

Item 4: Public Comments

From: Bob <Bob@fullmerco.com>

Sent: Thursday, October 27, 2022 10:35 AM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: 432 Monarch Bay Drive, Dana Point

Mr. Giometti, I am the homeowner at 42 Monarch Bay Drive and also the homeowner at 32091 Sea Island Drive, Dana Point. I vehemently oppose the proposed development of the subject property and appeal to the Planning Commission to oppose any proposed development that is not allowed by the community CC and R's. It is vital to all homeowners to be able to rely on the CC and R's that are in place at the time a property is purchased. Please register my opposition to the Planning Commission. Thank you.

Bob Fullmer

President

Fullmer Construction

Bob@fullmerco.com

P: (909) 947-9467 x.322

C: (909) 260-2433

1725 S. Grove Avenue

Ontario, CA 91761



From: Len Kranser <len@kranser.net>
Sent: Thursday, October 27, 2022 11:54 AM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: Lisa Klasky <klasky@keystonepacific.com>; Elizabeth Reed <ereed@keystonepacific.com>
Subject: Public Planning Commission Hearing November 14 re 432 Monarch Bay Drive

Dear Commissioners,

I currently am on the Monarch Bay Association Board of Directors and prior to that I was President of the Monarch Bay Land Association. In that previous position, I was involved with the appraisal of Monarch Bay residential lots in preparation for our community's transition from leased to fee simple land ownership.

The value of the land and homes in Monarch Bay is highly dependent on the enforcement of long-standing architectural guidelines controlling the height of buildings and their lot coverage, primarily to protect ocean views of neighbors and secondarily to maintain the community's feeling of open space. The proposed application for expansion of 432 Monarch Bay is in direct conflict with these guidelines. If approved, the project would be a breakthrough action that could set a precedent followed by others, including nonresident owners, to violate the community rules and governing documents. It would have serious negative impact on home values in our community.

I respectfully request that this application be denied and sent back to the Monarch Bay Association's Architectural Control Committee.

Leonard Kranser
75 Monarch Bay Drive
Dana Point

From: Carol LoCoco <carol@bigchiefllc.com>
Sent: Thursday, October 27, 2022 12:37 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: 432 Monarch Bay Drive, Monarch Beach, CA 92629

Dear Planning Commission

As a resident of Monarch Bay, I strenuously object to having our Monarch Bay Association Architectural Committee being overruled and thereby invalidating our CC&R's. Classifying this structure as an ADU-Accessory Dwelling Unit is disingenuous, if not deceitful and disdains the intention and objective of this California public policy initiative. There is a reason and purpose for our committee and neighbors to have conceived these CC&R's. It protects us all from detrimental overbuilding that could block other's views, unfairly reduce the enjoyment of our properties, and crowd our precious coastal environment.

Please do not allow this unfair submittal to go forward and set a precedent for future submittals.

Please see through this distortion of California public policy for individual gain and allow our Architectural Committee to maintain their authority over our neighborhood.

Carol & Don LoCoco
241 Monarch Bay Drive
Dana Point, CA 92629

BTW: I do not have an ocean view from my property, but if I built a second level ADU my "renters" would.

From: Greg Wells <gwells@marnellcompanies.com>
Sent: Thursday, July 21, 2022 3:00 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: Lisa Klasky <klasky@keystonepacific.com>; ereed@keystonepacific.com
Subject: Opposition to ADU at 432 Monarch Bay

Danny,

My family owns a home at 224 Monarch Bay Dr. and received notice from the Monarch Bay HOA that the owners of 432 Monarch Bay Dr have submitted plans to the City of Dana Point requesting approval for an Alternate Dwelling Unit ("ADU"). We have been advised that the ADU is to be constructed as an additional second story on their existing home.

As owners in Monarch Bay, we are all aware and have signed off on the strict design and development guidelines that govern our small community and protect the property rights of the owners. These rules and regulations are in place for the mutual benefit and protection of everyone and maintain a consistency in the community that prohibits any one property owner from unreasonably incumbering their neighbor's view, rights, or other shared community resources, which the plan proposed at 432 Monarch Bay will do.

While California has approved ADUs to help alleviate the housing shortage in the state, the plan at 432 Monarch Bay Drive certainly was not the intent of the law. A quick google search on purpose of California ADU law provides the following... *The California Health and Safety Code (HSC), Section 65583(c)(7), requires that cities and counties develop a plan that incentivizes and promotes the **creation of ADUs that can be offered at affordable rent for very-low to moderate-income households**...*

Certainly, mega-million dollar beach houses owned by a multi-millionaires don't qualify as affordable housing or provide the opportunity for affordable rents. Realtor.com shows only 2 homes for sale in the neighborhood, one for \$10.95m and other for \$9.88m and only one home available for rent at a monthly rate of \$22,000. I doubt this was the price range of opportunity legislators had in mind when the law was conceived.

The ADU plan at 432 Monarch Bay has nothing to do with helping alleviate the housing shortage, providing affordable housing or low-income rents. This is purely an attempt to use a loophole created by the ADU program to circumvent the design and development limits established by our CC&Rs to raise the elevation of their home, capture more ocean views, and increase the value of their home at the cost of the neighbors.

The increased elevation of the ADU will of course block the views currently enjoyed by neighbors and significantly decrease the value of the surrounding homes. If approved, will the City be providing compensation to those damaged as result of losing their ocean views do to the elevation of this ADU? It surely could be viewed as a "taking" of their property rights and diminishing value. If a second story is permitted to be an ADU and blocks neighbors views, will you then be approving a second and third story addition as ADUs so the neighbor being blocked can gain his view back? What about a fourth or fifth story ADU, or ADUs for the best homes on beach that will block everyone's views behind them?

Beach communities are unique and certainly complicated when it comes to development and landowner rights. The plan at 432 Monarch being pushed under the cover of the ADU program has nothing to do with helping achieve the objective by which the ADU legislation was established. ADUs have a place and purpose, but not when they purposely encumber the views and property rights of other neighbors in the community. We strongly oppose the planned ADU at 432 Monarch Bay Dr.

Thank you and please let me know if you have any questions.

Greg

Greg Wells
President of Investments and Real Estate
Marnell Companies
222 Via Marnell Way
Las Vegas, Nevada 89119
702-739-2000 phone
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702-610-5700 mobile
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From: jared mathis <jaredmathismmb@gmail.com>
Sent: Monday, July 18, 2022 3:38 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: Lisa Klasky <klasky@keystonepacific.com>; Elizabeth Reed <ereed@keystonepacific.com>
Subject: 432 Second Story ADU Proposal - Monarch Bay

Dear Danny,

My family allowed for the development of Monarch Bay and, until 2021 we owned the underlying property for approximately 125 years. My great-grandmother Nellie Gail Moulton signed the lease with Laguna Niguel Corporation to develop the property long before Monarch Bay was part of Dana Point. We still own nine homes in Monarch Bay - by far more than anyone else in the community. That being the case, we would probably benefit the most from having no rules in the community with the ability to improve our properties any way we saw fit in the moment. However, that wouldn't be good for the community. We understand what it means to be a good neighbor and know the importance of strong community guidelines. Therefore, we oppose the proposed development at 432 Monarch Bay Drive.

I've read the community's original founding documents. I've seen the first sales brochures and tract maps. There was an architectural design and artistry in the creation of the Monarch Bay community that allowed for neighbors' views to be protected. Specifically, in Tract 4472, each home has a recorded height restriction matching their original height. These restrictions have been in the CC&Rs for over five decades - and people have been able to rely upon them - and invest accordingly.

We own 435 Monarch Bay Drive - across the street from 432 Monarch Bay Drive. Our ocean views and the views of our neighbors will be permanently injured by any second story development at 432 Monarch Bay Drive.

If the owners of 432 Monarch Bay Drive want to create additional space to accommodate an ADU, they should have to consider subterranean development as to not infringe on their neighbors.

This is clearly a naked attempt to circumvent the established community standards to increase square footage, improve views and increase the value of their home at 432 Monarch Bay Drive at the expense of their neighbors and to the detriment of the rules governing the community.

If approved, this will destroy the long-held standards within the Monarch Bay Community. If you allow this charade to move forward, it will make the community's CC&Rs essentially null and void. Then, what would stop me or someone else in the community from adding two or three or five levels of ADUs on top of an existing home in Monarch Bay? Is that your desire? We hope not.

Monarch Bay is a community of distinction because of its wide streets, spacious lots and protected views. The original designers got it right. My family has been responsible for allowing property sales in Monarch Bay since 2013. That action alone provided confidence in the marketplace, created an untold number of jobs and brought new people/money into Dana Point. We are proud of the way we've cared about the community since 1895 and we love Monarch Bay. This proposal represents the opposite. This proposal is designed to hurt Monarch Bay - to break the back of the HOA and render its CC&R's powerless.

For all these reasons and more, we vigorously oppose the proposed development at 432 Monarch Bay Drive. Please don't let this proposal pervert the good intentions behind the creation of ADUs into a poison pill to be shoved down the throat of our community.

Please circulate to the Dana Point planning commissioners and city council members. Thank you for your consideration.

Jared Mathis

435 Monarch Bay Drive

jared@moulton.co

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Jared Mathis

CEO, Moulton Company
300 Spectrum Center Drive, Suite 300
Irvine, CA 92618
949-450-6285 o
202-236-1530 c

From: Stauff, Clyde <Clyde.Stauff@colliers.com>

Sent: Monday, June 27, 2022 3:51 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Cc: susie.stauff@yahoo.com; Lisa Klasky <klasky@keystonepacific.com>; Elizabeth Reed <ereed@keystonepacific.com>

Subject: Monarch Bay / 432 - Second Story ADU Proposal

Dear Danny,

1. Per the attached aerial, there are eleven single-story homes in the mall tract (4472) of Monarch Bay. These single-story homes were strategically integrated into the original development plan to provide ocean views for neighboring residences.
2. The homes in Tract 4472 have a recorded height restriction (to their original height) with the exception of the "back row" adjacent to PCH. The height restrictions have been in the CC&Rs for over five decades.
3. Four of the homes in Tract 4472 have added underground parking to accommodate expansion from the original floor plan, while still maintaining the original roof height. There is a new build planned at 401 which is single story and will also have a subterranean garage. Several homes in Monarch Bay outside tract 4472 have been constructed with subterranean garages to preserve the existing roof height and sight lines.
4. The existing 432 carport area could easily be converted to an ADU by adding subterranean parking as others have done in order to maintain the existing roof height when expanding.
5. There is a discrepancy in the stated existing living area square footage for 432. The assessor's living area square footage is stated to be 1,808 square feet. Therefore, the proposed ADU addition of 930 square feet far exceeds 30% of the existing livable square footage. You would need 3,100 square feet of existing living area to justify a 930 square foot ADU.
6. Allowing a second story ADU in Monarch Bay would be an extremely detrimental precedent. This precedent could enable all single-story homeowners in Monarch Bay to build a second story ADU which would result in severe view blockage for the majority of the homes that are not on the cliff or "front row".

We therefore vigorously oppose any degradation of the original thoughtful planning that went into making Monarch Bay a unique community. The original home heights, terracing, grading, etc., were all carefully designed to enhance the Monarch Bay development. The ADU law should not be used as justification to increase square footage and provide second story ocean views at the expense of the neighboring homeowners. Circumventing the protections provided in the CC&Rs under the guise of "affordable" housing should not be approved.

Please circulate to the Dana Point planning commissioners and city council members. Thank you for your consideration.

Clyde Stauff

431 Monarch Bay

949-724-5543

clyde.stauff@colliers.com



From: Stauff, Clyde <Clyde.Stauff@colliers.com>

Sent: Tuesday, September 27, 2022 10:44 AM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: 432 Monarch Bay ADU

Dear Danny,

Lisa Klasky indicated that the Coastal Commission has recognized that second story ADUs in sensitive areas that block views are not consistent with the spirit of the ADU law.

I am not sure what protection this actually provides. If we are still going to have the hearing, please let me know as I need a minimum of two weeks of advance notice in order to mobilize neighbors that are not aware of the adverse consequences of setting a precedence for second story ADUs in Monarch Bay.

I also noticed online that cities have adopted special guidelines in coastal areas such as San Luis Obispo, Carmel, Coronado, Encinitas, etc., that allow the cities to prohibit second story ADU construction in sensitive coastal areas.

Thanks for your help.

Clyde F. Stauff, SIOR

Vice Chair | Greater Los Angeles

Stauff/Gan Industrial Team

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From: webmaster@danapoint.org <webmaster@danapoint.org>

Sent: Tuesday, July 5, 2022 11:39 AM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: 432 MONARCH BAY DRIVE

Message submitted from the <City of Dana Point> website.

Site Visitor Name: Richard Mackay

Site Visitor Email: RNMACKAY2@GMAIL.COM

Danny, Rich Mackay here. My brother and I are 3rd generation owners of 436 Monarch Bay Drive. We just received a Variance Notice for 432 which was profoundly disturbing. If possible, I would like to discuss it with you to see how we might object to this proposed design.

Please let me know when it might be convenient for you. Thanks, Rich Mackay

From: Stauff, Clyde <Clyde.Stauff@colliers.com>
Sent: Wednesday, July 27, 2022 11:41 AM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: 432 Monarch Bay / Renderings

Danny,

Please see that attached that was prepared by Focus 360. The dimensions were taken off the plans and are to scale.

Please let me know if you have any questions.

Clyde F. Stauff, SIOR

Vice Chair | Greater Los Angeles

Stauff/Gan Industrial Team

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What is  **SIOR**





From: Gary Wiggle <gary@kw-architects.com>
Sent: Thursday, July 14, 2022 3:10 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: 432 Monarch Bay

Please distribute the attached letter. I am available for any questions or comments.

Gary R. Wiggle, AIA

LEED AP BD+C

Keisker & Wiggle Architects, Inc.

P. 949/388.1250

F. 949/388-2760



Please consider the environment before printing this email.



July 12, 2022

City of Dana Point
Planning Department
33282 Golden Lantern
Dana Point, California 92629

Attn: Danny Giometti
Senior Planner

SUBJECT: 432 Monarch Bay Drive, Monarch Beach, CA 92629
(Lot 15, Tract 4472)
Second Floor Living Unit
Architectural plans by Pacific Coast Architects

Dear Mr. Giometti:

The Monarch Bay Homeowners Association has been made aware that the Owners have submitted plans directly to you seeking approval of a second floor additional dwelling unit on an existing single story home. It is customary that architectural submittals are reviewed and acted on by the HOA prior to submittal to the City. But the Owner has chosen to bypass the HOA review, which does not waive the requirement, it just puts the Owner in the awkward position of possibly having a City approval for a project that will not have HOA approval.

This house is within the Mall area of Monarch Bay, and therefore subject to the CC&R restrictions and the Design guidelines, both of which apply to all residents within the community. The Mall was conceived as a unique neighborhood within Monarch Bay. The original houses were designed and constructed to optimize views from each lot, and the CC&R's and the Design Guidelines both contain very clear guidance on the restrictions on the residences for the protection of The Mall and its unique attributes. Based upon that premise, the CC&R's limit the height and footprint increases of the houses beyond the existing walls and roof. Within the block that this subject property sits, all of the houses on this side of the street are a single level above the road, and houses across the street, some two story, have ocean views over these residences. Those houses across the street are built up against Coast Highway, and by right can be considered for second story improvements as noted in 8.12.e.(ii) below. The Design Guidelines further elaborate on these restrictions.

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reconnect@keystonepacific.com
monarchbayhoa.com



8.12.e.(ii) No Improvement on a Lot within Tract #4472 shall exceed the height of the existing Improvements on that Lot existing as of the date of adoption of this Declaration, and based upon their location and minimal impact on other Lots, only Lots 32 through 44 may be eligible for variances therefrom.

Therefore, the proposed second floor addition would be in direct violation of the CC&R's and the Design Guidelines. Should the Owner request a variance per 8.12.e.(iii), the limitations and additional factors as noted in 8.12.e.(iv) would be considered by the ACC and, as they have consistently done in the past, the request would have to be denied as being non compliant with the governing documents.

8.12.e.(iii) Any proposal to exceed the height limit (which is not allowed in Tract 4472 except in the event of a variance as permitted under Subsection 8.12(e)(ii), above), or in Tract #4472 to expand laterally beyond the existing structure envelope, shall require a variance.

8.12.e.(iv) Notwithstanding the height limitations set forth above, the Architectural Control Committee may take additional factors into consideration when reviewing any proposed Improvement, including scale of site, aesthetic conformity, consideration of unreasonable blockage of view, and conformity of external design to neighboring structures. In particular, the height limitations set forth above shall not be construed to take precedence or control over such other factors, and a proposed Improvement that meets the height limitation may be disapproved on the basis of other factors considered by the Architectural Control Committee.

Prior to this request to the City for a full second floor, this Owner recently received approval from the ACC for a major remodel that conforms to the CC&R height limitations. A second-floor request was previously made and denied, and the structural plans that have been submitted appear to be based upon that proposed design. It is noted that with this second floor request, the mass of the first floor has also been expanded outside and above the existing envelope (and recently approved envelope) putting the balance of the proposed building out of compliance with the Design Guidelines and CC&R's.

Based upon the non conformance of the proposed project with our governing documents, we strongly object to this project and request that the City of Dana Point deny this application.

Respectfully,

THE MONARCH BAY ASSOCIATION
ARCHITECTURAL CONTROL COMMITTEE

-----Original Message-----

From: Melanie Cox <melaniemcox@mac.com>

Sent: Tuesday, July 5, 2022 8:10 AM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: 432 monarch bay drive

Please do not approve 432 monarch bay they are using the law to increase the square footage of the house and it impacts my ocean view. Thank you in advance !!! Melanie cox

Sent from my iPhone

From: Scott Morrow <scott@morrowmgmt.com>

Sent: Thursday, October 27, 2022 4:43 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Cc: Danielle Morrow <danielle@morrowmgmt.com>

Subject: 432 Monarch Bay Drive - Strong Opposition to Proposed New Construction / Variance

Hi Danny, we received the attached letter from our HOA and since I'm not going to be in town to attend the Public Hearing, I wanted to make sure at minimum I sent an email stating our strong opposition to the proposed ADU/second floor improvements at 432 Monarch Bay Drive. We are the owners of the home at 421 Monarch Bay Drive which is up the street from the subject property. Our highly cherished view looks directly towards the subject property and the Monarch Bay golf course and Salt Creek beach. Any alteration to the height of the current structure at the subject property would significantly damage our most valuable view and as such we oppose any change to the height of the current structure especially the concept of adding a second floor.

We are very fortunate to own a property within Monarch Bay. It is a special community that has very important rules and regulations to protect the values of our properties which attracted us to buy and also invest in building our new dream home. Like many others we're concerned that they are trying to exploit the ADU initiative to bypass the association's rules and regulations. I'm not sure who the owners are, but the association's rules, regulations and policies have been in place for decades and I'm sure they had access to review when they purchased the property to understand the limitations in improving the property.

We strongly oppose this improvement and hope the City allows the association to operate by the rules and regulations that are in place.

Thank you for your time.

Scott

Scott and Danielle Morrow

421 Monarch Bay Drive



October 26, 2022

CITY OF DANA POINT PUBLIC HEARING MEETING NOTICE

SUBJECT: 432 Monarch Bay Drive, Monarch Beach, CA 92629

Dear Residents:

In follow up to the variance letter the Association previously sent to you in June 2022, the Owners for the above referenced property have submitted plans to the City of Dana Point Planning Department which have been unanimously denied by the Monarch Bay Association Architectural Committee. These plans submitted to the City propose to add a second story level to an existing single-story home identifying that structure as an Accessory Dwelling Unit ("ADU"). This home is within the Mall, Tract #4472, which is restricted pursuant to the CC&Rs to not exceed the height of the existing roof height on the interior streets of the Mall. The plans submitted to the City of Dana Point Planning Department would exceed the allowable height referenced directly above.

Pursuant to the City procedures, a Public Hearing has been scheduled before the Planning Commission for Monday, November 14th at 6:00 pm in the City Council Chambers, 33282 Golden Lantern, Suite 210, Dana Point. It is important for all homeowners to express their opinion to the Planning Commission for this submittal, as this decision could have a tremendous impact on all owners in the community if the Planning Commission agrees to over-rule the Association's Governing Documents. If an additional story is approved for this location, it could set precedent that future submittals can be similar to or greater than this structure changing the view corridors protected by the CC&Rs throughout the community.

The submitted plan labels the second story structure as an ADU. The State of California, as a public policy initiative, adopted legislation to encourage affordable rental units to be built as ADUs to existing homes.

As stated, the home is located within the Mall area and any change to the existing roof line or the footprint of the building requires a variance; which was unanimously denied by the Architectural Committee. The proposed plan on file with the City exceeds both the existing footprint and height limitations specifically set out in the CC&Rs. The structure as designed and submitted to the City will not conform to the Monarch Bay Architectural Guidelines and will not be compatible with the height, setback or architectural design of the primary home and surrounding land uses as required in the ADU Coastal Guidelines.

If you have an opinion on this issue and want to be heard, you have the right to attend the Planning Commission meeting. If however you want to be heard and you are unable to attend the Planning Commission meeting, you may submit your written comments to City of Dana Point Planner, Danny Giometti by November 10th via email at: dgiometti@danapoint.org.

Respectfully,

THE MONARCH BAY ASSOCIATION
ARCHITECTURAL CONTROL COMMITTEE

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reconnect@keystonepacific.com
monarchbayhoa.com



-----Original Message-----

From: Philista Almquist <philistalmquist@me.com>

Sent: Friday, October 28, 2022 4:44 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: The Mall in Monarch Bay Tract 4472

Please do not give permission for a variance for the ADU at 432 Monarch Bay Dr. Dana Point . When the owner purchased the home he knew the CC&R guidelines and by purchasing the property agreed to abide by them.

There is no guarantee that the owner will use the addition as an ADU but mainly desires to change the structure for his personal use.

Sincerely,

Philista Almquist

172 monarch bay Dr

Dana Point CA 92629

From: Linda Taubert <lindataubert@gmail.com>
Sent: Friday, October 28, 2022 12:28 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: Comment on Public Hearing re: 432 Monarch Bay Drive

Dear Mr. Giometti,

My name is Linda (Taubert) Sioufi and I grew up in Monarch Bay in the '70's and 80's, and our family home is located at 120 Monarch Bay. We have owned this home for over 50 years.

I am writing to you to voice my opposition to a second story structure being built at 432 Monarch Bay. As I am sure you are well aware, the Monarch Bay Architectural Committee unanimously denied the request as it goes against the rules set forth in the community on height limits and restrictions.

These specific rules have been in place for a very long time, which has allowed Monarch Bay to keep its same look and feel after all these years, despite numerous home remodels. The community would be completely ruined if homeowners and newcomers decided to arbitrarily add a second story. It would block many homes' beautiful ocean views.

Please deny this request for a second story at 432 Monarch Bay, and help us preserve the beautiful community that we have loved for so long.

Thank you for allowing us to voice our concerns and opposition to this proposal. Please feel free to call or email me if you have any questions.

Thank you,

Linda Taubert Sioufi

(949) 285-4782

From: Wilfong, Andreas <wilfong@infinity.aero>

Sent: Monday, October 31, 2022 12:39 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: 432 Monarch Bay Drive, Dana Point Request for second level ADU

Mr. Giometti,

My name is Andreas Wilfong and I am the owner of the property located at 22 Monarch Bay Drive, Dana Point.

I am writing you in regards to the public hearing meeting that's to take place with the planning commission on November 14th referencing the submittal of plans for the property located at 432 Monarch Bay Drive.

I am adamantly against allowing these plans to be approved!

These plans violate the community's CC&Rs for both height and footprint limitations and have already been denied by the association's architectural committee and go against the "intent" of the CA Accessory Dwelling Unit (ADU) legislation. We are fortunate to live in an amazing community like Monarch Bay and the ADU legislation was not intended to allow homeowners to circumvent existing HOA regulations (which existed when the property was purchased) to increase the value of a multi-million dollar residence.

Home owners buy into a community that has CC&R's to protect the homeowner's asset.

As homeowners, living in the community, we agree to adhere to those CC&R's and follow the proper steps when asking for a variance and then **accepting** whether that request is approved or denied. The answer cannot be, when homeowners don't get the answer they want, to file with the planning commission, hoping to get the answer they want there. In this particular case, even going as far as claiming that the 2nd story structure is an Accessory Dwelling Unit??

I think this a precedent that we don't want to set. Not just for our community, but also for the city planning committee.

This decision has the ability to open the door for the other 214 home owners to also bypass the association and architectural committees and file plans with the

city for second story additions to be added to their homes. Homeowners want to protect their asset, which means protecting their view lines.

A number of homeowners have requested variances to increase their heights and have been denied and accepted that answer. We should not allow an exception for this homeowner that we have not allowed for others.

Regards, Andy

Andreas M. Wilfong (Andy)

Chief Executive Officer (CEO)



MOBILE 719.338.5706

EMAIL wilfong@infinity.aero

<http://www.infinity.aero>

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From: davealm@aol.com <davealm@aol.com>
Sent: Monday, October 31, 2022 4:03 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: Opposition to 423 Monarch Bay project

Dear Mr Giometti,

I am a resident in Monarch Bay. I have become aware of a proposal that is coming before Planning Commission on November 14th. The proposal that the owner of 423 Monarch Bay has submitted to the Planning Commission is to build a second story onto their existing structure. The proposal was unanimously turned down by our Monarch Bay Homeowners Association. The owner now wants to circumvent the Homeowners Association and Governing Documents and apply directly to the Planning Commission. I want to express my strong opposition to this proposed project!

For the Planning Commission to overrule the Homeowner's Association Governing Documents would have a very negative impact on our community. The second story ADU addition would impact other neighbors view of the ocean. Many in the community are upset about the actions of this owner, myself included. I wonder how the owner of 423 would feel if someone in front of his house decided to build something and take away his ocean view. As a community, for as long as I have lived here, has strived to respect other people's property and ocean views when adding on to their homes or building a new home. The Homeowners Association has worked hard to insure that happens fairly. As a result, after dozens and dozens and dozens of projects and new construction over the past few years, the community has been harmonious knowing the community's interests have been fairly handled by the Homeowners Association and people's properties have been respected. If you bought a house with an ocean view, nobody ever worried about somebody building a structure who would take that away and as a result decrease the value of their home.

I don't have an ocean view where live in Monarch Bay and I retired a couple years ago. We will be living off our SS and my savings. Our house is my biggest investment. It is important it is protected. Approving this project will hurt the neighborhood of 208 homes, its housing values and people getting along with each other in the future. We know your approval of this project it would set a precedent that no one wants and we know it wouldn't be good for our community. It will only good for the owner of 423. We all moved in this community well aware of the Homeowners Governing Documents. They have worked well for our community as a whole over the years. Any of us who have done any type of improvement on our house has gone through the Architectural Committee. The committee has been responsive and fair and worked with the homeowners for as long as I have been here. Projects get approved every month. The Homeowners Association did not approve this project and it my hope you as a Planning Commission respect our decision and DO NOT approve this project.

Respectfully,

David Almquist
172 Monarch Bay Dive
Dana Point, CA

From: Jillian Simonett <jillian@pd-usa.com> **On Behalf Of** Ken Girvetz
Sent: Monday, October 31, 2022 3:12 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: Ken Girvetz <keng@phillipsdraperies.com>
Subject: 432 Monarch Bay Dr, Monarch Beach, CA 92629 - Plans submitted

To Danny Giometti, City of Dana Point Planner

Please deny permit to build 2nd story "ADU" at this address. This 2nd story would violate the standing CCR's of this community and set a terrible precedent for all neighbors in the community.

The City should not reverse this rejected proposed plan. The Board of Homeowners unanimously rejected this proposal as a violation of our presiding CCR's. Please do not over-rule our CCR's.

In addition, we find it unlikely that this proposed addition will be utilized as an ADU. This is more likely a dishonest use of new legislation to encourage ADU additions.

Thank you for your consideration,

-Ken Girvetz for

Phyllis Girvetz, owner

422 Monarch Bay Dr

Monarch Beach, CA 92629 (An immediate neighbor)

626-255-2557 Ken's Cell

From: Dave Brobeck <davidandgay@cox.net>

Subject: Monarch Bay ADU Proposal

Date: October 31, 2022 at 5:30:16 PM PDT

To: dgiometti@dnapoint.org

Dear Mr. Giometti,

Like many others, we are very concerned about the proposed ADU and height exemption that is being requested by the owner of 432 Monarch Bay Drive.

We have strict CC&Rs, like most communities, and the proposal in this case could set a precedent that would destroy coveted views and greatly affect property values in our community.

We strongly oppose this effort by one disgruntled homeowner to try to circumvent restrictions that all 220 homeowners agreed to when they purchased their property.

We urge you to reject this application.

Respectfully,

Dave and Gaye Brobeck
217 Monarch Bay Drive

From: Axelson, James

Sent: Tuesday, November 1, 2022 12:41 PM

To: dgiometti@danapoint.org

Subject: ada request at 432 Monarch Bay

Danny, I have been a homeowner here in Monarch Bay since 2010. The architectural committee, while a pain many times, has preserved the concept of not blocking other homeowners ocean views and I agree with this policy. It would be wrong for someone to buy a home and have another homeowner raise another level and block a homeowners view through this ada loophole. I am not behind the 432 property, but if I was, I would not be happy for numerous reasons as I am sure you would be if you owned the home behind this application. I also do not understand how adding a level at the top of this house would help the owner for any sort of disability reason. I see the owner around the neighborhood and he does not seem to have any sort of disability, but I think if he did, he would add a lower level, not an upper level. This request seems like he just wants a better ocean view and is using this ada exception as his excuse and he is not concerned with the views of the homes behind him. I hope you reject this request for all the reasons stated above.

