00°00'00" E | 1.05'  |
| L5        | N 90°00'00" E | 11.08' |
| L6        | N 00°00'00" E | 1.17'  |
| L7        | N 90°00'00" E | 44.71' |
| L8        | N 00°00'00" E | 3.13'  |



1" = 20'



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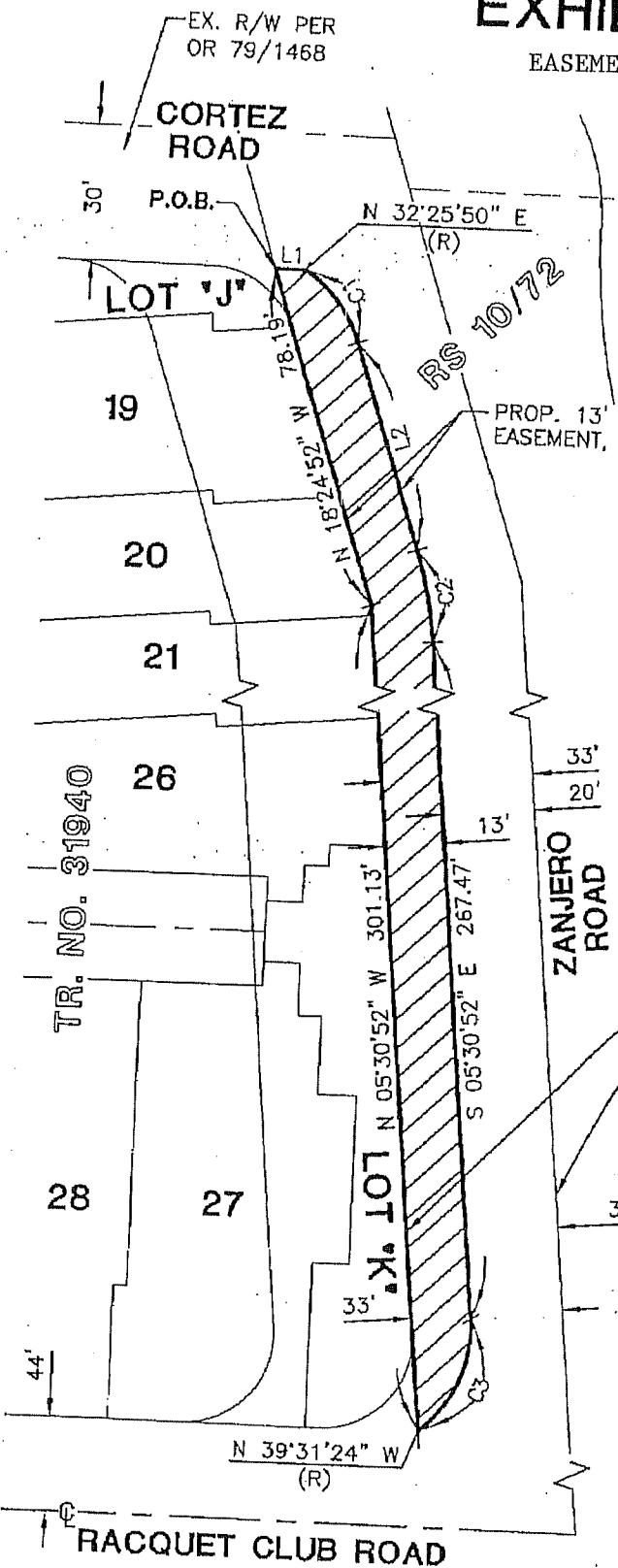
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SHEET 11 OF 11

# EXHIBIT "F"

EASEMENT AREA

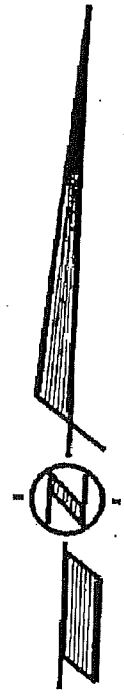


| CURVE DATA |           |        |        |         |
|------------|-----------|--------|--------|---------|
| NO.        | DELTA     | RADIUS | LENGTH | TANGENT |
| C1         | 39°09'18" | 29.50' | 20.16' | 10.49'  |
| C2         | 12°54'00" | 94.50' | 21.28' | 10.68'  |
| C3         | 55°59'28" | 29.50' | 28.83' | 15.68'  |

| LINE DATA |               |        |
|-----------|---------------|--------|
| NO.       | BEARING       | LENGTH |
| L1        | S 89°38'00" E | 6.73'  |
| L2        | S 18°24'52" E | 48.19' |

