

RECORDING REQUESTED BY:

CONFORMED COPY

Not Compared with Original

Monarch Bay Terrace Property
Owners Association, Inc.

AND WHEN RECORDED RETURN TO:

MONARCH BAY TERRACE PROPERTY
OWNERS ASSOCIATION, INC.

P.O. Box 3526

Dana Point, CA 92629

Recorded in Official Records, County of Orange
Gary Granville, Clerk-Recorder



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THIS SPACE FOR RECORDER'S USE ONLY

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MONARCH BAY TERRACE

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS amends and restates that certain Declaration of Establishment of Protective Restrictions, Covenants, Conditions, and Reservations recorded on September 15, 1966 in Book 8049, Page 214-226, Instrument No. 8704 in the Official Records of the County of Orange, which encumbers:

Lots 1 through 6, inclusive, of Tract No. 6265, as shown on a map recorded in Book 228, pages 49 through 50, inclusive, of Miscellaneous Maps, records of Orange County, California.

A list of the current property owners of each lot within said Tract is attached hereto as Exhibit "A" for indexing purposes.

I.

DEFINITIONS

1.1 "ASSOCIATION" shall mean and refer to MONARCH BAY TERRACE PROPERTY OWNERS ASSOCIATION, INC. a California, Non-Profit, Mutual Benefit Corporation. Each owner of a lot which is encumbered by this declaration may elect, at the owner's discretion, to become a member of the Association in accordance with the provisions of the Association's Bylaws. Ownership of a lot within the property covered by this Declaration and payment of the Association's dues are the sole qualifications for membership.

1.2 "ARCHITECTURAL COMMITTEE" shall mean and refer to a committee of three members of the Association who are appointed by the Board of Directors on an annual basis.

1.3 "PROPERTY" shall mean all the property covered by this Declaration and is sometimes hereinafter referred to as "said property", "said premises", or "the premises";

WHEREAS, the property described above is subject to certain protective restrictions, covenants, conditions and reservations that were originally recorded by the Grantor, the Laguna Niguel Corporation, or its successor in interest, Avco Community Developers, Inc.; and,

WHEREAS, the required percentage of owners of property in said tract described above have determined that said restrictions shall be amended and superceded by this Declaration;

THEREFORE, it is hereby declared that the following General Plan for the protection, maintenance, improvement and development of said property, is hereby established and all lots, parcels and portions of said property shall be held, leased, sold and conveyed, subject to this Declaration, and each future owner of land therein and each and every parcel of land therein shall be bound by these restrictions, which are declared to be for the benefit of said property. These Covenants, Conditions, and Restrictions shall run with the property and inure to the benefit of each owner, and his/her heirs, successors in interest, and transferees, and shall be enforceable as equitable servitudes.

ARTICLE II General Restrictions

2.1 No building, structure or improvement shall be constructed, erected, altered, placed or permitted to remain on any of said lots or any building site on said premises other than a one-family dwelling designed for occupation by not more than one family together with outbuildings hereinafter permitted. Neither said premises, nor any portion thereof, shall be used for any purpose tending to injure the reputation thereof, or to disturb the neighborhood or occupants of adjoining property, or to constitute a nuisance, or in violation of any public law, ordinance, or regulation in anyway applicable thereto.

2.2 The minimum livable ground floor area of all residential buildings constructed or erected on any of said lots or said premises shall be not less than 1,500 square feet; cellars, basements, patios, porches and garages are specifically excluded from inclusion in minimum livable ground floor area.

2.3 No building, structure, landscaping, tree, bush, or shrub, or other improvement, shall be constructed, grown, maintained, altered, placed or permitted to remain on any of said lots or any building site on said property in such location or manner as will unreasonably obstruct or interfere with the view from another lot in Monarch Bay Terrace. No building or structure may exceed 15 feet in height without approval of the Association. The height is defined (as per Dana Point Municipal Code) as the vertical distance by which the uppermost portion of the roof of a structure extends above the existing grade, finished pad elevation, (excluding the basement finished pad elevation), ceiling of a maximum ten (10) foot, zero (0) inch high basement, or eighteen (18) inches above the flood protection level, whichever is lower as measured from the lowest portion of the structure. No projections of any type shall be placed or permitted to remain above the roof of any residential building with the exception of one or more chimneys and one or more vent stacks. No outside television or radio pole or antenna shall be constructed, erected or maintained on any building or on any lot or building site or connected in such manner as to be visible from the outside of any such building, except for a satellite dish antennae which does not exceed 18" in diameter. All satellite dish antennae must be approved by the Architectural Committee before being installed, as to the location, which shall be situated so as to minimize the visibility from other lots in Monarch Bay Terrace.

