

MONARCH BAY ASSOCIATION

BYLAWS

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BY-LAWS OF

MONARCH BAY ASSOCIATION

a California Mutual Benefit Corporation

ARTICLE I

DEFINITIONS

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

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.

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

1.3.1 "Compliance Assessment" shall mean and refer to 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 his Lot into compliance with the Declaration and Bylaws, or any amount due the Association based upon disciplinary proceedings against an Owner in accordance with these Bylaws.

1.3.2 "Regular Assessment" shall mean and refer to the charge against each Owner and his respective Lot representing portion of the common Expenses of the Association.

1.3.3 "Special Assessment" shall mean and refer to the charge against an Owner and his respective Lot representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Area, or 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 these Bylaws.

1.4 "Assignment Agreement" shall mean that certain Assignment Agreement between California Western Home Financing Partners, Ltd. and Monarch Bay Association dated *[to be supplied] whereby California Western Home Financing Partners,

Ltd. assigns to Association all of its right title and interest in the Declaration.

1.5 "Association Maintenance Areas" shall mean and refer to all that certain real property, consisting of lots in Tract #4472, including, without limitation, vegetation, trees, shrubs, plantings, walkways and other landscaping, irrigation equipment and slope maintenance areas, with the exception of those areas retained by Owners of the residences located on such Lots and the immediate side yards and patios. The Association Maintenance Areas are the portions of Tract #4472 in open and common use together with all landscaping, trees and shrubbery of any kind. The payment of expenses relating to the Association Maintenance Areas shall be applied and be deemed to apply only to Owners of Lots in said Tract #4472.

1.6 "Board" shall mean and refer to the Board of Directors of the Association, elected in accordance with these Bylaws.

1.7 "By-Laws" shall mean and refer to these By-Laws as such may be amended, from time to time.

1.8 "Common Area" shall mean and refer to all of that certain real property and to all Improvements thereon which are leased or owned 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, the entry area, monumentation, controlled access system, guardhouse and related improvements, private storm rains, 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, by lease, or by easement, from time to time.

1.9 "Common Expenses" shall mean and refer to the actual and estimated costs to be paid by the Association for the following:

1.9.1 Maintaining, managing, operating, painting, repairing and replacing the Common Area and Association Maintenance Areas;

1.9.2 Managing and administering the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and any Association employees;

1.9.3 Providing utilities and other services to the Common Area and Association Maintenance Areas;

1.9.4 Providing insurance as provided for herein;

1.9.5 Paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment;

1.9.6 Paying taxes for the Association; and

1.9.7 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 the Articles of Incorporation or these Bylaws.

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 or Association Maintenance Areas which must be repaired or replaced on a periodic basis, rather than a regular annual basis. As set forth in Section 9.3, all Common Expenses attributable to Association Maintenance Areas shall be allocated and charged to Owners of Lots in Tract #4472.

1.10 "Community" shall mean all of that certain real property located in the City of Dana Point, County of Orange, California, commonly known as Monarch Bay, and more particularly described as follows:

Tract #3748 as per Map recorded in Book 142, Pages 30-34 inclusive of Miscellaneous Maps in the Office of the County Recorder of Orange County; Tract #3839 as per Map recorded in Book 135, Pages 37-40 inclusive of Miscellaneous Maps in the Office of the County Recorder of Orange County; and Tract #4472 as per Map recorded in Book 191, Pages 11-14 inclusive of Miscellaneous Maps in the Office of the County Recorder of Orange County, California,

1.11 "Declaration" shall mean collectively the several "Declaration of Subleasehold Restrictions" which are Exhibit A to each Sublease in the Community.

1.12 "Governing Documents" shall mean the Articles, these Bylaws, and Assignment Agreement.

1.13 "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 which will grow in excess of nine feet in the height.

1.14 "Lots" 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 Owner shall be deemed a "Lot". "Lot" shall not mean or refer to any plot of land, if any, owned by the Association as Common Area.

1.15 "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 "Membership", and shall be synonymous with the term "Owner".

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

1.17 "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.

1.18 "Mortgagor" shall mean and refer to a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage, and shall include the trustor of a deed of trust.

1.19 "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.

1.20 "Owner" shall mean and refer to the record Owner, or Owners if more than one, or the purchaser under a conditional sales contract of a Sublease of any Lot in Monarch Bay. 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.

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

1.22 "Property" shall mean and refer to all of that certain real property described in paragraph 1.10 above.

1.23 "Public Agencies" shall mean and refer collectively to one or more of the various local and State governmental agencies having jurisdiction over the Property, including, without limitation, the County of Orange, the City of Dana Point, California Coastal Commission, and the local regional commission thereof, and all utility companies serving the Project, from time to time.

1.24 "Residence" shall mean and refer to the individual dwelling and the related Improvements which are constructed upon one or more separate lots, and which are designed and intended for use and occupancy as a single-family residence.

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

1.26 "Sublease" shall mean a sublease of a Lot entered into by Laguna Niguel Corporation, sometimes known as "LNC Corporation" pursuant to the Ground Lease between First Western Bank and Trust Company, and Laguna Niguel Corporation dated July 1, 1960.

~~1.27 Application of Definitions. The aforesaid definitions shall be applicable to the Governing Documents, and to any supplements or amendments hereto, unless the context shall prohibit such application.~~

~~AMENDED SEE ATTACHED~~

ARTICLE II

OFFICES:

2.1 The principal office for the transaction of the business of the corporation ("principal executive office") is initially located in the State of California, County of Orange at the offices of Manaco, Inc., Suite 18, 30100 Crown Valley Parkway, Laguna Niguel, California, 92677. The Directors may change the principal office from one location to another. Any change of this location shall be noted by the secretary on these bylaws opposite this section, or the section may be amended to state the new location.

2.2 The Board of Directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.

ARTICLE III

NONPARTISAN ACTIVITIES

This corporation has been formed under the California Mutual Benefit Corporation Law and it shall be nonprofit and nonpartisan. No substantial part of the activities of the corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office or for or against any cause or measure being submitted to the people for a vote. The corporation shall not, except in an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described above.

ARTICLE IV

DEDICATION OF ASSETS

The properties and assets of this nonprofit corporation are irrevocably dedicated to fulfillment of the Objectives and Purposes of this corporation as set forth in the Articles of Incorporation.

ARTICLE V

MEMBERSHIP

5.1 Membership:

5.1.1 Ownership of Residential Lot: There shall be one class only membership in this corporation. Any person eighteen years of age or older, or any corporation, partnership, trustee or other legal entity, who or which is an owner or co-owner of a residential sublease of one or more of the lots in the Community of Monarch Bay, Orange County, California, shall be eligible for membership upon payment of such dues and fees as may from time to time be fixed by the Board of Directors.

5.1.2 Protection of Lenders and of the Sublessor: The holder of a security interest in Member's residential lot who acquires legal title to the lot by reason of a judicial or non-judicial foreclosure of the security interest or the Sublessor, in the event of termination of a Member's sublease by reason of a breach thereof, shall be deemed successors in interest to the involved Member and shall automatically become Member with respect to the residential lot in question as the successor

in interest to the Member.

5.2 Rights and Privileges of Members: Members shall have the right to elect the Board of Directors of the corporation and to vote on other matters properly coming before a meeting of the members, as is more fully set forth below in Article VI.

5.3 Obligations of Members: Members, by accepting a subleasehold interest in Monarch Bay, and becoming a Member of this Association, agree to abide by all the terms and conditions of the Governing Documents.

5.4 Fees, Dues, and Assessments: Each member must pay, within the time and on the conditions set by the Board of Directors, the fee and annual dues in amounts which may be fixed from time to time by the Board of Directors, as provided in Article IX below.

5.5 Termination of Membership: The membership of any member shall terminate upon occurrence of any of the following events:

5.5.1 Resignation of the member;

5.5.2 Failure of a member to pay dues and fees in the amount and within the times set forth by the Board of Directors;

5.5.3 A member no longer being an owner or co-owner of a subleasehold interest in the Community ; or

5.5.4 Termination of Member's sublease by reason of breach thereof by the Member;

provided however, no termination of membership shall excuse any member for any obligation under the Governing Documents during any period that such terminated member shall be an owner or co-owner of a subleasehold interest.

ARTICLE VI

MEETINGS OF MEMBERS

6.1 Place of Meeting: Meetings of the membership shall be held at any place within the State of California designated by the Board of Directors. In the absence of any such designation, members' meetings shall held at the principal executive office of the corporation.

6.2 Annual Meeting: The annual meeting of members shall

be held (unless the Board of directors fixes another date and so notifies the members as provided in Section 6.4) on the last Saturday in September of each year. General and Special meetings of members shall be held as ordered by the directors, from time to time as stated below.