I live at 319 Monarch Bay and if you have any questions or concerns, feel free to call me.

Thanks,

Jim

James B. Axelson, CFP® CEPA®

Senior Vice President - Wealth Management

Porter Axelson Bremner Group

UBS Financial Services, Inc.

888 San Clemente, Suite 300

Newport Beach, CA 92660

Tel: 949-467-6026

Fax: 855-239-1354

james.axelson@ubs.com

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From: Kathleen Kelly <kathleen@kentsnyderlaw.com>

Sent: Tuesday, November 1, 2022 2:31 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: Objection to Construction of ADU at 432 Monarch Bay Drive, Dana Point, CA

Dear Danny,

My husband, Peter Barbaresi and I are owners/residents of 1 Monarch Bay Drive, Dana Point, CA.

The purpose of this letter is to unequivocally oppose the approval of the construction of a second story ADU at 432 Monarch Bay Drive, Dana Point, CA.

Options need be explored for an alternative location for the construction of an ADU on this property site rather than the proposed second story.

Height restrictions, conformance with CC&R's and view blockage are taken very seriously in coastal communities and consequently, necessitate a disapproval of a second story ADU at 432 Monarch Bay Drive, Dana Point, CA.

Respectfully,

Kathleen Kelly

Attorney at Law

Law Office of Kent G. Snyder

2301 Dupont Drive, Suite 430

Irvine, CA 92612

Tel: (949) 833-9078

Email Fax: 949 732-1818

Kathleen@Kentsnyderlaw.com

NEW EMAIL ADDRESS ABOVE

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-----Original Message-----

From: bdt4legal@gmail.com <bdt4legal@gmail.com>

Sent: Tuesday, November 1, 2022 9:00 PM

To: Vanessa Rivera <VRivera@DANAPOINT.ORG>

Cc: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: Re: 432 Monarch Bay DENIAL

Attention: Dana Point Planning Commission

Re: ADU and increased height proposal by 432 Monarch Bay Dr.

I earnestly object to this overbearing plan. Please vote NO. Our CC&R's are fair and consistent for all owners.

Cordially, Brett Thomson, 3 Monarch Bay Dr Confidential message, for addressed recipient only.

From: kbisconti@gmail.com <kbisconti@gmail.com>
Sent: Wednesday, November 2, 2022 9:16 AM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: Lisa Klasky <klasky@keystonepacific.com>
Subject: Planning Commission mtg - 432 Monarch Bay Drive

Dear Planning Commission members -

We are the homeowners of 408 Monarch Bay Drive, Dana Point. Unfortunately we are out of state this month and will not be able to attend the Nov 10th meeting but we'd like to express our strong opposition to the ADU plans submitted by the owners of 432 Monarch Bay Drive.

We are homeowners with a nearly identical home to 432 Monarch Bay (same model) also on the west side of the Mall Tract. We purchased our property in Dec 2020 and like the owners of 432 Monarch desire to modernize and expand our home. We know what our governing document limitations are and we've spent the last 18 months going through the process of gaining approvals from the Monarch Bay ACC, Coastal commission and City of Dana Point and have made many undesired modifications to our plans in order to adhere to the HOA and city guidelines that protect our and our neighbors' rights and property investments. We've had to lower our floor elevations and reduce ceiling heights in undesirable ways but we completely understand the importance of sightlines / view corridors, especially in coastal communities like Monarch Bay.

We have elderly parents and adult children who would be more than happy to move into an ADU that we could easily locate on top of the house we are now building but we know that would adversely impact at least 5 of our neighbors. Likewise there are at least 2 downstream homes from us that could adversely impact us if they were allowed to bypass the Association Governing Documents that protect us today.

Every homeowner in Monarch Bay, especially the mall tract properties, knows the value of protecting our view corridors and any variances to this will create an avalanche of downstream problems and property value loss for nearly every homeowner in this community as well as other communities along the coastline.

For these reasons we strongly oppose any overruling of our association's governing documents.

Ken and Colleen Bisconti

Homeowners

408 Monarch Bay Drive

Dana Point CA 92629

From: Aram Keith <aram.keith@hotmail.com>
Sent: Wednesday, November 2, 2022 10:32 AM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: Tract 4472, lot 432

Danny - very nice to talk to you this morning. I want to go on the record of opposing the applicants request to add a second level to their existing home as an ADU.

This action if approved would potentially destroy our beautiful community and start a major conflict within our neighborhood. I plan to come to the Planning Commission hearing on the 14th.

Aram Keith

420 Monarch Bay Drive

Dana Point, California 92629

-----Original Message-----

From: Dzintris Vallis <vallis7@cox.net>

Sent: Wednesday, November 2, 2022 1:53 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: 432 Monarch Bay Dr. application for second story ADU.

We strongly object to the proposed addition of an ADU by 432 Monarch Bay Dr. To claim that an ADU by 432 Moarch Bay Dr. would qualify as a affordable dwelling unit is ludicrous. We have architectural guidelines that everyone should comply with.

Respectfully: Dzintris and Sylvia Vallis. 179 Monarch Bay Dr.

--

This email has been checked for viruses by Avast antivirus software.

www.avast.com

From: Jennifer Taubert <jennifertaubert@yahoo.com>
Sent: Wednesday, November 2, 2022 3:05 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: Tom Meinert <tm@amghp.com>
Subject: November 14th Public Hearing on 432 Monarch Bay Drive

Dear Mr. Giometti,

We write to you as the homeowners of 139 Monarch Bay Drive, Dana Point, CA 92677, in opposition to the proposal before the city regarding tract #4472 in Monarch Bay (432 Monarch Bay Drive, Dana Point, CA 92677). Changes to the site are restricted pursuant to the community's CC&Rs, and the proposal has been unanimously denied by the Monarch Bay Association's Architectural Committee.

When people purchase property in Monarch Bay it is with the clear understanding that approval by the Monarch Bay Association's Architectural Committee is required for all exterior changes to a home and that a variance is required for any and all changes that fall outside the guidelines for the community and for the specific tract of land. These requirements have been in place and have been consistently followed by all property owners since the community's inception in the 1960s. In addition, and very importantly, it is well understood that both Monarch Bay Association AND the City of Dana Point approvals are required prior to modification of any tract and that the more restrictive of the two requirements will always apply.

It is our understanding that the proposed plan on file with the City of Dana Point exceeds both the existing footprint and height limitations set out in the Monarch Bay Association CC&Rs. The structure as designed and submitted to the City of Dana Point does not conform to the Monarch Bay Association Architectural Guidelines and is not compatible with the height, setback or architectural design of the primary home and surrounding land uses as required in the ADU Coastal Guidelines. Any approval by the city outside of the clearly established requirements would set a dangerous precedent that has the potential to mire the community and the City in needless litigation for decades to come.

For all the reasons outlined above, we want to reiterate our opposition to the proposed plans for 432 Monarch Bay Drive, Dana Point, CA 92677, and ask that you deny the proposal.

Sincerely,

Jennifer Taubert and Tom Meinert

139 Monarch Bay Drive

Dana Point, CA 92677

From: Andrea Burridge <axburridge@gmail.com>
Sent: Thursday, November 3, 2022 1:00:42 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: Richard Burridge <rburridge14@gmail.com>
Subject: 432 Monarch Bay Drive

Dear Mr. Giometti

I am writing on behalf of my husband and myself to adamantly disagree with the plans submitted by the owners of 432 Monarch Bay Drive to add a second level ADU to their current structure. Not only is against all height restrictions set in place by our Home Owners Association, it will adversely effect the home values of the home in front of it and around it. It is not fair for a home owner to increase their own home value at the expense of decreasing those around it.

Approving this structure would also adversely effect the general feel of Monarch Bay Homes, which have been structured to have **ALL homeowners adhere** to our homeowners strict architectural guidelines.

Approving this structure would set a precedent for any future submittals which is very dangerous.

We **STRONGLY protest** the building of a second level ADU at 432 Monarch Bay Drive.

Respectfully,

Andrea and Dick Burridge

11 Monarch Bay Drive

Dana Point, CA 92629

From: Mike Hearn <mike@mhearn.com>
Sent: Saturday, November 5, 2022 11:33 AM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: 432 Monarch Bay Drive, Dana Point -- hearing on 11-14-22

Dear Mr. Giometti:

I live in Monarch Bay at 6 Monarch Bay Drive. I have received a notice for a hearing on 11-14-22 for 432 Monarch Bay Drive and their request for an ADU unit.

Please accept this as a formal objection to that request. The ARC for the community has already denied the request because it significantly increases the height of the roof line and violates other community rules. This ADU will infringe on other owners view. This is an attempt by the owner to bypass the ARC and community rules. If this is allowed, it will open Pandora's box for the community.

Thank you. Mike Hearn

From: Peter Labahn <p.labahn@hotmail.com>

Sent: Saturday, November 5, 2022 8:11 AM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: 432 Monarch Bay Drive - Public Hearing Comment Submittal

I own residential property at 93 Monarch Bay. I am writing concerning a proposed remodel and addition to a neighboring Monarch Bay property at 432 Monarch Bay Drive. I will be out of town and unable to attend the Planning Commission meeting on November 14, 2022, at which plans submitted by the owner of that property will be discussed. I request that my input as expressed in this email be reviewed and considered.

Although my property is not adjacent to the subject property, I have strong feelings about this owner's plan as proposed. I believe that if this plan for 432 Monarch Bay Drive is permitted to proceed, the impact on the entire community, and ultimately my property as well, will be profoundly destructive.

The owner of 432 Monarch Bay Drive is proposing a remodel, including addition of a second story, to their home. It appears certain that if approved, this addition would block the existing views of multiple neighbors. The proposed structure would violate Monarch Bay CC&R's, which the owner has apparently sought to disregard. Of perhaps more significance to me, and to others in our private, gated community, is the owner's decision to identify this addition as an accessory dwelling unit (ADU).

Because the proposed changes to this property were unanimously denied by the Monarch Bay Association Architectural Committee, and are opposed by most in the neighborhood, it requires a suspension of disbelief to accept that this applicant has the remotest intention of utilizing the ADU as envisioned by those who crafted AB-9. Rather, it appears likely that labelling the proposed addition as an ADU is merely an attempt to gain the leverage necessary to circumvent local rules and harm others while gaining some personal, financial advantage. It would be absurd to argue that an ADU which harvests views at the expense of neighbors in an established neighborhood of multi-million dollar homes would ever be used to provide "affordable" housing.

If the City of Dana Point approves the plans for 432 Monarch Bay Drive as submitted, logic suggests that more, similar submittals will follow, resulting in a profound change in the character and tone of our community. In the best of all possible worlds, regulations and local review processes are perhaps not needed, because those seeking to modify their properties are loath to harm their neighbors. Unfortunately, that is not the world we live in today.

Please support our local Monarch Bay architectural guidelines, and our community of homeowners. Do not permit this applicant to circumvent the rules that were in place at the time they purchased their property - rules which preserve our property values and quality of life as Dana Point residents.

Thank you

From: Michael K. McGuire, DDS <mkmperio@periohealth.com>

Sent: Monday, November 7, 2022 2:33 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Cc: Lisa Klasky <klasky@keystonepacific.com>; Jana McGuire <jsmctexas@gmail.com>; Michael K. McGuire, DDS <mkmperio@periohealth.com>

Subject: Letter to Mr. Danny Giometti

Dear Mr Giometti,

Please see attached.

Thanks,

Dr McGuire

135 Monarch Bay

Dana Point

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November 7, 2022

Mr. Danny Giometti
Senior Planner
City of Dana Point

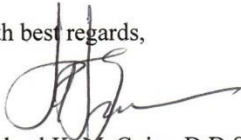
Re: ADU Public Hearing, November 14, 2022, at 6:00 P.M.

Dear Mr. Giometti:

I strongly oppose the proposed Accessory Dwelling Unit (ADU) at 431 Monarch Bay. If this is approved, it will set a precedent allowing investors to come in communities such as ours and increase the value of their property at the expense of the neighbors by building ADU's that are not in alignment with the communities architectural control parameters. This is a very different situation than normally occurs when people buy property that plan to live in the community and enjoy amical relationships with their neighbors. When they plan construction, there is sometimes contentious discussion but the neighbors, the community and the new owners are well represented and the end result is one that benefits all. I am afraid that with the advent of the ADU's we are seeing investors come into communities like ours and buy property to build on with no intention of every living in the community. Because of that, they have no allegiance to the neighborhood and are simply trying to rapidly improve the value of the property with no concern of how it affects neighbors view rights and property values.

I strongly oppose the addition of the ADU at 432 Monarch Bay and I hope that the City of Dana Point will not allow this proceed. I remember when we built our house and conformed to not only our community association architectural control rules but also regulations of the City of Dana Point. I hope that others do the same and if I can provide any further information to defeat this proposal, please do not hesitate to contact me personally.

With best regards,



Michael K. McGuire, D.D.S.
135 Monarch Bay Drive
Dana Point

Michael K. McGuire, DDS, FICD, FACP • mkmperio@periohealth.com

E. Todd Scheyer DDS, MS • etsperio@periohealth.com

Andrew M. Rossi, DDS, MSD • amrperio@periohealth.com

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-----Original Message-----

From: Samantha Taylor <givesamcoffee@gmail.com>

Sent: Monday, November 7, 2022 5:36 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: Monarch Bay Adu hearing

Good Evening Danny,

I know this hearing has been postponed but I wanted to send over an email stating our concern regarding the allowance of ADU additions in the Monarch Bay Community.

We live in the community and while this home does not affect us, if it is approved to allow them to build a second story ADU that blocks view corridors it will open a world of issues and will most definitely impact everyone in the community at some point. Every new build will find a way to use the ADU rules to build what they like.

The owners of that home knew when they purchased that lot they would not be able to build higher and they are trying to find a loophole. It's very disappointing and frustrating, especially considering many of us built new homes in here and followed all guidelines.

I know all of us would be very grateful if the submitted plans were denied.

Have a great night,

Samantha Taylor

Sent from my iPhone

-----Original Message-----

From: Lychakca <lychakca@gmail.com>

Sent: Thursday, November 10, 2022 1:20 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Cc: clyde.stauff@colliers.com

Subject: 432 monarch bay drive

Sent from my iPad

Danny Giometti,
Senior Planner,
City of Dana Point,
Dana Point, CA 92629

Dear Mr. Giometti,

> We are home owners of 315 Monarch Bay Drive, Dana Point, CA92629. Our house is in the mall area.

>

> This letter is written to object to the proposal of adding a second story structure to the existing house at 432 Monarch Bay Drive.

>

> As home owners in the coastal area, we object to any construction that will adversely impact the ocean views of neighborhood properties. The addition may also reduce the property value of the houses so impacted.

>

> Thank you for your consideration

> Sincerely,
Linda Chak
Richard Horns
>

From: Ingrid torre <torreingrid2017@gmail.com>
Sent: Saturday, November 12, 2022 1:13:58 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: ADU hearing for 432 Monarch Bay Dr.

Dear Mr. Giometti,

The variance situation here at Monarch Beach regarding the property at 432 is of great concern to my husband and myself as well as the other residents living in "the Mall" section of Monarch Beach. It is very unfortunate that one member in our community is causing such havoc by trying to negate the CC&Rs we all have accepted when purchasing our properties.

These rules have ensured not only our security within the community but also the reason we all purchased these properties which is "the view".

To obstruct the ocean view of our neighbors using a back door ruling of an ADU legislation is nasty and very selfish. What purpose to the general population of our community would this possible granted variance serve and enhance? Setting such a precedent is dangerous, vicious and self serving to the rest of our community members. This property has been given a resolution and the option of excavating underneath the existing carport and constructing the ADU where the carport currently exists without impacting the existing height or side yard guidelines.

I would like to voice our objection to the granting of a variance to the home at 342 Monarch Bay Drive and would hope that the Planning Board at the City of Dana Point would not rule in favor of that property using the ADU loophole to over ride our existing CC&Rs.

Thank you for your consideration concerning this matter.

Respectfully submitted,

Joe & Ingrid Torre
329 Monarch Bay Drive
Dana Point, Ca 92629
949 317 0137

From: Hayden Macurda <macurdah@gmail.com>
Sent: Sunday, November 13, 2022 8:30:41 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: 432 Monarch Bay Drive variance

I do not think that calling an addition to the height of the structure to make a second story exceeding the lot height limit and call it an Accessory Dwelling unit is in keeping with the spirit of the law. I would guess that when built, it would not hold another family but would be another set of rooms for the basic residence,

I therefore oppose the structure exceeding the height limit as listed in the CCRs,.

Thank you for your consideration

Hayden Macurda

Homeowner

142 Monarch Bay Drive

Dana Point, Ca 92629

From: anan anabtawi <anan22222@hotmail.com>
Sent: Saturday, November 12, 2022 3:14:09 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: ADU hearing , 432 Monarch Bay Dr

Danny,

This is to register our total opposition to the plan submitted by 432 Monarch Bay Drive for an ADU .
This will totally destroy our property values and create financial mayhem in our community.

Regards,

Anan And Taroub Anabtawi, 35 Monarch Bay Drive

From: Kathy Balle <kathydee@cox.net>
Reply-To: Kathy Balle <kathydee@cox.net>
Date: Friday, December 2, 2022 at 8:37 AM
To: DANNY GIOMETTI <DGIOMETTI@DanaPoint.org>
Subject: public hearing December 12, 6 pm Planning Commission

To Whom It May Concern,

My name is Kathy Balle and my husband and I own 12 Monarch Bay Dr, Dana Point. We purchased this home in 2003 and retired in 2009. Our intention when we purchased was for investment and help in our retirement. If you approve the ADA request for the owners of 432 Monarch Bay Dr, that will have a major impact on our investment and retirement.

The value of our homes in Monarch Bay is mainly the view, especially for our home. There are other options to add an ADA to this home that all other homeowners in our community have followed. Specifically, building underground. This allows the home to be in compliance with our communities' guidelines and still accomplish their objective. It is unfair for all the other homeowners over the years, to have followed these guidelines, and then to approve this request for one homeowner, that will have a major impact on every other homeowner in the community.

My husband and I plead with you to deny their request for a second story. There are other options they can do without the negative impact on all the rest of us homeowners.

Thank you kindly for your consideration.

Kathy Balle

12 Monarch Bay Dr,

Dana Point, CA

949 637-1807

From: Jim Boyd <jboyd@capdevelopment.com>
Sent: Friday, December 2, 2022 4:18:39 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: Doug McLeish <d.mcleish@cox.net>; Zumen@cox.net <zumen@cox.net>
Subject: 432 Monarch Bay Drive

Dear Mr Giometti;

I live at 141 Monarch Bay Drive and am a resident in the Monarch Bay Community in Dana Point. I understand the owner of 432 Monarch Bay Drive has applied for a permit to build a second story ADU. The Monarch Bay HOA and Architectural Control Committee unanimously disapproved this project, yet the owner is attempting to circumvent our restrictions by utilizing recent ADU legislation enacted by the State.

Our community has enacted C,C,&Rs and height restrictions designed to preserve ocean view corridors in the community. Each of our lots have maximum height elevations recorded against their property to avoid blockage of view from adjacent homesites. These height restrictions are of record and a purchaser is aware of them prior to purchasing in the community. These restrictions preserve value and avoid haphazard development that is not planned and which I'm sure is not in the interest of either the Community or the City of Dana Point. As a homeowner, I strenuously object to any attempt to circumvent these restrictions.

Further, SB9 and AB 670 permit ADUs up to 16' in height. The proposed ADU is higher than 16' and it is within both the Community and the City's discretion to impose reasonable restrictions where the proposed height is higher than 16'. AB 670 permits HOAs to adopt "reasonable restrictions" which are defined to mean restrictions that do not unreasonably increase the cost to construct or effectively prohibit the construction of an ADU. Many homeowners have excavated beneath their residence or converted garage space to residential usage without raising their roofline. Here the owner of 432 Monarch Bay could construct the ADU where the carport currently exists. Requiring this solution this would be a "reasonable" restriction/alternative to building a second story ADU.

We respectfully request that the application for 4432 be denied by the Planning Commission at its upcoming meeting.

Sincerely,
Jim and Karen Boyd
141 Monarch Bay Drive
Dana Point, CA 92629

From: Duane Cote <duane@duanecote.com>
Sent: Friday, December 2, 2022 1:14:48 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: 432 Monarch Bay Drive, Dana Point, CA 92629

City of Dana Point

Planning Department
33282 Golden Lantern
Dana Point, California 92629
Attn: Danny Giometti
Senior Planner

SUBJECT: 432 Monarch Bay Drive, Monarch Beach, CA 92629 (Lot 15, Tract 4472) Second Floor Living Unit

Dear Mr. Giometti:

I have been made aware that the owners of 432 Monarch Bay Drive have submitted plans directly to you seeking approval of a second floor addition onto the existing single story home.

This house is within the Monarch Bay Association, which oversees CC&R restrictions and design guidelines for all 214 building lots within the community.

The CC&R's limit the height and footprint increases of the houses beyond the existing walls and roof. Within the block that this subject property sits, all of the houses on this side of the street are a single level above the road, and houses across the street, some two story, have ocean views over these residences. Those houses across the street are built up against Coast Highway, and by right can be considered for second story improvements.

If an additional story is approved for this location, it could set precedent that future submittals can be similar to or greater than this structure changing the view corridors protected by the CC&Rs throughout the community.

The home buyers have purchased their residences in this community based on the enforcement of the CC&R's and design guidelines protecting the view they have purchased. These owners knew the rules when they purchased this house.

If the owner wants to build an ADU, I am fully supportive and they have the ability to do it within the current height limitations their property has by adding it either on the ground level or by going subterranean. There is no reason they need a second floor to add an ADU. Based upon the non-compliance of the proposed project with our governing documents, we strongly object to this project and request that the City of Dana Point deny this application without hesitation.

Respectfully,

Duane Cote
181 Monarch Bay Drive

Dana Point, CA 92629
214.632.5446 Mobile
duane@duanecote.com

From: seth brown <sethbrown1@outlook.com>
Sent: Friday, December 2, 2022 12:45:13 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: Tract# 4472/the Mall in Monarch Bay.

Mr Giometti,
My name is Seth Brown. We reside at 124 Monarch Bay Dr.
I am in fact into the city for permits (2nd comments) on my own remodel.
I found the architectural committee to be officious but accommodating as long as I didn't stray too far from certain criteria.
Allowing a project that was disapproved by the HOA to proceed would effect all the homeowners of Monarch Bay; in essence a free for all in design and execution for the future.
I know for a fact that the architectural committee is communicative and does not act in an arbitrary manner.
Thank you for your consideration.
Seth Brown
Sent from [Mail](#) for Windows

From: RICHARD MACKAY <rnmackay2@gmail.com>
Sent: Monday, December 5, 2022 8:10 AM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: Re: 432 MONARCH BAY DRIVE

Danny,

Thank you for notification of McFadden's permit request December 12, 2022.

My brother and I strongly oppose this proposal on multiple levels, and wish to submit a letter presenting our views.

What should I do to make sure our letter is distributed to the Planning Commission or other City staff?

Thank you,

Richard Mackay

436 Monarch Bay Drive

602.390.0215

From: mkranser@cox.net <mkranser@cox.net>
Sent: Sunday, December 4, 2022 1:24 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: Dec. 12 public hearing request

Kindly consider the needs of the homeowners in Monarch Bay when reviewing the request of #432 for attaching a second story which goes beyond our HOA regulations. I request a denial of his petition. Thank you.

Miriam Kranser

#75

From: Rosemary Liegler <rliegler@apu.edu>

Sent: Sunday, December 4, 2022 11:25 AM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: Opposition to proposal at 424 Monarch Bay Drive, Dana Point

Dear Mr. Giometti,

I live at 434 Monarch Bay Dr. in Dana Point--I am a next door neighbor to Tim Mc Fadden who is proposing an Accessory Dwelling Unit as a second floor to 424 Monarch Bay Dr.

I am very opposed for two reasons:

1. A second floor above the current height limits would set a terrible precedent here in Monarch Bay. The CC&R's closely restrict the height limits and honor ocean views for other residents.

2. My recently deceased husband and I added a second floor 30 years ago. Our only option was to add the floor below our home at 434. The geological survey identified solid rock below our home. This option is also available to Mr. McFadden if he wishes to have two floors. The home at 436 Monarch Bay Dr. also has a second floor below street level.

As senior planner for the City of Dana Point, I urge you to vote against this proposal of an Accessory Dwelling Unit as a second floor above street level at 424. I could ruin the appearance and home values in Monarch Bay.

Sincerely,

Rosemary Liegler,

434 Monarch Bay Dr., Dana Point.

rliegler@apu.edu

cell: 626-484-7167

-----Original Message-----

From: Nelson Quigley <nquigley@cox.net>

Sent: Saturday, December 3, 2022 4:19 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: 432 Monarch Bay Drive

Using an ADU as an excuse to circumvent Monarch Bay CC&R's is reprehensible! The MB architectural committee guidelines and the ADU Coastal Guidelines are being totally ignored and trampled.

I vote NO - no approval for this project which could set a precedent for others to follow with bad architectural schemes.

Sincerely,

Nelson J Quigley

186 Monarch Bay Drive

From: Cynthia Johnson <don_cindi@cox.net>
Sent: Saturday, December 3, 2022 12:40 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: Public Hearing Dec. 12th for 432 Monarch Bay Dr.

Hi Mr. Giometti -

We would like to express our concern and objection to any considerations for approval of the ridiculous requests being made by the owners of 432 Monarch Bay Dr. They are very self-serving and without regard to anyone else or any rules or guidelines in place by our HOA, our City or the Coastal Commission. We are actually shocked that this request is even allowed to take up the time of our board and our city council planning commission. We will be praying and having faith that our City Council will uphold the laws in place and not allow legal bullying and threats to even be considered.

Thank you for your service to our wonderful City!

And have a Happy Holiday season.

Sincerely,

Don & Cindi Johnson

19 Monarch Bay Dr.

-----Original Message-----

From: Calder Mackay <cmm@caldermackay.com>

Sent: Monday, December 5, 2022 5:01 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Cc: RICHARD MACKAY <rnm@richmackay.com>

Subject: McFadden CDP22-0017 (Neighbor Mackay Objection)

Hello Mr. Giometti,

Attached is a letter I prepared explaining our family's objections to the McFadden's project.

Thank you for the chance to be heard.

Calder Mackay
206-200-0384

Calder M. Mackay

December 5, 2022

Mr. Danny Giometti, Senior Planner
City of Dana Point
Community Development Department
33282 Golden Lantern
Dana Point, CA 92629

Re: CDP22-0017 and CUP22-0007/McFadden/Edmonson

Dear Mr. Giometti:

My name is Calder Mackay. My family has owned #436 Monarch Bay since 1976. I write you to convey our family's opposition to the design proposed by the McFadden project just up the street, at #432 Monarch Bay, which seeks to use new building codes favoring ADUs as a weapon to defeat the height and setback restrictions underlying all the real property deeds in Monarch Bay. We acknowledge the desire to increase ADU placements in Dana Point, including Monarch Bay, but we strongly oppose the McFadden's specific permit application.

California has adopted public policy laws designed to increase the inventory of reasonably priced, small living spaces, such as ADUs, within or attached to residential structures. ADUs, which would have otherwise been denied by setback, lot coverage or height restrictions, will become more common. The City of Dana Point's own ADU enabling codes relax existing standards for setbacks, height, and parking in order to accommodate them.

What of other building restrictions within planned communities such as those found in the deeds underlying Monarch Bay, Ritz Cove, the Strands and others inland, that run with the land, that have been set out clearly in each and every homeowner's deed, that have been relied on for decades, and that are fundamental to the enjoyment and value of all residences therein?

In Monarch Bay and, in particular, in the area known as the Mall, where the McFadden's project is located, each lot was originally sited, sized and graded in relation to each other lot and in relation to the ocean and beach views. Detailed building dimensions were fixed in place in order to assure that an owner could not impair the balanced, general scheme whereby neighbors share the view. Not only are such restrictions fair and reasonable, they are essential to the success and cohesiveness of the community whether enjoyed from the residences, the streets, the walkways or looking back from the beach.

How then should the addition of an ADU be measured against the very deed restrictions that ensure the neighborhood's integrity? Newly enacted California Civil Code Section 714.3 offers us guidance. Section 714.3 identifies just three circumstances when private covenants and restrictions in an owner's deed may be deemed unenforceable against a proposed ADU. Absent one of the three circumstances such deed restrictions are, by law, valid and enforceable. The three ADU-related circumstances that trump otherwise valid restrictions are present when they:

- (1) effectively prohibit the construction of an ADU,
- (2) extinguish the ability to otherwise construct, an ADU, or
- (3) unreasonably increase the cost to construct an ADU.

The first and second circumstances don't exist here. It is a fact that not one of the Monarch Bay's covenants in the Mall restricting height, coverage, or setbacks in the McFadden's deed to #432 makes it impossible or effectively prohibits them from adding an ADU to the existing home or from constructing an ADU within a new home. For example, they could modify the existing garage or structure without violating the height restriction. There is also significant additional space to be claimed by excavating a basement living area or a basement garage, all without violating the height or setback restrictions.

POB 99530, Seattle, WA 98139
206-200-0384
cmn@caldernackay.com

Virtually all new construction in Monarch has pursued these approaches as the means of enlarging homes without violating the height or setback restrictions.