2.4 Outbuildings or garages erected and maintained upon any lot or building site on said premises shall conform generally in architectural design and exterior material to the finish of the dwelling house to which they are appurtenant and may be, but need not be, attached to said dwellings. No outbuilding may have any kitchen facilities including stove or other appliances enabling food preparation, and may not be designed or used as a separate living unit.

2.5 No shed, tent or temporary building shall be erected, maintained or used on any lot or building site of said premises; provided, however, that temporary buildings for use and used only for purposes incidental to the initial construction of improvements and dwellings on any portion of the premises may be constructed and maintained provided that said temporary buildings shall be promptly removed upon the completion of such construction work. No boat, truck (over 3/4 ton), recreational vehicle, limousine, commercial vehicle, or trailer shall be stored or parked on the premises unless the same shall be kept in an enclosed area and out of the view of any adjacent lot or street.

2.6 When garages are not in use, garage doors shall be closed. No open carport shall be used for the storage of any item other than an automobile.

2.7 No sign or other advertising device of any character shall be erected or maintained upon any part of the premises or on any lot or building site; provided, however, that one "For Sale" or "For Rent" sign of customary dimensions, which have been approved by the Architectural Committee, may be temporarily placed on the property to advertise the property, and two "Open House" directional signs may be utilized on a temporary basis according to criteria approved by the Architectural Committee. The Association or its agents may summarily remove all unauthorized signs.

2.8 No animals, fowl, reptiles or poultry shall be kept on the premises, except that domestic dogs, cats, birds and fish may be kept as household pets upon said property provided that they are not kept, bred or raised thereon for commercial purposes or in unreasonable quantities.

2.9 No weeds, rubbish, debris, objects or materials of any kind shall be placed or permitted to accumulate upon any portion of the premises which render such portion of the premises unsanitary, unsightly, offensive or detrimental to any property in the vicinity thereof or to the occupants of any such vicinity. All landscaping (shrubs, trees, grass, and other plantings) on every portion of each lot, including the slopes, of every kind and character, shall be neatly trimmed, properly cultivated and maintained continuously by the owner thereof in a neat and orderly condition and in a manner to enhance its appearance, and in such a manner that does not unreasonably interfere with views from other lots in Monarch Bay Terrace.

2.10 No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown, or maintained upon any part of said property. The Association shall have the right, after written notice and a hearing, to enter upon any portion of the premises and, at the expense of the owner of said property, remove infected or diseased plants and/or spray the same and/or take such measures as may be necessary in the opinion of the Association to protect the same and/or the community from the spread of such infection.

2.11 All service yards or service areas and clothes-line areas on any lot on any premises shall be enclosed or fenced in such a manner that such yards or areas will be obstructed from view from any adjacent lot or street.

2.12 No noxious or offensive trade or activity shall be carried on upon any portion of the premises, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood. No garage sales shall be permitted, unless approved by the Architectural Committee.

2.13 All buildings and other structures upon the premises and each portion thereof shall at all times be maintained in good condition and repair and well and properly painted.

2.14 During reasonable hours and after reasonable notice, the Association shall have the right to enter upon and inspect the exterior premises and the improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration are being complied with and shall not be deemed guilty of trespass by reasons thereof.

ARTICLE III Building Sites and Improvements

3.1 Each lot set forth upon and established by the latest subdivision map covering said premises or any portion thereof and recorded in the office of the County Recorder of Orange County, California, shall be a building site as the term is used in this Declaration. No lot or building site or lots or building sites shall be subdivided.