TR. NO. 4753  
MB 77/19-20

EX. 33' WHITEWATER  
MUTUAL WATER CO.  
R/W PER RS 10/72



1" = 40'



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SHEET 1 OF 1

Case # \_\_\_\_\_ Date \_\_\_\_\_ Initial \_\_\_\_\_

APPROVED BY CITY COUNCIL

Case # \_\_\_\_\_ Date 2.2.05 Initial PF

Ordinance # 21198 Ordinance # \_\_\_\_\_

APPROVAL SUBJECT TO ALL REQUIRED  
CONDITIONS BY ABOVE BODIES

EXHIBIT "G"  
CITY OF PALM SPRINGS  
CONDITIONS OF APPROVAL

Case No. 5.1020

PLANNED DEVELOPMENT 304 & TTM 31940

PALM SPRINGS MODERN HOMES IV, LLC

NORTHWEST CORNER OF RACQUET CLUB ROAD AND ZANJERO ROAD

JANUARY 19, 2005

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

PROJECT SPECIFIC CONDITIONS

**Administrative**

1. The proposed development of the premises shall conform to all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, or any other City Codes, ordinances and resolutions which supplement the zoning district regulations.
2. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Case 5.1020. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon a matter following an adverse judgement or failure to appeal, shall not cause a waiver of the indemnification rights herein.

3. That the property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and without limitation sidewalks, bikeways, parkways, parking areas, landscape, irrigation, lighting, signs, walls, and fences between the curb and property line, including sidewalk or bikeway easement areas that extend onto private property, in a first class condition, free from waste and debris, and in accordance with all applicable law, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction at the property owner's sole expense. This condition shall be included in the recorded covenant agreement for the property if required by the City.
4. This project shall be subject to Chapters 2.24 and 3.37 of the Municipal Code regarding public art. The project shall either provide public art or payment of an in lieu fee. In the case of the in-lieu fee, the fee shall be based upon the total building permit valuation as calculated pursuant to the valuation table in the Uniform Building Code, the fee being 1/2% for commercial projects or 1/4% for residential projects with first \$100,000 of total building permit valuation for individual single-family units exempt. Should the public art be located on the project site, said location shall be reviewed and approved by the Director of Planning and Zoning and the Public Arts Commission, and the property owner shall enter into a recorded agreement to maintain the art work and protect the public rights of access and viewing.
5. Pursuant to Park Fee Ordinance No. 1632 and in accordance with Government Code Section 66477 (Quimby Act), all residential development shall be required to contribute to mitigate park and recreation impacts such that, prior to issuance of residential building permits, a parkland fee or dedication shall be made. Accordingly, all residential development shall be subject to parkland dedication requirements and/or park improvement fees. The parkland mitigation amount shall be based upon the cost to acquire and fully improve parkland.
6. The Project will bring a significant number of additional residents to the community. The City's existing public safety and recreation services, including police protection, criminal justice, fire protection and suppression, ambulance, paramedic, and other safety services and recreation, library, cultural services are near capacity. Accordingly, the City may determine to form a Community Services District under the authority of Government C. Section 53311 et seq, or other appropriate statutory or municipal authority. Developer agrees to support the formation of such assessment district and shall waive any right to protest, provided that the amount of such assessment shall be established through appropriate study and shall not exceed \$500 annually with a consumer price index escalator. The district shall be formed prior to sale of any lots or a covenant agreement shall be recorded against each parcel, permitting incorporation of the parcel in the district.

#### CC & R's

7. The applicant prior to issuance of building permits shall submit a draft declaration of covenants, conditions and restrictions ("CC&R's") to the Director of Planning Services for approval in a form to be approved by the City Attorney, to be recorded prior to approval of a final map. The CC&R's shall be enforceable by the City, shall not be amended without City approval, shall require maintenance of all property in a good condition and in accordance with all ordinances.



8. The applicant shall submit to the City of Palm Springs, a deposit for the review of the CC&R's by the City Attorney. A \$250 filing fee shall also be paid to the City Planning Department for administrative review purposes.