As for the third circumstance ('unreasonable cost'), the cost to excavate enough material for a basement ADU or garage, is simply not unreasonable. The site is easily accessed from the street. Developers are everywhere being required to put parking underground. Further, it is hardly an 'unreasonable' cost for this homeowner, who owns 2 houses in the Mall in Monarch Bay (#432 and #416), and perhaps others, to either put the ADU somewhere other than in the sky, or excavate or convert the site for a garage, in a way that does not exceed the height of the existing structure. Their lot is an extremely valuable coastal property. #430 Monarch Bay sold two years ago for \$5.5 million, #317 Monarch Bay sold in January 2021 for \$5.6 million. #412 Monarch Bay sold in August 2021 for \$6.4 million. Our house just doors away from the McFaddens, of the same construction vintage (original tract home) with similar views as theirs's, was appraised for \$5.7 million. It is simply not an unreasonable absolute or relative cost for the McFaddens to construct an ADU on their lot in a way that does not violate the deed restrictions.


Since not one of the circumstances called out in Section 714.3 is present here, the covenants and restrictions in the McFadden's deed are valid, legal and enforceable and their project as designed should not be permitted to go forward. On behalf of my family, I therefore respectfully ask that approval of their project be denied.

I have doubts that the McFaddens sincerely desire to increase the public housing stock in Dana Point or that they will ever take in another family within their residence. I believe they are abusing the law to increase the size, height, and width of their proposed residence for their own enjoyment to capture for themselves a windfall intended for the public good, yet to the significant detriment of the residents of Monarch Bay.

Allowing the McFadden project would presumably incentivize others to go upward and outward, under the pretext of constructing an ADU. Although that might financially benefit Mall owners someday, it will be a tragedy for the Monarch Bay community. This must not be the fate of Monarch Bay, not least while there are other responsible and reasonable ways for one to include an ADU in a project, still have a fine home, and stay within the original scheme of the neighborhood.

Thank you for your time considering our concerns on this matter so important to us and to all Mall residents in Monarch Bay.

Very truly yours,


Calder Mackay

cc: Richard Mackay

From: Todd Befield <corbinaman1@gmail.com>

Sent: Wednesday, December 7, 2022 10:05 AM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>; evelynbrumfield35@gmail.com

Subject: 432 Monarch Bay Drive Proposed ADU Rental Unit

As 45 year residents of #95 Monarch Bay, we are against the proposed ADU rental unit proposed at #432 Monarch Bay due to the excessive variance which will violate height, setback, architectural design, and surrounding land uses as required in the ADU Coastal Guidelines.

Sincerely, Todd and Evelyn Brumfield

-----Original Message-----

From: Mike M <pennymatter@gmail.com>

Sent: Wednesday, December 7, 2022 3:21 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: Re: variance for. 432 monarch bay dr., dana point.

Mr. Giometti -

We are writing you in regards to the proposed plan for 432 monarch bay (tract#4472 which is restricted by the associations CC&R). The proposed plans exceed the footprint and height limitations of the tract as well as the ADU Coastal Guidelines. When the owners purchased the property they were aware of the community's CC&R and are bound to it; they should have also understood that generations of homeowners have abided by the rules to allow legacy view corridors and a cooperative development environment. Last, my opinion is the State approved ADU initiative was meant to create affordable rental units not to allow developers or owners to circumvent rules and regulations to over develop established lots etc. We encourage the planning commission to support the decision of the monarch bay architectural committee and deny the plans.

Respectfully, Charles and Penny Matter

114 Monarch Bay Dr.

Dana Point, CA

Item 4: Public Comments – Continued

-----Original Message-----

From: G. Aldo Dapelo <gadapelo@aol.com>

Sent: Thursday, December 8, 2022 3:17 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>; klasky@keystonepacific.com

Subject: Objection to 432 Monarch Bay ADU Application

Dear Mr. Giometti,

My written comments and referenced photographs are attached to this email. If you happen to have any difficulty opening the attachments, please let me know so that I can once again try to get them to you and the City Planning Commission.

Thank you for your time and efforts.

Sincerely,

Gary A. Dapelo

429 Monarch Bay Drive



City of Dana Point Planning Commission
c/o Mr. Danny Giometti
dgiometti@danapoint.org

Dear Mr. Giometti,

My name is Gary A. Dapelo. I am 70 years of age and pretty stressed about all of this. My home address is 429 Monarch Bay Drive, Dana Point, CA.

I kindly ask that you please consider my comments and objections with regard to the **Coastal Development Permit CDP22-0017 and Conditional Use Permit CUP22-0007** application duplicitously filed by Tim and Mary McFadden as owners of 432 Monarch Bay.

I have resided in the Community of Monarch Bay since approximately 1985. During the last three to four years, I have worked with my Architect, the Monarch Bay Homeowners Association/Architectural Design Committee, all of my surrounding neighbors and the City of Dana Point to design and build a new home on my property where I hope to live out my final days. My new home that is currently under construction does not interfere with or impact any of my neighbors' ocean views. I have complied with every single requirement, rule, regulation, nuance and aspect of the Monarch Bay Recorded CC&R's along with all of the requirements imposed by the City of Dana Point.

I have not, in the many years I have lived in Monarch Bay, had to deal with anything quite as brazen or shockingly dishonest as the actions of the McFadden's relative to their home remodel scheme.

During these last three to four years while I have spent hundreds of thousand of dollars to obtain the approvals and permits to appropriately construct my new home, the McFadden's have seemingly sought to obstruct my view of the sand, white-water and blue ocean which I believe is specifically protected by the recorded CC&R's. The 432 residential structures have always been and should always remain a one story single family home. All of the McFadden's prior efforts to add a second story to this property were disapproved by the HOA. In fact, nearly everyone in the Monarch Bay Community, including all of the prior owners of 432 and the McFadden's, had actual notice and knowledge that the recorded CC&R's expressly precluded/restricted any owner of that property from adding a second story that would obstruct the ocean views of their neighbors.

During any Monarch Bay HOA Architectural approval process, all affected neighbors must be able to review any proposed construction plans and sign a "Neighbor Awareness Form" including any comments and objections. The McFadden's actively participated in that process by walking through my home while actually reviewing and discussing my plans along with examining my views. Based upon

those events, I know for a fact that the McFadden's are well aware that my new home was designed entirely around my long standing views of the sand, white water and ocean. The photos of my existing views (that the McFadden's also took photos of during their walk-through) are attached.

This newest McFadden plot/scheme includes having obtained neighbor acknowledgements and ACC approvals of a completely different set of plans for a single story remodel and are not the plans currently submitted to the City of Dana Point. The McFadden's appear to have deceptively pretended to comply with Monarch Bay's recorded CC&R's and Architectural Guidelines with an apparent and predetermined intent to then clandestinely file a different set of unapproved plans (including an unapproved second story) with the City. The McFadden's newest "bait and switch" scheme is, in my opinion, an outlandish and egregiously intentional act of fraud and deceit.

While I understand the underlying policy in support of ADU'S is to contribute needed housing for those who wish to reside in Dana Point, my opinion is that it's highly unlikely that there are very many folks able to pay the rents of \$10,000 to \$30,000 per month that has been historically charged by the McFadden's to rent 432 Monarch Bay or any of their other nearby properties.

From what else I can discern from the policy considerations underlying the ADU statutes, it seems unlikely that the millions of dollars expended by me to build a new home in compliance with all of the applicable rules and regulations would be considered. But it really should be! The same goes for the absolute diminution of value to our Community properties that I, and many others in our community, will most definitely sustain if the McFadden's' application is approved and they are somehow rewarded as a result of their blatant duplicity.

Nevertheless, I understand that "A local agency (including an HOA) may impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit.....etc.) [CA Gov Code 65852.2 (B) (i)], This provision is relevant when considered with Section 5 of the City of Dana Point "ACCESSORY DWELLING UNIT/JUNIOR ACCESSORY DWELLING UNIT PLAN CHECK SUBMITTAL REQUIREMENTS" which requires that the applicant confirm: "In the event that the subject property is located within a Homeowners Association ("HOA"), the owner shall submit written evidence of the HOA's approval of the ADU or JADU." This pending application should be denied based upon the fact that the McFadden's failed to submit any such written evidence.

Moreover, and without going too deep on the subject, California Statutes which are contained in twenty nine (29) separate Codes,

almost always include General Provisions with the codified directive that: "The word 'shall' is mandatory" and not permissive. "Shall is a term of obligation; something that must be done." Shall denotes a requirement that is mandatory and not in any way shape or form permissive.

With the forgoing in mind, I reference the following provisions specified in Dana Point Municipal Code Section 9.07.210:

(d) (2) "The application form shall specify all information needed in order for the ADU Permit application to be deemed complete."

(e) (1) (J) "All attached ADUs and JADUs shall be approved by the applicant's homeowner's association, if applicable, prior to an application being submitted to the City."

(3) (H) "All ADUs shall be approved by the applicant's homeowner's association, if applicable, prior to an application being submitted to the City."

(f) (9) (K) "In the event that the property upon which the ADU is proposed is located within a Homeowners Association ("HOA"), the applicant shall submit to the City written evidence of the HOA's approval of the ADU concurrent with their ADU application."

The McFadden's purposefully ignored compliance with any of the noted provisions specified in Dana Point Municipal Code 9.07.210 relative to their duplicitous attempt to seek City approval of "a non-mandatory ADU" while improperly pushing their application to a Public Hearing.

As the owner and actual resident of the property located across the street from the proposed 432 Monarch Bay project, I vehemently object to the McFadden's deceitfully calculated ruse to add a view blocking second story to the 432 Monarch Bay structure.

I cannot attend the Public Hearing in this matter because I am residing out of state while my home is being rebuilt. However, if you'd like me to clarify anything or if you have questions, please feel free to call me at my home (208-928-6239) or my cell (949-290-3230).

Thank you for your time and efforts.

Gary A. Dapelo

From: Lara Leitner <LRL@JMBM.com>

Sent: Thursday, December 8, 2022 9:44:02 PM

To: Ashok Dhingra <adhingra@danapoint.org>; Roy Dohner <RDohner@DanaPoint.org>; Eric Nelson <ENelson@DanaPoint.org>; Mary Opel <MOpel@DanaPoint.org>

Cc: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: Public Comment - December 12, 2022 - Agenda Item No. 4 [JMBM-LA.FID2073826]

Please find attached correspondence in connection with Agenda No. 4 for the Planning Commission meeting on December 12, 2022.

Best,

Lara

Lara Leitner | Associate

Jeffer Mangels Butler & Mitchell LLP | JMBM

1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067

D: (310) 785-5361 | **F:** (310) 203-0567 | **E:** LLeitner@JMBM.com



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Lara R. Leitner
lleitner@jmbm.com

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Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

December 8, 2022

VIA ELECTRONIC MAIL

City of Dana Point Planning Commission
Ashok K. Dhingra, Vice-Chair
Roy Dohner, Commissioner
Eric A. Nelson, Commissioner
Mary Opel, Commissioner
adhingra@danapoint.org
rdohner@danapoint.org
enelson@danapoint.org
mopel@danapoint.org

Dana Point City Hall
33282 Golden Lantern,
Dana Point, CA 92629

Re: 432 Monarch Bay Drive, Monarch Beach, CA 92629

Hearing Date: December 12, 2022

Time: 6:00 p.m.

Project: Coastal Development Permit CDP22-0017 and Conditional Use
Permit CUP22-0007

Dear Members of the City of Dana Point Planning Commission:

We are counsel to the Monarch Bay Homeowners Association ("HOA"). We send this letter on behalf of the HOA in advance of the hearing taking place before this Commission on December 12, 2022, to consider the Applicants' pending conditional use permit #22-0007 ("CUP") and coastal development permit #22-0017 ("CDP") applications (the "Project") for the property located at 432 Monarch Bay (the "Property"). For the reasons detailed below, the HOA urges the Commission to reject the Applicants' Project in full.

Before you is a proposal to build an accessory dwelling unit ("ADU") as a second-story to an existing single-level residence. To grant the requested CUP, this Commission would have to find, among other things, that "the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures." (Dana Point Municipal Code ("DPMC") § 9.65.060(b)(2).) Similarly, to grant the CDP, the Planning Commission would have to find, among other things, "[t]hat the proposed development will be visually compatible

with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas....” (DPMC § 9.69.070(f).) Neither of these findings can be made here.

The desires of the Monarch Bay community are expressed through the governing Covenants, Conditions, and Restrictions (“CC&Rs”), which contain carefully drafted criteria related to the size, scale, design, and aesthetic features of any new development within each “tract” in Monarch Bay. Attached hereto as Exhibit A is a true and correct copy of the CC&Rs. Significant emphasis is placed on preserving views and harmonizing development with the surrounding community. (See e.g., CC&R, §§ 8.9(b) and (e).) The Property at issue here is located within Tract No. 4472 known as the “Mall Area.” The CC&Rs are particularly protective of the scale, views, and coastal character of Mall Area properties.

The proposed Project though ignores these fundamental provisions and thereby “adversely affect[s]” adjacent properties. (DPMC § 9.65.060(b)(2).) The Planning Commission may not grant the CUP where, as here, the proposed Project “constitute[s] a menace to public health, safety, or general welfare, [or is] materially detrimental to the property of other persons located in the vicinity of such use.” (DPMC, § 9.65.060.) Nor can the Planning Commission grant the CDP because the proposed Project is quite obviously visually incompatible with the character of surrounding areas. (DPMC § 9.69.070(f).)

Significantly, properties within Tract No. 4472 are limited to the height of real property as it existed at the time the CC&Rs were adopted, which in this case is 8 feet. (CC&R, § 8.12(e).) It is for this reason that all of the houses on the same block and side of the street where this Property is located are single-story. Incredibly, the proposed Project *seeks to exceed its height limitation by nearly 16 feet*, which plainly violates the CC&R height restriction. As the CC&Rs also protect views, tripling the height of the existing structure, as the Project proposes to do, unreasonably obstructs the panoramic ocean views from neighboring properties (most significantly impacting the property across the street). (CC&R §§ 8.9(b), 8.9(e)(iv), 8.12(f)(ii), 8.12(g), 8.12(i).) Attached hereto as Exhibit B is a photograph of the existing ocean views from the residence across the street from the Property.

The proposed Project also violates the critical CC&R requirement that property owners obtain development approval from the HOA’s Architectural Control Committee (“ACC”). CC&R § 7.8 (“There shall be no structural alteration, construction or removal of any Residence, fence or other structure whatsoever in Monarch Bay without the prior written approval of the Board or its designated Architectural Control Committee...”); CC&R § 7.9 (“There shall be no construction, alteration or removal of any Improvement in Monarch Bay... without the approval of the Architectural Control Committee...”) The ACC must base its decision to approve or deny a project “on scale of site dimension, conformity and harmony of external design with neighboring structures, effect of location and use of Improvements... on neighboring property and views,... consideration of view and aesthetic beauty, and conformity of the plans and specifications to the purpose and general plan and intent of the Covenants in this Declaration.”

(CC&R §§ 8.9(b); *see also* CC&R § 8.9(e)(iv) (ACC considers “scale of site, aesthetic conformity,... unreasonable blockage of view, and conformity of external design to neighboring structures.”).¹ The ACC denied the Project because it violates the CC&R height restriction, unreasonably blocks neighboring views, and is out of scale with surrounding properties.² The Applicants nevertheless proceeded to submit their plans to the City despite not having ACC approval.

These CC&R violations make it impossible for the Planning Commission to make the required CUP and CDP findings because the Project directly violates the very conditions this community has expressed are necessary to prevent detrimental impacts (including visual impairment) to surrounding properties. (DPMC, §§ 9.65.060(b)(2), 9.69.070(f).)

Less impactful alternatives for development are available to the Applicants. Indeed, virtually all of the properties on the same side of the street where this Property is located have constructed subterranean living space. The HOA is not seeking to unreasonably restrict development of the Property, but this proposed Project directly conflicts with the longstanding CC&Rs and the municipal code.

The HOA thus respectfully requests that the Planning Commission adopt the recommendations of the staff report and deny the CUP and CDP.

Sincerely,



LARA R. LEITNER for
Jeffer Mangels Butler & Mitchell LLP

LRL

¹ Only a one foot variance for Title 24 upgrades is even available at the discretion of the ACC. (Section 5.3 of the Monarch Bay Association Architectural Guidelines)

² The Applicants also violated the procedural requirements for submitting their plans and specifications to the ACC for approval *prior to* submitting them to the City. (CC&R §§ 7.8, 7.9.) The Applicants bypassed the entire ACC review process and submitted their plans directly to the City instead. Upon discovering this, the ACC tracked the plans down, reviewed them according to the CC&R criteria, and justifiably denied them.

EXHIBIT A

RECORDING REQUESTED BY:
FIRST AMERICAN TITLE COMPANY
NATIONAL HOMELOAN SERVICES
SUBDIVISION DEPARTMENT

Recording requested by:

MMB Management, LLC
c/o William B. Brinckloe, Jr., Esq.
9841 Irvine Center Drive, Suite 220
Irvine, California 92618-4316

When recorded return to:

MMB Management, LLC
c/o William B. Brinckloe, Jr., Esq.
9841 Irvine Center Drive, Suite 220
Irvine, California 92618-4316

3857735-18

Recorded in Official Records, Orange County
Renee Ramirez, Assistant Clerk-Recorder



279.00

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
MONARCH BAY**

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

Executed in counterpart

IT
92P

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EXHIBITS

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR
MONARCH BAY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR MONARCH BAY is made this 19th day of December, 2012, by **MMB MANAGEMENT, LLC**, a California limited liability company (hereinafter referred to as the "**Declarant**").

W I T N E S S E T H:

A. Declarant is the owner of that certain real property located in the City of Dana Point, County of Orange, State of California, more particularly described on Exhibit "A" to this Declaration (the "**Property**"), which has been improved with a residential subdivision and associated amenities commonly known as, and hereinafter referred to as, "**Monarch Bay**". Monarch Bay Association, a California nonprofit mutual benefit corporation (the "**Association**"), was incorporated under the laws of the State of California and has been operating as the homeowners association serving the residents of Monarch Bay and shall continue to operate in that capacity pursuant to this Declaration and the Association's Articles and By-Laws. Unless otherwise defined herein, capitalized terms used in these Recitals shall have the meaning ascribed thereto in Article I of this Declaration.

B. Prior to the date hereof, all of Monarch Bay was the subject of the Ground Lease (more particularly identified in Section 1.13 of this Declaration) between Declarant, as lessor, and the Association, as lessee. Each of the Lots was further subleased by the Association pursuant to a sublease (a "**Sublease**") to the owner of the Residence (defined below) located upon that Lot. The land use restrictions governing the use of Monarch Bay by the owners of the Residences were set forth in the Subleases for those Residences.

C. As of the date hereof, the Beach Club Lots (as identified on Exhibit "A") within Monarch Bay are subject to that certain Restated and Amended Sublease—Monarch Bay Club between the Association, as "Landlord", and MONARCH BAY CLUB, a California non-profit corporation ("**MBC**"), as "Tenant", dated January 1, 2003, as amended by that certain First Amendment to Restated and Amended Sublease—Monarch Bay Club between the Association and MBC dated November 25, 2008 (as the same may be in the future amended or modified, the "**Club Sublease**"); and the Road and Facility Lots (as identified on Exhibit "A") within Monarch Bay are subject to that certain Sublease between the Association, as "Lessor" (pursuant to that certain Mutual Estoppel Certificate for Monarch Bay Lease and Subleases, dated November 25, 2008, by and between Declarant, the Association, California Western Home Financing Partners, a California limited partnership, Avco Community Developers, Inc., a California corporation then in dissolution, and MBC), and the Association, as "Lessee", dated July 18, 1966 (as the same may be in the future amended or modified, the "**Road Sublease**"). The Beach Club Lots and the Road and Facility Lots are referred to in this Declaration collectively as the "**Common Area Lots**").

D. Prior to the date hereof, all of Monarch Bay was the subject of that certain Option Agreement and Escrow Instructions dated September 2, 1988, by and between Monarch Bay Land Association, a California nonprofit mutual benefit corporation ("MBLA"), as optionee, and Declarant's predecessor-in-interest, Sanwa Bank California, as trustee of the Moulton, Mathis and Hanson Trusts, as optionor, as amended by that certain Mutual Estoppel Certificate and Agreement for Monarch Bay 1988 Option Agreement dated December 3, 2008, and that certain: (i) Addendum to Option Agreement and Escrow Instructions dated December 9, 2011; (ii) Addendum No. 2 to Option Agreement and Escrow Instructions dated August 31, 2012; and (iii) Addendum No. 3 to Option Agreement and Escrow Instructions dated September 28, 2012 (collectively, the "Option Agreement"). MBLA has exercised its right under the Option Agreement to acquire certain of the Lots in Monarch Bay, which Lots are identified on Exhibit "A" to this Declaration as the "Converted Lots", and MBLA continues to hold the option under the Option Agreement to acquire, at a later date, the balance of the Monarch Bay property, including the Lots identified on Exhibit "A" to this Declaration as the "Non-Converted Lots". Each of the Non-Converted Lots continues to be subject to the Ground Lease and the Sublease for such Non-Converted Lot, and the Common Area Lots continue to be subject to the Ground Lease, the Club Sublease and the Road Sublease.

E. Pursuant to the Option Agreement, Declarant will convey the Common Area Lots to First American Trust, FSB (the "Trustee"), who shall take title thereto (subject to the Ground Lease, the Club Sublease and the Road Sublease, as applicable) pursuant to the terms and provisions of that certain Land Trust Agreement, as modified by the Amendment to Land Trust Agreement, between Declarant, as "Grantor" and "Beneficiary", and the Trustee, as "Trustee" (as the same may be in the future amended or modified, the "Trust Agreement").

F. As MBLA exercises its option under the Option Agreement to acquire Lots within Monarch Bay, (i) fee title to each such Lot will be conveyed to the owner of the Residence located upon that Lot and each such Lot shall no longer be subject to the Ground Lease nor the Sublease for such Lot, and concurrently therewith (ii) a 1/214th undivided interest in the Common Area Lots (subject to the Ground Lease, the Club Sublease and the Road Sublease, as applicable) shall be conveyed by the Trustee to the Association.

G. It is the intention of Declarant, MBLA, the Association and each Owner, that all Owners and all Lots within Monarch Bay, whether held by the Owner in fee title or subleasehold estate, shall be subject to the same use restrictions (including, without limitation, architectural control, repair and maintenance obligations, and those use restrictions set forth in the Article herein entitled "Use Restrictions") and assessment obligations.

H. Declarant deems it desirable to impose a general plan for the maintenance, improvement, protection, use, occupancy and enjoyment of Monarch Bay, and to establish, adopt and impose covenants, conditions and restrictions upon Monarch Bay for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of Monarch Bay.

I. For the efficient enforcement, protection and preservation of the value, desirability and attractiveness of Monarch Bay, the Association has been established as the homeowners association to which the following powers have been delegated and assigned: the

powers of maintaining certain Common Area within the Property, as hereinafter provided, administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to.

NOW, THEREFORE, Declarant agrees and declares that it has established, and does hereby establish, a plan for the maintenance, protection, improvement, use, occupancy and enjoyment of Monarch Bay, and has fixed, and does hereby fix, the covenants, conditions, restrictions, easements, reservations, equitable servitudes, liens and charges (hereinafter collectively referred to as the "Covenants" and individually referred to as a "Covenant") upon the Property. Each and all of the Covenants shall run with the land and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, all subsequent owners of all or any portion of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I

DEFINITIONS

Section 1.1. "Architectural Control Committee" shall mean and refer to the architectural committee created pursuant to the Article herein entitled "Architectural Control".

Section 1.2. "Articles" shall mean and refer to the Articles of Incorporation of the Monarch Bay Association, as filed in the Office of the Secretary of the State of the State of California, as such Articles may be amended, from time to time.

Section 1.3. "Assessments" shall be used as a generic term which shall mean and refer to the following:

(a) "Compliance Assessment" shall mean and refer to (i) the charge against an Owner representing the costs incurred by the Association in the repair of any damage to the Common Area for which such Owner was responsible, the costs incurred by the Association (including, without limitation, attorneys' fees) in bringing such Owner and such Owner's Lot into compliance with this Declaration, (ii) any amount due the Association based upon the failure of an Owner on a Non-Converted Lot to timely pay any rent or other amounts due under the Sublease for that Owner's Lot, including any rent payable by the Association pursuant to that certain Assignment and Sale of All-Inclusive Sublease dated August 1, 2001, on behalf of any Owner who fails to timely pay the rent due under the Sublease for that Owner's Lot, or (iii) any amount due the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration;

(b) "Mall Maintenance Area Assessment" shall mean and refer to, with respect to Tract #4472, the charge levied by the Association against each Owner of a Lot within Tract #4472 to cover the Mall Maintenance Area Expenses that have been or may be incurred by the Association on behalf of, and which are allocable only to, the Owners of Lots within Tract #4472.

(c) "Mall Maintenance Area Capital Improvement Assessment" shall mean and refer to, with respect to Tract #4472, a charge levied by the Association against each Owner of a Lot within Tract #4472 and that Owner's Lot, representing a portion of the cost to the Association for installation or construction of any capital improvements on or to any of the Mall Maintenance Area Improvements that the Association may from time to time authorize pursuant to the provisions of this Declaration.

(d) "Regular Assessment" shall mean and refer to the charge levied against each Owner and that Owner's respective Lot representing a portion of the Common Expenses of the Association.

(e) "Special Assessment" shall mean and refer to the charge levied against an Owner and that Owner's Lot representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Area, of constructing or installing any capital improvements to the Common Area, or of taking any extraordinary action for the benefit of the Common Area or the membership of the Association pursuant to the provisions of this Declaration and/or as allowed by statute.

Section 1.4. "Association" shall mean and refer to MONARCH BAY ASSOCIATION, a California nonprofit, mutual benefit corporation, in which all Owners shall have a membership interest as more particularly described hereinbelow.

Section 1.5. "Board" shall mean and refer to the Board of Directors of the Association, elected or appointed, if applicable, in accordance with the By-Laws of the Association and this Declaration.

Section 1.6. "By-Laws" shall mean and refer to the By-Laws of the Association which have been, or will be, adopted by the Board, as such By-Laws may be amended, from time to time.

Section 1.7. "Common Area" shall mean and refer to all of that certain real property and to all Improvements thereon which are owned or leased by the Association, or over which the Association has an easement for the use, care or maintenance for the common use, benefit and enjoyment of all Owners. The Common Area shall include, without limitation, entry area monumentation, the controlled access system, guardhouse and related Improvements, private storm drains, private streets and private utilities, if any, public rights-of-way, parkways, slopes, greenbelts and such other Improvements as may be designated and transferred to the Association, in fee, leasehold, or by easement, from time to time. The Common Area as of the date of recordation of this Declaration is more fully described in Exhibit "A" to this Declaration, attached hereto and incorporated herein by reference.

Section 1.8. "Common Expenses" shall mean and refer to the actual and estimated costs to be paid by the Association for the following: (a) maintaining, managing, operating, painting, repairing and replacing the Common Area (other than the Mall Maintenance Areas); (b) managing and administering the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and any Association employees;

(c) providing utilities and other services to the Common Area (other than the Mall Maintenance Areas); (d) providing insurance as provided for herein; (e) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (f) paying taxes for the Association; and (g) paying for all other goods and services designated by, or in accordance with, other expenses incurred by the Association for the benefit of all Owners, and reasonably required for the Association to perform its powers and duties as set forth in this Declaration. Additionally, the Common Expenses shall include adequate reserves, as the Board shall determine to be appropriate, for the repair and replacement of those elements of the Common Area which must be maintained, repaired or replaced on a periodic basis, rather than a regular annual basis. Notwithstanding anything to the contrary set forth above, "Common Expenses" shall not include any actual or estimated costs to be paid by the Association for any Mall Maintenance Areas or other expenses that comprise Mall Maintenance Area Expenses allocable to the Owners of Lots in Tract #4472.

Section 1.9. "Converted Lot" shall mean and refer, at any time, to (a) each Lot for which MBLA has exercised its option under the Option Agreement and that has been acquired in fee title by the Owner of the Residence located thereon, and (b) each Non-Converted Lot that becomes a Converted Lot on December 31, 2020, as provided in Section 1.28(b) below. The Association shall maintain and update a list of the Converted Lots. Concurrent with the closing of the sale of each Lot and/or when a Non-Converted Lot becomes a Converted Lot on December 31, 2020, the Association shall execute, acknowledge and deliver a supplement to this Declaration, upon approval by the Board and without necessity of consent from the Owners, to amend Exhibit "A" to reflect that previously Non-Converted Lots have become Converted Lots.

Section 1.10. "County" shall mean and refer to the County of Orange, California. In the event that the area in which the Property is located shall ever become or be annexed to an incorporated city, township or other geopolitical subdivision exercising jurisdiction for police power or other governmental purposes contemplated within this Declaration, then the term "County" shall include and refer to such city, township or other geopolitical subdivision.

Section 1.11. "Declarant" shall mean and refer to MMB MANAGEMENT, LLC, a California limited liability company, and to any person or entity acquiring all of Declarant's interest in the Property and under this Declaration pursuant to a written assignment from Declarant which is recorded in the Office of the County Recorder for Orange County.

Section 1.12. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and to all amendments to this Declaration as may be recorded, from time to time, in the Office of the County Recorder for Orange County.

Section 1.13. "Ground Lease" shall mean and refer to that certain Ground Lease of the Property made as of July 1, 1960, by and between First Western Bank and Trust Company, a California banking corporation, as Lessor (and Declarant's predecessor in interest), and Laguna Niguel Corporation, a California corporation (and the Association's predecessor in interest), as evidenced by that certain Memorandum of Ground Lease recorded on July 1, 1960, in Book

5311, page 44 of Official Records of Orange County, California, as such Ground Lease has been and may be in the future amended or modified.