3.2 Before an owner commences the construction of any improvements, the following shall be submitted to the Architectural Committee and approved in writing: two (2) complete sets of detailed preliminary building plans and specifications therefor including a plot plan showing the proposed location thereof on said premises, a floor plan and elevation and outline specifications. If approved, such approval shall be endorsed by the Association upon said preliminary plans and specifications, one (1) set of which shall be retained by Association. Said owner shall also submit to the Architectural Committee for its approval two (2) complete sets of detailed final building plans and specifications. If approved, such approval shall be endorsed by Association upon said final plans and specifications, one (1) set of which shall be retained by the Association; provided, however, that such approval shall not be withheld by Association if such final plans and specifications conform in all respects to the preliminary plans and specifications previously approved and endorsed by the Architectural Committee.

3.3 Within six (6) months after completion of a dwelling and its appurtenances, the owner of said property shall landscape the front yard of his lot on said premises. Before said owner commences such landscaping, or before any owner installs any landscaping, tree, bush, or shrub, such owner shall submit to the Architectural Committee for its approval two (2) complete sets of detailed plans and specifications therefor. If approved, such approval shall be endorsed by the Association upon said plans and specifications, one (1) set of which shall be retained by Association.

3.4 No structure or excavation of any kind, including but not limited to any building, fence, wall, walk, driveway, tent or awning, the plans, specifications and proposed location of which have not first received the written approval of Association or which does not comply fully with such approved plans, specifications and proposed location, shall be erected, made or maintained on the premises.

3.5 No addition to or alteration of any such structure or excavation erected, made or maintained on said premises shall be commenced unless and until plans and specifications covering the proposed addition or alteration shall have been first submitted to and approved by the Architectural Committee in writing. If the Architectural Committee fails to approve said plans, the Owner may appeal to the Board of Directors, whose decision shall be final.

3.6 No tree, bush, shrub, hedge or other planting over three (3) feet in height or which is of the type which may grow to over three (3) feet in height, or which unreasonably blocks the view from another lot within Monarch Bay Terrace, shall be planted, replanted, maintained, or grown on any portion of the premises unless a plan showing the kind of tree, bush, shrub, hedge or other planting and the location thereof shall have been submitted to and approved in writing by the Architectural Committee. In this connection, it is agreed that the owner of said property will, within a reasonable time after being requested by the Association to do so, cut, trim, replant or remove any such tree, bush, shrub, hedge or other planting which in the Association's opinion is of unreasonable height or size, or which unreasonably blocks or interferes with the view of another lot within Monarch Bay Terrace.

It is understood and agreed that neither the Architectural Committee, its members, nor the Association shall be liable for any loss, damage or injury of any kind whatsoever to any person or property as a result of the approval of any plans or specifications submitted or revised in accordance with this Declaration, and the Association makes no representations, express or implied, with respect to said plans and specifications or any work done in accordance therewith.

3.7 When the construction of any building or other structure on said premises, or any addition thereto or alteration thereof, is commenced, the same shall be prosecuted with reasonable diligence until completed, and shall conform to all public laws, ordinances and regulations applicable thereto.

3.8 In the event any improvements or landscaping is erected, installed, planted, replanted, grown or maintained on the premises in violation of any provisions contained in this Article III, the Association or its agents shall have the right, after written notice and a hearing, to enter upon said property and summarily remove said improvements or landscaping, and any expenses incurred by Association because of such removal shall become due and payable from the owner of said property within five (5) days after written demand therefor.

3.9 The Architectural Committee shall be composed of three Members of the Association, appointed annually by the Board of Directors. No fence, wall, building, or other structure, or exterior change or alteration thereof (including painting), or any landscaping, tree, bush, or shrub, shall be commenced, constructed, erected, placed, planted, grown, altered, maintained, or permitted to remain on any real property within Monarch Bay Terrace until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor and structural design and landscaping shall have been submitted to and approved in writing by the Architectural Committee.