### **Cultural Resources**

9. Prior to any ground disturbing activity, including clearing and grubbing, installation of utilities, and/or any construction related excavation, an Archaeologist qualified according to the Secretary of the Interior's Standards and Guidelines, shall be employed to survey the area for the presence of cultural resources identifiable on the ground surface.
10. A Native American Monitor shall be present during all ground-disturbing activities.
  - a) Experience has shown that there is always a possibility of buried cultural resources in a project area. Given that, a Native American Monitor(s) shall be present during all ground disturbing activities including clearing and grubbing, excavation, burial of utilities, planting of rooted plants, etc. Contact the Agua Caliente Band of Cahuilla Indian Cultural Office for additional information on the use and availability of Cultural Resource Monitors. Should buried cultural deposits be encountered, the Monitor shall contact the Director of Planning Services and after the consultation the Director shall have the authority to halt destructive construction and shall notify a Qualified Archaeologist to investigate and, if necessary, the Qualified Archaeologist shall prepare a treatment plan for submission to the State Historic Preservation Officer and Agua Caliente Cultural Resource Coordinator for approval.
  - b) Two copies of any cultural resource documentation generated in connection with this project, including reports of investigations, record search results and site records/updates shall be forwarded to the Tribal Planning, Building, and Engineering Department and one copy to the City Planning and Zoning Department prior to final inspection.

### **Final Design**

11. Final landscaping, irrigation, exterior lighting, and fencing plans shall be submitted for approval by the Department of Planning Services, Department of Public Works, and Department of Parks and Recreation, prior to issuance of a building permit. Landscape plans shall be approved by the Riverside County Agricultural Commissioner's Office prior to submittal. All landscaping located within the public right of way or within community facilities districts must be approved by the Public Works Director and the Director of Parks and Recreation.
12. The final development plans shall be submitted in accordance with Section 94.03.00 of the Zoning Ordinance. Final development plans shall include site plans, building elevations, floor plans, roof plans, grading plans, landscape plans, irrigation plans, exterior lighting plans, sign program, site cross sections, property development standards and other such documents as required by the Planning Commission. Final development plans shall be submitted within two (2) years of the City Council approval of the preliminary planned development district.

13. Maximum building heights shall be limited to 23'-2" measured from the building pad elevations, as specified in Tentative Tract Map 31940. If pad elevations are subsequently raised, maximum building height measurements will be taken from the approved Tentative Track Map.
14. An exterior lighting plan in accordance with Zoning Ordinance Section 93.21.00, Outdoor Lighting Standards, shall be submitted for review and approval by the Director of Planning Services prior to the issuance of building permits. Manufacturer's cut sheets of lighting on the building and in the landscaping shall be submitted for approval prior to issuance of a building permit. If lights are proposed to be mounted on buildings, downlights shall be utilized. No lighting of the hillside is permitted.
15. All roof mechanical equipment screening shall be painted to match the buildings they are located on.
16. Street trees and other trees and shrubs shall be densely planted along the Racquet Club Road frontage. They shall be included in the detailed landscape and sprinkler plan to be submitted to and approved by the Director of Planning Services or designee.
18. Additionally, the shade structures that cover the guest parking, adjacent to the retention basin, shall be softened with the addition of vines.
19. Resident only pedestrian access gates shall be included in the perimeter wall at the end of private streets "E" and "F".

#### GENERAL CONDITIONS/CODE REQUIREMENTS

17. The project is subject to the City of Palm Springs Water Efficient Landscape Ordinance. The applicant shall submit an application for Final Landscape Document Package to the Director of Planning and Zoning for review and approval prior to the issuance of a building permit. Refer to Chapter 8.60 of the Municipal Code for specific requirements.
18. Prior to issuance of a grading permit, a Fugitive Dust and Erosion Control Plan shall be submitted and approved by the Building Official. Refer to Chapter 8.50 of the Municipal Code for specific requirements.
19. The grading plan shall show the disposition of all cut and fill materials. Limits of site disturbance shall be shown and all disturbed areas shall be fully restored or landscaped.
20. All materials on the flat portions of the roof shall be earth tone in color.
21. All awnings shall be maintained and periodically cleaned.
22. All roof mounted mechanical equipment shall be screened from all possible vantage points both existing and future per Section 9303.00 of the Zoning Ordinance. The screening shall be considered as an element of the overall design and must blend with the architectural design of the building(s). The exterior elevations and roof plans of the buildings shall indicate any fixtures or equipment to be located on the roof of the building, the equipment heights, and type of screening. Parapets shall be at least 6"

above the equipment for the purpose of screening. Parapets shall be included in the building height.