Section 1.14. "Governing Documents" shall mean and refer to the Articles of Incorporation, By-Laws, Declaration, Rules and Regulations, Architectural Guidelines, and any and all amendments, modifications and/or supplements to each of the foregoing.

Section 1.15. "Improvements" shall mean and refer to all structures and appurtenances thereto of every kind, including, but not limited to, Residences, buildings, walkways, awnings, shades, screens, screen doors, skylights, room additions, garages, open parking areas, pavement, private streets, driveways, fences, screening walls, retaining walls, stairs, patios and patio covers, mailboxes, windbreaks, irrigation equipment and all related facilities, exterior air conditioning units, landscaping, drainage swales, streetscapes, antennas and related facilities, exterior lighting, hedges and trees.

Section 1.16. "Landlord" shall mean and refer to Declarant, in its capacity as Lessor under the Ground Lease, and any successor to the interest of Declarant as Lessor under the Ground Lease.

Section 1.17. "Lot" shall mean and refer to a plot of land as shown upon the recorded maps of Monarch Bay and to all Improvements, including the Residence, constructed thereon. Only those plots of land which are designed and intended for the construction of a Residence and ownership by an individual Owner shall be deemed "Lots". "Lot" shall not mean or refer to any plot of land, if any, owned or leased by the Association as Common Area. Where the phrase "Owner's Lot" or "Member's Lot" is used to refer to the estate held by an Owner or Member, such phrase shall refer to the fee title held by the Owner thereof except that with respect to each Non-Converted Lot, such phrase shall refer to the subleasehold estate held by the Owner of the Residence located on that Lot.

Section 1.18. "Mall Maintenance Area" shall mean and refer to that certain real property, consisting of Lots in Tract #4472 outside the footprint (i.e., boundary of the foundation) of each Residence and not enclosed in a private patio or yard, including, without limitation, vegetation, trees, shrubs, plantings, walkways and other landscaping, irrigation equipment and slope maintenance areas. The Mall Maintenance Area is designated for open and common use together with all landscaping, trees and shrubbery located thereon. All references in this Declaration to Mall Maintenance Area Assessments and the payment of expenses relating to the Mall Maintenance Area shall apply and be deemed to apply only to Owners of Lots in said Tract #4472.

Section 1.19. "Mall Maintenance Area Expenses" shall mean and refer to the actual and estimated costs to be paid by the Association that are allocable only to the Owners of Lots in Tract #4472 for the following: (a) maintaining, managing, operating, painting, repairing and replacing the Mall Maintenance Area Improvements; (b) providing utilities and other services as required for the Mall Maintenance Area Improvements; (c) providing insurance as provided for herein for the Mall Maintenance Area Improvements; (e) paying that portion of any Mall Maintenance Area Assessment attributable to Mall Maintenance Area Expenses not paid by the

Owner responsible for payment; (f) paying taxes for the Association attributable to the Mall Maintenance Area; and (g) paying for all other goods and services designated by, or in accordance with, other expenses incurred by the Association for the benefit of all Owners within Tract #4472 and the applicable budget line items regarding same with respect to the Mall Maintenance Area Improvements, and reasonably required for the Association to perform its powers and duties as set forth in this Declaration. Additionally, the Mall Maintenance Area Expenses shall include adequate reserves, as the Board shall determine to be appropriate, for the repair, maintenance and replacement of those elements of the Mall Maintenance Area Improvements which must be repaired, maintained or replaced on a periodic basis, rather than a regular annual basis.

Section 1.20. "Mall Maintenance Area Improvements" shall mean and refer to the Improvements located within the Mall Maintenance Area and operated, maintained, insured, repaired and replaced by the Association primarily for the benefit of the Owners of the Lots within Tract #4472, including, without limitation, vegetation, trees, shrubs, plantings, walkways and other landscaping, irrigation equipment and slope maintenance areas, other than (i) those areas maintained by Owners of the residences located on such Lots and (ii) the immediate adjacent side yards and patios of those Lots.

Section 1.21. "Member" shall mean and refer to every person or entity who holds membership in the Association, as more particularly set forth in the Article herein entitled "The Association", and shall be synonymous with the term "Owner".

Section 1.22. "Monarch Bay" shall mean and refer to the Property and to all Improvements, including the Residences constructed thereon and the Common Area, including the Mall Maintenance Areas.

Section 1.23. "Mortgage" shall mean and include a duly recorded deed of trust, as well as a mortgage in the conventional sense, encumbering a Lot.

Section 1.24. "Mortgagee" shall mean and refer to a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust.

Section 1.25. "Mortgagor" shall mean and refer to an Owner who mortgages his, her or its Lot to another, i.e., the maker of a Mortgage, and shall include the trustor of a deed of trust.

Section 1.26. "Non-Converted Lot" shall mean and refer to each Lot that is not a Converted Lot.

Section 1.27. "Notice and Hearing" shall mean and refer to written notice and a hearing before the Board or the Architectural Control Committee of the Association, at which the affected Owner shall have an opportunity to be heard in the manner provided herein and in the By-Laws.

Section 1.28. "Owner" shall have the following meaning:

(a) As to each Converted Lot, "Owner" shall mean and refer to the person(s) or entity(ies) who alone or collectively own fee title to that Lot; and

(b) As to each Non-Converted Lot, "Owner" shall mean and refer, during the period that such Lot is subject to the Ground Lease, to the person(s) or entity(ies) who alone or collectively own the Residence located on that Lot and hold a subleasehold estate in that Lot, and during any period that such Lot is not subject to the Ground Lease, if ever, "Owner" shall mean and refer to the person(s) or entity(ies) who alone or collectively own fee title to that Lot. Notwithstanding any term or provision of this Declaration to the contrary, if as of December 31, 2020, all of the Non-Converted Lots have not been transmuted to Converted Lots, then concurrently with the conveyance by the Trustee to the Association of all of the undivided 1/214th interests in the Common Area Lots attributable to such Non-Converted Lots, such Non-Converted Lots will automatically be deemed to be and thereafter treated as Converted Lots.

The term "Owner" includes sellers under executory contracts of sale and does not include any Mortgagee in its capacity as Mortgagee unless and until such Mortgagee acquires and holds title to a Lot.

Section 1.29. "Property" shall mean and refer to all of that certain real property described in Recital A of this Declaration.

Section 1.30. "Public Agencies" shall mean and refer collectively to one (1) or more of the various local and State governmental agencies having jurisdiction over the Property, including, without limitation, the County of Orange, the California Coastal Commission and the local regional commission thereof, and all utility companies serving Monarch Bay, from time to time.

Section 1.31. "Residence" shall mean and refer to the individual dwelling constructed upon one (1) or more separate Lots, and which is designed and intended for use and occupancy as a single-family residence, together with the related Improvements.

Section 1.32. "Rules and Regulations" shall mean and refer to the Rules and Regulations adopted by the Board pursuant to the By-Laws and this Declaration, as they may be amended, from time to time.

Section 1.33. "Sublease" shall have the meaning ascribed thereto in Recital B of this Declaration.

Section 1.34. "Tract #3748" shall mean and refer to those portions of Monarch Bay located within the boundaries of Tract #3748 as per map recorded in Book 142, Pages 30 through 34, inclusive, of Miscellaneous Maps in the Office of the County Recorder of Orange County.

Section 1.35. "Tract #3839" shall mean and refer to those portions of Monarch Bay located within the boundaries of Tract #3839 as per map recorded in Book 37 through 40, inclusive, of Miscellaneous Maps in the Office of the County Recorder of Orange County.

Section 1.36. "Tract #4472" shall mean and refer to those portions of Monarch Bay located within the boundaries of Tract #4472 as per map recorded in Book 191, Pages 11 through 14, inclusive, of Miscellaneous Maps in the Office of the County Recorder of Orange County.

Section 1.37. "Trustee" shall mean and refer to First American Trust, FSB, and any successor to First American Trust, FSB as "Trustee" under the Trust Agreement.

Section 1.38. Application of Definitions. The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments hereto, filed or recorded pursuant to the provisions of this Declaration, unless the context shall prohibit such application.

ARTICLE II

RESERVATION OF EASEMENTS AND OTHER PROPERTY RIGHTS IN THE COMMON AREA

Section 2.1. Owners' Easements. Every Owner shall have a nonexclusive right and easement of access, use and enjoyment in and to the Common Area. Said right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the limitations set forth in Section 2.2 below.

Section 2.2. Limitations on Owners' Easement Rights. The rights and easements of access, use and enjoyment set forth in Section 2.1 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

- (a) The right of the Association to reasonably limit the number of guests of Owners;
- (b) The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Common Area, and all Improvements located thereon, and architectural standards to be strictly followed and enforced pertaining to the development, construction, landscaping, replacement, repair and maintenance of all Lots and Residences now or hereafter constructed on Lots in Monarch Bay;
- (c) The right of the Association, in accordance with its Articles, By-Laws and this Declaration, to borrow money in excess of the then current fiscal year's total Assessment revenue with the assent of a 51% majority of the voting power of the Association, and/or to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, for the purpose of improving, maintaining and replacing or repairing the Common Area and related facilities; provided, however, the Association may not mortgage, pledge, or otherwise hypothecate any of the Common Area Lots prior to the date on which all of the

1/214th undivided interests in such Common Area Lot have been conveyed to the Association;

(d) The right of the Association to suspend the voting rights and rights and easements of use and enjoyment of the Common Area of any Member, and the persons deriving such rights and easements from any Member, for any period during which any Assessment against such Member's Lot remains unpaid and delinquent and/or for violation of the Association's Governing Documents; and, after Notice and Hearing, to impose monetary penalties or suspend such use rights, including without limitation, voting rights, and easements for a period of not to exceed thirty (30) days for any non-continuing violation of the Governing Documents, it being understood that any suspension for either nonpayment of any Assessments or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners; provided, however, the prior written consent of Declarant shall be required for any such dedication or transfer of any Common Area Lot, until the date on which all of the 1/214th undivided interests in such Common Area Lot have been conveyed to the Association. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by Owners representing sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, and recorded in the Office of the County Recorder for Orange County, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes (for example, without limitation, for emergency vehicle access purposes) consistent with the intended use of the Common Area shall not require the prior approval of the Members of the Association.

(f) The right of the Association to perform and exercise its duties and powers as set forth herein;

(g) Other rights of the Association, the Architectural Control Committee, the Board, and the Owners with respect to the Common Area as may be provided for in this Declaration; and

(h) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Area imposed by Public Agencies, including, but not limited to, the rights of the County or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Common Area designed for vehicular movement to perform municipal functions or emergency or essential public services.

Section 2.3. Delegation of Common Area Use Rights. Any Owner who resides in Monarch Bay may delegate, in accordance with this Declaration and the By-Laws, that Owner's

rights of use and enjoyment to the Common Area, and any recreational facilities thereon, to the members of that Owner's immediate family and any other persons residing within that Owner's Residence. In the event an Owner has rented or leased that Owner's Residence, that Owner's rights of use and enjoyment to the Common Area, and any recreational facilities thereon, shall be automatically delegated to that Owner's tenants or lessees for the duration of their tenancy, and that Owner shall forfeit any rights of use and enjoyment to the Common Area, and any recreational facilities thereon, for the duration of such tenancy. In the event of a conditional sales contract, pursuant to which possession is transferred to the purchaser, the seller under the contract shall be deemed to delegate that seller's rights of use and enjoyment to the Common Area, and any recreational facilities thereon, to the purchaser under the contract.

Section 2.4. Easements for Vehicular and Pedestrian Traffic. In addition to the general right and easements for access, use and enjoyment granted herein, there shall be, and Declarant hereby covenants for itself, and its successors and assigns, that each and every Owner shall have a nonexclusive easement appurtenant to such Owner's Lot for vehicular and pedestrian traffic over all private streets and drives within Monarch Bay.

Section 2.5. Easements for Public Agencies. In addition to the foregoing easements over the Common Area, there shall be easements for public services, including, but not limited to, the right of police, fire, ambulance and other public-services to enter upon any part of the Common Area for purposes of serving the health and welfare of all Owners and residents in Monarch Bay.

Section 2.6. Easements for Utilities. The rights and duties of the Owners of Lots within Monarch Bay with respect to sanitary sewer, water, electricity, gas, television cable (or CATV service) and telephone lines, and other facilities, shall be governed by the following:

(a) Each respective utility company shall maintain all utility facilities and connections in Monarch Bay owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon such Owner's Lot and it shall be the obligation of the Association to maintain those facilities and connections located upon the Common Area.

(b) Wherever sanitary sewer, water or gas connections, television cables (or CATV service), electricity or telephone lines are installed within Monarch Bay and it becomes necessary to gain access to said connections, cables and/or lines through a Lot owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such other Lot or to have the utility companies enter upon such other Lot to repair, replace and generally maintain said connections, cables and/or lines. Notwithstanding the foregoing, the Owner whose Lot shall be served by such connections, cables and/or lines shall be solely responsible for any damage sustained to another Owner's Lot that is not served by such connections, cables and/or lines. The

Owners, by and between themselves, are obligated to resolve any such dispute without Association involvement and without liability to the Association.

(c) Whenever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within Monarch Bay, and said connections, cables and/or lines serve more than one (1) Lot, the Owner of each Lot served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service that Owner's Lot.

(d) In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the cost thereof, or for damage to a Lot or Lots not served by such connections, cables and/or lines, the Owners that are party to such dispute shall be responsible to resolve such dispute, but in no event shall the Association be responsible for the repair or rebuilding of the aforesaid connections, cables and/or lines, nor for any costs associated with same.

Section 2.7. Easements over Common Area. There is hereby granted to the Association easements for the purpose of permitting the Association to discharge its obligations and powers as described in this Declaration, including without limitation, its maintenance obligations with respect to the Common Area, including without limitation the Mall Maintenance Areas.

Section 2.8. Easements for Maintenance of the Common Area. In the event it becomes necessary for the Association to enter upon any Lot for purposes of: (a) maintaining the Common Area, including the Mall Maintenance Areas; or (b) bringing an Owner and/or a Lot into compliance with this Declaration, in accordance with the provisions set forth herein, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon such Owner's Lot for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same at its expense. Notwithstanding the foregoing, in the event of an emergency, such right of entry shall be immediate.

Section 2.9. Easements Over Sidewalks. Declarant hereby covenants for itself, its successors and assigns, that each and every Owner and each Owner's tenants and invitees shall have nonexclusive reciprocal easements appurtenant on and over all sidewalks, if any (other than sidewalks serving a particular Residence), located on Lots within Monarch Bay for pedestrian access, use and enjoyment.

Section 2.10. Easements for Drainage. There are hereby created and reserved over the Property easements for drainage according to the patterns for drainage created by the grading plans for Monarch Bay approved by the Public Agencies, as well as according to the actual, natural and existing patterns for drainage. Each Owner covenants and agrees that such Owner shall not obstruct or otherwise interfere with said drainage patterns of waters from adjacent Lots in Monarch Bay over that Owner's Lot, or, in the alternative, that in the event it is necessary and

essential to alter said drainage pattern for the protection and use of that Owner's Lot, that Owner will make adequate provisions for proper drainage.

ARTICLE III

THE ASSOCIATION

Section 3.1. Association Membership. Every person or entity who or which is an Owner, as defined hereinabove, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. All memberships in the Association shall be appurtenant to the Lot owned or held by each Member, and memberships in the Association shall not be assignable, except to the person or entity to whom the title to a Lot has been transferred, as provided in Section 3.2 hereinbelow. Ownership of a Lot shall be the sole qualification for membership in the Association. The memberships in the Association shall not be transferred, pledged or alienated in any way, except to an Owner. Any attempt to make a prohibited membership transfer shall be void and will not be reflected in the books of the Association. In clarification of the foregoing, with respect to each Non-Converted Lot that is subject to a Sublease, membership in the Association shall be appurtenant to the subleasehold estate in that Lot during the term of such Sublease and with respect to each Non-Converted Lot that is not subject to the Ground Lease, if ever, membership in the Association shall be appurtenant to the fee title estate in that Lot.

Section 3.2. Transfer. The Association membership held by any Owner shall not be transferred, pledged or alienated in any way, except as incidental to the conveyance of ownership of such Lot. In the event of such conveyance, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or transferee of the Lot, or to the Mortgagee (or third party purchaser) of such Lot upon a foreclosure sale. Any attempt to make a prohibited transfer of an Owner's membership in the Association is void and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners and their Lots (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association. In clarification of the foregoing, for purposes of this Section, the assignment of the subleasehold estate in a Non-Converted Lot that is subject to a Sublease, together with the sale of the Residence located thereon, shall be deemed a "conveyance of ownership" of that Lot.

ARTICLE IV

POWERS AND DUTIES OF THE ASSOCIATION

Section 4.1. Management Body. The Association is hereby designated as the management body of Monarch Bay. The Members of the Association shall be the Owners in Monarch Bay, as provided herein, and the affairs of the Association shall be managed by the Board, as more particularly set forth in the By-Laws.

Section 4.2. Powers. The Board, for and on behalf of the Association, shall have the right and power to do all things necessary to conduct, manage and control the affairs and business of the Association. Subject to the provisions of the Articles, the By-Laws and this Declaration, the Board shall have all general powers authorized under the California Corporations Code for nonprofit, mutual benefit corporations, and shall have the following specific powers:

- (a) Enforce the provisions of this Declaration and all contracts or any agreements to which the Association is a party;
- (b) Manage, maintain, repair and replace all Common Area, including the Mall Maintenance Areas, and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, gardening and other necessary services for the Common Area, including the Mall Maintenance Areas, all as more specifically set forth in the Article herein entitled "Repair and Maintenance";
- (c) Maintain fire, casualty, liability and worker's compensation coverage, fidelity bond coverage and other insurance coverage pursuant to the terms of that Article herein entitled "Insurance";
- (d) Obtain, for the benefit of the Common Area, including the Mall Maintenance Areas, all commonly metered water, gas and electric services, and may provide for refuse collection and cable (or CATV) television service;
- (e) Grant easements or licenses, where necessary, for utilities and sewer facilities over, on and across the Common Area to serve Monarch Bay;
- (f) Pay all taxes and special assessments which would be a lien upon the Common Area, and to discharge any lien or encumbrance levied against the Common Area;
- (g) Levy and collect Assessments on the Owners of all Lots in Monarch Bay in which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Non-Payment of Assessments: Remedies of the Association", provided, however, that Assessments attributable to Mall Maintenance Area Expenses shall be allocated solely to Owners of Lots in Tract #4472 as set forth in Section 1.18;
- (h) Pay for reconstruction of any portion of the Common Area damaged or destroyed;
- (i) Employ and retain a professional manager and/or management company to perform all or any portion of the delegable duties and responsibilities of the Board with respect to administration of the Association;

(j) Enter into any Lot when necessary in connection with maintenance or construction for which the Association is responsible;

(k) Contract with any other homeowners association and/or any governmental or quasi-governmental entity for the benefit of Monarch Bay;

(l) Purchase such other labor, services, materials, supplies and the like, as needed for the proper maintenance of the Common Area, including the Mall Maintenance Areas, and/or proper operation of the Association;

(m) Adopt reasonable Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of any portion of Monarch Bay; and

(n) Perform any and all other acts and things that a nonprofit, mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meetings its duties as set forth in this Declaration.

Section 4.3. Duties. Notwithstanding the Association's obligations, as more specifically set forth in the Article herein entitled "Repair and Maintenance", the Board shall perform and execute the following duties for an on behalf of the Association:

(a) Maintain and operate the Common Area, including the Mall Maintenance Areas, for the common use and benefit of all Owners in Monarch Bay;

(b) Provide water, sewer, gas, electricity, garbage and trash collection, and other necessary utility services for the Common Area, including the Mall Maintenance Areas;

(c) Provide insurance for the Association and its Members in accordance with the provisions of the Article hereinbelow entitled "Insurance";

(d) Accept, as part of Monarch Bay, all property included in Monarch Bay, in accordance with the terms and provisions of this Declaration, and to accept all Owners as Members of the Association. In addition, the Association shall accept all Common Area, Mall Maintenance Areas, streets and recreational areas conveyed, leased or otherwise transferred to it by the Trustee, the Declarant and its successors or assigns;

(e) Maintain and repair all portions of the Common Area, including the Mall Maintenance Areas, in a neat, clean, safe, attractive, sanitary and orderly condition at all times other than when the Common Area is undergoing maintenance, repair or replacement services. In the event any maintenance or repairs to the Common Area, including the Mall Maintenance Areas, are required due to the willful or negligent acts or omissions of an Owner or Owners and their family, guests, invitees, licensees, or tenants, the Association shall levy the cost of such maintenance and repair as a Compliance Assessment against the responsible Owner(s).

(f) In addition to all other provisions set forth herein respecting the maintenance of the Common Area, including the Mall Maintenance Areas, maintain all private sewers, storm drains, private streets, and street, sidewalk and Common Area lighting facilities, in a condition comparable to the condition initially approved by the Public Agencies:

(g) Provide manned access control to Monarch Bay, which may include twenty-four (24) hour access control, at such time and upon such terms as shall be determined by the Board;

(h) Pay all real and personal property taxes and Assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners;

(i) Contract for any material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;

(j) Cause financial statements for the Association to be regularly prepared and copies distributed to each Member of the Association, regardless of the number of Members or the amount of assets of the Association:

(i) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the fiscal year, and shall contain the following information:

(A) An itemized estimate of the Association's revenue and expenses, determined on an accrual basis, together with a separate itemized estimate of the funds to be collected and expended for the Mall Maintenance Areas;

(B) The amount of the total cash reserves of the Association (with a separate itemization for reserves collected for the Mall Maintenance Areas) which are then currently available for the major repair or replacement of Common Area Improvements and for other contingencies;

(C) A general statement setting forth the procedures utilized by the Association to calculate and establish reserves to defray the costs of future repairs, replacements or additions to the Common Area Improvements; and

(D) An itemized estimate of the remaining useful life of the Common Area Improvements, together with an explanation of the methods of funding being utilized by the Association to defray the costs of

future repairs, replacements or additions to the Common Area Improvements; and

(ii) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing for the first sale of a Lot, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date;

(iii) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

- (A) A balance sheet as of the last day of the Association's fiscal year;
- (B) An operating (income) statement for the fiscal year;
- (C) A statement of changes in financial position for the fiscal year; and
- (D) Any information required to be reported by law.

This annual report shall be prepared by a licensee of the California Board of Accountancy, in accordance with generally accepted accounting principles for any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand Dollars (\$75,000), unless such amount is increased or decreased by statute. However, if, for any reason, the report is not prepared by a licensee of the California Board of Accountancy, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association;

(iv) A statement of the Association's policies and practices in enforcing its remedies against Members for non-payment of Assessments, as set forth in the Article herein entitled "Effect of Non-Payment of Assessments: Remedies of the Association," which shall be distributed within sixty (60) days prior to the beginning of the fiscal year; and

(v) The Board shall review, on a quarterly basis, unless otherwise stated, the following:

- (A) A current reconciliation of the Association's operating accounts;
- (B) A current reconciliation of amounts collected as reserves;
- (C) The current year's actual amounts collected as reserves and expenses compared to the current year's budget;

(D) An income and expense statement for the Association's operating and reserve accounts; and

(E) On an annual basis only, the latest statements of account prepared by the financial institutions where the Association has its operating and reserve accounts.

(k) Assume and pay out of the Assessments provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume as provided for in Section 4.4 hereinbelow;

(l) Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Common Area, including the Mall Maintenance Areas, and development, construction, maintenance and architectural standards of Residences, as more particularly described in Section 4.13 below;

(m) Enforce all applicable provisions of this Declaration, the Articles, By-Laws and such Rules and Regulations of the Association, and of all other documents pertaining to the ownership, use, management and control of Monarch Bay;

(n) Consistent with statutory guidelines, upon the receipt of a written request from an Owner, provide said Owner with a copy of this Declaration and the By-Laws and Articles for the Association, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges therein as provided by this Declaration or other management documents of the Board as of the date of such request. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents, although such fee and cost limitations shall not apply to the Association's manager or management company; and

(o) Elect the officers of the Association and fill (through appointment by the remaining Directors) any vacancies on the Board, except if such vacancy is created by the removal of a Director.

Section 4.4. Discretionary Powers. The Board, at its option, may assume, perform an execute the following powers and duties for and on behalf of the Association:

(a) Retain the services of a manager for Monarch Bay and provide such other personnel as the Association deems necessary and proper to assist in the operation of the Association and/or management of the Common Area, regardless of whether such other personnel are employed directly by the Association or otherwise;

(b) Remove or replace any Improvement that extends into the Common Area under authority of an easement when access to a utility line underneath such Improvement is requested by any utility company; provided, however, that the cost shall

be assessed against the Owner of the Lot involved as a Compliance Assessment if said Owner caused the Improvement to be so placed in the Common Area without legal right to do so;

(c) Incur any liability or pay any costs or expenses for a single Lot or Owner thereof; provided, however, that in the event the Association does incur any such liability or pay any such costs or expenses, the amount thereof shall be specially assessed to the Owner of such Lot as a Compliance Assessment so long as the Association did not cause damage to a Lot for which repair by the Association would be warranted after a duly noticed hearing before the Board; provided further, however, that nothing herein shall permit the Association to assess the Owners for any new Improvements to the Common Area, except as otherwise provided in this Declaration; and

(d) Subject to the limitations set forth in this Article, contract for any other material, furniture, labor, services, maintenance, repairs, structural alterations or insurance, or pay any taxes or Assessments which, in the opinion of the Board, shall be necessary or proper for the operation of the Common Area for the benefit of the Owners or for the enforcement of this Declaration.

Section 4.5. Repair of Willful Damage to Common Area. Notwithstanding the Association's duty to maintain the Common Area, including the Mall Maintenance Areas, in the event that the maintenance, repair or replacement of any element of the Common Area, including the Mall Maintenance Areas, becomes necessary due to the willful or negligent acts or omissions of any Owner, that Owner's family, guests or invitees, after prior Notice and Hearing, the Board shall assess the cost of such maintenance, repair and/or replacement as a Compliance Assessment against the Lot owned by such Owner.

Section 4.6. Limitations on Contracts. Except as otherwise provided herein (including contracts permitted by Section 4.10(a) below), no contract entered into by the Association, or the Board acting for and on behalf of the Association, may run for a term longer than one (1) year unless (i) by majority vote of the Board, it is determined that contracts longer than one (1) year are in the Association's best interest and such contracts are identified by the Board as multi-year contracts which result in a cost saving to the Association, or (ii) such longer term is approved with the vote or written consent of a majority of the voting power of the Association and a majority of the votes residing in Members.

Section 4.7. Delegation of Duties. In the event that the Association shall delegate any or all of its delegable duties, powers or functions to any person, corporation or firm to act as manager, neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated.

Section 4.8. Right of Entry for Emergency. The Board, any person authorized by the Board or any Owner may enter any Lot in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

Section 4.9. Right of Entry for Repairs. The Board, or any person authorized by the Board, shall have the right to enter, upon reasonable notice, any Lot to effect necessary repairs which the Owner has failed to perform or which are necessary in connection with the repairs to the Common Area, including the Mall Maintenance Areas, or an adjoining Lot. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association, or the non-Lot Owner, as the case may be, shall repair the same at its expense.

Section 4.10. Limitations on Board Action. The Board shall be prohibited from taking any of the following actions, except, as provided in Section 4.6 above, with the vote or written consent of a majority of the voting power of the Association and a majority of the votes residing in Members.

(a) Entering into a contract with a third persons, wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year (unless (i) by majority vote of the Board, it is determined that contracts longer than one (1) year are in the Association's best interest and such contracts are identified by the Board as multi-year contracts which result in a cost saving to the Association, or (ii) such longer term is approved with the vote or written consent of a majority of the voting power of the Association and a majority of the votes residing in Members), with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(ii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for a short-rate cancellation by the insured; and

(iii) Agreements for cable television or satellite services and equipment of not to exceed five (5) years duration;

(b) Paying compensation to Directors 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 Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or

(c) Filling a vacancy on the Board created by the removal of a Director, unless such action is allowed by statute.

Section 4.11. Licenses, Easements and Rights of Way. The Board, for and on behalf of the Association and for the term of this Declaration (as established in Section 13.3 of this Declaration), is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other public utility purposes

over those portions of the Common Area, including the Mall Maintenance Areas, upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Area, including the Mall Maintenance Areas, or for the preservation of the health, safety, convenience and welfare of the Owners.

Section 4.12. New Improvements. Except as otherwise provided in this Declaration, the Association may conduct new Improvements or additions to the Common Area, including the Mall Maintenance Areas, or demolish existing Improvements, provided that in the case of any Improvement, addition or demolition involving a total expenditure in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the written consent or vote of a majority of the Owners (other than the Declarant) in Monarch Bay as to the maximum total cost therefor shall first be obtained, and provided that no Lot shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof. The Board shall levy a Special Assessment on all Owners in Monarch Bay for the cost of such work.

Section 4.13. Association Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assessments. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Control Committee, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provision of this Declaration, the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded.

Section 4.14. Suspension of Voting Rights. The Board shall have the authority to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, so long as such suspension occurs after a duly noticed hearing before the Board, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration. In addition, such suspension may occur for violation of the Association's Governing Documents after a duly noticed hearing before the Board.