6.3 Special Meetings:

6.3.1 Authorized persons who may call: A special meeting of the members may be called at any time by any of the following: The Board of Directors, the President, or 25 or more members.

6.3.2 Meeting called by Members: If a special meeting is called by members other than the President or the Board of Directors, the request shall be submitted by such members in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified mail or by telegraphic or other facsimile transmission to the President, or the Secretary of the corporation. The officer receiving the request shall cause notice to be promptly given to the members entitled to vote, in accordance with the provisions of Section 6.4 and 6.5, that a meeting will be held, and the date for such meeting, which date shall be not less than 15 nor more than 35 days following the receipt of the request. If the notice is not given within the 15 days after receipt of the request, the persons requesting the meeting may give the notice. Nothing contained in this subsection shall be construed as limiting, fixing, or affecting the time when a meeting of members may be held when the meeting is called by action of the President or Board of Directors.

6.4 Notice of Members' Meetings:

6.4.1 General notice contents: All notices of meetings of members shall be sent or otherwise given in accordance with Section 6.5 not less than 10 nor more than 30 days before the date of the meeting or as may be otherwise ordered by the directors. The notice shall specify the place, date and hour of the meeting and (i) in the case of a special meeting, the general nature of the business to be transacted, and no other business may in that case be transacted, or (ii) in the case of the annual meeting, those matters which the Board of Directors, at the time of giving the notice, intends to present for action by the members.

6.4.2 Notice of Certain Agenda Items: If action is proposed to be taken at any meeting for approval of any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid

unless the notice or written waiver of notice states the general nature of the proposal(s):

6.4.2.1 Removing a director without cause;

6.4.2.2 Filling vacancies on the Board of Directors by the Members;

6.4.2.3 Amending the articles of incorporation;

6.4.2.4 Amending the By-Laws of the Association;

6.4.2.5 Approving a contract or transaction in which a director has a material financial interest; and

6.4.2.6 Approving a plan of distribution of assets, other than cash, in liquidation when the corporation has more than one class of memberships outstanding.

6.4.3 Manner of giving notice: Notice of any meeting of members shall be given either personally or by first-class mail, telegraphic or other written communication, charges prepaid, addressed to each member either at the address of that member appearing on the books of the corporation or the address given by the member to the corporation for the purpose of notice. If no address appears on the corporation's books and no other has been given, notice shall be deemed to have been given if either (i) notice is sent to that member by first-class mail or telegraphic or other written communication to the corporation's principal executive office, or (ii) notice is published at least once in a newspaper of general circulation in the county where that office is located. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by telegram or other means of written communication.

6.4.4 Affidavit of mailing practice: An affidavit of the mailing or other means of giving any notice of any meeting may be executed by the secretary, assistant secretary, or any other party of the corporation giving the notice, and if so executed, shall be filed and maintained in the Minute Book of the corporation.

6.5 Quorum:

6.5.1 Percentage required: Twenty percent of the members present in person or by proxy shall constitute a quorum for transaction of business at a meeting of the members. For purposes of quorum determination, members who are co-owners of a residential lot shall be counted as a single member.

6.5.2 Loss of quorum: The members present at a duly called or duly held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, if action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum.

6.6 Adjourned Meeting: Any members' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the members represented at the meeting, either in person or by proxy. But in the absence of a quorum, no other business may be transacted at that meeting, except as provided in this Article.

6.7 Voting:

6.7.1 Eligibility to vote Persons entitled to vote at any meeting of Members shall be members as of the date determined in accordance with Section 6.10, subject to the provisions of the California Nonprofit Corporation Law.

6.7.2 Voting may be by voice or ballot, provided that any election of directors must be by ballot if demanded by any member before the voting begins.

6.7.3 Each member entitled to vote at any election of directors shall have the right to cumulate his votes by giving one candidate a number of votes equal to the number of directors to be elected, multiplied by the number of votes to which his membership is entitled, or by distributing his votes on the same principle among as many candidates as he desires. No member shall be entitled to cumulate votes unless: (a) the candidates names have been placed in nomination before the voting, and (ii) a member has given notice at the meeting, and before the voting of the member's intention to cumulate the member's votes. If any one member has given such notice, all members may cumulate their votes for candidates in nomination. Those candidates receiving the highest number of votes, up to the number of directors to be elected, shall be winners of the election.

6.7.4 If a quorum is present, the affirmative vote of the majority of the members represented at the meeting, entitled to vote and voting on any matter (other than the election of Directors) shall be the act of the Members, unless the vote of a greater number or voting by classes is required by law or the Articles of Incorporation.

6.8 Waiver of Notice or Consent By Absent Members:

6.8.1 The transactions of any meeting of members, either

annual or special, however called or noticed, and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or a consent to holding of the meeting, or an approval of the minutes. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any annual or special meeting of members, except that if action is taken or proposed to be taken for approval of any of those matters specified in sections 6.4.2, the waiver of notice or consent shall state the general nature of the proposal. All such waivers, consents, or approvals shall be filed with the corporate records, or made a part of the minutes of the meeting.

6.8.2 Attendance by person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business due to the inadequacy or illegality of the notice. Also, attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting, if that objection is expressly made at the meeting.

6.9 Any action that may be taken at any annual or special meeting of members may be taken without a meeting and without prior notice if written ballots are received from a number of members at least equal to the quorum applicable to a meeting of Members. All such written ballots shall be filed with the Secretary of the Corporation and maintained in the corporate records. All solicitations of ballots shall indicate the time by which the ballot must be returned to be counted. All members must be given an equal opportunity to vote by ballot upon the same terms as any other member.

6.10 Record Date for Member Notice, Voting, and Consents:

6.10.1 For the purposes of determining which members are entitled to receive notice of any meeting, to vote, or to give consent to corporate action without a meeting, the Board of Directors may fix, in advance, a "record date", which shall not be more than 60 nor fewer than 10 days before the date of any such meeting, nor more than 60 days before any such action without a meeting. Only members of record on the date so fixed are entitled to notice, to vote, or to give consents, as the case may be, notwithstanding any transfer of any membership on the books of the corporation after the record date, except as otherwise provided in the articles of incorporation, by agreement, or under California law.

6.10.2 Failure of the Board to Determine Date:

6.10.2.1 Unless fixed by the Board of Directors, the record date for determining those members entitled to receive notice of, or to vote at, a meeting of members shall be the next business day preceding the day on which notice is given, or if notice is waived, the next business day preceding the day on which the meeting is held.

6.10.2.2 Unless fixed by the Board, the record date for determining those members entitled to vote by ballot on corporate action without a meeting, when no prior action by the Board has been taken, shall be the day on which the first written consent is given. When prior action of the Board has been taken, it shall be the day on which the Board adopts the resolution relating to that action.

6.10.2.3 For purposes of this paragraph, a person holding membership as of the close of business on the record date shall be deemed the member of record.

6.11 Proxies:

6.11.1 Every person entitled to vote shall have the right to do so either in person or by agent authorized by a written proxy, signed by the person and filed with the secretary of the corporation. A proxy shall be deemed signed if the member's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the member or the member's attorney-in-fact.

6.11.2 A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect unless (a) revoked by the member executing it, before the vote cast pursuant to that proxy, by a writing delivered to the corporation stating that the proxy is revoked by a subsequent proxy executed by such member, or by personal attendance and voting at a meeting by such member, (b) written notice of the death or incapacity of the maker of the proxy is received by the corporation before the vote pursuant to that proxy is counted; provided however, that no proxy shall be valid after the expiration of 11 months from the date of the proxy, unless otherwise provided in the proxy. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of the California Nonprofit Corporation Law.

6.11.3 In any election of directors, any form of proxy that is marked by a member "withhold" or otherwise marked in a manner indicated that the authority to vote for the election of

directors is withheld, shall not be voted either for or against the election of a director. Failure to comply with this paragraph shall not invalidate any corporate election taken, but may be the basis for challenging the proxy at a meeting.

6.11.4 A proxy is not revoked by the death or incapacity of the maker or the termination of a member as a result thereof unless, before the vote is counted, written notice of the death or incapacity is received by the corporation.

6.12 Each member shall be entitled to cast one vote on all matters submitted to a vote of the members, provided that if two or more members share the ownership of one residential lot in Monarch Bay, such members shall, in the aggregate, have only one vote. If two or more members owning one residential lot purport or attempt to cast conflicting ballots on any vote, the vote attributable to that residential lot shall be invalid and void.

ARTICLE VII

ELECTION OF DIRECTORS

7.1 Nominations and Solicitations for Votes:

7.1.1 The Board of Directors shall appoint three of its members as a Nominating Committee which shall nominate candidates for Directorships. The Secretary shall cause the names of the candidates chosen by the Nominating Committee to be placed on the ballot.