23. No exterior downspouts shall be permitted on any facade on the proposed building(s) visible from adjacent streets or residential and commercial areas.
24. Perimeter walls shall be designed, installed and maintained in compliance with the corner cutback requirements as required in Section 9302.00.D.
25. The design, height, texture and color of building(s), fences and walls shall be submitted for review and approval prior to issuance of building permits.
26. The street address numbering/lettering shall not exceed eight inches in height.
27. Construction of any residential unit shall meet minimum soundproofing requirements prescribed pursuant to Section 1092 and related sections of Title 25 of the California Administrative Code. Compliance shall be demonstrated to the satisfaction of the Director of Building and Safety.
28. Submit plans meeting City standard for approval on the proposed trash and recyclable materials enclosure prior to issuance of a building permit.
29. Details of pool fencing (material and color) and equipment area shall be submitted with final landscape plan.
30. No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.
31. No outside storage of any kind shall be permitted except as approved as a part of the proposed plan.
32. Prior to the issuance of building permits, locations of all telephone and electrical boxes located on the building plans and must be completely screened and located in the interior of the building. Electrical transformers must be located toward the interior of the project maintaining a sufficient distance from the frontage(s) of the project. Said transformer(s) must be adequately and decoratively screened.
33. Standard parking spaces shall be 17 feet deep by 9 feet wide; compact sized spaces shall be 15 feet deep by 8 feet wide. Handicap parking spaces shall be 18 feet deep by 9 feet wide plus a 5 foot walkway at the right side of the parking space; two (2) handicap spaces can share a common walkway. One in every eight (8) handicap accessible spaces, but not less than one (1), shall be served by an 8 foot walkway on the right side and shall be designated as "van accessible".
34. Handicapped accessibility shall be indicated on the site plan to include the location of handicapped parking spaces, the main entrance to the proposed structure and the path of travel to the main entrance. Consideration shall be given to potential difficulties with the handicapped accessibility to the building due to the future grading plans for the property.

35. Compact and handicapped spaces shall be appropriately marked per Section 93.06.00.C.10.
36. Curbs shall be installed at a minimum of five (5) feet from face of walls, fences, buildings, or other structures. Areas that are not part of the maneuvering area shall have curbs placed at a minimum of two (2) feet from the face of walls, fences or buildings adjoining driveways.
37. Any parking lot light fixtures shall align with stall striping and shall be located two to three feet from curb face.
38. Islands of not less than 9 feet in width with a minimum of 6 feet of planter shall be provided every 10 parking spaces. Additional islands may be necessary to comply with shading requirements.
39. Shading requirements for parking lot areas as set forth in Section 9306.00 of the Zoning Ordinance shall be met. Details to be provided with final landscape plan.
40. Parking stalls shall be delineated with a 4 to 6 inch double stripe - hairpin or elongated "U" design. Individual wheel stops shall be prohibited; a continuous 6" barrier curb shall provide wheel stops.

#### Waste Disposal

41. Trash cans shall be screened from view and kept within fifty (50) feet of the street.

#### POLICE DEPARTMENT

1. Developer shall comply with Section II of Chapter 8.04 of the Palm Springs Municipal Code.

#### BUILDING DEPARTMENT

1. Prior to any construction on-site, all appropriate permits must be secured.

#### FIRE

1. Premises Identification: Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. (901.4.4 CFC)
2. Water Systems and Hydrants: Underground water mains and fire hydrants shall be installed, completed, tested and in service prior to the time when combustible materials are delivered to the construction site. (903 CFC).
3. Operational Fire Hydrants: An operational fire hydrant(s) shall be installed within 250' of all combustible construction. No landscape planting, walls, or fencing are permitted within 3 feet of fire hydrants, except groundcover plantings.