ARTICLE V

ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within Monarch Bay, hereby covenants, and each Owner of any Lot, by acceptance of a conveyance instrument therefor, whether or not it shall be so expressed in such conveyance instrument, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments; (b) Special Assessments for capital improvements and such other purposes set forth herein; (c) Compliance Assessments, including, but not limited to, costs incurred by the Association in the repair of damage to the Common Area for which such Owner was responsible and costs incurred by the Association in bringing such Owner and such Owner's Lot into compliance with this Declaration; and (d) Mall Maintenance Area Assessments and Mall Maintenance Area Capital Improvements Assessments. Each Assessment (other than Compliance Assessments comprising a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Instruments), together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be enforceable, in accordance with the provisions of Article VI of this Declaration, as a continuing lien against the Lot against which each such Assessment is made. Notwithstanding the foregoing or any term or provision of this Declaration to the contrary, if a Non-Converted Lot becomes a Converted Lot as of December 31, 2020, as provided in Section 1.28(b) above, and if Declarant or its successors, assigns or transferees is the Owner of the Non-Converted Lot at the time it becomes a Converted Lot, such Converted Lot shall not be liable for, subject to, encumbered by any liens for any Assessments that are due and owing and/or attributable to any period of time prior to December 31, 2020. Each Assessment, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall also be the personal obligation of the Owner of such property at the time when the Assessment fell due, except that each Compliance Assessment comprising a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Instruments that is levied against an Owner, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. In clarification of the foregoing, a Compliance Assessment imposed to reimburse the Association as provided in Section 1.3(a)(i) and 1.3(a)(ii), above, shall comprise a charge on the land and, after recordation of a lien as provided in Article VI of this Declaration, shall be a continuing lien upon the Lot against which each such Assessment is made.

Section 5.2. Purpose of Assessments: Levy and Collection. The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of all Owners in Monarch Bay and to maintain, replace, repair and improve the Common Area. The Association, by and through the Board, shall levy and collect Assessments from the Owner of each Lot in the Community in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution of its power and duties set forth in this Declaration, the By-Laws and the Articles.

Section 5.3. Regular Assessments - Basis. Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots. Each Owner's proportionate share of the Regular Assessments shall be a fraction, the numerator of which shall be the number of Lots owned by such Owner, and the denominator of which shall be the total number of Lots in Monarch Bay which are subject to assessment. The maximum Regular Assessment may be increased each fiscal year by twenty percent (20%) above the maximum Regular Assessment for the previous year without the vote or written consent of a majority of those Owners in attendance at a duly called meeting of the Association. The limitation set forth above shall not apply to increases in Assessments where the Owners approve such increase in excess of the statutory limitations related to expenses incurred in conjunction with an emergency situation. From and after the first day of the fiscal year immediately following the conveyance of the first Lot to an Owner, the Regular Assessment may be increased by more than provided above only with the vote or written consent of a majority of those Owners in attendance at a duly called meeting of the Association.

Section 5.4. Mall Maintenance Area Assessments - Basis.

(a) With respect to the Lots within Tract #4472, Mall Maintenance Area Assessments payable to the Association shall be assessed equally against all Owners of Lots within Tract #4472 who have not elected, in accordance with the provisions of Section 5.4(b) below, to maintain the Mall Maintenance Areas located on his or her Lot by him or herself and at his or her own expense. Each Owner's proportionate share of the Mall Maintenance Area Assessments shall be a fraction, the numerator of which shall be the number of Lots within Tract #4472 owned by such Owner, and the denominator of which shall be the total number of Lots in Tract #4472 for which the Association is maintaining the Mall Maintenance Area. The Mall Maintenance Area Assessment may be increased each fiscal year by twenty percent (20%) above the Mall Maintenance Area Assessment for the previous year without the vote or written consent of a majority of Owners of Lots in Tract #4472 who are in attendance at a duly called meeting of the Association. The limitation set forth above shall not apply to increases in Mall Maintenance Area Assessments where the Owners of Lots in Tract #4472 approve such increase in excess of the statutory limitations related to expenses incurred in conjunction with an emergency situation specific to the Mall Maintenance Areas. The Mall Maintenance Area Assessment may be increased by more than provided above only with the vote or written consent of a majority of Owners of Lots in Tract #4472 who are in attendance at a duly called meeting of the Association. All amounts collected as Mall Maintenance Area Assessments are not to be commingled with other funds of the Association and shall be used solely for the purpose for which such amounts were collected.

(b) Notwithstanding the provisions of Subsection 5.4(a), above, the Owners of Lots within Tract #4472, upon the assent of sixty-seven percent (67%) of the voting power of Owners of Lots within Tract #4472, may generally authorize the Owners of Lots within Tract #4472 to individually elect (upon prior written notice to the Association) to maintain those portions of the Mall Maintenance Areas located on his or

her Lot and at his or her sole expense, provided that such Owner maintains such Mall Maintenance Areas to the same level as required of the Association for other portions of Common Area within Monarch Bay pursuant to Section 9.1 of this Declaration and provided that any such general authorization shall make adequate provision for the long term repair and replacement of capital improvements within the Mall Maintenance Areas, as well as the collection of reserves therefor. If the Association determines that any such Owner has failed to so maintain the Mall Maintenance Areas on his or her Lot, the Association may take such action as the Association deems reasonable or necessary to ensure maintenance of such Mall Maintenance Areas to such level, including termination of such Owner's right to maintain such Mall Maintenance Areas by him or herself.

Section 5.5. Special Assessments for Capital Improvements. In addition to the Regular Assessments authorized above, the Board may levy a Special Assessment, applicable to that fiscal year only, for the purpose of defraying, in whole or in part, the unanticipated costs and expense of any construction, reconstruction, replacement or repair of a capital Improvement within the Common Area (other than the Mall Maintenance Areas, which are addressed in Section 5.6 below), including fixtures and personal property related thereto; provided that (except as otherwise provided in Section 9.5) any such Special Assessment may not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners casting a majority of the votes at a meeting or election called for the purpose of voting on the imposition of such Special Assessment. Every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments.

Section 5.6. Special Assessments for Mall Maintenance Area Capital Improvements. In addition to the Mall Maintenance Area Assessments authorized above, the Board may levy a Special Assessment, applicable to that fiscal year only and to Tract #4472, for the purpose of defraying, in whole or in part, the unanticipated cost and expense of any construction, reconstruction, replacement or repair of the Mall Maintenance Area Improvements, including fixtures and personal property related thereto; provided that (except as otherwise provided in Section 9.5) any such Special Assessment may not exceed five percent (5%) of the budgeted Mall Maintenance Area Expenses for that fiscal year without the approval of Owners of Lots within Tract #4472 casting a majority of the votes at a meeting or election called for the purpose of voting on the imposition of such Special Assessment. Every such Special Assessment shall be levied upon the same basis as that prescribed for the levying of Mall Maintenance Area Assessments.

Section 5.7. Notice and Quorum For Any Action Authorized Under Sections 5.3 through 5.6. Any action authorized under Sections 5.3 through 5.6, above, should be taken at a special meeting of Members of the Association called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting. The notice shall specify the place, day and hour of the meeting. Said special meeting shall be conducted in accordance with the provisions of the By-Laws of the Association concerning special meetings of the Members of the Association. At such meeting, the presence of Members entitled to cast fifty-one percent (51%) of all votes of each class of membership shall constitute a quorum of the Association, and the presence of Members owning

Lots within Tract #4472 and entitled to cast fifty-one percent (51%) of all votes of the Owners of Lots within Tract #4472 shall constitute a quorum of the Owners of Lots within Tract #4472.

Section 5.8. Due Dates. The Board shall fix the amount of the Regular Assessment and Mall Maintenance Area Assessments against each Lot at least thirty (30) days in advance of each Regular Assessment and Mall Maintenance Area Assessment period. The Association may, but shall not be obligated to, provide written notice of such monthly Assessment amounts on a monthly basis. The due dates shall be established by the Board.

Section 5.9. Certification of Payment. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence as to all third parties relying thereon to show that all Assessments acknowledged therein have been paid, but shall not relieve any Owner of the responsibility for Assessments not in fact paid.

Section 5.10. Delivery by Owner. Each Owner of a Lot shall, as soon as practicable prior to the transfer of title to the Lot or the execution of a real property sales contract, as currently defined in California Civil Code Section 2985 give to the prospective purchaser a copy of this Declaration and copies of the By-Laws and Articles of the Association, and a true statement, in writing, from the Board as to the amount of any delinquent Assessments and information relating to penalties, attorneys' fees and other charges authorized by this Declaration on the Lot as of the date the statement is issued.

Section 5.11. Delivery of Statement. Upon written request, the Board of the Association shall, within ten (10) days of the mailing or delivery of such request, provide the Owner of a Lot with a copy of this Declaration and copies of the By-Laws and Articles of the Association, together with a true statement, in writing, as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges authorized by this Declaration on the Lot as of the date of the request. The Board may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents, although such fee and cost limitations shall not apply to the Association's manager or management company.

Section 5.12. Reserves.

(a) The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Area (but excluding Mall Maintenance Area Improvements), or any such other purpose determined by the Board; and the Mall Maintenance Area Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Mall Maintenance Area Improvements. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Association; provided, however, the Board may transfer interest earned

on reserve funds into the general operating account of the Association in order to satisfy income taxes payable.

(b) Notwithstanding the provisions of Section 5.12(a) above, the Board:

(i) May authorize the temporary transfer of money from the reserve account to meet short term cash flow requirements or other expenses of the Association if the Board has provided notice, in the case of reserves collected as part of Regular Assessments, to all Owners, or in the case of reserves collected as part of Mall Maintenance Area Assessments, to all Owners of Lots within Tract #4472, of the intent to consider the transfer in a notice of meeting, which shall be provided pursuant to the provisions of the Bylaws dealing with Board meetings and which notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a Special Assessment, or Mall Maintenance Area Assessment as the case may be, may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the moneys will be repaid to the reserve account;

(ii) Shall cause the transferred funds to be restored to the reserve account within one (1) year of the date of the initial transfer; however, the Board, upon making a documented finding that a delay of restoration of the funds to the reserve account would be in the best interests of the Association, may delay the restoration until such time it reasonably determines to be necessary; and

(iii) Shall exercise prudent fiscal management in delaying restoration of the transferred funds to the reserve account and, if necessary, shall levy a Special Assessment, or Mall Maintenance Area Assessment, to recover the full amount of the expended funds within the time limits specified in Section 5.12(b)(ii) above. Any such Special Assessments or Mall Maintenance Area Assessments shall be subject to the five percent (5%) limitation specified in Section 5.5 and Section 5.6, respectively.

Section 5.13. Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Common Area or abandonment of the Owner's Lot, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Association or any alleged damage caused by the Association to the Owner's Lot and/or the Owner.

Section 5.14. Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

(a) All property dedicated to and accepted by any public authority;

All property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of California. However, no land or Improvements devoted to dwelling use shall be exempt from said Assessment; and

- (b) All Common Area owned or leased by the Association.

ARTICLE VI

EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Section 6.1. Effect of Non-Payment of Assessments: Remedies of the Association. Except as may be otherwise required by the California Civil Code, any installment of an Assessment not paid within fifteen (15) days after the due date may be deemed delinquent, subject to reasonable costs of collection, including reasonable attorneys' fees, and a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law, and interest on all sums imposed under this Section at an annual percentage rate not to exceed twelve percent (12%), commencing thirty (30) days after the Assessment was due. The Board, for and on behalf of the Association, may commence legal action against the Owner personally obligated to pay the same, or, in the case of a Regular or Special Assessment and Compliance Assessments (subject to the limitations on Compliance Assessments referenced in this Declaration), may foreclose the lien against such Owner's Lot. Such lien may also be foreclosed by a power of sale or other non-judicial procedure provided for by the laws of the State of California.

Section 6.2. Notice of Delinquent Assessments. No action shall be brought to foreclose a lien for delinquent Assessments, or to proceed under the power of sale herein, unless at least thirty (30) days has expired following the date a Notice of Delinquent Assessments is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Recorder of Orange County. Said Notice of Delinquent Assessments must recite the name and street address of the record Owner, a good and sufficient legal description of any such Lot, the amount claimed to be due and owing by the delinquent Owner (which may, at the Association's option, include reasonable late charges as may, from time to time, be established by the Board in accordance with California law, interest on the unpaid Assessment, plus reasonable attorneys' fees and expenses of collection, including costs to record and release the recorded documents, incurred in connection with the debt secured by said lien), the name and address of the principal office of the Association, and, in the event of a non-judicial foreclosure, as provided in Section 6.3 below, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice shall be signed and acknowledged by the President, or Vice President, and the Secretary, or assistant Secretary, of the Association and may be delegated to others to act on the Board's behalf. The lien shall continue until fully paid or otherwise satisfied.

Section 6.3. Foreclosure Sale. Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board in accordance with the provisions of Sections 2924, 2924a, 2924b and 2924c of the California Civil Code, or any similar sections then in effect, applicable to the exercise of powers of sale in Mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Any Owner, by acceptance of a deed for a Lot, hereby expressly waives any objection to the enforcement and foreclosure of the lien in this manner.

Section 6.4. Curing of Default. Upon the timely curing of any default for which a Notice of Delinquent Assessments was filed by the Association, the officers thereof are hereby authorized to record a release of such Notice.

Section 6.5. Assignment of Rents When Assessments Become Delinquent.

(a) **Assignment.** Subject to the requirements of Civil Code Section 2938 and successor statutes, if applicable, including without limitation requirements for notice in the form set forth therein, upon an Owner's failure to pay any Assessment within thirty (30) days after the due date, and under no other circumstances, each Owner who is renting a Lot to a tenant or tenants hereby assigns to the Association, if the Association accepts such assignment, the following:

(i) All the right, title and interest of such Owner in and to any lease(s) or rental agreement(s) (the "**Rental Lease**"); and

(ii) All of the rents and any other income now due or which may become due from the lease or rental of the Lot, including monies for supplying services, materials or installations (the "**Rents**"), together with any and all rights and remedies which the Owner may have against any tenant under the Rental Lease or others in possession of the Lot for the collection or recovery of monies so assigned.

(b) **Process to Effectuate Assignment.** All of the steps required to record a Notice of Delinquent Assessment against the Owner, as required by the Civil Code, shall be met by the Association. Then, the Demand to Pay Rent to Party Other than Landlord, in the form required by Civil Code Section 2938, signed under penalty of perjury by a Director or the Board's designee, shall be sent by first class mail to both the Owner and the tenant in the Owner's Lot.

(c) **Association Not a Landlord.** The enforcement and/or exercise of the Association's rights under this Section shall in no way constitute the Association as a "landlord" under any Rental Lease or sublease with a tenant for an Owner's Lot. Each Owner hereby acknowledges that the Association shall have no such responsibility and each Owner hereby agrees to indemnify, defend and hold the Association, its officers, Directors, agents, representatives, employees and attorneys harmless from any and all

claims by an Owner's tenant or any third party that the Association acted as the landlord and that tenant or any third party has a claim against the Association for failing to fulfill such duties in any manner.

(d) Payment of Rents to Association. Each Owner irrevocably consents that the tenant under the Rental Lease, upon receiving from the Association notice of the Owner's default and demand for payment, shall pay the Rents to the Association without incurring any liability for the failure to determine the actual existence of any default claimed by the Association. Each Owner further agrees that the tenant under the Rental Lease shall not be liable to the Owner for nonpayment of Rents to the Owner for Rents paid to the Association by such tenant pursuant to this Section. The full amount of the Rents received by the Association shall be applied to the Owner's account. Application of the Rents to particular charges within the Owner's account shall be at the Association's discretion to the extent not dictated by California law.

(e) Termination of Payment of Rents to Association. The Association may continue receiving the Rents directly from the tenant until any foreclosure action against the subject Lot is completed or until the amount of money owed to the Association by the Owner, including Assessments, late charges, interest, and collection costs, including reasonable attorney's fees, is paid in full, whichever occurs first.

(f) Management of Lot. Until the foreclosure action is completed or an Owner's debt to the Association is paid in full, the Association is assigned the right to (i) evict the tenants and to re-lease the Lot to qualified tenants; (ii) cancel or modify the Rental Lease; (iii) make repairs as the Association deems appropriate; and (iv) perform such other acts in connection with the management and operation of the Lot, at the delinquent Owner's sole cost and expense, as the Association, in its sole discretion, may deem proper.

(g) Association Powers. The Association may, at any time, upon ten (10) days' written notice to the Owner, either in person, by agent or by a receiver appointed by a court of competent jurisdiction, and regardless of the adequacy of any security for the Owner's indebtedness, enter upon and take possession of all or any part of such Owner's Lot, and/or in its own name sue for or otherwise collect the Rents, including those past due and unpaid. The Association shall apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder.

(h) Mortgage Holder Rights. The assignment of rents and powers described in this Section shall not affect, and shall in all respects be subordinate to, the execution of the rights and powers of the holder of any first or senior mortgage on any Lot to do the same or similar acts.

Section 6.6. Cumulative Remedies. The Association's remedies for non-payment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of

any other rights and remedies which the Association and its assigns may have hereunder or at law.

Section 6.7. Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created hereunder, nor any breach of the terms and provisions of this Declaration, nor the enforcement of any term or provision hereof, shall defeat or render invalid the rights of any Mortgagee under any recorded first Mortgage or deed of trust upon a Lot made in good faith and for value; provided, that after such Mortgagee or other person or entity obtains title to such Lot by judicial or non-judicial foreclosure, such Lot shall remain subject to this Declaration and shall be obligated for the payment of Assessments which fall due subsequent to the date of taking title.

ARTICLE VII

USE RESTRICTIONS

All Lots and Common Area shall be occupied, used and enjoyed only as follows:

Section 7.1. Private Single Family Dwelling. Each Lot shall be used as a single family private residential dwelling and for no other purpose.

Section 7.2. Use of Common Area. Use of the Common Area shall be subject to the provisions of this Declaration, the Rules and Regulations and to any additional limitations imposed by the Association.

Section 7.3. Conduct Affecting Insurance. Nothing shall be done or kept in any Lot or the Common Area which will increase the rate of insurance on the Common Area without the approval of the Association. No Owner shall permit anything to be done or kept in such Owner's Lot or in the Common Area which will result in the cancellation of insurance on the Common Area or which would be in violation of any law. If, by reason of the occupancy or use of said premises, Lot or Residence by the Owner, the rate of insurance to the Common Area shall be increased, the Owner shall become personally liable for the additional insurance premiums and shall be assessed by the Board as a Compliance Assessment against the responsible Owner.

Section 7.4. Liability for Damage to the Common Area. Each Owner shall be liable to the Association, pursuant to the laws of the State of California, for any and all costs and expenses which may be incurred by the Association to repair any damage to the Common Area which may be sustained by reason of the negligence or willful misconduct of said Owner or of said Owner's family, tenants, lessees or contract purchasers, or their respective trusts or invitees, whether minor or adult. After a duly noticed hearing before the Board and the approval by a majority of the Board, any such costs and expenses shall be levied by the Board as a Compliance Assessment against such Owner's Lot.

Section 7.5. Signs. Subject to the provisions of California Civil Code Sections 712 and 713, or any similar sections of California law then in effect, and the Architectural Guidelines adopted, from time to time, by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on or from any Lot or the Common Area without the approval of the

Association, except for such signs as are expressly allowed by applicable law, and pursuant to the Architectural Guidelines established by the Architectural Control Committee. All signs permitted under this Section shall conform with any sign ordinance adopted by the Public Agencies.

Section 7.6. Maintenance of Animals Within Monarch Bay. No animals of any kind shall be raised, bred or kept in any Lot or in the Common Area, except that common household pets, including dogs, cats, fish and birds (excluding, without limitation, equine, bovine, sheep, swine, goats and other such animals) in numbers deemed reasonable by the Board may be kept in each Lot; provided, however, that no animal shall be kept, bred or maintained for any commercial purpose or in unreasonable numbers. Any such animal must be either kept within a Residence or an enclosed area, as may be approved by the Architectural Control Committee. Any pet food, grain or other similar foodstuffs shall be stored within a Residence or in secured containers in such a manner as not to attract rodents, insects or other pests. Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by said animal on the Common Area. The Association, upon the approval of a majority of the Board, shall have the right to prohibit maintenance of any animal within Monarch Bay which constitutes a private nuisance to any other person. All animals maintained in a Lot must be kept either within an enclosure, yard or patio, or, when on Common Area, on a leash being held by a person capable of controlling the animal.

Section 7.7. Quiet Enjoyment. No Owner shall permit or suffer anything to be done or kept upon such Owner's Lot which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. Each Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to said premises, and shall remove all rubbish, trash and garbage from such Owner's Lot. There shall be no exterior fires whatsoever, except barbeque fires contained within receptacles therefore, fire pits in the enclosed yards designed in such a manner that they do not create a fire hazard, and fireplaces installed and maintained in accordance with the provisions of Article VIII of this Declaration. All clotheslines, refuse containers, woodpiles, storage boxes, bulk material, tools and equipment shall be prohibited from any Lot unless obscured from view by a fence or appropriate screen approved, in advance in writing, by the Architectural Control Committee provided for hereinbelow.

Section 7.8. Structural Changes. There shall be no structural alteration, construction or removal of any Residence, fence or other structure whatsoever in Monarch Bay without the prior written approval of the Board or its designated Architectural Control Committee, as required herein.

Section 7.9. Improvements. There shall be no construction, alteration or removal of any Improvement in Monarch Bay (other than those repairs or rebuilding permitted under the Article entitled "Damage or Destruction to the Common Area") without the approval of the Architectural Control Committee, as set forth hereinbelow. The Architectural Control Committee may, but is not required to, allow certain construction which encroaches into the

Common Area. With the exception of such specifically allowed encroachments, no Improvement shall be constructed upon any portion of any Common Area, other than such Improvements as shall be constructed by the Association as provided herein.

Section 7.10. Windows. No window in any Residence shall be covered, in whole or in part, inside or outside, with aluminum foil, newspaper, paint, tint or any other material reasonably deemed inappropriate for such use by the Association.

Section 7.11. Commercial Activity. No professional, commercial or industrial operations of any kind shall be conducted by any Owner in or upon any Lot or upon the Common Area. Notwithstanding the foregoing, this Section 7.11 does not preclude any Owner (1) from maintaining any business permitted by law (e.g., a family day care center) or (2) from using his or her Residence as a home office and conducting business activities therefrom provided such business activities are in compliance with the following: (a) such activities comply with law; (b) the patrons or clientele of such activities do not visit the Lot and do not park automobiles or other vehicles in Monarch Bay; (c) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; (d) such activities do not increase the liability or casualty insurance obligation or premium of the Association; and (e) such activities are consistent with the residential character of Monarch Bay and conform with the provisions of this Declaration.

Section 7.12. Parking. All vehicles in Monarch Bay shall be parked in accordance with the following:

(a) All streets within Monarch Bay are private and are subject to the covenants and terms of this Declaration, as well as all applicable laws, ordinances and regulations of all governmental agencies having jurisdiction over Monarch Bay. Additionally, the Association may adopt reasonable Rules and Regulations regarding the parking of vehicles in Monarch Bay and procedures to enforce such Rules and Regulations, including, but not limited to, the levying of fines and citing and towing of violating vehicles.

(b) No Owner shall park, store or keep any large commercial type vehicle, or any commercial vehicle that contains a business name or contact information, or any recreational vehicle (including, but not limited to, campers, motorhomes, trailers, boat trailers, boats, aircraft, mobile homes or other similar vehicles), or any vehicular equipment, mobile or otherwise, on such Owner's Lot (except entirely within such Owner's respective garage, such that the garage door shall be closed), the private streets and drives within Monarch Bay or any portion of the Common Area. The Board shall have the power with the approval of a majority of the voting power of the Association to prohibit the parking of standard passenger vehicles on the streets of Monarch Bay for overnight periods and to require that all such vehicles be parked within the garages of the residents.

(c) No vehicle shall be parked upon any driveway of a Residence for any continued period in excess of forty-eight (48) hours without the express prior written approval of the Board.

(d) Each Owner shall keep his or her garage readily available for parking of his or her respective vehicle and shall not store any goods or materials therein, nor use any portion of the garage for a workshop, living area, or other use if such storage or use would prevent said Owner from parking any and all of his or her respective vehicles therein.

(e) No Owner shall conduct major repairs to any motor vehicle of any kind whatsoever in that Owner's garage or upon the Common Area, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility.

(f) All garage doors shall remain closed at all times, except as reasonably required for entry to and exit from the garage.

Section 7.13. Regulation of Parking. The Association, through its officers, committees and agents, is hereby empowered to establish "parking" and "no parking" areas within the Common Area in accordance with Section 22658 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those so empowered.

Section 7.14. Guest Parking. Subject to the provisions of this Declaration and the Rules and Regulations of the Association, all open parking spaces within the Common Area shall be permanently maintained and available on a first-come, first-served basis to all guests and invitees of Owners.

Section 7.15. Compliance with Management Documents. All Owners shall be Members of the Association and shall comply with the terms and conditions as set forth in this Declaration, and in the Articles and the By-Laws, and all Rules and Regulations of the Association.

Section 7.16. Solar Collectors. All Owners shall have the right to place and maintain on their Residence equipment and facilities related to the installation and maintenance of individual solar heating systems or other solar energy collection equipment. The installation and maintenance of any solar system by an individual Owner shall be subject to all applicable zoning district regulations, the Uniform Building Code and associated ordinances, and review and prior written approval by the Architectural Control Committee for compliance with the Architectural Guidelines adopted by the Board.

Section 7.17. Antennas. No Owner shall install, or cause to be installed, any radio, "Citizens Bank" (C.B.), shortwave or ham radio antenna or other similar electronic receiving or broadcasting device on the exterior of any Residence or elsewhere within a Lot, or upon the Common Area. Additionally, no video or television antenna including a satellite dish, that has a diameter or diagonal measurement of more than one (1) meter shall be installed or maintained in

Monarch Bay. Any Owner who desires to install a video or television antenna having a diameter or diagonal measurement of one (1) meter or less shall comply with the following reasonable restrictions: (1) apply to and obtain approval for the installation of such antenna from the Architectural Control Committee, which approval shall not be unreasonably withheld or delayed; (2) agree to maintain, repair or replace any roof or other Improvements affected by the installation, maintenance or use of such antenna, if required by the Architectural Control Committee; and (3) agree to indemnify and/or reimburse the Association for any loss or damage caused by the installation, maintenance or use of such antenna. To the extent permitted by law, the Architectural Control Committee may require a video or television antenna having a diameter or diagonal measurement of one (1) meter or less to be reasonably screened from view of any street and the Common Area, provided such requirement does not significantly increase the cost of the video or television antenna system (including all related equipment), and does not significantly decrease its efficiency or performance.

Section 7.18. Leasing. No Owner shall be permitted to rent or lease that Owner's Lot for transient or hotel purposes or for a period of less than thirty (30) days. No Owner may rent or lease less than the entire Lot. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, the By-Laws and Articles of the Association, and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement. Other than the foregoing, there are no restrictions on the right of an Owner to rent or lease that Owner's Lot.

Section 7.19. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or the Common Area, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon or in any Lot or the Common Area. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted upon any Lot or the Common Area.

Section 7.20. Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any portion of Monarch Bay, except in sanitary containers located in appropriate areas screened and concealed from view by a fence, wall or other screen approved in advance, in writing, by the Architectural Control Committee, and no odor shall be permitted to arise therefrom so as to create a nuisance or render Monarch Bay, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Owners may subscribe for "walk-in" trash collection service if available. Approval of any architectural plans which do not provide for a trash storage area accessible for such "walk-in" service shall require a variance. All refuse which is put out for pickup by the Public or County Agencies shall be contained in garbage cans, garbage bags or other closed container approved by the Public Agencies or County Agency. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time (not to exceed twenty-four (24) hours before and after scheduled trash collection hours).

Section 7.21. Pests. Each Owner shall, at all times, maintain his or her Lot free from all undesirable animals, including, without limitation, rats, mice and other objectionable rodents,

gophers, moles and other similar burrowing vermin, and wasps, bees, hornets, flies and other similarly objectionable insects, and pigeons, sparrows or other objectionable birds.

Section 7.22. Drainage. There shall be no interference with the established drainage pattern over any Lot within Monarch Bay as to affect the Common Area or adjacent Lots, unless adequate alternative provision is made for proper drainage and is approved in writing by the Architectural Control Committee and the Public Agencies. For purposes hereof, "established" drainage is defined as the drainage which exists at the time such Lot is conveyed to an Owner, or later grading changes that are shown on plans approved by the Architectural Control Committee and the Public Agencies.

Section 7.23. Prohibition Against Further Subdivision. No Owner shall make any conveyance, execute any document or map, or enter into any contract which shall purport to further subdivide any Lot in any manner whatsoever, including, without limitation, subdividing such Lot into additional lots, condominiums, stock cooperatives or timeshare uses, whether by map, deed or contract. Any such conveyance, documents, map or contract shall be void and of no force or effect whatsoever. Nothing herein, however, shall limit an Owner from construction of a Residence and related Improvements on one (1) or more Lots.

Section 7.24. Water Features. No swimming pool, spa/hot tub, fish pond, reflection pool, fountain or other artificial body of water (collectively, "Water Features") shall be constructed, kept or maintained on any Lot located in, or portion of, Tract #4472 without prior written approval of the Architectural Control Committee. All Water Features shall be limited to a water depth of no more than eighteen (18) inches. Notwithstanding the foregoing, the Architectural Control Committee shall have the authority, in its sole and reasonable discretion, to grant a variance to the Water Feature Depth restriction based on health, safety, privacy and applicable building code factors; provided, however, due to their location, certain Lots or portions of Tract #4472 may never be eligible for a Water Feature depth variance by the Architectural Control Committee if there is a visual or physical impact on the Mall Maintenance Area.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 8.1. Exemptions From Architectural Control. Except as otherwise provided herein, all Improvements to Lots shall be subject to architectural approval by the Association in accordance with the provisions of this Declaration.