7.1.2 If there is a meeting to elect directors, any members present at the meeting, in person, may place names in nomination.

7.2 Candidates receiving the highest number of votes shall be elected as directors.

ARTICLE VIII

DIRECTORS

8.1 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 the Declaration, the Board shall have all general powers authorized under the California Corporation Code for nonprofit, mutual benefit corporations, and shall have the following specific powers:

8.1.1 Enforce the provisions of the Articles of the Governing Documents, and all contracts or any agreements to which the Association is a party;

8.1.2 Manage, maintain, repair and replace all Common Area and Association 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 and Association Maintenance Areas;

8.1.3 Maintain fire, casualty, liability and worker's compensation coverage, fidelity bond coverage and other insurance;

8.1.4 Obtain, for the benefit of the Common Area and Association Maintenance Areas, all commonly metered water, gas and electric services, and may provide for refuse collection and cable (or CATV) television service;

8.1.5 Grant easements or licenses, where necessary, for utilities and sewer facilities over, on and across the Common Area to serve Monarch Bay;

8.1.6 Pay all taxes and special assessments which would be lien upon the Common Area, and to discharge any lien or encumbrance levied against the Common Area;

8.1.7 Levy and collect Assessments on the Owners of all Lots in Monarch Bay in accordance with the terms and conditions of Articles IX and X hereof.

~~8.1.8 Pay for reconstruction of any portion of the Common Area damaged or destroyed;~~

8.1.9 Employ and retain professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board with respect to administration of the Association;

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

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

~~8.1.12 Purchase such other labor, services, materials, supplies and the like, as needed for the proper maintenance of the Common Area, the Association Maintenance Areas and/or proper operation of the Association;~~

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

8.1.14 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 meeting its duties as set forth in the Governing Documents.

8.2 The Board shall perform and execute the following duties for and on behalf of the Association:

8.2.1 Maintain and operate the Common Area and Association Maintenance Areas for the common use and benefit of all Owners in Monarch Bay;

8.2.2 Provide water, sewer, gas, electricity, garbage and trash collection, and other necessary utility services for the Common Area and Association Maintenance Areas;

8.2.3 Provide insurance for the Association and its Members;

8.2.4 The Association shall accept all Common Area, Association Maintenance Areas, and street and recreational areas conveyed, leased or otherwise transferred to it;

8.2.5 Maintain and repair all portions of the Common Area and Association Maintenance Areas in a neat, clean safe, attractive, sanitary and orderly condition at all times. In the event any maintenance or repairs to the common Area or Association Maintenance Areas are required due to the willful or negligent acts or omissions of an Owner or Owners, the Association shall levy the cost of such maintenance and repair as a Compliance Assessment against the responsible Owner(s);

8.2.6 In addition to all other provisions set forth herein respecting the maintenance of the Common area and Association 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;

8.2.7 Provide security service to Monarch Bay which may include twenty-four (24) hour guard service, at such time and upon such terms as shall be determined by the Board;

8.2.8 Pay all real and personal property taxes and Assessments which the Association is required to pay for pursuant to the terms and provisions of these Bylaws, or by law, unless separately assessed to Owners;

8.2.9 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 Governing Documents;

8.2.10 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:

8.2.10.1 A pro forma operating statement (budget) for each fiscal year shall be distributed not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the fiscal year, and shall contain the following information:

8.2.10.1.1 An itemized estimate of the Association's revenue and expenses, determined on an accrual basis;

8.2.10.1.2 The amount of the total cash reserves of the Association which are then currently available for the major repair or replacement of Common Area Improvements and for other contingencies;

8.2.10.1.3 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

8.2.10.1.4 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.

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

8.2.10.2.1 A balance sheet as of the last day of the Association's fiscal year;

8.2.10.3.2 An operating (income) statement for the fiscal year;

8.2.10.2.3 A statement of changes in financial position for the fiscal year; and

8.2.10.2.4 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 principles for any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand Dollars (\$75,000). 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;

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

8.2.10.4 The Board shall review, on a quarterly basis, unless otherwise stated, the following:

8.2.10.4.1 A current reconciliation of the Association's operating accounts;

8.2.10.4.2 A current reconciliation of amounts collected as reserves;

8.2.10.4.3 The current year's actual amounts collected as reserves and expenses compared to the current year's budget;

8.2.10.4.4 An income and expense statement for the Association's operating and reserve accounts; and

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

8.2.11 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 hereinbelow;

8.2.12 Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the common Area, the Association Maintenance Areas and development, construction and maintenance of Residences, as more particularly described in Section 13 below;

Articles, Agreement Agreement & these by laws
8.2.13 Enforce all applicable provisions of the Governing Documents and Rules and Regulations of the Association, and of all other documents pertaining to the ownership, use, management and control of Monarch Bay;

8.2.14 Within ten (10) days of the mailing or delivery of a written request from an Owner, provide said Owner with a copy of the Governing Documents, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges, 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; and

8.2.15 Elect the officers of the Association and fill any vacancies on the Board, except if such vacancy is created by the removal of a Director.

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

8.3.1 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;

8.3.2 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;

8.3.3 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; 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 these Bylaws.

8.3.4 Subject to the limitations set forth in this Article, contract for any other material, furniture, labor, services, maintenance, repairs, structural alterations or insurance, or 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 the Governing Documents.

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

8.5. Limitations on Contracts. Except as otherwise provided herein, 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, except with the vote or written assent of a majority of the voting power of the Association.

8.6. Delegation of Duties. In the event that the Association shall delegate any or all of its 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.

8.7. 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.

8.8. 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, the Association 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 shall repair the same at its expense, unless the repairs were the responsibility of the Owner.

8.9. Limitations of Board Action. Unless a different plurality is specified herein, the Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the

Association:

8.9.1 Entering into a contract with 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, with the following exceptions:

8.9.1.1 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;

8.9.1.2 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

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

8.9.2 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

8.9.3 Filling a vacancy on the Board created by the removal of a Director.

8.10. Licenses, Easements and rights of Way. The Board, for and on behalf of the Association, 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 and Association 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 and Association Maintenance Areas, or for the preservation of the health, safety, convenience and welfare of the Owners.

8.11 New Improvements. Except as otherwise provided in the Governing Documents, the Association may construct new Improvements or additions to the Common Area and Association 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 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 the Project for the cost of such work.

8.12 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, the Association Maintenance Areas, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in the Governing Documents, 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 the Governing Documents. 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 have the same force and effect as if they were set forth in and were part of these Bylaws, 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 provision of the Governing Documents, the provisions of the Rules and Regulations shall be deemed to be superseded.

8.13 The authorized number of directors shall be nine, all of whom shall be Owners in Monarch Bay. Three directors shall be elected at each annual meeting of members to hold office for a term of three years, provided however, if any annual meeting is not held or the directors are not elected at any annual meeting, they may be elected at any special member's meeting held for that purpose. Each director, including a director elected to fill a vacancy or elected at a special member's meeting shall hold office until expiration of the term for which elected and until a successor has been elected and qualified.

8.14 Vacancies:

8.14.1 A vacancy or vacancies in the Board of Directors shall be deemed to exist on the occurrence of the following:

8.14.1.1 The death, resignation, or removal of any director;

8.14.1.2 The declaration by resolution of the Board

of Directors of a vacancy of the office of a director who has been declared of unsound mind by an order of Court or convicted of a felony or has been found by final order or judgment of any Court to have breached a legally imposed duty under the California Non-Profit Corporation Law;

8.14.1.3 The vote of the members to remove a director;

8.14.1.4 The increase of the authorized number of directors; or

8.14.1.5 The failure of the Members, at any meeting of Members at which any director or directors are to be elected, to elect the number of directors to be elected at such meeting.

8.14.2 Except as provided in this paragraph any director may resign, which resignation shall be effective on giving written notice to the President, the Secretary or the Board of Directors, unless the notice specifies a later time for the resignation to become effective. If the resignation of a director is effective at a future time, the Board of Directors may elect a successor to take office when the resignation becomes effective. No director may resign when the corporation would be left without a duly elected director or directors in charge of its affairs.

8.14.3 The Members may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors, but any such election by written consent shall require the consent of a majority of the voting power.

8.14.4 No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

8.15 Regular meetings of the Board of Directors may be held any place within Orange or Los Angeles County that has been designated from time-to-time by resolution of the Board. In the absence of such designation, regular meetings shall be held at the principal executive office of the Corporation. Special meetings of the Board shall be held at any place in Orange or Los Angeles county that has been designated in the notice of the meeting. Notwithstanding the above provisions, a regular or special meeting of the Board of Directors may be held at any place consented to in writing by all the Board members, either before or after the meeting. If consents are given, they shall be filed with the minutes of the meeting. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another, and all such directors shall be deemed to be present in person at such meeting.