4. Building or Complex Gate Locking Devices: Locked gate(s) shall be equipped with a KNOX key switch device or Key box. Contact the fire department at 323- 8186 for a KNOX application form. (902.4.CFC)
5. Vertical Fire Apparatus Clearances: Palm Springs Fire Apparatus require an unobstructed vertical clearance of not less than 13 feet 6 inches. (902.2.2.1 CFC)
6. Entry Gates: Entry gates are required to be a minimum of 15 feet in width.
7. Road Design: Fire apparatus access roads shall be designed and constructed capable and able to support a fire truck weighing 73,000 pounds GVW. (902.2.2.2 CFC)
8. Minimum Access Road Dimensions: Provide a minimum 20 feet unobstructed width. If parking on one side of the access road is desired, provide an additional 8 foot wide parking lane with opposing curb marked red with appropriate signage for a total 28 foot width. If parking on both sides of the access road is desired, provide an 8 foot wide parking lane on each side of the access road for a total 36 foot width. (902.2.2.1 CFC)
9. Reduced Roadway Width: Areas with reduced roadway width (such as entry and exit gates, entry and exit approach roads, traffic calming areas) that are under 36 feet wide require red painted curb to maintain minimum 20 foot clear width. Red curb shall be stenciled "NO PARKING" and "FIRE LANE" with white paint. (901.4 CFC)

#### ENGINEERING DEPARTMENT

The Engineering Division recommends that if this application is approved, such approval is subject to the following conditions being completed in compliance with City standards and ordinances.

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer.

#### STREETS

1. Any improvements within the public right-of-way require a City of Palm Springs Encroachment Permit.
2. Submit street improvement plans prepared by a Registered Civil Engineer to the Engineering Division. The plans shall be approved by the City Engineer prior to issuance of building permits.

#### CORTEZ ROAD

3. Dedicate an additional right-of-way of 30 feet along the entire frontage of that portion of the property identified by Assessor's Parcel Numbers 504-140-005 and 504-140-006.
4. Remove and reconstruct the existing cross gutter, curb returns, and spandrels located at the intersection of Cortez Road and Zanjero Road as necessary to facilitate the relocated alignment of Zanjero Road.

5. Construct a 6 inch curb and gutter, 20 feet south of centerline along the entire frontage, with a 25 feet radius curb return and at the southwest corner of the intersection of Cortez Road and Zanjero Road in accordance with City of Palm Springs Standard Drawing No. 200 and 206.
6. Construct a 32 feet wide driveway approach for the main entrance in accordance with City of Palm Springs Standard Drawing No. 205.
7. Construct a 15 feet wide emergency access driveway approach located approximately 85 feet west of the northeast corner of the property in accordance with City of Palm Springs Standard Drawing No. 201.
8. Construct a 5 feet wide sidewalk behind the curb along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 210.
9. Construct a Type C curb ramp on either side of the main entrance in accordance with City of Palm Springs Standard Drawing No. 214.
10. Construct a minimum pavement section of 3 inches asphalt concrete pavement over 6 inches crushed miscellaneous base with a minimum subgrade of 24 inches at 95% relative compaction, or equal, from edge of proposed gutter to centerline along the entire Cortez Road frontage in accordance with City of Palm Springs Standard Drawing No. 110 and 315. If an alternative pavement section is proposed, the proposed pavement section shall be designed by a California registered Geotechnical Engineer using "R" values from the project site and submitted to the City Engineer for approval.

#### RACQUET CLUB ROAD

11. Easements shall be granted for any portions of the sidewalk that leave the public right-of-way.
12. Remove and reconstruct the existing curb return, cross gutter and spandrel as necessary to facilitate the relocated alignment of Zanjero Road.
13. Construct a 5 feet wide sidewalk along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 210.
14. Construct a Type A curb ramp meeting current California State Accessibility standards at the northwest corner of the intersection of Racquet Club Road and Zanjero Road in accordance with City of Palm Springs Standard Drawing No. 212.
15. All broken or off grade street improvements shall be repaired or replaced.

#### ZANJERO ROAD

16. Acquire an additional right-of-way of 20 feet across that certain 33 feet wide parcel of land identified as a Whitewater Mutual Water Company easement adjacent to the property as necessary to provide an ultimate right-of-way of 50 feet and to facilitate the relocated alignment of Zanjero Road.
17. Remove the existing curb, gutter, and spandrel located 5 feet west of the new street centerline and construct a 6 inch curb and gutter 15 feet west of centerline along the entire frontage, with a

35 feet radius curb return and spandrel at the northwest corner of the intersection of Zanjero Road and E. Racquet Club Road in accordance with City of Palm Springs Standard Drawing No. 200 and 206.