Section 8.2. Architectural Control. Except for the purposes of proper maintenance and repair, and except as otherwise permitted hereunder, no person shall install any Improvement, or change or otherwise alter the exterior of any Residence or appurtenant Improvement until there has been full compliance with the provisions of this Article. For the purposes of this Section, the term "exterior" shall mean, without limitation, any outside wall, outside surface, roof, outside door, landscaping, patio, balcony, deck, swimming pool, garage or other outside structure of said Residence which is visible to others in Monarch Bay and/or to the public.

Section 8.3. Architectural Control Committee. The Architectural Control Committee is hereby authorized with the rights and powers set forth in this Article. Said Committee shall consist of (a) not less than three (3) voting members, nor more than five (5) voting members, each of whom shall be from the membership of the Association, and (b) one (1) nonvoting member, who shall be a licensed or registered architect, civil engineer or landscape designer, and who need not be a member of the Association. In the event of the failure or inability of any member of the Architectural Control Committee to act, the Board shall designate a successor who shall serve for the remainder of the term of the member replaced by such successor member. The Board shall have the power to appoint all of the members of the Architectural Control Committee. No member of the Architectural Control Committee shall be liable to any person for such member's decisions or failure to act in making decisions as a member of the Architectural Control Committee.

Section 8.4. Meetings of the Architectural Control Committee. The Architectural Control Committee shall meet, from time to time, as necessary to perform its duties hereunder. The Architectural Control Committee may, by a majority vote of the members thereof, delegate any of its rights and responsibilities hereunder to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Control Committee on all matters so delegated.

Section 8.5. General Architectural Guidelines. The Association has adopted "Architectural Guidelines for the Construction of Residences and Other Improvements Within Monarch Bay" ("Architectural Guidelines"), which shall be applicable to the construction of all Residences and other Improvements within Monarch Bay. The Architectural Guidelines may be periodically updated or revised by the Board, as the Board, in its reasonable discretion, may deem appropriate. The Architectural Control Committee shall maintain a copy of the then current Architectural Guidelines on file at all times, and shall provide each Owner with a copy of the Architectural Guidelines upon written request. The Board shall establish a reasonable fee for copies of the Architectural Guidelines, and other related materials, to cover costs of reproduction, administration and handling. The Architectural Guidelines contain guidelines pertaining to the construction of Residences, garages, ancillary buildings, fences, swimming pools, spas or other Water Features, sports and recreational facilities, landscaping and all works of Improvement. The Architectural Control Committee will not approve the construction of any work of Improvement which is not designed in substantial conformance with the Architectural Guidelines and may actively attempt to stop construction as referenced herein if the prior written approval was not obtained.

Section 8.6. Architectural Approval - Review of Plans and Specifications. The Architectural Control Committee shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans are in conformance with and are harmonious to the exterior design and existing materials of the buildings in Monarch Bay. The Architectural Control Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration, and perform such other duties as, from time to time, shall be assigned to it by the

Board, including the inspection of construction and progress to ensure its conformance with the plans approved by the Architectural Control Committee.

Section 8.7. Submittal of Plans and Specifications. Any Owner desiring to make any Improvement to such Owner's Lot shall submit to the Architectural Control Committee for its review detailed plans and specifications denoting the nature, kind, size, shape, style, dimensions, materials, quality, color, finish, location and elevation of the proposed Improvement, which shall be in substantial conformance with the Architectural Guidelines. The Architectural Control Committee may require such detail in the plans and specifications as it deems appropriate, including, without limitation, the following:

- (a) **Site-Plan.** A fully dimensioned site plan showing the location of all structures, landscaped areas, parking areas, exterior lighting, trash enclosures, walls, fences, signs, slopes and vehicular and pedestrian accessways, adjoining streets, alleys and all public or private easements and rights-of-way, together with a fully dimensioned area map showing the location of the Lot, and all proposed and existing Improvements thereon, in relation to adjoining Lots and Improvements within one hundred feet (100');
- (b) **Building Plans.** Building plans, including floor, foundation and roof plans, together with a description of all materials for such matters;
- (c) **Elevations.** Exterior elevations, surfaces and sections of all structures specifying the colors, finishes and surface materials proposed, and a palette of such colors, finishes and materials;
- (d) **Landscaping Plans.** Landscaping and irrigation plans showing the type, number, size, location and elevation of trees, bushes, shrubs, plants, hedges, fences, lines, sprinklers, valves and other proposed features;
- (e) **Grading Plans.** A grading plan with elevation contours and drainage;
- (f) **Other Documents.** Other documents deemed necessary by the Architectural Control Committee to support or clarify the plans and specifications submitted by Owner.

All such plans and specifications shall have been drawn to scale, shall have been prepared by an architect, landscape architect, engineer or designer licensed or certified by the State of California, or by such other person as may be approved, in writing, by the Architectural Control Committee, and shall be submitted in writing over the signature of the Owner, or Owner's authorized agent. The Architectural Control Committee shall designate the number of duplicate copies of such plans and specifications that it shall require in order to perform its responsibilities under this Article.

Section 8.8. Regulations and Fees for Architectural Review. The Board may establish and issue reasonable rules and regulations governing procedures for submission of plans and specifications, and may establish a reasonable schedule of architectural review fees to be charged

by the Architectural Control Committee for the review of plans and specifications, as shall be set forth in the Architectural Guidelines. Such fees shall be reasonably related to the anticipated cost of providing the architectural review. The Owner of the Lot upon which the work of Improvement is to be constructed shall pay these fees prior to the Architectural Control Committee's review of the plans and specifications for the proposed work. Acceptance of the architectural review fee in no way guarantees the approval of the proposed work, and in the event the proposed work is disapproved, there shall be no refund of said fee.

Section 8.9. Review of Plans and Specifications. The Architectural Control Committee shall review any plans and specifications submitted by an Owner, pursuant to Section 8.7 hereinabove, in accordance with the following provisions:

(a) **Review by Licensed Professionals.** The submitting Owner shall pay all reasonable fees and all additional costs and expenses incurred by the Architectural Control Committee for the services of an engineer, architect or other professional, including services of the nonvoting professional member of the Architectural Control Committee, to review or assist in the review of any such plans and specifications for any proposed Improvement.

(b) **Review Criteria.** Approval by the Architectural Control Committee of the plans and specifications shall be based, among other things, on scale of site dimension; conformity and harmony of external design with neighboring structures; effect of location and use of Improvements (including landscaping) on neighboring property and views; relation of topography, grade and finished ground elevation of the Lot being improved to that of neighboring property; proper facing of all elevations with respect to nearby streets; consideration of view and aesthetic beauty; and conformity of the plans and specifications to the purpose and general plan and intent of the Covenants in this Declaration. The Architectural Control Committee may withhold approval of the plans and specifications for any proposed Improvement because of noncompliance with any of the specific Covenants set forth in this Declaration; because of the dissatisfaction of the Architectural Control Committee with the proposed nature, kind, plan, design, shape, height, dimensions, proportions, architectural style, color, finish or materials to be used therein, the pitch or type of any proposed roof, or the size, type or location of any proposed trees or other landscaping to be planted on the Lot; or because of the dissatisfaction of the Architectural Control Committee with any aspect of the proposed Improvement which would cause the proposed Improvement to be inappropriate, inharmonious or out-of-keeping with the general plan of improvement for Monarch Bay, or with the Improvements on or topography of the surrounding property. The Architectural Control Committee may condition its approval of plans and specifications on such changes therein as it deems appropriate, upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for purpose of maintenance, and may require submission of additional plans and specifications or other information prior to approving or disapproving the materials submitted.

(c) **Action by the Architectural Control Committee.** The Architectural Control Committee shall take action on all plans and specifications within sixty (60) days

after submittal thereof, in writing, to the Committee. In the event the Architectural Control Committee shall fail to act within said period by responding, in writing, the plans and specifications shall be deemed disapproved. If the Owner then notifies the Architectural Control Committee, in writing, within thirty (30) days following the expiration of said sixty (60) day approval period of the fact that the Owner has not yet received a written response to its submittal and still desires to continue with the proposed Improvement, and the Architectural Control Committee continues to fail to respond, in writing, for an additional thirty (30) day period following such notice, then the submittal shall be deemed approved. Any action by the Architectural Control Committee on said plans and specifications, including approval, conditional approval or disapproval, shall be evidenced by a certificate, signed by the chairman of the Architectural Control Committee which shall state the reasons, as applicable, for approval, conditional approval or disapproval. Once issued, the certificate may be relied on by all parties affected thereby. The Architectural Control Committee shall retain the original of said certificate and one (1) copy of the plans and specifications in the records of the Association, and shall promptly mail an executed copy of the certificate to the Owner and return to the Owner the other set of plans and specifications, marked to show the certificate date.

(d) Resolution of Disputes. In the event any Owner who submits plans and specifications to the Architectural Control Committee is dissatisfied with the action of the Architectural Control Committee, and contends that the Architectural Control Committee acted in an unjust, unreasonable, arbitrary or capricious manner in reviewing and acting on such plans and specifications, such Owner shall have the right to file a written appeal with the Board of the Association within fifteen (15) days of the date of the Architectural Control Committee's written notice, and the Board's decision on the matter shall be final.

Section 8.10. Submittal to Public Agencies - Right of Architectural Control Committee to Review. Upon obtaining the written approval of the Architectural Control Committee, the Owner shall thereafter submit plans and specifications to the appropriate Public Agencies, in accordance with the requirements of such Public Agencies. In the event that all approvals of such Public Agencies necessary for the issuance of a building permit are not obtained within six (6) months from the date of approval by the Architectural Control Committee, the Architectural Control Committee shall have the right, but not the obligations, to review all previously approved plans and specifications. In addition, in the event that the County and/or other Public Agencies require modifications to the plans and specifications previously approved by the Architectural Control Committee, the Owner shall submit to the Architectural Control Committee all modifications to the plans and specifications previously approved by the Architectural Control Committee, which shall have the right to review and to impose further conditions on any such modifications.

Section 8.11. Approval of Public Agencies. Approval of any proposed or existing Improvement, or completion of an Improvement, by the Architectural Control Committee or the Board shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the minimum standards of any Public Agencies having jurisdiction over such Improvement. Similarly, approval of any proposed or existing Improvement by any

Public Agency having jurisdiction over the Improvement shall not be construed to constitute approval of such Improvement by the Architectural Control Committee or the Board.

Section 8.12. Specific Architectural Restrictions. In addition to the Architectural Guidelines described in Section 8.5 hereinabove, the Architectural Control Committee shall give effect to and enforce the following specific architectural restrictions and controls which are mandatory, and apply to the construction of any and all works of Improvement, in order to maintain a uniform and attractive appearance within Monarch Bay:

- (a) **Single-Family Residence.** Each Lot is designed and intended for the construction of one (1) detached single-family dwelling. No multi-family Residences shall be allowed. In no event shall more than one (1) Residence be constructed upon any Lot. Notwithstanding the foregoing, the Architectural Control Committee may approve the construction of one (1) Residence upon two (2) or more contiguous Lots. In such event, the Architectural Control Committee may permit reasonable variations from the specific restrictions set forth in this Section, such as setbacks, increases in maximum number of garage stalls and other restrictions determined in part on the basis of square footage of the Lot upon which the Improvement is being constructed.
- (b) **Driveways.** The driveway serving each Residence shall be constructed and completed concurrently with the construction of the Residence. Driveways shall be constructed of such material as may be approved by the Architectural Control Committee, in its reasonable discretion. The driveway shall be of sufficient size and configuration as to permit the parking of at least the same number of automobile-sized vehicles as the garage, without any such vehicle extending into any street or sidewalk.
- (c) **Sidewalks.** All sidewalks, if any, shall be constructed in such location and manner as shall be required by the Public Agencies and in accordance with standards established by the Architectural Guidelines.
- (d) **Minimum Setback Requirements.** The minimum setback requirements shall be the more restrictive of: (1) the minimum setback prescribed by the Public Agencies; or (2) the minimum setback established by the Architectural Guidelines, as, from time to time, amended by the Board.
- (e) **Height Limitations.** No Improvement shall be constructed, erected, altered, placed, or permitted to remain, on any Lot in excess of the heights determined as follows, provided, however, nothing herein shall be deemed to require the removal of any Improvement previously approved. If, as of the date of recordation of this Declaration, the height of any existing Improvement exceeds the height limit set forth in this section, the height limit of such existing Improvements shall prevail.
 - (i) The height limit for all Improvements within Tract #3748 and Tract #3839 shall be based upon finished grade elevations as shown on the original grading plan, a copy of which is on file in the office of the Association, and Improvements shall not exceed the height set forth in the height limitation

memorandum of Cabot, Cabot & Forbes, Inc, dated January 23, 1962, a copy of which is in on file in the office of the Association and the height table thereof is attached hereto as Exhibit "B". The maximum building height shall not exceed the limits herein set forth, or the City maximum, whichever is more restrictive.

(ii) No Improvement on a Lot within Tract #4472 shall exceed the height of the existing Improvements on that Lot existing as of the date of adoption of this Declaration, and based upon their location and minimal impact on other Lots, only Lots 32 through 44 may be eligible for variances therefrom.

(iii) Any proposal to exceed the height limit (which is not allowed in Tract 4472 except in the event of a variance as permitted under Subsection 8.12(e)(ii), above), or in Tract #4472 to expand laterally beyond the existing structure envelope, shall require a variance. The Owner shall submit a photograph, taken at seated eye level from each of the affected neighbor's lowest living area which shows the height of the proposed structure. The photo shall include a pole or other marker simulating the roof ridge in plan and elevation at its highest point with reference to the horizon. A licensed surveyor shall certify all elevations on the photographs.

(iv) Notwithstanding the height limitations set forth above, the Architectural Control Committee may take additional factors into consideration when reviewing any proposed Improvement, including scale of site, aesthetic conformity, consideration of unreasonable blockage of view, and conformity of external design to neighboring structures. In particular, the height limitations set forth above shall not be construed to take precedence or control over such other factors, and a proposed Improvement that meets the height limitation may be disapproved on the basis of other factors considered by the Architectural Control Committee.

(f) Trees and Other Plantings.

(i) No tree, bush, shrub, hedge or other planting over three feet (3') in height, or which is of the type which may grow to over three feet (3') in height shall be planted or grown without prior written approval of a landscape plan by the Architectural Control Committee.

(ii) No Owner shall permit any tree or other planting on such Owner's Lot to grow to the point of obstructing the view from any other Lot, "obstruction" being defined as impact on the seated view from an affected neighboring Lot's lowest living level. For purposes of this Section 8.12(f)(ii), the "lowest living level" of a Lot shall be defined as the level of a single-family residential dwelling unit on that Lot on which the living room, kitchen and dining room (or a majority of these living area rooms) were originally constructed in the interior of such single-family residential dwelling unit. In the event that any Owner shall violate

the provisions hereof, the Association may enforce the provisions hereof as provided in Section 8.15(b), below.

(g) Air Conditioners. No "through-the-wall" or "window" style air conditioning unit shall be installed in any structure within Monarch Bay, nor shall any air conditioning unit be installed upon the roof of any structure in Monarch Bay. All air conditioning compressors, condensers and other air conditioning equipment (collectively referred to herein as "Air Conditioning Equipment") shall be concealed within such screen or other structure as may be deemed appropriate by the Architectural Control Committee, in order to totally obscure such Air Conditioning Equipment from the view of other persons in Monarch Bay. The Architectural Control Committee shall have the right to approve or disapprove the size, shape, style, noise level and location of any Air Conditioning Equipment within Monarch Bay.

(h) Water Softening/Demineralizing Equipment. No apparatus or device for softening or demineralizing water shall be installed except wholly within the Residence or the garage appurtenant to such Residence.

(i) Solar Energy System. No solar heating panels or other solar energy collection equipment shall be installed on any portion of any Lot, or any Improvement thereon, unless such equipment is installed in such location and in such manner as to be obscured from the view of other persons in Monarch Bay to the greatest degree practicable without significantly decreasing its efficiency. No person shall install any such panels or equipment without the prior written consent of the Architectural Control Committee, which shall have the right to reasonably restrict and determine the size, shape, color, style, materials or location of any such panels or equipment within Monarch Bay, subject to the provisions of California Civil Code Section 714, or any similar law then in effect.

(j) Antennas. Except as otherwise provided in Section 7.17, above, no owner shall install, or cause to be installed, any television, satellite dish, radio, "Citizens Band" (C.B.) antenna or other similar electronic receiving or broadcasting device on the exterior of any Residence or elsewhere within a Lot, or upon the Common Area.

(k) Exterior Lighting Facilities. All exterior lighting facilities must be approved in writing by the Architectural Control Committee, and shall be designed and installed so as to mitigate, to the fullest extent possible, any offensive glare to the other Lots or other property within Monarch Bay.

Section 8.13. Variance. The Architectural Control Committee may, but is not required to, authorize variances from compliance with any of the provisions of the Architectural Guidelines when circumstances may reasonably require. Such variances must be evidenced in writing, and must be signed by a majority of the members of the Architectural Control Committee. If any such variance is granted, no violation of the Covenants contained in this Declaration 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 this Declaration for any purpose, except as to the particular Lot covered by the variance, nor shall it in any way affect the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Lot, including, without limitation, zoning ordinances, setback lines or other requirements imposed by any governmental or regulatory authority.

Section 8.14. Performance of Work. The performance of any work of Improvement approved pursuant to Section 8.9 hereinabove shall be performed in accordance with the following provisions:

(a) **Bonds or Security Deposits.** The Architectural Control Committee may require that an Owner post a bond, cash security deposit or irrevocable letter of credit in a form satisfactory to the Architectural Control Committee, in an amount appropriate to the scope of the work of Improvement and its risk to the Common Area, in favor of the Association, as a condition to approving any proposed work of Improvement. No person shall commence any work of Improvement until any and all such bonds, security deposits and letters of credit have been properly posted with the Architectural Control Committee. The proceeds of such bonds, security deposits and letters of credit shall be used by the Board as deemed reasonably necessary by the Board to remedy any breach or default by an Owner of any Covenant contained in this Article, including, without limitation, any failure by such Owner to:

- (i) Repair any damage to any real or personal property within Monarch Bay caused by the work of Improvement;
- (ii) Remove any lumber, materials or debris within a reasonable period following completion of the work of Improvement;
- (iii) Construct or install the work of Improvement in accordance with the plans and specifications approved by the Architectural Control Committee; or
- (iv) Complete the work of Improvement in a timely manner.

(b) **Commencement and Completion.** Following approval of final plans and specifications for a proposed Improvement by the Architectural Control Committee and the Public Agencies, the Owner shall commence such proposed Improvement within the time period specified by the Architectural Control Committee for such work of Improvement or such approval shall be deemed revoked. The Owner shall diligently prosecute the work to completion, shall complete such Improvement in a reasonably prompt manner, and, in any case, shall complete such Improvement within eighteen (18) months following the date of commencement of works of Improvement, or such other date as may be specified by the Architectural Control Committee in its approval. The Architectural Control Committee retains the authority to shorten or lengthen the date by which the works of Improvement must be completed and, upon a written request for a variance for extenuating circumstances, may lengthen the Improvement completion date.

(c) Performance of Work. Except in the case of a bona fide emergency, all work shall be performed during reasonable daylight hours, in accordance with the Architectural Guidelines. Any variances shall require the prior approval of the Architectural Control Committee. All persons performing such work shall use their best efforts to minimize the duration of the work and the inconvenience to other Owners in Monarch Bay. All work shall be performed in a neat and orderly manner, and all reasonable safety precautions shall be taken during the performance of such work.

(d) Indemnification. Notwithstanding the bond required in Section 8.14(a) above, the Owner of any Lot upon which any work of Improvement is being performed shall indemnify, defend and hold harmless the Association, the Board, the Architectural Control Committee, the Association's manager or managing agent, and every other Owner in Monarch Bay from and against any and all liability arising out of or otherwise resulting from any negligent or intentional act or omission relating to the performance of such work.

Section 8.15. Inspection of Work. The inspection of any work of Improvement performed pursuant to this Article, or in violation of this Article, shall be performed in accordance with the following provisions:

(a) Notice and Inspection. The Architectural Control Committee shall have the right, upon reasonable notice and during reasonable daylight hours, to make periodic inspections of any work in progress. Upon the completion of any Improvement, the Owner shall give written notice thereof to the Architectural Control Committee. Within sixty (60) days after receipt of such notice, the Architectural Control Committee, or its duly authorized representative, may inspect the completed Improvement to determine whether it was constructed, erected or installed in substantial compliance with the approved plans. In the event the Architectural Control Committee fails to respond to the notice within a sixty (60) day period following receipt of such notice, then the completed Improvement shall be deemed approved. If, however, the Architectural Control Committee shall inspect the completed Improvement and determine that such Improvement was not constructed, erected or installed in compliance with the approved plans, it shall notify the Owner, in writing, of such noncompliance within ten (10) days after the date of the inspection, specifying the particulars of noncompliance.

(b) Effect of Noncompliance. In the event the Owner has performed any work without appropriate approvals, or contrary to approved plans, and has failed to remedy any alleged noncompliance within thirty (30) days from the date the Owner is notified of such noncompliance, the Architectural Control Committee shall notify the Board, who shall then set a date on which a hearing shall be held regarding the matter. Said date shall not be less than twenty (20) days nor more than sixty (60) days after said notice of noncompliance was given to the Owner. Written notice of the hearing date shall be given by the Board to the Owner at least ten (10) days prior to the hearing. At the hearing, the Owner, the Architectural Control Committee and the Board, and any other interested persons, may present information relevant to the question of the alleged noncompliance. After considering all such information, if the Board shall determine that

there is in fact a noncompliance, the Board shall specify the exact nature of the noncompliance, the estimated cost of correcting or removing same and shall specify a reasonable period of time the Owner shall have to remedy or remove the same after the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such reasonable period, or within any extension of such reasonable period as the Board may grant, in its discretion, the Board shall take such action against said Owner as it deems appropriate, including, without limitation and if allowed by statute, the recording of a notice of noncompliance in the Office of the County Recorder, and the filing of a lawsuit declaring said non-complying Improvement to be a nuisance and for abatement thereof. Any noncompliance shall be deemed a nuisance. In furtherance thereof, all Owners hereby agree that the Board shall have legal standing to commence and prosecute legal proceedings against any Owner to enforce the Covenants set forth in this Declaration. Additionally, the Board, at its option, may cause the noncomplying Improvement to be removed or may otherwise cause the noncompliance to be remedied, and the Owner shall promptly reimburse the Association, upon demand, for all costs and expenses incurred therewith. If such costs and expenses are not promptly paid to the Association, the Board shall, after Notice and Hearing, cause such costs and expenses to be levied as a Compliance Assessment against the responsible Owner. Notwithstanding the provisions hereof, if in the opinion of the Board and its counsel, compliance with the time limits provided herein could prejudice the ability of the Board to obtain judicial relief, the Board may take immediate action, including without limitation, commencement of litigation or denial of access by contractors, to compel compliance.

Section 8.16. Approval of Waiver. The approval by the Architectural Control Committee of any plans and specifications for an Improvement to any given Lot shall not be deemed to constitute a waiver by the Architectural Control Committee of its right to object to any features or elements embodied in such plans and specifications in the event said features or elements are embodied in subsequent plans and specifications submitted to the Architectural Control Committee for approval for use on any other Lot.

Section 8.17. No Liability. Neither the Association or any member of the Board, the Association's manager or managing agent, the Declarant or the Architectural Control Committee shall be liable in damages to any person submitting plans or specifications for approval, or to any Owner, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval, or failure to approve or disapprove, any such plans or specifications, or for any defect in any Improvement constructed from such plans and specifications. Plans and specifications shall be approved as to style, exterior design, appearance and location, and are not approved for engineering design, structural engineering and safety, or for compliance with zoning and building ordinances. Every person who submits plans to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every other Owner agrees by acquiring title to its Lot, that it will not bring any action or suit against the Association or any member of the Board or the Architectural Control Committee to recover any such damages.

Section 8.18. Conflicts Between Public Agencies and Architectural Control Committee.

In the event of any conflict in the conditions of approval of any proposed Improvements imposed by the Public Agencies and the Architectural Control Committee, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Architectural Control Committee from imposing conditions of approval of any proposed Improvements which are more restrictive than conditions as may be imposed by the Public Agencies.

ARTICLE IX

REPAIR AND MAINTENANCE

Section 9.1. Repair and Maintenance by Association. Without limiting the generality of the Article herein entitled "Powers and Duties of the Association", the Association shall have the duty to maintain, in a neat, clean, safe, sanitary, attractive and orderly condition at all times, the following upon the Common Area as designated in this Declaration.

- (a) Maintain, landscape, repair, improve, restore and replace all Improvements on the Common Area, including the Mall Maintenance Areas (except as otherwise provided in Section 5.4, above) in a neat, clean, safe, attractive and orderly condition at all times, including, without limitation the following:
 - (i) All private streets and Common Area driveways, and adjacent streetscapes, if any, in a condition comparable to the condition initially approved by the Public Agencies;
 - (ii) All sidewalks, trails or other pedestrian paths;
 - (iii) All drainage facilities and easements within the Common Area;
 - (iv) All Common Area lighting facilities required by the Public Agencies for the purposes of illuminating the Common Area;
 - (v) Entry area monumentation and related Improvements in a condition comparable to that condition in existence at the date this Declaration is recorded;
 - (vi) Exterior surfaces (defined to mean the side fronting any public right-of-way and the Common Area, including the Mall Maintenance Areas) of all Monarch Bay perimeter walls and fences or in a condition comparable to that condition existing at the date this Declaration is recorded. In clarification of the foregoing and not in limitation thereof, each Owner shall be responsible for the maintenance and repair, including replacement, of all perimeter walls and fences located on his or her Lot except that the Association shall maintain the exterior surface only of those walls or fences that front a public right-of-way or the Common Area. All such maintenance, repair and replacement by an Owner must meet the requirements of Article VIII herein entitled "Architectural Control",

including the use of materials that conform to the standards adopted by the Architectural Control Committee.

(b) Maintain all Mall Maintenance Areas (except as otherwise provided in Section 5.4, above) designated herein in a neat, clean, safe, attractive and orderly condition at all times, including, without limitation:

- (i) All slopes, grades and banks, stairs and pathways;
- (ii) All irrigation and erosion controls, as may be necessary to protect the Mall Maintenance Areas;
- (iii) All drainage facilities and easements within the Mall Maintenance Areas.

(c) Maintain all other areas, facilities, furniture, equipment, services or aesthetic components of whatsoever nature as may, from time to time, be requested by the vote or written consent of three-fourths (3/4) of the voting power of the Members; and

(d) Except as otherwise herein specified as being paid by individual Owners, the costs of maintenance, repair, restoration and replacement as provided in this Article shall be Common Expenses and shall be paid out of the general fund of the Association.

Section 9.2. Repair and Maintenance by Owner. Except as the Association shall be obligated to maintain, repair or replace as may be provided in this Declaration, every Owner shall maintain his or her Lot and the Residence located thereon, including, without limitation, all decorative walls within the Lot installed by the Owner; exterior lighting fixtures, landscaping, fences, hose bibs, roofs, patios, patio covers, decks, deck covers, balconies, windows, screens, driveways, locks and doors of such Owner's Residence and all other Improvements located on such Owner's Lot in a neat, clean, safe and attractive condition at all times, and make all repairs as they may be required. Each Owner of an unimproved Lot shall cause such Lot to be maintained in a neat, clean, safe and sanitary condition at all times, such that the Lot is free of unsightly debris, garbage, weeds or brush. In the event the Owner shall fail to so maintain such unimproved Lot, the Board, acting through its employees and agents, shall have the right, but not the duty, to enter upon any Lot for maintenance purposes to clear and remove any unsightly, unsafe or otherwise undesirable condition. The cost of such maintenance shall be levied by the Board against the Owner as a Compliance Assessment.

Section 9.3. Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities or public utilities which are located within easements in the Common Area owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

Section 9.4. Damage or Destruction Affecting a Residence - Duty to Rebuild. In the event any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Residence to repair or reconstruct said Residence in a manner which will restore it to its condition and appearance immediately prior in time to such damage or destruction, or as otherwise approved by the Architectural Control Committee. In the event that the Owner elects not to repair or reconstruct said Residence, the Lot shall be cleared of debris within a reasonable time, at the Owner's expense, as may be determined by the Board, and shall, thereafter, maintain the Lot as provided herein.

Section 9.5. Damage or Destruction Affecting Common Area.

(a) In the event of damage or destruction of Improvements within the Common Area, including the Mall Maintenance Areas, such areas shall be restored by the Association to their general condition and appearance immediately prior to such damage or destruction; provided, however, (i) in the event such damage or destruction shall have been caused by an Owner, or any person or entity under such Owner's control and/or employ, such Owner shall be responsible for all repairs, which shall be made as soon as reasonably possible after the damage or destruction, at such Owner's sole cost and expense, and (ii) with respect to the Beach Club Lots, for so long as the same are subject to a lease to a third party for the operation of the facilities located thereon as a private beach club, the Association shall be deemed to have fulfilled its obligation hereunder by enforcing the provisions of such lease with respect to damage or destruction of such facilities). The Association may levy a Compliance Assessment against such Owner for failure to comply with the provisions of this Section.