8.16 Immediately following each annual meeting of members,

the Board of Directors shall hold a regular meeting for the purpose of organization, election of officers, and the transaction of other business. Notice of this meeting shall not be required.

8.17 Other regular meetings of the Board of Directors shall be held without call at such time as shall from time-to-time be fixed by the Board of Directors.

8.18 Special meetings of the Board of Directors for any purpose may be called at any time by the President and Secretary, or any two directors.

8.18.1 Notice of the time and the place of special meetings shall be given to each director by one of the following methods: (a) by personal delivery of written notice; (b) by first class mail, postage paid; (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the corporation.

8.18.2 Notice sent by first class mail shall be deposited into a United States mail box at least four days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephone, or given to the telegram company at least 48 hours prior to the time set for the meeting.

8.18.3 The notice shall state the time and place for the meeting. However, it need not specify the purpose of meeting, or the place of the meeting, if it is to be held at the principal executive office of the Corporation.

8.19 Quorum: A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 8.21 of this Article VIII. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, subject to the provisions of the California Nonprofit Corporation Law, especially those provisions relating to (i) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (ii) appointment of committees, and (iii) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

8.20 Waiver of Notice: The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be valid as though taken at a meeting duly held

after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting.

All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

8.21 Adjournment: A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

8.22 Notice of Adjournment: Notice of the time and place of holding an adjourned meeting need not be given unless the meeting is adjourned for more than 24 hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

8.23 Action Without Meeting: Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

ARTICLE IX

ASSESSMENTS

~~9.1 Creation of the Lien and Personal Obligation of Assessments. Each Member, by purchasing a subleasehold and becoming a Member of this Association, for each Lot owned within Monarch Bay, hereby covenants and agrees to pay to the Association: (a) Regular Assessments; (b) Special Assessments for capital improvements and such other purposes set forth herein; and (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 his Lot into compliance with these Bylaws and the Declaration. The Regular and Special Assessments, together with interests, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Regular Assessment and each Special 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. Each compliance Assessment levied against an Owner, together with interest, costs, and reasonable attorney's 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 Owners' successors in title unless expressly assumed by them.

9.2 Purpose of Regular Assessments: Levy and Collection. The Regular 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 and improve the Common Area and Association Maintenance Areas. The Association, by and through the Board, shall levy and collect Assessments from the Owner of each Lot in Monarch Bay 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 the Governing Documents.

9.3 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 above the maximum Regular Assessment for the previous year without the vote or written assent 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 related to: (a) maintenance or repair of the Common Area, including, but not limited to, the payment of insurance premiums, the payment of utility bills, the costs incurred in maintaining or repairing structures or improvements, and funding reserves, or (b) expenses incurred in conjunction with an emergency situation. The Regular Assessment may be increased by more than provided above only with the vote or written assent of a majority of those Owners in attendance at a duly called meeting of the Association. All assessments attributable to Association Maintenance Area Expenses shall be allocated solely to Owners of Lots in Tract 4472.

9.4 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 cost of any construction, reconstruction, replacement or repair of a capital Improvement within the Common Area and Association Maintenance Areas, including fixtures and personal property related thereto; provided that any such Special Assessment may not exceed five percent (5%) of the budgeted gross expenses of

AMENDED SEE ATTACHED

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.

9.5 Notice and Quorum For Any Action Authorized Under Sections 9.3 and 9.4. Any action requiring approval of Members under Section 9.3 and 9.4 shall be taken at the annual meeting of the Members or 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 shall constitute a quorum. ~~AMENDED~~

9.6 Certification of Payment. The Association shall, upon the 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.

9.7 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 defined in California Civil Code, Section 2985, give to the prospective purchaser a copy of the Governing Documents, and a true statement, in writing, from the Board as to the amount of delinquent Assessments, penalties, attorneys' fees and other charges authorized by these bylaws 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.

9.8 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 the Governing Documents, together with a true statement, in writing, as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges authorized by the Governing Documents 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.

9.9 Reserves. 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, or Association Maintenance Areas, or any such other purpose determined by the Board. 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.

9.10 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 his 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.

9.11 Exempt Property. The following property subject to the Governing Documents shall be exempt from the Assessments herein:

9.11.1 All property dedicated to and accepted by any public authority;

9.11.2 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

9.11.3 All Common Area.

ARTICLE X

EFFECT OF NON-PAYMENT OF ASSESSMENTS:

~~10.1. Effect of Non-Payment of Assessments: Remedies of the Association. Any installment of a Regular, Special or Compliance 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 determined by the Board but not to exceed the maximum rate permitted by law, 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, may foreclose the lien against his Lot.

10.2. Notice of Delinquent Assessments. No action shall be brought to foreclose a lien for delinquent Assessments 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 on the delinquent (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 incurred in connection with the debt secured by said lien), and the name and address of the principal office of the Association. The Notice shall be signed and acknowledged by the President, or Vice President, and the Secretary, or assistant Secretary, of the Association. The lien shall continue until fully paid or otherwise satisfied.

10.3. 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 file or record, as the case may be, an appropriate release of such Notice upon payment by the defaulting Owner of a fee to be determined by the association, but not to exceed Twenty-Five Dollars (\$25.00), to cover the costs of preparing and filing or recording such release.

10.4 Cumulative Remedies. The Association's remedies for non-payment of Assessments, including, but not limited to, an action to recover a money judgment, and assessment lien, 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.

10.5 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created hereunder, nor any breach of the terms and provisions of the Governing Documents, 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 for value; provided, that after such Mortgagee or other person or entity obtains title to such Lot by judicial or nonjudicial foreclosure, such Lot shall remain subject to the

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Governing Documents, and the payment of Assessments which fall due subsequent to the date of taking title.

ARTICLE XI

USE RESTRICTIONS

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

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

11.2 Use of Common Area and Association Maintenance Areas. Use of the Common Area and Association Maintenance Areas shall be subject to the provisions of the Governing Documents, the Rules and Regulations, and to any additional limitations imposed by the Association.

11.3 Conduct Affecting Insurance. Nothing shall be done or kept in any Lot, the Common Area or the Association Maintenance Areas which will increase the rate of insurance on the Common Area or Association Maintenance Areas without the approval of the Association. No Owner shall permit anything to be done or kept in his Lot, in the Common Area or in the Association Maintenance Areas, 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 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.

11.4 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 or Association Maintenance Areas which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, tenants, lessees or contract purchasers, or their respective guests or invitees, whether minor or adult. After 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.

11.5 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. All signs permitted under this Section shall conform with any sign ordinance adopted by the Public Agencies and the architectural guidelines established by the Architectural Control Committee.

11.6 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, snakes and other such animals) 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. As used herein, "unreasonable numbers" shall ordinarily mean more than two (2) animals per Lot. 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 public or private nuisance or hazard to any other person. All animals maintained in a Lot must be kept either within an enclosure, yard or patio, or on a leash being held by a person capable of controlling the animal.

11.7 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 his Lot. There shall be no exterior fires whatsoever, except barbecue fires contained within receptacles therefore and fire pits in the enclosed yards designed in such a manner that they do not create a fire hazard.

11.8 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 by the Architectural Control Committee.

11.9 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.

11.10 Improvements. There shall be no construction, alteration or removal of any Improvement in Monarch Bay 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 Association Maintenance Areas. With the exception of such specifically allowed encroachments, no Improvement shall be constructed upon any portion of any Common Area or Association Maintenance Areas, other than such Improvements as shall be constructed by the Association as provided herein.

11.11 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.

11.12 Commercial Activity. No professional, commercial or industrial operations of any kind shall be conducted in or upon any Lot or the common Area.

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

11.13.1 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.

11.13.2 No Owner shall park, store or keep any large commercial type vehicle 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 his Lot (except entirely within his 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 and Association Maintenance Areas. 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.

11.13.3 The Board may provide that no vehicle shall be parked upon any driveway of a Residence for any continuous period in excess of forty-eight (48) hours.

11.13.4 Each Owner shall keep his garage readily available for parking of his 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 of his respective vehicles therein.

11.13.5 No Owner shall conduct major repairs to any motor vehicle of any kind whatsoever in his 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.

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

11.13.7 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.

11.14 Guest Parking. Subject to provisions of these Bylaws, 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.

11.15 Compliance with Management Documents. All Owners shall be Members of the Association and shall comply with the terms and conditions of the Governing Documents, and all Rules and Regulations of the Association. No Owner shall transfer any membership or interest in the Association, except upon the transfer of the Lot to which it is appurtenant.