18. Construct a 5 feet wide sidewalk behind the curb along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 210.
19. Construct a minimum pavement section of 3 inches asphalt concrete pavement over 6 inches crushed miscellaneous base with a minimum subgrade of 24 inches at 95% relative compaction, or equal, from edge of proposed gutter to clean sawcut edge of pavement along the entire Zanjero Road frontage in accordance with City of Palm Springs Standard Drawing No. 110 and 315. If an alternative pavement section is proposed, the proposed pavement section shall be designed by a California registered Geotechnical Engineer using "R" values from the project site and submitted to the City Engineer for approval.

#### PRIVATE STREETS

20. Dedicate easements extending from back of curb to back of curb to the City of Palm Springs for public utility and sewer purposes, and for service and emergency vehicles and personnel, over the private streets.
21. Street "E" shall be constructed with a modified "knuckle" as necessary to provide adequate site distance at the 90 degree turn, as approved by the City Engineer, with details to be worked out between applicant and staff.
22. Street "E" and Street "F" shall be realigned to intersect at a 90 degree angle.
23. Construct a wedge curb approved by the City Engineer, 12.5 feet on both sides of centerline along the entire frontage of the private streets.
24. Construct a minimum pavement section of 2½ inch asphalt concrete pavement over 4 inch crushed miscellaneous base with a minimum subgrade of 24 inches at 95% relative compaction, or equal. If an alternative pavement section is proposed, the proposed pavement section shall be designed by a California registered Geotechnical Engineer using "R" values from the project site and submitted to the City Engineer for approval.
25. The gated entry design shall be reviewed and approved by the City Engineer. Submit a detailed entry design showing storage lanes and maneuvering areas. Include standard vehicle and truck turning radius track lines on the detail. Sufficient storage shall be required (50 feet minimum) for vehicles entering the gated project, and a turn-around maneuvering area shall be provided for vehicles unable to enter the project. Final design shall also be subject to review and approval by the City Engineer.

#### SANITARY SEWER

26. Submit sewer improvement plans prepared by a California registered Civil Engineer to the Engineering Department. The plans shall be approved by the City Engineer prior to issuance of any grading or building permits.
27. Construct an 8 inch sewer main within the on-site private streets and connect to the existing sewer main located in Zanjero Road. Existing sewer laterals to the parcels from Cortez Road

shall be plugged and abandoned. All sewer mains constructed by the developer and to become part of the public sewer system shall be televised by the developer prior to acceptance of the sewer system for maintenance by the City of Palm Springs.

## GRADING

28. Submit a Grading Plan prepared by a California registered Civil Engineer to the Engineering Division for review and approval. The Grading Plan shall be approved by the City Engineer prior to issuance of grading permit.

A Fugitive Dust Control Plan shall be prepared by the applicant and/or its grading contractor and submitted to the Engineering Division for review and approval. The applicant and/or its grading contractor shall be required to comply with Chapter 8.50 of the City of Palm Springs Municipal Code, and shall be required to utilize one or more "Coachella Valley Best Available Control Measures" as identified in the Coachella Valley Fugitive Dust Control Handbook for each fugitive dust source such that the applicable performance standards are met. The applicant's or its contractor's Fugitive Dust Control Plan shall be prepared by staff that has completed the South Coast Air Quality Management District (AQMD) Coachella Valley Fugitive Dust Control Class. The applicant and/or its grading contractor shall provide the Engineering Division with current and valid Certificate(s) of Completion from AQMD for staff that have completed the required training. For information on attending a Fugitive Dust Control Class and information on the Coachella Valley Fugitive Dust Control Handbook and related "PM10" Dust Control issues, please contact Elio Torrealba at AQMD at (909) 396-3752, or at [etorrealba@AQMD.gov](mailto:etorrealba@AQMD.gov). A Fugitive Dust Control Plan, in conformance with the Coachella Valley Fugitive Dust Control Handbook, shall be submitted to and approved by the Engineering Division prior to approval of the Grading plan.

The first submittal of the Grading Plan shall include the following information: a copy of final approved conformed copy of Conditions of Approval; a copy of a final approved conformed copy of the Site Plan; a copy of current Title Report; a copy of Soils Report; and a copy of the associated Hydrology Study/Report.