(b) Notwithstanding the provisions of Section 9.5(a), above, in the event that the amount available from the proceeds of insurance policies for restoration and repair of the Common Area (other than the Mall Maintenance Areas, which are discussed in Section 9.5(c) below) shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Improvements shall be replaced or restored unless (1) such restoration and repair is not required by the Ground Lease and (2) twenty-five percent (25%) of the voting power of a quorum of the Association objects in writing to such replacement or restoration or votes against the same at a meeting duly called therefor. For purposes of this Section, "quorum" shall mean more than fifty percent (50%) of the Lots in Monarch Bay. If the Members do not disapprove such replacement or restoration, the Board shall levy a Special Assessment, with each Owner contributing a like sum, in order to provide the necessary funds for such reconstruction over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause such damaged or destroyed Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. In the event of a determination, as provided above, not to replace or restore the Improvements on such Common Area, such Common Area shall be cleared and landscaped for park or open space use and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by Special Assessment in an amount determined by the Board.

(c) Notwithstanding the provisions of Section 9.5(a), above, in the event that the amount available from the proceeds of insurance policies for restoration and repair of the Mall Maintenance Areas shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Improvements shall be replaced or restored unless (1) such restoration and repair is not required by the Ground Lease and (2) twenty-five percent (25%) of the voting power of a quorum of the Owners of Lots within Tract #4472 objects in writing to such replacement or restoration or votes against the same at a meeting duly called therefor. For purposes of this Section, "quorum" shall mean more than fifty percent (50%) of the Lots in Tract #4472. If such Members do not disapprove such replacement or restoration, the Board shall levy a Special Assessment, with each Owner of a Lot within Tract #4472 contributing a like sum, in order to provide the necessary funds for such reconstruction over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause such damaged or destroyed Mall Maintenance Areas to be restored as closely as practical to its former condition prior to the destruction or damage. In the event of a determination, as provided above, not to replace or restore the Improvements on such Mall Maintenance Area, such Mall Maintenance Area shall be cleared and landscaped for park or open space use and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by Special Assessment levied against the Lots within Tract #4472 in an amount determined by the Board.

ARTICLE X

CONDEMNATION

Section 10.1. Distribution of Awards - Common Area. Condemnation by eminent domain or sale resulting in a condemnation award affecting all or any portion of the Common Area shall be remitted to the general fund of the Association.

Section 10.2. Board of Directors as Attorney-in-Fact. All Owners hereby appoint the Board as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Common Area.

ARTICLE XI

COVENANT AGAINST PARTITION

Section 11.1. Covenant Against Partition. By acceptance of the conveyance instrument to a Lot, each Owner shall be deemed to covenant for themselves, and for such Owner's heirs, representatives, successors and assigns, that such Owner will not institute legal proceedings to effect judicial partition of such Owner's interest in Monarch Bay, until fifty (50) years from recordation of this Declaration and only if Monarch Bay (a) is then obsolete and uneconomical and (b) at least sixty-seven percent (67%) of the Owners of Lots and sixty-seven percent (67%)

of the first Mortgagees (based upon one (1) vote for each Mortgage owned) consent to or join in such action for partition.

ARTICLE XII

INSURANCE

Section 12.1. Required Insurance Coverage. The Association, acting by and through the Board, shall obtain for the Association and shall maintain and pay the premiums for the following insurance coverages:

(a) **Casualty and Fire Insurance.** A policy or policies of casualty and fire insurance with extended coverage endorsement for the full replacement value (without deduction for depreciation) of the Common Area, including Mall Maintenance Areas, together with all Improvements located thereon. Said policies shall be maintained for the benefit of the Association, the Owners and their respective Mortgagees, as their interests may appear.

(b) **Public Liability Insurance.** A policy or policies of full coverage public liability insurance (with cross-liability endorsement, if obtainable) insuring the Association, the Board, the Owners, and, until the earlier of (i) the date that the last Non-Converted Lot becomes a Converted Lot and the last 1/214th undivided interest in the Common Area Lots is conveyed to the Association, or (ii) December 31, 2020, both Declarant and the Trustee, and the agents and employees of each of the foregoing against any liability to the public or to any Owner, such Owner's family, invitees and/or tenants, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Common Area, including Mall Maintenance Areas, and such other risks as shall customarily be covered with respect to similar residential developments in the area of Monarch Bay, and to contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying a claim because of negligent acts or omissions of the Association, its officers and directors acting in such capacity or other Owners. The limits of liability under this Section shall be set by the Board and shall be reviewed at least annually by the Board and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than three million dollars (\$3,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence.

(c) **Fidelity Bonds.** Fidelity bonds naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Association, including, but not limited to, officers, directors, trustees and employees of the Association, and officers, employees and agents of any management company employed by the Association who handle or are responsible for the administration of Association funds. Such coverage shall be in an amount deemed reasonably appropriate by the Association, but shall not be less than the estimated maximum funds, including reserves in the custody of the Association, or twenty-five percent (25%) of the estimated annual operating expenses of Monarch Bay, including reserves, whichever is greater.

Section 12.2. Optional Insurance Coverage. The Association, acting at its option and by and through the Board, may purchase such other insurance as it may deem necessary or appropriate, or otherwise financially beneficial for the Owners, including, but not limited to, earthquake insurance, flood insurance, Workers' Compensation Insurance and plate glass insurance.

Section 12.3. Notice of Cancellation of Insurance. All policies of insurance maintained by the Association pursuant to this Article shall contain a provision that coverage under said policies may not be cancelled, terminated, allowed to expire by their own terms, or be substantially modified by any party without at least thirty (30) days' prior written notice to the Board, to each Owner and to such first Mortgagees who have filed written requests with the Association for such notice. A list of the Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

Section 12.4. Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for Monarch Bay, based upon the then current construction costs, insurance practices in the area in which Monarch Bay is located and all other factors which may indicate that either additional insurance coverage or increased coverage under the existing policies is necessary or desirable to protect the interest of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

Section 12.5. Waiver by Owners. As to all policies of insurance maintained by the Association which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Association, the Board and the agents and employees of each of the foregoing, and all other Owners, with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

Section 12.6. Premiums, Proceeds and Settlement. Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Association; provided, however, the Board may designate insurance costs related to the Mall Maintenance Areas as a Mall Maintenance Area Expense. All insurance proceeds paid to the Association shall be disbursed as follows: (a) in the event of any damage or destruction to the Common Area, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Common Area"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set forth in the Article herein entitled "Mortgagee Protection". The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its Members.

Section 12.7. Rights and Duties of Owners to Insure. Each Owner hereby expressly acknowledges that the Association does not maintain fire, casualty or other insurance insuring any Owner's Lot or Residence, nor does the Association maintain liability, workers' compensation or other insurance with respect to any injury or damage occurring upon any Lot or within any Residence. Each Owner may obtain any casualty and fire insurance on such Owner's personal property and all other Improvements located on such Owner's Lot. Nothing herein shall preclude any Owner from carrying any public liability insurance as such Owner may deem desirable to cover such Owner's individual liability for damage to person or property occurring inside such Owner's individual Lot or elsewhere upon Monarch Bay. If obtainable, such liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against the Association, the Board, their agents and employees, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by such Owner to the Association to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 12.8. Trustee for Policies. The Association is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Association, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. Enforcement.

(a) The Association or the Owner of any Lot in Monarch Bay shall have the right to enforce, by proceedings at law or in equity, all of the covenants now or hereafter imposed by this Declaration and the By-Laws, respectively (and the Rules and Regulations duly adopted by the Association), including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration or the provisions of the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest.

(c) The remedies herein provided for breach of the covenants contained in this Declaration or the provision of the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association or any Owner to enforce any of the covenants contained in this Declaration or the provisions of the By-Laws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants contained in this Declaration or of the provisions of the By-Laws shall not affect or impair the lien or charge of any bona fide Mortgage or deed of trust made in good faith and for value on any Lot; provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise.

(f) The Board, for and on behalf of the Association, may assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend said Owner's voting rights and right to use the recreational facilities, if any, for the period during which any Assessment against said Owner's Lot remains unpaid; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(g) The Board, for and on behalf of the Association, may, after Notice and Hearing, temporarily suspend an Owner's voting rights and right to use the recreational facilities as provided in the Association's published Rules and Regulations for an infraction of such Rules and Regulations or any other Governing Instrument; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(h) In addition to the above general rights of enforcement, the Public Agencies shall have the right, through their agents and employees, to enter upon any part of Monarch Bay for the purpose of enforcing the California Vehicle Code and its local ordinances, and are hereby granted an easement over Monarch Bay for that purpose.

Section 13.2. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect.

Section 13.3. Term. The covenants set forth in this Declaration shall run with and bind Monarch Bay, and shall insure to the benefit of the Association and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by (i) a majority of Owners of Converted Lots and (ii) a

majority of Owners of Non-Converted Lots, agreeing to terminate said covenants and restrictions, in whole or in part, has been recorded within one (1) year prior to the termination of the initial fifty (50) year term, or within one (1) year prior to the termination of any successive then (10) year period.

Section 13.4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of Monarch Bay. The Article and Section headings have been inserted for convenience and reference only and shall not be considered or referred to in resolving questions of interpretation or construction. In the event of a conflict between the provisions of this Declaration and the provisions of applicable law, including without limitation the provisions of the Davis-Stirling Common Interest Development Act set forth at California Civil Code Section 1350 *et seq.*, and/or its successive statute, the more restrictive provisions shall apply.

Section 13.5. Singular Includes Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 13.6. Amendments.

(a) This Declaration may be amended only by an affirmative vote of not less than (a) fifty-one percent (51%) of the Owners of Converted Lots and (b) fifty-one percent (51%) of the Owners of Non-Converted Lots; provided, however, the affirmative vote of not less than (a) sixty-seven percent (67%) of the Owners of Converted Lots and (b) sixty-seven percent (67%) of the Owners of Non-Converted Lots shall be required for a material amendment to this Declaration, provided "material amendment" shall mean amendments governing the following subjects:

- (i) the fundamental purpose for which Monarch Bay was created (such as, without limitation, a change from residential use to a different use);
- (ii) the duty of the Association to repair, replace and reconstruct the Common Area, including, without limitation, the duty to fund reserves for the same;
- (iii) a reduction in coverage levels for casualty, fidelity and liability insurance or the allocation of proceeds thereof;
- (iv) reconstruction in the event of damage or destruction; or
- (v) rights to use the Common Area.

(b) In the event any Mortgagee receives a written request from the Board to approve any amendment to the Declaration, and such Mortgagee does not deliver a negative response in writing to the Board within thirty (30) days of the mailing of such

request by the Board, such Mortgagee shall be deemed to have approved such proposed amendment.

(c) Notwithstanding anything to the contrary set forth above, neither this Declaration, any other Governing Document, nor any other document to which the Association is a party may be amended (i) to allow a material increase in the intensity or a material change in the character of the use of the Beach Club Lots (as identified on Exhibit "A" to this Declaration) from their actual and permitted use as of the date of recordation of this Declaration under the Club Sublease and the Ground Lease or (ii) to allow an extension of the term of the right, existing as of the date of recordation of this Declaration, of any party other than the Association and its Members to use the Beach Club Lots, without the written consent, during the term of the Ground Lease, of both the Landlord and at least sixty-seven percent (67%) of the voting power of Owners other than the Landlord, and after the term of the Ground Lease expires in 2020 (or the earlier termination of the Ground Lease), the vote of at least fifty-one percent (51%) of the voting power of the Owners;

(d) This amendment provision shall not be amended to allow amendments by less than the percentages set forth hereinabove; provided, however, any Owner or the Association may petition the Superior Court of the County in which Monarch Bay is located for an order reducing the necessary percentage required under Subsection 13.6(a) to amend this Declaration. The procedure for effecting this petition is set forth in Section 1356 of the California Civil Code, as the same may be amended, from time to time. An amendment made in accordance with the provisions set forth hereinabove shall be effective when executed by the President and Secretary of the Association, who shall certify that the amendment has been approved by the membership and, where appropriate, by the mortgagees in the percentages set forth hereinabove, and recorded in the Office of the County Recorder for the County in which Monarch Bay is located. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment.

Section 13.7. Encroachments. None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to willful conduct of said Owner.

Section 13.8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by registered or certified mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Lot of such person if no address has been given to the Association. If such

notice is not sent by regular mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Association.

Section 13.9. Attorneys' Fees. If any Owner defaults in making a payment of Assessments or in the performance or observance, including non-performance or violation, of any provision of this Declaration or any other Governing Document, and the Association has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorneys' fees, regardless of whether legal proceedings are instituted. In case a suit is instituted, the prevailing party shall recover the cost of the suit, in addition to the aforesaid costs and fees.

Section 13.10. Mortgagee Protection. No breach of the Covenants set forth in this Declaration shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of such Covenants shall be binding upon and effective against every Owner, however such Owner's title is derived.

Section 13.11. Release of Declarant. The Association acknowledges and agrees that the Association shall be responsible for performing all duties and discharging all obligations of the Association pursuant to this Declaration, notwithstanding the fact that the Association may own fee simple title to only a fractional undivided interest in the Common Area Lots. Except for any breach of this Declaration by Declarant in the event Declarant becomes an Owner pursuant to this Declaration, the Association releases Declarant from all obligations and/or liability pursuant to this Declaration.

ARTICLE XIV

DECLARANT'S RIGHTS

Section 14.1. Subordination. Declarant agrees that should the Ground Lease be terminated as to all or any of Monarch Bay, Declarant's fee title thereto shall be subject to the provisions of this Declaration, which shall remain in full force and effect notwithstanding such termination of the Ground Lease. In particular, no breach or amendment of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the Ground Lease, but all of said covenants, conditions and restrictions shall be binding upon and effective against Declarant in the event of termination of the Ground Lease. Nothing in this Declaration shall be interpreted, deemed or construed to modify or amend the rights and interests of Declarant under the terms and provisions of the Ground Lease. In clarification of the foregoing, compliance with the provisions of this Declaration shall not be deemed to be compliance with the provisions of the Ground Lease. In the event of a conflict between the terms and provisions of this Declaration and the terms and provisions of the Ground Lease existing as of the date of recordation of this Declaration, the terms and provisions of the Ground Lease shall control as between the parties to the Ground Lease and/or over any contrary term or provision of this Declaration. On and after the date of recordation of this Declaration, Landlord may enter into a new ground lease for any Lot for which the Ground Lease has either expired or been terminated or may amend the Ground Lease, provided that any such new ground lease and any amendment to the Ground Lease shall

not conflict with the provisions of this Declaration. References in this Declaration to the "Ground Lease" shall thereupon refer to such new ground lease or amendment to the Ground Lease. Any provision of a new ground lease and any amendment to the Ground Lease entered into after the date of recordation of this Declaration in violation of this Section 14.1 shall be deemed void and of no force or effect.

Section 14.2. Curing Defaults. If Declarant or its successors, assigns or transferees terminates the Ground Lease or accepts the surrender of the Ground Lease for a Lot, then on and after the date of such termination, Declarant or its successors, assigns or transferees shall be subject to the provisions of this Declaration as the Owner of such Lot (including compliance on and after such date of the Lot with the provisions of this Declaration), but Declarant or its successors, assigns or transferees shall not be responsible and such Lot shall not be liable for, subject to, or encumbered by any liens for any Assessments, fines or penalties accruing against such Lot prior to the date of such termination nor for any personal obligation of any former Owner for a breach of this Declaration, whether such breach was monetary or non-monetary, arising prior to the date of such termination.

Section 14.3. Relationship with Assessment Liens.

(a) The lien provided for in this Declaration for the nonpayment of Assessments levied against a Non-Converted Lot is subordinate to the Ground Lease, and the foreclosure of such lien shall not terminate the Ground Lease.

(b) Nothing in this Section shall be construed to release any Owner from his or her obligations to pay any Assessment levied pursuant to this Declaration.

Section 14.4. Declarant Consent. During the term of the Ground Lease, this Declaration shall not be amended or otherwise modified except with the prior written consent of Declarant, not to be unreasonably withheld, conditioned or delayed. Declarant shall have thirty (30) days within which to provide its approval or disapproval to the Association.

Section 14.5. Other Declarant's Rights. During the term of the Ground Lease, Declarant shall be entitled to:

(a) inspect and copy the books and financial records of the Association during normal business hours;

(b) receive the annual audited financial statement of the Association one hundred and twenty (120) days following the end of the Association's fiscal year;

(c) receive written notice of all regular and special meetings of the Members and of the Board and designate a representative to attend all such meetings; provided, however, nothing contained in this Section shall give Declarant the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting (except insofar as Declarant otherwise shall have a right to do so as an Owner);

(d) receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by an Owner of a Non-Converted Lot, which default has not been cured within sixty (60) days of a request therefor by the Association;

(e) receive written notice from the Association in the event that any Common Area, or any portion thereof, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority. As used herein, "substantially damaged" or "taking" shall mean damage or taking exceeding Ten Thousand Dollars (\$10,000); and

(f) receive written notice from the Association of any lapse, cancellation or material modification of any policy of insurance or fidelity bond maintained by the Association.

Section 14.6. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

ARTICLE XV

SUBORDINATION AND NONDISTURBANCE

Section 15.1. Subordination. In the event of the termination of a Sublease for a Lot, that Lot shall remain subject to the provisions of this Declaration, which shall remain in full force and effect notwithstanding the termination of that Sublease. Similarly, in the event of termination of the Road Sublease or the Club Sublease, the Road and Facility Lots or the Beach Club Lots, as applicable, shall remain subject to the provisions on this Declaration, which shall remain in full force and effect notwithstanding the termination of the Road Sublease or the Club Sublease. In particular, no breach or amendment of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid any Sublease, the Road Sublease and/or the Club Sublease, but all of said covenants, conditions and restrictions shall be binding upon and effective against the Lot, the Road and Facility Lots, and the Beach Club Lots, respectively. Nothing in this Declaration (including, without limitation, the provisions of Section 13.6(c) above) nor in the Consent and Subordination of Monarch Bay Association, shall be interpreted, deemed or construed to modify or amend the terms and provisions of the Subleases, the Road Sublease and/or the Club Sublease. In clarification of the foregoing, compliance with the provisions of this Declaration shall not be deemed to be compliance with the provisions of the Subleases, the Road Sublease or the Club Sublease. In the event of a conflict between the terms and provisions of this Declaration and the terms and provisions of a Sublease, the Road Sublease and/or the Club Sublease, the terms and provisions of the Sublease, the Road Sublease and/or the Club Sublease, respectively, shall control as between the parties thereto and/or over any contrary term or provision of this Declaration. On and after the date of recordation of this Declaration, no amendment to a Sublease, the Road Sublease and/or the Club Sublease shall conflict with the provisions of this

Declaration and any such amendment that violates this Section 15.1 shall be deemed void and of no force or effect.

Section 15.2 Relationship of Subleases with Assessment Liens. The lien provided for in this Declaration for the nonpayment of Assessments levied against a Non-Converted Lot shall be subordinate to the Sublease for that Non-Converted Lot and notwithstanding the subordination by the Association of its interest as lessor under the Sublease for that Non-Converted Lot to this Declaration, the foreclosure of such lien shall not terminate the Sublease for that Non-Converted Lot.

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

"DECLARANT"

MMB MANAGEMENT, LLC, a
California limited liability company

By: THE LEWIS FENNO MOULTON TRUST
UDT, APRIL 17, 1925
Manager

By: Lewis M. Mathis
Lewis M. Mathis
Trustee

By: _____
Jane M. Barnes
Trustee

By: _____
Glenn E. Mathis, Jr.
Trustee

By: _____
Todd W. Mathis
Manager

By: _____
Scott T. Barnes
Manager

By: _____
Jared K. Mathis
Manager

Declaration and any such amendment that violates this Section 15.1 shall be deemed void and of no force or effect.

Section 15.2 Relationship of Subleases with Assessment Liens. The lien provided for in this Declaration for the nonpayment of Assessments levied against a Non-Converted Lot shall be subordinate to the Sublease for that Non-Converted Lot and notwithstanding the subordination by the Association of its interest as lessor under the Sublease for that Non-Converted Lot to this Declaration, the foreclosure of such lien shall not terminate the Sublease for that Non-Converted Lot.

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

"DECLARANT"

MMB MANAGEMENT, LLC, a
California limited liability company

By: THE LEWIS FENNO MOULTON TRUST
UDT, APRIL 17, 1925
Manager

By: _____
Lewis M. Mathis
Trustee

By:  _____
Jane M. Barnes
Trustee

By: _____
Glenn E. Mathis, Jr.
Trustee

By: _____
Todd W. Mathis
Manager

By: _____
Scott T. Barnes
Manager

By: _____
Jared K. Mathis
Manager

Declaration and any such amendment that violates this Section 15.1 shall be deemed void and of no force or effect.

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

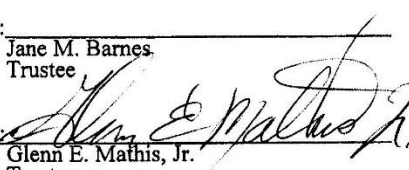
"DECLARANT"

MMB MANAGEMENT, LLC, a
California limited liability company

By: THE LEWIS FENNO MOULTON TRUST
UDT, APRIL 17, 1925
Manager

By: _____
Lewis M. Mathis
Trustee

By: _____
Jane M. Barnes
Trustee

By: 
Glenn E. Mathis, Jr.
Trustee

By: _____
Todd W. Mathis
Manager

By: _____
Scott T. Barnes
Manager

By: _____
Jared K. Mathis
Manager

Declaration and any such amendment that violates this Section 15.1 shall be deemed void and of no force or effect.

Section 15.2 Relationship of Subleases with Assessment Liens. The lien provided for in this Declaration for the nonpayment of Assessments levied against a Non-Converted Lot shall be subordinate to the Sublease for that Non-Converted Lot and notwithstanding the subordination by the Association of its interest as lessor under the Sublease for that Non-Converted Lot to this Declaration, the foreclosure of such lien shall not terminate the Sublease for that Non-Converted Lot.

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

"DECLARANT"


MMB MANAGEMENT, LLC, a
California limited liability company

By: THE LEWIS FENNO MOULTON TRUST
UDT, APRIL 17, 1925
Manager

By: _____
Lewis M. Mathis
Trustee

By: _____
Jane M. Barnes
Trustee

By: _____
Glenn E. Mathis, Jr.
Trustee

By:  _____
Todd W. Mathis
Manager

By: _____
Scott T. Barnes
Manager

By: _____
Jared K. Mathis
Manager

Declaration and any such amendment that violates this Section 15.1 shall be deemed void and of no force or effect.

Section 15.2 Relationship of Subleases with Assessment Liens. The lien provided for in this Declaration for the nonpayment of Assessments levied against a Non-Converted Lot shall be subordinate to the Sublease for that Non-Converted Lot and notwithstanding the subordination by the Association of its interest as lessor under the Sublease for that Non-Converted Lot to this Declaration, the foreclosure of such lien shall not terminate the Sublease for that Non-Converted Lot.

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

"DECLARANT"

MMB MANAGEMENT, LLC, a
California limited liability company

By: THE LEWIS FENNO MOULTON TRUST
UDT, APRIL 17, 1925
Manager

By: _____
Lewis M. Mathis
Trustee

By: _____
Jane M. Barnes
Trustee

By: _____
Glenn E. Mathis, Jr.
Trustee

By: _____
Todd W. Mathis
Manager

By: Scott T. Barnes
Scott T. Barnes
Manager

By: _____
Jared K. Mathis
Manager

Declaration and any such amendment that violates this Section 15.1 shall be deemed void and of no force or effect.

Section 15.2 Relationship of Subleases with Assessment Liens. The lien provided for in this Declaration for the nonpayment of Assessments levied against a Non-Converted Lot shall be subordinate to the Sublease for that Non-Converted Lot and notwithstanding the subordination by the Association of its interest as lessor under the Sublease for that Non-Converted Lot to this Declaration, the foreclosure of such lien shall not terminate the Sublease for that Non-Converted Lot.

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

"DECLARANT"

MMB MANAGEMENT, LLC, a
California limited liability company

By: THE LEWIS FENNO MOULTON TRUST
UDT, APRIL 17, 1925
Manager

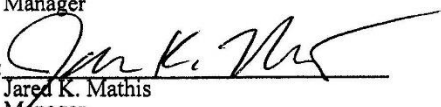
By: _____
Lewis M. Mathis
Trustee

By: _____
Jane M. Barnes
Trustee

By: _____
Glenn E. Mathis, Jr.
Trustee

By: _____
Todd W. Mathis
Manager

By: _____
Scott T. Barnes
Manager

By:  _____
Jared K. Mathis
Manager

ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
COUNTY OF Merced } S.S.

On December 2, 2012, before me, D. Breth, Notary Public, personally appeared, **LEWIS M. MATHIS**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____



(Seal)

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } S.S.

On December __, 2012, before me, _____, Notary Public, personally appeared, **JANE M. BARNES**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGEMENT

STATE OF CALIFORNIA }
COUNTY OF _____ } S.S.

On December __, 2012, before me, _____, Notary Public, personally appeared, **LEWIS M. MATHIS**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } S.S.

Kristi L. Carpenter
Notary Public

On December 7, 2012, before me, _____, Notary Public, personally appeared, **JANE M. BARNES**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kristi L. Carpenter (Seal)

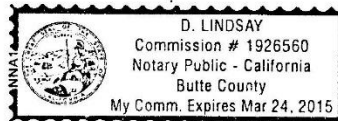


COUNTY OF Butte } S.S.

WITNESS my hand and official seal.

Signature

(Seal)



STATE OF CALIFORNIA }

COUNTY OF _____ } S.S.

WITNESS my hand and official seal.

Signature

(Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF California)SS
COUNTY OF San Benito)

File No: ()

APN No:

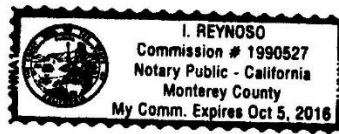
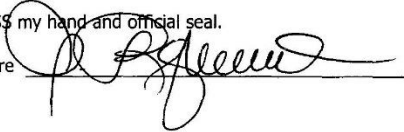
On December 7, 2012 before me, I. Reynoso, Notary Public, personally appeared Todd W. Mathis

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



This area for official notarial seal.

OPTIONAL SECTION CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER(S) TITLE(S)
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

OPTIONAL SECTION

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: _____

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

Reproduced by First American Title Company 11/2007

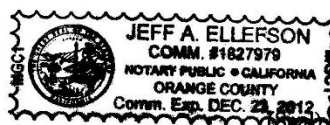
STATE OF CALIFORNIA }
COUNTY OF ORANGE } S.S.

On December 7, 2012, before me, Jeff A Ellerson, Notary Public, personally appeared, **SCOTT T. BARNES**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____



STATE OF VIRGINIA }
COUNTY OF _____ } S.S.

On December _____, 2012, before me, _____, Notary Public, personally appeared, **JARED K. MATHIS**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of Virginia that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

GOVERNMENT CODE 27361.7


I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

NAME OF NOTARY: Jeff A. Ellefson
DATE COMMISSION EXPIRES: Dec 23, 2012
COUNTY WHERE BOND IS FILED: Orange
COMMISSION NUMBER: 1827979
MANUFACTURER/VENDOR NUMBER: MGCI

PLACE OF EXECUTION: Corona

DATED: 12-14-2012

SIGNATURE: _____


A. Ruiz

**CONSENT AND SUBORDINATION OF
MONARCH BAY ASSOCIATION
TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS FOR MONARCH BAY**

By executing this Consent and Subordination of Monarch Bay Association to the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monarch Bay (this "**Association Consent**"), Monarch Bay Association (the "**Association**") acknowledges the Association is subordinating the interest of the Association as lessor under the Club Sublease and Subleases for Non-Converted Lots, and as lessor and lessee pursuant to that certain All-Inclusive Sublease dated July 30, 1974, and the Road Sublease, to this Declaration and approves the terms and provisions of the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monarch Bay (the "**Declaration**") to which this Association Consent is attached, as the same may be amended and/or modified in the future, including, without limitation, the terms and provisions of the Declaration that involve or relate to the Ground Lease, the Subleases, the Club Sublease and the Road Sublease, and agrees to perform all duties and discharge all obligations of the Association pursuant to this Declaration, notwithstanding the fact that the Association may own fee simple title to only a fractional undivided interest in a portion of the Common Area. Capitalized terms used in this Association Consent shall have the meaning ascribed thereto in the Declaration except as otherwise defined in this Association Consent.

IN WITNESS WHEREOF, the Association has caused this Association Consent to be executed by the duly authorized representative of the Association to be effective as of the date of recordation of the Declaration.

"ASSOCIATION"

MONARCH BAY ASSOCIATION,
a California nonprofit mutual benefit corporation

By: _____

Doug McLeish
President

By: _____

Michael Winterhalter
Secretary

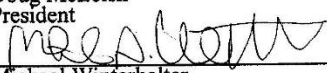
**CONSENT AND SUBORDINATION OF
MONARCH BAY ASSOCIATION
TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS FOR MONARCH BAY**

By executing this Consent and Subordination of Monarch Bay Association to the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monarch Bay (this "**Association Consent**"), Monarch Bay Association (the "**Association**") acknowledges the Association is subordinating the interest of the Association as lessor under the Club Sublease and Subleases for Non-Converted Lots, and as lessor and lessee pursuant to that certain All-Inclusive Sublease dated July 30, 1974, and the Road Sublease, to this Declaration and approves the terms and provisions of the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monarch Bay (the "**Declaration**") to which this Association Consent is attached, as the same may be amended and/or modified in the future, including, without limitation, the terms and provisions of the Declaration that involve or relate to the Ground Lease, the Subleases, the Club Sublease and the Road Sublease, and agrees to perform all duties and discharge all obligations of the Association pursuant to this Declaration, notwithstanding the fact that the Association may own fee simple title to only a fractional undivided interest in a portion of the Common Area. Capitalized terms used in this Association Consent shall have the meaning ascribed thereto in the Declaration except as otherwise defined in this Association Consent.

IN WITNESS WHEREOF, the Association has caused this Association Consent to be executed by the duly authorized representative of the Association to be effective as of the date of recordation of the Declaration.