11.16 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. 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 reasonable review by the Architectural Control Committee for compliance with the Architectural Guidelines adopted by the Board.

11.17 Antennas. 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.

11.18 Leasing. No Owner shall be permitted to rent or lease his 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 the Governing Documents, 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 restriction on the right of an Owner to rent or lease his Lot.

11.19 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.

11.20 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 by the Architectural Control committee, and no odor shall be permitted to arise therefrom so as to render Monarch Bay, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. All Owners shall 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. Any 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) hours before and after scheduled trash collection hours.

11.21 Pests. Each Owner shall, at all times, maintain his 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.

11.22 Drainage. There shall be no interference with the established drainage pattern over any Lot within Monarch Bay as

to affect the Common Area, Association Maintenance Areas, or adjacent lots, unless adequate alternative provisions are 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 was conveyed to a sublease holder, or later grading changes that are shown on plans approved by the Architectural Control Committee and the Public Agencies.

11.23 Prohibitions 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 constructions of a Residence and related Improvements on one or more Lots.

11.24 Prohibition Against Pools in Tract #4472. No swimming pool, fish pond, reflection pool, fountain or the artificial body of water shall be constructed, kept or maintained on any lot or portion of Tract #4472; except, however, such artificial bodies of water may be constructed, kept and maintained in the interior of the single-family residential dwelling unit on such Lots.

ARTICLE XII ARCHITECTURAL CONTROL

12.1 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 the Governing Documents.

12.2 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 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.

12.3 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 not less than three members, nor more than five

members. 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 he replaces. The Board shall have the power to appoint all of the members of the Architectural Control Committee. All members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association, except at least one licensed or registered architect, civil engineer or landscape designer, whether or not such person is a member of the Association, shall be a member of the Architectural Control Committee. No member of the Architectural Control Committee shall be liable to any person for his decisions or failure to act in making decisions as a member of the Architectural Control Committee.

12.4 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 or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Control Committee on all matters so delegated.

12.5 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 may contain guidelines pertaining to the construction of Residences, garages, ancillary buildings, fences, swimming pools, spas, sports and recreational facilities, landscaping and all works of Improvement. The Architectural control Committee shall not approve the construction of any work of Improvement which is not designed in substantial conformance with the Architectural Guidelines.

12.6 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.

12.7 Submittal of Plans and Specifications. Any Owner desiring to make any Improvement to his 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:

12.7.1 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;

12.7.2 Building Plans. Building plans, including floor, foundation and roof plans, together with a description of all materials for such matters;

12.7.3 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;

12.7.4 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;

12.7.5 Grading Plans. A grading plan with elevation contours and drainage;

12.7.6 Other Documents. Other documents deemed necessary by the Architectural Control Committee to support or clarify the plans and specifications submitted by Owner.

12.8 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.

12.9 Review of Plans and Specifications. The Architectural Control Committee shall review any plans and specifications submitted by an Owner, pursuant to Section 7 hereinabove, in accordance with the following provisions:

12.9.1 Review by Licensed Professionals. In the event the Architectural Control Committee shall deem it reasonably necessary or appropriate to retain the services of an engineer or architect to review or assist in the review of any such plans and specifications for any proposed Improvement, the Architectural Control Committee shall so advise the Owner, in writing. The Owner shall pay all reasonable fees and all additional costs and expenses incurred by the Architectural Control committee in obtaining such review, including, without limitation, any fees incurred by the Architectural Control Committee in retaining an architect, engineer or other professional.

12.9.2 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; 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 street; consideration of view and aesthetic beauty; and conformity of the plans and specifications to the purpose and general plan and intent of the Governing Documents. 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 the Governing Documents; 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.

12.9.3 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 as 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. 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.

12.9.4 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.

12.10 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 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.

12.11 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.

12.12 Specific Architectural Restrictions. In addition to the Architectural Guidelines described in Section 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:

12.12.1 Single-Family Residence. Each Lot is designed and intended for the construction of one detached single-family dwelling. No multi-family Residences shall be allowed. In no event shall more than one Residence be constructed upon any Lot. Notwithstanding the foregoing, the Architectural Control Committee may approve the construction of one 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.

12.12.2 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.

12.12.3 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.

12.12.4 Minimum Setback Requirements. The minimum setback requirements shall be the more restrictive of the minimum setback limitation prescribed by the Public Agencies; or the minimum setback established by the Architectural Guidelines as, from time to time, amended by the Board. In Tract 4472, no Structure shall expand laterally beyond the envelope created by the existing improvements.

12.12.5 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 the height of any existing Improvement exceeds the height limit set forth in this section at the date of the Assignment Agreement, the height limit of the existing improvements shall prevail.

12.12.5.1 In Tract #3839 and #3748 the height 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 Monarch Bay Association, and the Improvements shall not exceed the height set forth in each of the original Subleases, and as set forth in the height limitation memorandum of Cabot, Cabot & Forbes, Inc., dated January 23, 1962. The maximum building height shall not exceed the limits herein set forth, or the City maximum, whichever is more restrictive.

12.12.5.2 In Tract #4472 no Improvement shall exceed the height of the existing Improvements on any Lot as of the date of adoption of these Bylaws.

12.12.5.3 Any proposal to exceed the height limit, 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.

12.12.6 Trees and other Plantings:

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

12.12.6.2 No Owner shall permit any tree or other planting to grow to the point of obstructing the view from any other Lot, obstruction being defined as impact on seated view from the affected neighbors lowest living level. In the event that any Owner shall violate the provisions hereof, the Association may enforce the provisions hereof as provided in paragraph 12.15.2.

12.12.7 Air Conditioning. 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 shall be located at ground level along side or behind the structure being serviced by such unit, concealed within such screen or other structure as may be deemed appropriate by the Architectural Control Committee, in order to totally obscure such unit 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.

12.12.8 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.

12.12.9 Solar Energy Systems. 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.

12.12.10 Antennas. 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.

12.12.11 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.

12.13 Variances. The Architectural Control Committee may, but is not required to, authorize variances from compliance with any of the provisions of the Architectural restrictions 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, setbacklines or other requirements imposed by any governmental or regulatory authority.

12.14 Performance of Work. The performance of any work of Improvement approved as hereinabove provided shall be performed in accordance with the following provisions:

12.14.1 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 in an amount appropriate to the scope of the risk to the common area, but not less than Five Thousand Dollars (\$5,000.00), 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 deems 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:

12.14.1.1 Repair any damage to any real or personal property within Monarch Bay caused by the work of Improvement:

12.14.1.2 Remove any lumber, materials or debris within a reasonable period following completion of the work of Improvement;

12.14.1.3 Construct or install the work of Improvement in accordance with the plans and specifications approved by the Architectural Control Committee; or

12.14.1.4 Complete the work of Improvement in a timely manner.

12.14.2 Commencement and Completion. The Owner shall commence work on any proposed Improvement within ninety (90) days following approval of the final plans and specifications by the Architectural Control Committee and the Public Agencies, 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 two (2) years 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.

12.14.3 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.

12.14.4 Indemnification. Notwithstanding the bond required in Section 14.1 above, the Owner of any Lot upon which any work of Improvement is being performed shall defend and hold harmless the Association, the Board, the Architectural Control Committee and every other Owner in the Project 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.

12.15 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:

12.15.1 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 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.

12.15.2 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, the recording of a notice of noncompliance in the Office of the county Recorder, and the filing of a suit 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, may at its option, 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 of Directors 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.

12.16 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.

12.17 No Liability. Neither the Association or any member of the Board, 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 Lots, 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.

12.18 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 XIII

COMMITTEES

13.1 Committees of Directors: The Board of Directors may, by resolution adopted by a majority of the directors then in office, designate one or more committees, each consisting of two or more directors, to serve at the pleasure of the Board. Any committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except that no committee, regardless of resolution, may:

13.1.1 Take any final action on matters, which under the Nonprofit Corporation Law of California, also requires Members' approval;

13.1.2 Fill vacancies on the Board of Directors or in any committee;

13.1.3 Fix compensation of the directors for serving on the Board or on any committee;

13.1.4 Amend or repeal any resolution of the Board of Directors which by its express terms is not amendable or repealable;

13.1.5 Appoint any other committees of the Board of Directors or the members of these committees;

13.1.6 Expend corporate funds to support a nominee for director after there are more people nominated for director than can be elected; and

13.1.7 Approve any transaction (i) to which the corporation is a party and one or more directors have a material financial interest; or (ii) between the corporation and one or more of its directors or between the corporation or any person in which one or more of its directors have a material financial interest.