29. Drainage swales shall be provided adjacent to all curbs and sidewalks to keep nuisance water from entering publicly utilized streets, roadways, or gutters.
30. A National Pollutant Discharge Elimination System (NPDES) stormwater permit, issued from the California Regional Water Quality Control Board (Phone No. 760-346-7491) is required for the proposed development. A copy of the executed permit shall be provided to the City Engineer prior to approval of a Grading Plan.
31. In accordance with City of Palm Springs Municipal Code, Section 8.50.025 (c), the developer shall post with the City a cash bond of two thousand dollars (\$2,000.00) per disturbed acre for mitigation measures for erosion/blowsand relating to this property and development.
32. A soils report prepared by a California registered Geotechnical Engineer shall be required for and incorporated as an integral part of the grading plan for the proposed development. A copy of the soils report shall be submitted to the Building Department and to the Engineering Division prior to approval of the Grading Plan.



33. In cooperation with the Riverside County Agricultural Commissioner and the California Department of Food and Agriculture Red Imported Fire Ant Project, applicants for grading permits involving a grading plan and involving the export of soil will be required to present a clearance document from a Department of Food and Agriculture representative in the form of an approved "Notification of Intent To Move Soil From or Within Quarantined Areas of Orange, Riverside, and Los Angeles Counties" (RIFA Form CA-1) prior to approval of the Grading Plan (if required). The California Department of Food and Agriculture office is located at 73-710 Fred Waring Drive, Palm Desert (Phone: 760-776-8208).

#### DRAINAGE

34. Accept all stormwater runoff passing through and falling onto the site and conduct this runoff to approved drainage structures as described in the Preliminary Hydrology Report for Tract Map No. 31940, prepared by MSA Consulting, Inc., dated June 30, 2004 (as may be amended and/or revised). The developer shall be responsible for construction of drainage improvements, including but not limited to retention/detention basins, catch basins, storm drain lines, and outlet structures, for conveyance of off-site stormwater runoff and management of on-site stormwater runoff, as described in a final Hydrology Report for the development, as approved by the City Engineer. The preliminary Hydrology Report for the development shall be amended to include catch basin sizing, storm drain pipe sizing, and retention/detention basin sizing calculations and other specifications for construction of required on-site storm drainage improvements.
35. The project is subject to flood control and drainage implementation fees. The acreage drainage fee at the present time is \$6,511 per acre per Resolution No. 15189. Fees shall be paid prior to issuance of a building permit.

#### GENERAL

36. Any utility trenches or other excavations within existing asphalt concrete pavement of off-site streets required by the proposed development shall be backfilled and repaired in accordance with City of Palm Springs Standard Drawing No. 115.
37. All proposed utility lines shall be installed underground.
38. All existing utilities shall be shown on the grading/street plans. The existing and proposed service laterals shall be shown from the main line to the property line.
39. The original improvement plans prepared for the proposed development and approved by the City Engineer shall be documented with record drawing "as-built" information and returned to the Engineering Division prior to issuance of a certificate of occupancy. Any modifications or changes to approved improvement plans shall be submitted to the City Engineer for approval prior to construction.
40. In accordance with Chapter 8.04.401 of the City of Palm Springs Municipal Code, all existing and proposed electrical lines of thirty-five thousand volts or less and overhead service drop conductors, and all gas, telephone, television cable service, and similar service wires or lines, which are on-site, abutting, and/or transecting, shall be installed underground unless specific restrictions are shown in General Orders 95 and 128 of the California Public Utilities Commission, and service requirements published by the utilities. A detailed plan approved by the owner(s) of the affected utilities depicting all above ground facilities in the area of the project

to be undergrounded, shall be submitted to the Engineering Division prior to approval of any grading plan.

The existing overhead utilities across the south property lines of the properties identified by Assessor's Parcel Numbers 504-140-005 and 504-140-006 meet the requirement to be installed underground. The developer is advised to investigate the nature of these utilities, the availability of undergrounding these utilities with respect to adjacent and off-site properties, and to present its case for a waiver of the Municipal Code requirement, if appropriate, to the Planning Commission and/or City Council as part of its review and approval of this project.