"ASSOCIATION"

MONARCH BAY ASSOCIATION,
a California nonprofit mutual benefit corporation

By: _____
Doug McLeish
President
By:  _____
Michael Winterhalter
Secretary

STATE OF CALIFORNIA }
COUNTY OF ORANGE } S.S.

On December __, 2012, before me, KI YOUNG HONG, Notary Public, personally appeared, **DOUG MCLEISH**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____



(Seal)

STATE OF CALIFORNIA }
COUNTY OF ORANGE } S.S.

On December __, 2012, before me, _____, Notary Public, personally appeared, **MICHAEL WINTERHALTER**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA }
COUNTY OF ORANGE } S.S.

On December __, 2012, before me, _____, Notary Public, personally appeared, **DOUG MCLEISH**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA }
COUNTY OF ORANGE } S.S.

On December 17, 2012, before me, ABBA KO-KIM, Notary Public, personally appeared, **MICHAEL WINTERHALTER**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)



**CONSENT OF
MONARCH BAY LAND ASSOCIATION
TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS FOR MONARCH BAY**

By executing this Consent of Monarch Land Bay Association to the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monarch Bay (this "**Land Association Consent**"), Monarch Bay Land Association (the "**Land Association**") approves the terms and provisions of the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monarch Bay (the "**Declaration**") to which this Land Association Consent is attached, as the same may be amended and/or modified in the future. Capitalized terms used in this Land Association Consent shall have the meaning ascribed thereto in the Declaration except as otherwise defined in this Land Association Consent.

IN WITNESS WHEREOF, the Land Association has caused this Land Association Consent to be executed by the duly authorized representative of the Land Association to be effective as of the date of recordation of the Declaration.

"LAND ASSOCIATION"

MONARCH BAY LAND ASSOCIATION,
a California nonprofit corporation

By: Bruce Tester
Bruce Tester
President

By: _____
April O'Connor
Secretary

**CONSENT OF
MONARCH BAY LAND ASSOCIATION
TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS FOR MONARCH BAY**

By executing this Consent of Monarch Land Bay Association to the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monarch Bay (this "**Land Association Consent**"), Monarch Bay Land Association (the "**Land Association**") approves the terms and provisions of the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monarch Bay (the "**Declaration**") to which this Land Association Consent is attached, as the same may be amended and/or modified in the future. Capitalized terms used in this Land Association Consent shall have the meaning ascribed thereto in the Declaration except as otherwise defined in this Land Association Consent.

IN WITNESS WHEREOF, the Land Association has caused this Land Association Consent to be executed by the duly authorized representative of the Land Association to be effective as of the date of recordation of the Declaration.

"LAND ASSOCIATION"

MONARCH BAY LAND ASSOCIATION,
a California nonprofit corporation

By: _____
Bruce Tester
President

By: April O'Connor
April O'Connor
Secretary

STATE OF CALIFORNIA }
COUNTY OF ORANGE } S.S.

On December 17, 2012, before me, ABBA KO-KIM, Notary Public, personally appeared, **BRUCE TESTER**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____



(Seal)

STATE OF CALIFORNIA }
COUNTY OF ORANGE } S.S.

On December __, 2012, before me, _____, Notary Public, personally appeared, **APRIL O'CONNOR**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA }
COUNTY OF ORANGE } S.S.

On December __, 2012, before me, _____, Notary Public, personally appeared, **BRUCE TESTER**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

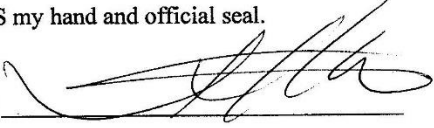
Signature _____ (Seal)

STATE OF CALIFORNIA }
COUNTY OF ORANGE } S.S.

On December 17, 2012, before me, ABBA KO-KIM, Notary Public, personally appeared, **APRIL O'CONNOR**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



CONSENT OF LIENHOLDER AND LIMITED SUBORDINATION OF LIEN

The undersigned beneficiary ("**Beneficiary**") under that certain Corporation Deed of Trust with Assignment of Rents recorded on October 5, 2001, as Instrument #20010706626 of Official Records of Orange County, California (as the same has been or may in the future be amended, the "**Deed of Trust**"), agrees as follows:

1. Following any foreclosure under the Deed of Trust, the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Monarch Bay (the "**Declaration**") shall continue in full force and effect on all real property subject to such foreclosure.
2. No other subordination of the Deed of Trust is agreed to by Beneficiary.
3. Notwithstanding Beneficiary's execution and delivery of this instrument, Beneficiary shall be fully entitled to the provisions of Section 6.7 of the Declaration.

Dated: December 6, 2011

"BENEFICIARY"

CALIFORNIA WESTERN HOME FINANCING
PARTNERS,
a California limited partnership

By: NEW WESTERN HOME FINANCING
CORPORATION,
General Partner

By:


Richard H. O'Hara
President

STATE OF CALIFORNIA

COUNTY OF

ORANGE

)
) SS:
)

On December 6, 2011, before me, Wanda L. Miller, Notary Public, personally appeared RICHARD H. O'HARA, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Wanda L. Miller
Signature of Notary Public

[Seal]

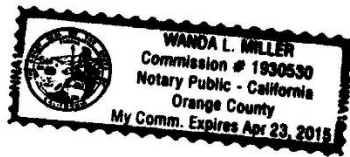


EXHIBIT "A"

Legal Description - Property

All of that certain real property located in the City of Dana Point, County of Orange, State of California, more particularly described as:

1. **"Converted Lots"**: Lots 10 (162 Monarch Bay Dr), 13 (220 Monarch Bay Dr), 21 (236 Monarch Bay Dr), 23 (240 Monarch Bay Dr), 40 (105 Monarch Bay Dr), 43 (99 Monarch Bay Dr), 47 (91 Monarch Bay Dr), 67 (141 Monarch Bay Dr), 68 (139 Monarch Bay Dr), 72 (129 Monarch Bay Dr), 77 (64 Monarch Bay Dr), 83 (126 Monarch Bay Dr), 85 (130 Monarch Bay Dr), 96 (196 Monarch Bay Dr), 100 (237 Monarch Bay Dr) and 116 (179 Monarch Bay Dr) of Tract No. 3748, as per map recorded in Book 142, Pages 30 through 34, inclusive; Lots 9 (32 Monarch Bay Dr), 14 (41 Monarch Bay Dr), 15 (43 Monarch Bay Dr), 16 (53 Monarch Bay Dr), 18 (57 Monarch Bay Dr), 27 (4 Monarch Bay Dr), 31 (11 Monarch Bay Dr) and 34 (52 Monarch Bay Dr) of Tract No. 3839, as per map recorded in Book 135, Pages 37 through 40, inclusive; and Lots 4 (331 Monarch Bay Dr), 7 (337 Monarch Bay Dr), 10 (343 Monarch Bay Dr), 11 (345 Monarch Bay Dr), 12 (347 Monarch Bay Dr), 13 (436 Monarch Bay Dr), 14 (434 Monarch Bay Dr), 17 (426 Monarch Bay Dr), 20 (420 Monarch Bay Dr), 21 (418 Monarch Bay Dr), 28 (408 Monarch Bay Dr), 29 (410 Monarch Bay Dr), 35 (409 Monarch Bay Dr), 39 (419 Monarch Bay Dr) and 43 (431 Monarch Bay Dr) of Tract No. 4472, as per map recorded in Book 191, pages 11 through 14, inclusive, all of Miscellaneous Maps in the Office of the County Recorder of Orange County.
2. **"Non-Converted Lots"**: Lots 1 through 9, inclusive, 11, 12, 14 through 20, inclusive, 22, 24 through 27, inclusive, 29 through 35, inclusive, 37 through 39, inclusive, 41, 44, 45, 48 through 66, inclusive, 69 through 71, inclusive, 73 through 76, inclusive, 79, 80, 82, 84, 86, 88 through 95, inclusive, 97 through 99, inclusive, 101 through 115, inclusive and 117 through 126, inclusive of Tract No. 3748, as per map recorded in Book 142, Pages 30 through 34, inclusive; Lots 1 through 6, inclusive, 8, 10 through 13, inclusive, 17, 19 through 21, inclusive, 23 through 26, inclusive, 28 through 30, inclusive, 32, 33, and 35 through 44, inclusive of Tract No. 3839, as per map recorded in Book 135, Pages 37 through 40, inclusive; and Lots 1 through 3, inclusive, 5, 6, 8, 9, 15, 16, 18, 19, 22 through 27, inclusive, 30 through 34, inclusive, 37, 38, 40 through 42, inclusive and 44 of Tract No. 4472, as per map recorded in Book 191, pages 11 through 14, inclusive, all of Miscellaneous Maps in the Office of the County Recorder of Orange County.

3. **"Common Area"** (over which the Association is hereby granted an easement):

a. The property described in PARCEL 1, PARCEL 2, and PARCEL 3 below is referred to collectively as the **"Road and Facility Lots"**, the property described in PARCEL 4 below is referred to as the **"Beach Club Lots"**, and the property described in PARCEL 1, PARCEL 2, PARCEL 3 and PARCEL 4 below is referred to collectively as the **"Common Area Lots"**:

PARCEL 1: (APN'S: 670-111-07, 670-111-21, 670-111-33, 670-111-39, 670-111-40, 670-111-46, 670-111-52, 670-111-55, 670-111-64, 670-121-12, 670-121-13, 670-121-26, 670-121-33, 670-121-37, 670-121-55, 670-131-06, 670-131-13 AND 670-131-56)

LOTS A THROUGH O AND LOT 127 OF TRACT NO. 3748, IN THE CITY OF DANA POINT, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF,

RECORDED IN BOOK 142, PAGES 30 TO 34, OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY.

EXCEPT ANY PORTION OF SAID LAND LYING BELOW THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN.

ALSO EXCEPT ANY PORTION OF SAID LAND LYING OUTSIDE OF THE PATENT LINES OF THE RANCHO NIGUEL, AS SUCH LINES EXISTED AT THE TIME OF THE ISSUANCE OF THE PATENT, WHICH WAS NOT FORMED BY THE DEPOSIT OF ALLUVION FROM NATURAL CAUSES AND BY IMPERCEPTIBLE DEGREES.

PARCEL 2: (APN'S: 670-131-11, 670-131-14, 670-131-25, 670-131-35, 670-131-44, 670-131-45, 670-141-03, 670-141-04 AND 670-141-05)

LOTS A THROUGH G OF TRACT NO. 3839, IN THE CITY OF DANA POINT, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF, RECORDED IN BOOK 135, PAGES 37 TO 40 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY.

EXCEPT ANY PORTION OF SAID LAND LYING BELOW THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN.

ALSO EXCEPT ANY PORTION OF SAID LAND LYING OUTSIDE OF THE PATENT LINES OF THE RANCHO NIGUEL, AS SUCH LINES EXISTED AT THE TIME OF THE ISSUANCE OF THE PATENT, WHICH WAS NOT FORMED BY THE DEPOSIT OF ALLUVION FROM NATURAL CAUSES AND BY IMPERCEPTIBLE DEGREES.

PARCEL 3: (APN'S: 670-151-47 THROUGH 670-151-53)

LOTS A THROUGH G OF TRACT NO. 4472, IN THE CITY OF DANA POINT, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 191, PAGES 11 TO 14 OF MISCELLANEOUS MAPS.

PARCEL 4: (APN: 671-151-55)

THOSE PORTIONS OF PARCELS 1 AND 2, AS SHOWN ON A MAP FILED IN BOOK 79, PAGE 20 OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, LYING WITHIN THE LAND DESCRIBED AS PARCELS A AND B IN THAT CERTAIN MEMORANDUM OF LEASE AS RECORDED JULY 1, 1960 IN BOOK 5311, PAGE 44 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY.

EXCEPTING FROM SAID PARCEL 1, AS SHOWN ON MAP FILED IN BOOK 79, PAGE 20 OF RECORDS OF SURVEYS, THAT PORTION LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 27° 23' 45" WEST 120.00 FEET FROM THE MOST NORTHERLY CORNER THEREOF; THENCE EASTERLY ON A STRAIGHT LINE TO A POINT ON THE SOUTHEASTERLY LINE OF SAID PARCEL 1, DISTANT SOUTH 52° 55' 06" WEST 90.00 FEET FROM THE MOST EASTERLY CORNER THEREOF.

EXCEPT ANY PORTION OF SAID LAND LYING BELOW THE ORDINARY HIGH TIDE
LINE OF THE PACIFIC OCEAN.

ALSO EXCEPT ANY PORTION OF SAID LAND LYING OUTSIDE OF THE PATENT LINES
OF THE RANCHO NIGUEL, AS SUCH LINES EXISTED AT THE TIME OF THE ISSUANCE
OF THE PATENT, WHICH WAS NOT FORMED BY THE DEPOSIT OF ALLUVION FROM
NATURAL CAUSES AND BY IMPERCEPTIBLE DEGREES.

b. That portion of Tract #4472 in use as common area for walkways, Mall and
landscaping at the date of recording of this Declaration (i.e., Mall Maintenance Area) shall also
comprise "Common Area" for purposes of this Declaration.

EXHIBIT "B"

Monarch Bay-Tract 3748

This information is compiled from previously archived sources, and is subject to verification. All Measurements rounded to the nearest 0.1 foot.

All Pad Elevations are based upon "MGVD29" datum.

- indicates missing datum

? indicates partially obscured or illegible datum

?? indicates totally obscured or illegible datum

Lot	Addr	Maximum Height	Pad Elev
1	142	16.5'	163.0'
2	144	14.0'	162.0'
3	146	14.0'	161.0'
4	150	13.0'	160.0'
5	152	14.0'	162.0'
6	154	15.0'	165.0'
7	156	15.0'	166.0'
8	158	15.0'	165.0'
9	160	13.0'	161.0'
10	162	11.5'	158.0'
11	216	10.0'	155.0'
12	218	12.5'	162.0'
13	220	16.5'	166.0'
14	222	16.0'	166.0'
15	224	16.0'	165.0'
16	226	16.0'	165.0'
17	228	16.0'	164.0'
18	230	16.0'	162.3'
19	232	16.0'	160.0'
20	234	16.0'	159.0'
21	236	16.0'	158.0'
22	238	16.0'	158.0'
23	240	16.0'	151.5'
24	242	12.0'	148.0'
25	206	12.0'	149.0'
26	208	14.0'	153.0'
27	210	16.0'	161.0'
28	212	16.0'	165.0'
29	214	16.0'	168.0
30	211	14.0'	158.0'
31	207	14.0'	152.0'
32	205	12.0'	147.5'
33	203	12.0'	146.7'
34	201	12.0'	146.4'
35	199	12.0'	146.0'
36	197	13.0'	146.0'
37	195	12.0'	145.1'
38	109	12.0'	144.3'
39	107	12.0'	144.7'
40	105	13.0'	144.0'
41	103	13.0'	140.7'
42	101	11.0'	136.1'

Lot	Addr	Maximum Height	Pad Elev
43	99	12.0'	132.0'
44	97	11.0'	127.5'
45	95	12.0'	123.0'
46	93	12.0'	118.0'
47	91	13.0'	113.0'
48	89	13.0'	110.0'
49	87	13.0'	108.1'
50	85	13.0'	108.1'
51	75	15.0'	108.6'
52	73	15.0'	109.1'
53	73	15.0'	110.8'
54	69	15.0'	111.7'
55	67	15.0'	112.8'
56	65	15.0'	114.4'
57	63	15.0'	116.0'
58	68	12.0'	117.0'
59	70	12.0'	112.5'
60	74	12.0'	111.0'
61	78	15.0'	120.5'
62	80	15.0'	122.0'
63	82	13.0'	121.0'
64	86	12.0'	109.0'
65	88	11.0'	110.0'
66	92	15.0'	116.0'
67	141	14.0'	129.0'
68	139	15.0'	133.0'
69	137	15.0'	138.0'
70	135	15.0'	143.0'
71	133	14.0'	148.0'
72	129	14.0'	152.0'
73	127	14.0'	151.0'
74	119	14.0'	142.0'
75	117	13.0'	132.0'
76	115	13.0'	122.0'
77	64	14.0'	118.0'
78	116	15.0'	126.0'
79	118	14.0'	138.0'
80	120	14.0'	152.0'
81	122	14.0'	156.5'
82	124	15.0'	160.0'
83	126	12.0'	160.0'
84	128	15.0'	158.5'

Lot	Addr	Maximum Height	Pad Elev
85	130	14.0'	154.5'
86	132	14.0'	150.0'
87	134	12.0'	145.0'
88	136	14.0'	140.0'
89	138	15.0'	135.0'
90	140	12.0'	130.0'
91	100	12.0'	139.0'
92	102	12.0'	143.0'
93	104	15.0'	146.0'
94	106	15.0'	146.7'
95	108	15.0'	147.3'
96	196	13.0'	145.0'
97	198	13.0'	146.1'
98	200	12.0'	146.5'
99	241	12.0'	147.8'
100	237	12.0'	150.0'
101	233	11.0'	157.3'
102	231	12.0'	159.8'
103	229	13.0'	162.5'
104	227	14.0'	164.3'
105	225	14.0'	164.7'
106	217	14.0'	161.0'
107	215	15.0'	151.2'
108	172	15.0'	150.0'
109	186	15.0'	149.4
110	188	15.0'	148.0'
111	190	15.0'	147.0'
112	189	14.0'	149.8'
113	187	14.0'	150.4'
114	183	12.0'	151.7'
115	181	12.0'	153.5'
116	179	12.0'	154.0'
117	177	12.0'	154.0'
118	175	14.0'	150.9'
119	171	14.0'	150.3'
120	169	14.0'	150.9'
121	167	14.0'	152.0'
122	165	14.0'	154.0'
123	163	14.0'	156.1'
124	149	14.0'	157.5'
125	147	10.0'	159.5'
126	145	12.5'	161.2'

Exhibit B-1

Monarch Bay-Tract 3839

This information is compiled from previously archived sources, and is subject to verification. All Measurements rounded to the nearest 0.1 foot.

All Pad Elevations are based upon "MGVD29" datum.

- indicates missing datum

? indicates partially obscured or illegible datum

?? indicates totally obscured or illegible datum

Lot	Addr	Maximum Height	Pad Elev
1	17	15.0'	162.0'
2	19	15.0'	156.0'
3	21	15.0'	152.0'
4	23	14.0'	147.0'
5	25	15.0'	136.0'
6	27	12.0'	135.0'
7	29	11.0'	129.0'
8	31	11.0'	123.0'
9	318	15.0'	102.5'
10	33	15.0'	111.5'
11	35	15.0'	114.0'
12	37	15.0'	118.5'
13	39	15.0'	122.0'
14	41	15.0'	126.0'
15	43	15.0'	130.3'

Lot	Addr	Maximum Height	Pad Elev
16	53	15.0'	132.2'
17	55	15.0'	128.2'
18	57	15.0'	125.0'
19	59	15.0'	121.2'
20	61	15.0'	118.2'
21	16	12.0'	130.0'
22	14	11.0'	138.0'
23	12	11.0'	148.0'
24	10	15.0'	157.0'
25	8	15.0'	162.0'
26	6	15.0'	162.0'
27	4	15.0'	165.0'
28	3	15.0'	162.0'
29	5	15.0'	160.0'
30	7	15.0'	156.8'

Lot	Addr	Maximum Height	Pad Elev
31	11	12.0'	142.0'
32	15	11.0'	134.0'
33	56	11.0'	136.0'
34	52	11.0'	138.0'
35	50	12.0'	149.0'
36	48	13.0'	149.0'
37	46	12.0'	145.0'
38	42	12.0'	136.0'
39	40	12.0'	127.0'
40	28	12.0'	133.0'
41	24	11.0'	140.0'
42	22	15.0'	150.0'
43	20	14.0'	151.0'
44	1	15.0'	163.0'

Exhibit B-2

EXHIBIT B



From: Roberto B <rbrutocao@gmail.com>

Sent: Friday, December 9, 2022 1:47:56 PM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: Monarch Bay Homeowners; 432 Monarch Bay Drive, Monarch Beach, CA

Dear Mr. Giometti,

We are homeowners at 203 Monarch Bay Drive. We understand that every home in our community is subject to recorded deed restrictions, including ours. These restrictions include restrictions on roof heights, among other things. Neighborhood viewsheds are critically important in communities like ours and all of Dana Point. The restriction on roof heights is obviously intended to balance the viewshed of all homeowners not only in the Monarch Bay community, but adjacent areas as well. It may be important to massing considerations as well.

We understand the city is reviewing plans pertaining to the referenced property that seek to violate the permitted height restriction by adding a second story level to an existing single-story home and identifying that structure as an Accessory Dwelling Unit ("ADU"). We join with so many others in encouraging the City to deny the plans.

While we understand the recent ADU legislation may override local zoning (in otherwise appropriate cases), we do not understand that the ADU legislation can override and eliminate the property rights of the homeowners in the community.

All homeowners that purchase in Monarch Bay do so with knowledge of these restrictions and are expected to abide by them. Moreover, we understand that each and every homeowner in Monarch Bay Association has a property right as it relates to encroachments on these restrictions.

Fairness is an important consideration as it pertains to the exercise of discretion in plan approval matters. Approval of plans under these circumstances is not fair to the surrounding community and to

those homeowners who were intended to benefit from the height restrictions recorded on each and every property in Monarch Bay. Even if the applicant circumvents a zoning consideration utilizing the ADU zoning loophole, the property rights of the other homeowners must not be overlooked. Litigation will surely follow, and the City will no doubt be caught up in that.

The plans were denied by the Monarch Bay Association Architectural Committee. We encourage the City of Dana Point to do the same and in the process protect its residents by respecting deed restrictions.

Thank you for your consideration.

Sincerely,

Roberto Brutocao
203 Monarch Bay Drive
Dana Point, CA. 92629

From: Melanie Cox <melaniemcox@mac.com>
Sent: Saturday, December 10, 2022 6:55:51 AM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: new doc 2022-12-10 06.53.08

This was sent by the owners of 432 monarch bay drive. Please see the adu is just a tool to go up on height. They state it is not an adu or a rental. Hoping this gets rejected as it sets a bad precedence for the neighborhood and I leading existing views. Thank you for your consideration. Melanie cox monarch
8

Sent from my iPhone

"It's no wonder that truth is stranger than fiction. Fiction has to make sense." ~ Mark Twain

December 5, 2022

Dear Neighbors,

We are the owners of 432 Monarch Bay, and we invite you to drive down the streets in the mall to fully understand and appreciate the construction that is occurring. We are writing in response to the emails that have been distributed regarding our home rebuild project.

Contrary to what has been implied in the ACC emails, we have been working with the Architectural Committee since our first complete and detailed submittal in October 2020. We hired our architect in July 2020 with the hopes of being able to begin building in mid 2021. Our desire was and still is to work with the ACC and get their approval to build our family home. We built our current family home in Dana Point in 2005 and we had no delays; our home was completed within the year of our plan submittal. Our original detailed and extensive plans for 432 were submitted over 2 years ago and included a subterranean walkout with a private room for my elderly father and our family. We designed the subterranean walkout to be the least impactful to our neighbors across the street.

You will see our current home at 432 Monarch has a flat roof with only 2"x4" wood planks as the ceiling/roof and there is no insulation. The ceiling height is only 6'-8" in some areas. One half of our home's height is currently below street grade. We need an increase in height to keep the entrance of our home at street level. It is the lowest height in the entire neighborhood, other mall homes have been allowed to expand in height on both sides of the street. The ACC quickly rejected our new build plans without review or discussion due to our need for a height variance. We appealed to the board who also rejected our plans without review. They would not consider a minor height variance on a new build. The fact that we can get a height increase on a remodel but not on a rebuild is illogical and it is the cause for our need of an ADU.

We wanted to continue working with the ACC for approval. Our only choice left was to design a remodel and once again ask for a small height variance. We redesigned our home along with the request for an increase in height. After 11 months of working with the ACC on a remodel our plans were approved with the height increase so our home entrance would not be below the street grade. Due to current city guidelines, our building a subterranean walkout would not be allowed on a remodel. So we would not have a space for my father and family on a remodel.

Our need to add a 2nd story ADU would not be necessary if our original plans were not turned down by the ACC. There are currently many other homes with ADU units in Monarch Bay. Our home project is the first time the ACC has sent emails advising neighbors to contact the city to dispute the plans. Contrary to the information distributed about our family home we have no intention of renting the ADU unit separately, we need a separate living space for our father and family.

2/2

Our original subterranean plans also included a request to keep our existing patio. Due to the current definition of lot coverage, our existing patio would now need a variance. The subterranean walkout we designed to accommodate the neighbors across the street, causes the existing patio to be more than 30" above grade and therefore it would have to be calculated in our lot % coverage, according to current architectural guidelines. This is a unique situation affecting only mall owners on our side of the street.

In June 2022 – We submitted to the city our ACC approved plans for a remodel along with plans for an attached second story ADU with an additional attached ADU mandatory garage. We followed the State mandated ADU Guidelines for a second dwelling, allowing for my elderly father and other family members to have accessible access to our home. The City of Dana Point accepted our ADU plans understanding we met the State Mandated Requirements and knowing our design for the alternative subterranean walkout for our ADU needs was rejected by the Monarch ACC.

July 8, 2022 – We submitted the ADU Unit with the ACC approved remodel plans to the Monarch ACC committee. We were rejected again without a discussion.

<u>OUR OPTIONS</u>	NEW SUBTERRANEAN HOME BUILD	REMODEL
ACC Allows us 1' Height Increase	NO	YES
SUBTERRAIN WALKOUT ALLOWED PER CITY	YES	NO
LIVING QUARTERS FOR FATHER & FAMILY	YES	YES W/ADU
ALLOWED TO KEEP OUR EXSISTING PATIO PER ACC	NO	YES

Driving down our street in the mall you will quickly see the truth and the fiction of the disparity between what the ACC has approved for our neighbors across the street. There is no dispute; our side of the street is making sacrifices for our neighbors across the street who live along Pacific Coast Highway. We as neighbors are asking for fair and equitable treatment under the law. We are asking for variances that affect only our side of the street, just as they have made special allowances for the homes that back up to PCH. We have taken 2 ½ years to respond honestly, fairly, and quickly to their concerns. We ask that you evaluate the circumstances before making a decision that affects our family home.

Thank you for your time,
Tim and Mary McFadden

From: M Monahan <monahanmissy@gmail.com>
Sent: Friday, December 9, 2022 7:14:21 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Subject: Public Hearing Monday for property 432

Hi Danny,

I am reaching out regarding the Dana Point public hearing for 432 Monarch Bay Drive. I am unable to attend the public hearing on Monday, however, would like to be heard regarding this situation. I am voting NO on allowing the property of 432 Monarch Bay Drive to increase the roof line.

My concern is if we allow 432 to raise their roof line, will this open the door for others to do the same? This neighborhood has been built on a specific set of standards to help protect our views. We shouldn't make any special adjustments especially if it does block another's view.

When I purchased my property I wanted to have a second story as well, however I had to follow the guidelines, so I lowered my property 18 inches so that I could have a subterranean garage, more living space plus I was able to heighten my ceilings. Thank you for noticing me regarding this situation and I hope this will not be approved.

Thank you,

Missy Monahan
137 Monarch Bay Dr.
Dana Point.

From: Kathy Balle <kathydee@cox.net>

Sent: Friday, December 2, 2022 8:38 AM

To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>

Subject: public hearing December 12, 6 pm Planning Commission

To Whom It May Concern,

My name is Kathy Balle and my husband and I own 12 Monarch Bay Dr, Dana Point. We purchased this home in 2003 and retired in 2009. Our intention when we purchased was for investment and help in our retirement. If you approve the ADA request for the owners of 432 Monarch Bay Dr, that will have a major impact on our investment and retirement.

The value of our homes in Monarch Bay is mainly the view, especially for our home. There are other options to add an ADA to this home that all other homeowners in our community have followed. Specifically, building underground. This allows the home to be in compliance with our communities' guidelines and still accomplish their objective. It is unfair for all the other homeowners over the years, to have followed these guidelines, and then to approve this request for one homeowner, that will have a major impact on every other homeowner in the community.

My husband and I plead with you to deny their request for a second story. There are other options they can do without the negative impact on all the rest of us homeowners.

Thank you kindly for your consideration.

Kathy Balle

12 Monarch Bay Dr,

Dana Point, CA

949 637-1807

From: Lisa Hirose <lisalhirose@yahoo.com>
Sent: Monday, December 12, 2022 4:22 PM
To: Danny P. Giometti <DGIOMETTI@DanaPoint.org>
Cc: Stuart Hirose <stuart.hirose@cox.net>
Subject: 432 Monarch Bay Drive

Hi,

My husband and I bought our home in Monarch Bay in 2021. This will be our retirement home. One of the main reasons we bought the home was for the ocean view. We bought the house and paid the amount we did because the community guidelines protected owners' views. If a second story ADU structure is allowed at 432 Monarch Bay Drive what is to stop others in the neighborhood from adding on to their single-story homes and blocking neighbors existing views.

I realize the law passed by the state of CA was trying to help with an affordable housing shortage but that is not the intent of the owners at 432. They are using the law to further their own interests without consideration for the neighbors around them and the rest of the community. Anyone who buys a home in Monarch Bay is well aware of the guidelines regarding height restrictions, so it is ingenious for the owners at 432 Monarch Bay Drive to think they should be an outlier to the guidelines. If they truly need the additional space for an elderly family member as they state, they should consider building subterranean space.

We strongly oppose the adding of a second story ADU by the owners of 432 Monarch Bay Drive.

Thank you.

Stuart and Lisa Hirose
317 Monarch Bay Drive