13.2 Meetings and Actions of Committees: Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Article VIII of these bylaws, concerning meetings of directors, with such changes in the context of those bylaws as are necessary substitute the committee and its members for the Board of Directors and its members, except that the time for meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee. Special meetings of committees may also be called by resolution of Board of Directors. Notice of special meetings of committees shall also be given to any and all alternate members, who have the right to attend all

meetings of the committee. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE XIV

OFFICERS

14.1 Officers: The officers of the corporation shall be a president, a secretary, and a chief financial officer. The corporation may also have, at the discretion of the Board of Directors, a chairman of the Board, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article XIV. Any number of offices may be held by the same person, except that neither the secretary nor the chief financial officer may serve concurrently as either the president or the chairman of the board.

14.2 Election of Officers: The officers of the corporation, except those appointed in accordance with the provisions of Section 3 of this Article XIV, shall be chosen by the Board of Directors, and each shall serve at the pleasure of the board, subject to the rights, if any, of an officer under contract of employment.

14.3 Subordinate Officers: The Board of Directors may appoint, and may authorize the chairman of the board or the president or another officer to appoint, any other officers that the business of the corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in the bylaws or determined from time to time by the board of directors.

14.4 Removal of Officers: Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors, at any regular or special meeting of the board, or, except in case of an officer chosen by the Board of Directors, by an officer on whom such power of removal may be conferred by the Board of Directors.

14.5 Resignation of Officers: Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to rights, if any, or the corporation under any contract to which the officer is party.

14.6 Vacancies in Offices: A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these bylaws for regular appointments to that office.

14.7 Responsibilities of Officers:

14.7.1 Chairman of the board: If such an officer be elected, the chairman of the board shall preside at meetings of the Board of directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the bylaws. If there is no president, the chairman of the board shall, in addition, be the chief executive officer of the corporation and shall have the powers and duties prescribed in paragraph 14.7.2 below.

14.7.2 President: Subject to such supervisory powers as may be given by the Board of Directors to the Chairman of the Board, if any, the president shall, subject to the control of the Board of Directors, generally supervise, direct, and control the business of the officers of the corporation. He shall preside at all meetings of the members and, in the absence of the chairman of the board, or if there be none, at all meetings of the board of directors. He shall have such other powers duties as may be prescribed be the board of directors or the bylaws.

14.7.3 Vice-Presidents: In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon, and perform such other duties as from time to time may be prescribed from them respectively by the Board of Directors or the chairman of the board.

14.7.4 Secretary: The secretary shall attend to the following:

14.7.4.1 The secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees or directors, and members, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings, the number of members present or represented at members' meetings, and the proceedings of such meetings.

14.7.4.2 The secretary shall keep, or cause to be kept, at the principal executive office, as determined by

resolution of the Board of Directors, record of the corporate members, showing the names of all members, their addresses, and the class of membership held by each.

14.7.4.3 The secretary shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors required by the bylaws to be given. He shall keep the seal of the corporation in safe custody. He shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the bylaws.

14.7.5 Chief Financial Officer: The chief financial officer shall attend to the following:

14.7.5.1 The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any director at all reasonable times.

14.7.5.2 The chief financial officer shall deposit all money and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors; shall disburse the funds of the corporation as may be ordered by the Board of Directors; shall render to the president and directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the corporation; and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the bylaws.

14.7.5.3 If required the Board of Directors, the chief financial officer shall give the corporation a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his office and for restoration to the corporation of all its books, papers, vouchers, money, and other property and every kind in his possession or under his control on his death, resignation, retirement, or removal from office. The cost of the bond shall be an expense of the corporation.

ARTICLE XV

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS.

15.1 Definitions: For the purpose of this Article,

15.1.1 "Agent" means any person who is or was a director, officer, employee, or other agent of this corporation, or is or was serving at the request of this corporation as an officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of this corporation or of another enterprise at the request of the predecessor corporation.

15.1.2 "Proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative;

15.1.3 "Expenses" includes, without limitation, all attorneys' fees, costs, and any other expenses incurred in the defense of any claims or proceedings against any agent by reason of his position or relationship as agent and all attorneys' fees, costs, and other expenses incurred in establishing a right to indemnification under this Article.

15.2 Successful Defense by Agent: To the extent that an agent of this corporation has been successful on the merits in the defense of any proceeding referred to in this Article, or in the defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with the claim. If an agent either settles any such claim or sustains a judgment rendered against him, then the provisions of Section 15.3 through 15.5 shall determine whether the agent is entitled to indemnification.

15.3 Actions Brought by Persons Other Than the Corporation: Subject to the required findings to be made pursuant to Section 15.5, below, this corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding other than an action brought by, or on behalf of, this corporation, or by an officer, director or person granted related status by the Attorney General, or by the Attorney General on the ground that the defendant director was or is engaging in self-dealing within the meaning of California Corporations Code, or by the Attorney General or a person granted related status by the Attorney General for any breach of duty relating to assets held in charitable trust, by reason or the fact that such person is or was an agent of this corporation, for all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding.

15.4 Action Brought By Or On Behalf Of The Corporation:

15.4.1 Claims settled out of court: If any agent settles or otherwise disposes of a threatened or pending action

brought by or on behalf of this corporation, with or without court approval, and without the consent of the corporation, the agent shall receive no indemnification for either amounts paid pursuant to the terms of the settlement or other disposition or for any expense incurred in defending against the proceeding.

15.4.2 Claims and suits awarded against agent: This corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action brought by or on behalf of this corporation by reason of the fact that the person is or was an agent of this corporation, for all expenses actually and reasonably incurred in connection with the defense of that action, provided that both of the following are met:

15.4.2.1 The determination of good faith conduct required by Section 15.5, below, must be made in the manner provided for in that section; and

15.4.2.2 Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the agent should be entitled to be indemnified for the expenses incurred. If the agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

15.5 Determination of Agent's Good Faith Conduct: The indemnification granted to an agent in Section 15.3 and 15.4 above is conditioned on the following:

15.5.1 Required standard of conduct: The agent seeking reimbursement must be found, in the manner provided below, to have acted in good faith, in a manner he believed to be in the best interest of this corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person is a like position would use in similar circumstances. The termination of any proceeding by judgement, order, settlement, conviction, or on a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in the best interest of this corporation or that he had reasonable cause to believe that his conduct was unlawful. In the case of a criminal proceeding, the person must have had no reasonable cause to believe that his conduct was unlawful.

15.5.2 Manner of determination of good faith conduct: The determination that the agent did act in a manner complying with paragraph 15.5.1 above shall be made by:

15.5.2.1 The Board of Directors by a majority vote of a quorum consisting of directors who are not parties to the proceeding;

15.5.2.2 The affirmative vote (or written ballot in accordance with Article VI, Section 6.9) of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum).

15.5.2.3 The court in which the proceeding is or was pending. Such determination may be made on application brought by this corporation or the agent or the attorney or person rendering a defense to the agent, whether or not the application by the agent, attorney, or other person is opposed by this corporation.

15.6 Limitations: No indemnification or advance shall be made under this Article, except as provided in Sections 15.2 or 15.5.2.3 in any circumstance when it appears:

15.6.1 That the indemnification or advance would be inconsistent with a provision of the articles, a resolution of the members, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

15.6.2 That the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

15.7 Advance of Expenses: Expenses incurred in defending any proceeding may be advanced by this corporation before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the agent to repay the amount of the advance unless it is determined ultimately that the agent is entitled to be indemnified as authorized in this Article.

15.8 Contractual Rights of Non-Directors and Non-Officers: Nothing contained in this Article shall affect any right to indemnification to which persons other than directors and officers of this corporation, or any subsidiary hereof, may be entitled by contract or otherwise.

ARTICLE XVI RECORDS AND REPORTS

16.1 Inspection Rights: Any member of the corporation may:

16.1.1 Inspect and copy the records of names and addresses and voting rights during usual business hours on five days' prior written demand on the corporation.

16.1.2 Obtain from the secretary of the

corporation, on written demand and on the tender of the secretary's usual charges for such a list, if any, a list of names and addresses of members who are entitled to vote for the election of directors, and their voting rights, as of the most recent record date for which that list has been compiled, or as of a date specified by the member after the date of demand. The demand shall state the purpose for which the list is requested. This list shall be made available to any such member by the secretary on or before the later of 10 days after the demand is received or the date specified in it as the date by which the list is to be compiled.

Any inspection and copying under this section may be made in person or by an agent or attorney of the member and the right of inspection includes the right to copy and make extracts.

16.2 Maintenance and Inspection of Articles and Bylaws: The corporation shall keep at its principal executive office, the original or a copy of the articles and bylaws amended to date, which shall be open to inspection by the members at all reasonable times during office hours.