If utility undergrounding is deferred in accordance with specific direction by the Planning Commission and/or City Council, the record property owner shall enter into a covenant agreeing to underground all of the existing overhead utilities required by the Municipal Code in the future upon request of the City of Palm Springs City Engineer at such time as deemed necessary. The covenant shall be executed and notarized by the property owner and submitted to the City Engineer prior to issuance of a grading permit. A current title report; or a copy of a current tax bill and a copy of a vesting grant deed shall be provided to verify current property ownership. A covenant preparation fee of \$135 shall be paid by the developer prior to issuance of any grading or building permits.

The applicant is to provide sufficient information to the Engineering Department in order for staff to verify whether the existing utility poles are on or adjacent to the applicant's property.

41. Contact Whitewater Mutual Water Company to determine impacts to any existing water lines and other facilities that may be located within the property. Make appropriate arrangements to protect in place or relocate any existing Whitewater Mutual Water Company facilities that are impacted by the development. A letter of approval for relocated or adjusted facilities from Whitewater Mutual Water Company shall be submitted to the Engineering Division prior to issuance of a grading permit.
42. Nothing shall be constructed or planted in the corner cut-off area of any driveway which does or will exceed the height required to maintain an appropriate sight distance per City of Palm Springs Zoning Code Section 93.02.00, D.
43. All proposed trees within the public right-of-way and within 10 feet of the public sidewalk and/or curb shall have City approved deep root barriers installed per City of Palm Springs Standard Drawing No. 904.

#### MAP

44. A Final Map shall be prepared by a California registered Land Surveyor or qualified Civil Engineer and submitted to the Engineering Division for review and approval. A Title Report prepared for subdivision guarantee for the subject property, the traverse closures for the existing parcel and all lots created therefrom, and copies of record documents shall be submitted with the Final Map to the Engineering Division as part of the review of the Map. The Final Map shall be approved by the City Council prior to issuance of building permits.
45. In accordance with Section 66434 (g) of the Government Code, the existing 30 feet of right-of-way for the west half of Zanjero Road dedicated to the City through a grant of right-of-way, recorded as Document No. 9639 on January 15, 1979, may be abandoned upon the filing of a Final Map identifying the abandonment of the portion of right-of-way for Zanjero Road granted to

the City of Palm Springs. Prior to approval of a Final Map, the developer shall coordinate with each public utility company and determine specific requirements as to the abandonment and/or relocation of existing underground utilities that may exist within the public right-of-way to be abandoned. Prior to approval of a Final Map, the developer shall provide to the City Engineer a letter of approval regarding the proposed abandonment of the portion of Zanjero Road right-of-way from each public utility agency. The acquisition of 20 feet of right-of-way for Zanjero Road across the easterly portion of that certain 33 feet wide parcel of land identified as a Whitewater Mutual Water Company easement adjacent to the property shall be obtained prior to approval of a Final Map and abandonment of the existing right-of-way for Zanjero Road.

46. In the event it is determined that a public utility or public agency requires the use of, now or in the future, the subject portion of Zanjero Road right-of-way proposed for abandonment, a Final Map will not be approved and the proposed development will require reconfiguration, redesign, and resubmittal, including processing of an amended Tentative Tract Map through the Department of Planning Services, as required by the Director of Planning Services.

#### TRAFFIC

47. A minimum of 48 inches of sidewalk clearance shall be provided around all above-ground facilities for handicap accessibility.
48. Street name signs shall be required at each intersection, as required by the City Engineer, in accordance with City of Palm Springs Standard Drawing Nos. 620 through 625.
49. A 24 inch stop sign with standard stop bar and legend shall be installed in accordance with City of Palm Springs Standard Drawing Nos. 620-625 at the main entrance and Cortez Road.
50. A 24 inch stop sign with standard stop bar and legend shall be installed in accordance with City of Palm Springs Standard Drawing Nos. 620-625 on Cortez Road at Zanjero Road.
51. Construction signing, lighting and barricading shall be provided for on all projects as required by City Standards or as directed by the City Engineer. As a minimum, all construction signing, lighting and barricading shall be in accordance with State of California, Department of Transportation, "Manual of Traffic Controls for Construction and Maintenance Work Zones" dated 1996, or subsequent additions in force at the time of construction.
52. This property is subject to the Transportation Uniform Mitigation Fee which shall be paid prior to issuance of building permit.