16.3 Maintenance and Inspection of Other Corporate Records: The accounting books, records, and minutes or proceedings of the members and the Board of Directors and any committee(s) of the Board of Directors shall be kept at such place or places designated by the Board of Directors, or, in the absence of such designation, at the principal executive office of the corporation. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed, or printed form. The minutes and accounting books and records shall be open to inspection on the written demand of any member, at any reasonable time during usual business hours, for a purpose reasonably related to the member's interests as a member. The inspection may be made in person or by an agent or attorney, and shall include the right to copy and make extracts. These rights of inspection shall extend to the records of each subsidiary corporation of the corporation.

16.4 Inspection By Directors: Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of every kind and the physical properties of the corporation and each of its subsidiary corporation. This inspection by a director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

16.5 Annual Report: The annual report to members referred to in the California Nonprofit Corporation Law is expressly dispensed with, but nothing in these bylaws shall be interpreted as prohibiting the Board Of Directors from issuing annual or other periodic reports to the members of the corporation as they

consider appropriate. However, the corporation shall provide to the directors, and those members who request it in writing, within 120 days of the close of its fiscal year, a report containing the following information in reasonable detail:

16.5.1 The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year.

16.5.2 The principal changes in assets and liabilities, including trust funds, during the fiscal year.

ARTICLE XVII

AMENDMENT OF BYLAWS

The By-Laws may be amended from time to time by the Board of Directors and the Members of the Corporation as provided by law provided, however, that Article XII may be amended only with the affirmative vote of members possessing two-thirds of the voting power of the Corporation. Nothing in these bylaws shall ever be deemed or construed to create or establish any contractual rights in or for any member of the Corporation except as may be set forth in these bylaws as amended from time to time pursuant to this Article XVII.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am the presently elected and acting Secretary of MONARCH BAY ASSOCIATION, a California Mutual Benefit Corporation, and the above bylaws, consisting of 54 pages are the bylaws of this corporation as adopted at a meeting of the Members of the Association held on _____, 1990, in the City of Dana Point, State of California.

DATED _____

SECRETARY _____

**AMENDMENTS
TO
BY-LAWS
OF
MONARCH BAY ASSOCIATION**

This Amendments to By-Laws of Monarch Bay Association is made as of the date indicated on the Certificate of Secretary of Monarch Bay Association, a California nonprofit mutual benefit corporation, hereinafter referred to as the "Association."

On or about August 20, 1990, the Association adopted the By-Laws of the Association ("By-Laws").

The Association, solely comprised of all of the Owners of Subleases of a Lot in Monarch Bay, approved the amendments to the By-Laws, as follows:

AMENDMENTS

I Article I, Section 1.3 of the By-Laws, entitled *Assessments*, is hereby deleted in its entirety and replaced with the following:

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

1.3.1 "Compliance Assessment" shall mean and refer to the financial 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 the Owner's Lot into compliance with the Declaration and By-Laws, or any amount due the Association based upon disciplinary proceedings against an Owner in accordance with these By-Laws.

1.3.2 "Regular Assessment" shall mean and refer to the charge against each Owner and his respective Lot representing a portion of the Common Expenses of the Association.

1.3.3 "Special Assessment" shall mean and refer to the charge against an Owner and his respective Lot representing (i) Common Expenses that Regular Assessments were inadequate in defraying for the fiscal year for any reason; (ii) all or a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Area; (iii) all or a portion of the cost of constructing or installing any capital improvements to the Common Area; or (iv) all or a portion of the cost of taking any extraordinary action for the benefit of the Common Area or the

membership of the Association pursuant to the provisions of these By-Laws.

II Article I, Section 1.4 of the By-Laws, entitled *Assignment Agreement*, is hereby deleted in its entirety and replaced with the following:

1.4 "Assignment Agreement" shall mean that certain Agreement between California Western Home Financing Partners, Ltd. and Monarch Bay Association, dated August 1, 2001, whereby California Western Home Financing Partners, Ltd. assigns to the Association all of its right title and interest in the Declaration.

III A new Section 1.27, entitled *Sublease Payments*, is added to Article I of the By-Laws, as follows:

1.27 "Sublease Payments" or "Quarterly Ground Rent" or "Quarterly Lease Payments" shall mean the rent that each Owner pays for the Sublease of a Lot on a quarterly or other designated basis. Delinquent Sublease Payments shall be collected in the same manner as delinquent Regular and Special Assessments.

IV Article I, Section 1.27, entitled *Application of Definitions*, is hereby deleted in its entirety and replaced with the following:

1.28 Application of Definitions. The aforesaid definitions shall be applicable to the Governing Documents, and to any supplements or amendments thereto, unless the context shall prohibit such application.

V Article IX, Section 9.1, entitled *Creation of the Lien and Personal Obligation of Assessments*, is hereby deleted in its entirety and replaced with the following:

9.1 Creation of the Lien and Personal Obligation of Assessments and Sublease Payments. Each Member, by purchasing a subleasehold and becoming a Member of the Association, for each Lot owned within Monarch Bay, hereby covenants and agrees 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 the Owner's Lot into compliance with these By-Laws and the Declaration; and (iv) Sublease Payments. The Regular Assessments, Special Assessments, and Sublease Payments together with any late charges, costs and reasonable attorneys' fees for the collection thereof, and interest on all of these sums shall be a charge on the land and shall be a continuing lien upon the Lot against which each such

Assessment and Sublease Payments are made. Each Regular Assessment, each Special Assessment, and each Sublease Payment together with any late charges, costs and reasonable attorneys' fees for the collection thereof, and interest on all of these sums shall also be the personal obligation of the Owner of such property at the time when the Assessment and/or Sublease Payment fell due. Each Compliance Assessment levied against an Owner, together with late charges, costs and reasonable attorney's fees for the collection thereof, and interest on all of these sums shall be the personal obligation of the Owner of the property at the time of the Assessment. The personal obligation for delinquent Assessments and/or Sublease Payments shall not pass to an Owners' successors in title whether or not expressly assumed by them.

VI. Article IX, Section 9.2, entitled *Purpose of Regular Assessments: Levy and Collection*, is hereby deleted in its entirety and replaced with the following:

9.2 Purpose of Assessments. The Regular Assessments levied by the Association shall be used exclusively to promote the health, recreation, safety and welfare of all Owners in Monarch Bay; for the maintenance and improvement of the Common Area and the Association Maintenance Areas; to preserve and protect the integrity and current lifestyle of the Association; and to discharge any other obligation of the Association under these By-Laws. All assessments collected from the Owners shall be put into general operating and reserve funds to be used for the foregoing purposes.

VII. Article IX, Section 9.3, entitled *Regular Assessments – Basis*, is hereby deleted in its entirety and replaced with the following:

9.3 Regular Assessments - Basis. Regular Assessments payable to the Association shall be 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 the Governing Documents. Except for that portion of the Common Expenses that are attributable to the Association Maintenance Area, Regular Assessments payable to the Association shall be assessed equally against all Owners of Lots. Each Owner's proportionate share of the Regular Assessments less the Common Expenses that are attributable to the Association Maintenance Area, 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.

Except in emergency situations, and unless otherwise superseded by applicable law, the Board may not, without the approval of Owners constituting a quorum of the Owners and casting a majority of the votes at a lawfully conducted meeting or election of the Association, impose a

regular assessment that is more than twenty percent (20%) greater than the regular assessment for the preceding fiscal year. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- (a) Required by a court order;
- (b) Necessary to repair or maintain Monarch Bay or any part of it for which the Association is responsible when a threat to personal safety in Monarch Bay is discovered; or
- (c) Necessary to repair or maintain Monarch Bay or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

All Assessments attributable to the Association Maintenance Area expenses shall be allocated solely to the Owners of Lots in Tract 4472 and shall be paid equally by the Owners of said Lots.

VIII. Article IX, Section 9.4, entitled *Special Assessments for Capital Improvements*, is hereby deleted in its entirety and replaced with the following:

9.4 Special Assessments. 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, (i) the additional expenses that are considered Common Expenses that Regular Assessments were inadequate in defraying for the fiscal year for any reason; (ii) the cost of reconstructing any damaged or destroyed portion or portions of the Common Area; or (iii) the cost of constructing or installing any capital improvements to the Common Area; or (iv) the cost of taking any extraordinary action for the benefit of the Common Area or the membership of the Association pursuant to the provisions of these By-Laws; provided that any such Special Assessment may not exceed five percent (5%), or other higher percentage authorized by applicable law, of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners constituting a quorum and 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. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations, as defined in Section 9.3 above.

IX. Article IX, Section 9.5, entitled *Notice and Quorum For Any Action Authorized Under Sections 9.3 and 9.4*, is hereby deleted in its entirety and replaced with the following:

9.5 Notice and Quorum For Any Action Authorized Under Sections 9.3 and 9.4. Any action requiring the approval of Members under Sections 9.3 and 9.4 shall be taken at the annual meeting of the Members or 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 more than fifty percent (50%) of all votes shall constitute a quorum.

In lieu of a regular or special meeting of Members for the purposes stated in Sections 9.3 and 9.4, approval of the Members may be solicited by written ballot. Such ballot solicitations shall specify (a) the number of responses needed to meet the quorum requirement, (b) the percentage of approvals necessary to approve the action, and (c) the date by which ballots must be received in order to be counted. The form of written ballot shall afford an opportunity to specify a choice between approval and disapproval of each matter. Receipt within the specified time period of the number of written ballots that equals or exceeds the quorum requirement and the number of approvals necessary to approve the proposed action shall constitute valid approval of the proposed action under Section 9.3 or Section 9.4.

X. Article X, Section 10.1, entitled *Effect of Non-Payment of Assessments*, is hereby deleted in its entirety and replaced with the following:

10.1. Effect of Non-Payment of Assessments and/or Sublease Payments: Remedies of the Association. Any installment of a Regular, Special or Compliance Assessment not paid within fifteen (15) days after the due date shall 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

increased by applicable California law, and interest on all sums imposed under this Section at an annual percentage rate of twelve percent (12%) or such maximum rate permitted by law, 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, may record a lien and foreclose the lien against his Lot.

As to delinquent Sublease Payments, the Association may recover late charges, costs of collection, including reasonable attorneys' fees, and interest at the same rate specified above for delinquent Regular, Special and Compliance Assessments. In addition, the Board, for and on behalf of the Association, may commence legal action against the Owner personally obligated to pay the same, or, as in the case of a delinquent Regular or Special Assessment, may record a lien and foreclose the lien against his Lot. Furthermore, any Sublease Payment not paid to the Association on the date required shall constitute a default under the Sublease. If any Sublease Payment shall remain unpaid for a period of thirty (30) days from and after written notice of such delinquency from the Association, as Lessor, to Owner, as Lessee, in which the Association shall specify in the notice the delinquent amount of Sublease Payments, the Association may, at its option, terminate the Sublease by giving the Owner notice of such termination. Upon giving said notice, the Sublease shall immediately cease and terminate and Owner's rights in and to the subleased Lot and all structures, improvements and facilities constructed and installed thereon, shall cease and end, and the Association may, without further notice or demand or legal process, re-enter and take possession of Owner's Lot and all buildings and improvements located thereon, and Owner and all other occupants on the Lot shall quit and surrender possession of the Lot and all improvements thereon to the Association; provided, however, that such termination shall not relieve Owner from the payment of any delinquent Sublease Payments, Assessments and other charges then due and owing to the Association or any claim for damages then accrued against Owner, nor relieve Owner from the performance of Owner's other obligations under the terms of the Sublease, and such termination of the Sublease shall not prevent the Association from recovering any such sums or damages, or from enforcing such obligations or recovering damages for any default thereof, by exercising any remedy provided by law.

XI. Article X, Section 10.2, entitled *Notice of Delinquent Assessments*, is hereby deleted in its entirety and replaced with the following:

10.2 Notice of Delinquent Assessment. A delinquent Regular or Special Assessment, Compliance Assessment (to the extent permitted by law), Sublease Payment, and any related late charges, reasonable costs of collection (including reasonable attorneys' fees), and interest shall

become a lien upon the Lot to which such delinquent Assessment(s), Sublease Payments and other charges are attributable when a Notice of Delinquent Assessment ("Notice" or "assessment lien") is recorded with the Orange County Recorder. The Notice shall describe the amount of the delinquent Assessment(s), Sublease Payments, and the related charges authorized by these By-Laws and applicable law, a description of the Lot, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice shall be signed by any officer of the Association, or any employee or agent of the Association authorized to do so by the Board. The Notice may be enforced in any manner permitted by law, including legal action, judicial foreclosure or nonjudicial foreclosure.

The Notice may not be recorded until the Association has first complied with Civil Code Section 1367.1(a) or any successor statute concerning delivery of a written demand for payment to the delinquent Owner. If the delinquent Assessments, Sublease Payments and related charges are paid or otherwise satisfied in accordance with the demand for payment prior to recordation of the Notice, the Association shall not record the Notice.

XII. Article X, Section 10.3, entitled *Curing of Default*, is hereby deleted in its entirety and replaced with the following:

10.3. Curing of Default. The Notice of Delinquent Assessment is not required to be amended to reflect any partial payments after its recordation, and any such partial payments shall not be construed to invalidate the Notice. If all sums specified in the Notice are paid before the completion of any judicial or nonjudicial foreclosure or lawsuit, the Association shall, within twenty-one (21) days of payment of all sums, or within an earlier date if otherwise mandated by law, (i) record a notice of satisfaction and release of lien and provide the Owner with a copy of the lien release or notice that the delinquent assessment has been satisfied, and (ii) also record a notice of rescission of any recorded notice of default and demand for sale, or otherwise comply with superseding, applicable law in effect.

XIII. A new Section 10.4, entitled *Application of Partial Payments*, is hereby added to Article X of the By-Laws, as follows:

10.4 Application of Partial Payments. Unless otherwise provided by law, any payments made by the Owner toward delinquent Assessments and Sublease Payments shall first be applied to Assessments owed, and only after the Assessments owed are paid in full shall payments be applied to the late charges, collection costs, including reasonable

attorneys' fees, and interest that are related to the delinquent Assessments. Only after the delinquent Assessments and other related charges are paid in full shall payments be then applied to the delinquent amount of the Sublease Payments. After the Sublease Payments owed are paid in full shall payments be applied to late charges, collection costs, including reasonable attorneys' fees, and interest that are related to the delinquent Sublease Payments.

XIV. Article X, Section 10.4, entitled *Cumulative Remedies*, is hereby deleted in its entirety and replaced with the following:

10.5 Cumulative Remedies. The Association's remedies for non-payment of Assessments and Sublease Payments, including, but not limited to, an action to recover a money judgment and recordation and foreclosure of an assessment lien, 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.

XV. Article X, Section 10.5, entitled *Mortgagee Protection*, is hereby deleted in its entirety and replaced with the following:

10.6 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created hereunder, nor any breach of the terms and provisions of the Governing Documents, 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 for value; provided, that after such Mortgagee or other person or entity obtains title to such Lot by judicial or nonjudicial foreclosure, such Lot shall remain subject to the Governing Documents, and the payment of Assessments which fall due subsequent to the date of taking title.

XVI. A new Section 10.7, entitled *Assignment of Rents*, is hereby added to Article X, as follows:

Section 10.7. Assignment of Rents.

(a) Assignment.

Each Owner who is renting a Lot to a tenant or tenants hereby assigns to the Association:

(1) all the right, title and interest of such Owner in and to any lease(s) or rental agreement(s) (the "Lease"); and

(2) 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 Lease or others in possession of the Lot for the collection or recovery of monies so assigned.

This assignment is absolute, but is conditioned on the Owner's failure to pay any Assessment or Sublease Payment within thirty (30) days after the due date.

(b) Payment of Rents to the Association.

Each Owner irrevocably consents that the tenant under the 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. 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.

(c) Termination of Payment of Rents to the 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, Sublease Payments, late charges, collection costs, including reasonable attorney's fees, and interest, is paid in full, whichever occurs first.

(d) Management of Lot.

Until the foreclosure action is completed or Owner's debt to the Association is paid in full, the Association is assigned the right to evict the tenants and to re-lease the Lot to tenants of the Association's choosing; to cancel or modify the Lease; to make repairs as the Association deems appropriate; and to 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.

(e) 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.

(f) 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 lease or sublease with a tenant in 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 that the Association acted as the landlord and that tenant has a claim against the Association for failing to fulfill such duties in any manner.

(g) 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.

* * * * *

Except as expressly set forth herein, no other amendment, modification or alteration of said By-Laws, is hereby made or intended, and all the terms and conditions of said By-Laws, as amended, shall remain in full force and effect.

**CERTIFICATE OF SECRETARY
OF
MONARCH BAY ASSOCIATION**

I, Elizabeth Lynch, Secretary of Monarch Bay Association, hereby certify that:

The terms and provisions recited in the Amendments to By-Laws of Monarch Bay Association, attached hereto, were approved by the vote or written assent of at least two-thirds (2/3) of the voting power of the Association (Members representing 143 Subleases).

IN WITNESS WHEREOF, I, Elizabeth Lynch, as Secretary of the Association, have executed this Certificate and the attached Amendments to By-Laws of Monarch Bay Association, on December 8, 2003.

Elizabeth L. Lynch
December 8, 2003, Secretary