3.10 It shall be the duty of the Architectural Committee to consider and act upon all plans submitted for approval pursuant to this Declaration. Within 60 days from the date the Architectural Committee has received all plans and information required in order to evaluate the proposed improvements or landscape, it shall notify the applicant, in writing, whether the plans are approved or disapproved, and if disapproved, the reasons for disapproval. The Architectural Committee shall have the power to adopt reasonable rules and regulations concerning the submission of plans for approval, and the power to adopt reasonable Architectural Standards to be applied, provided such Rules and Regulations, and Architectural Standards are approved by the Board of Directors, and published to the members before being enforced. The Architectural Committee may charge an applicant a reasonable fee for review of plans. Approval shall be based, among other things, on adequacy of site dimensions; adequacy of structural design and materials; conformity and harmony of exterior design with neighboring structures; effect of location and use of improvements and landscaping on neighboring property, improvements, views, operations, and uses; relation of topography, grade, and finished ground elevation of the property being improved to that of neighboring property; proper facing of main elevations with respect to

nearby streets; preservation of natural view and aesthetic beauty; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration.

3.11 No member of the Architectural Committee shall be entitled to any compensation, however, they shall be entitled to be reimbursed by the Association for any expenses incurred in the performance of their duties. The Architectural Committee shall also have the power to determine whether any existing or proposed improvement, tree, bush, or shrub, unreasonably blocks or interferes with the view of any lot within Monarch Bay Terrace, and report to the Board of Directors concerning its findings in that regard. All disputes between owners concerning views must be mediated by the owners first, with a request in writing by the owner who contends that a view is unreasonably blocked, to the neighbor who is allegedly interfering with the view. If mediation is unsuccessful, a written complaint must be sent to the Architectural Committee, or Board of Directors. If any owner disagrees with the findings of the Architectural Committee concerning any view dispute, or concerning any plans submitted to it, the owner may appeal the decision or findings to the Board of Directors.

3.12 Neither the Association, nor the Architectural Committee, shall be liable in damages to anyone submitting plans or specifications to it for approval, or to any other Owner of property affected by the approval, 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.

ARTICLE IV

Enforcement, Modification and Waiver

4.1 Violation or breach of any of the conditions, covenants, restrictions or reservations herein contained shall give the Association and/or any owner or owners of lots or building sites in said property, the right, but not the duty, after written notice and a hearing, to enter upon said property upon or as to which such violation or breach exists, and to abate and remove at the expense of the owner thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity to enforce any of the covenants, conditions, restrictions and reservations, to prevent or enjoin them from violating the same, to cause said violation to be remedied, or to recover damages for said violation. The Association also has the power to adopt a schedule of reasonable fines that may be imposed for violations after an owner is given written notice and an opportunity to be heard in front of the Board of Directors concerning the alleged violation. Each owner of a lot is

responsible for the actions of any tenant who resides on the property, and shall make sure that each tenant is provided with a copy of the CC&Rs and any Rules and Regulations published by the Association. The Association may levy a fine or take other action against the owner of a lot as a result of the actions of the lot owners' tenant(s). There shall be no right of action by an owner or any other person against the Association, or its officers or directors based upon the Association's failure to enforce any of the restrictions.

4.3 Civil Code section 1365.7 shall be applicable which provides that no officer or director of the Association shall be liable in excess of the coverage of insurance carried by the Association to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of the tortious act or omission of the officer or director if all of the following criteria are met: (a) The act or omission was performed within the scope of the officer's or director's association duties; (b) the act or omission was performed in good faith; (c) the act or omission was not willful, wanton, or grossly negligent; (d) the Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made, insurance coverage for general liability of the association, and coverage for individual liability of officers and directors for negligent acts or omissions in that capacity (D&O insurance); provided that the limits of such insurance are at least \$1,000,000.00.

4.4 Prior to the filing of a civil action by either the Association or any Owner to enforce the provisions of this Declaration, the parties shall submit their dispute to binding or non-binding arbitration. However, if any party does not agree to binding arbitration, that party shall not be entitled to recover attorney's fees, even if they would otherwise be recoverable to that party in any such action. If binding arbitration is used, the arbitrator will have jurisdiction over the dispute including the power to issue equitable relief, and judgment may be entered on any such written award. If the parties are unable to stipulate to an arbitrator within 30 days, either party may file a petition with the court to have an arbitrator appointed. The parties shall have the right to discovery in accordance with Code of Civil Procedure section 1283.05. The filing of a small claims action, or a court action to obtain a temporary restraining order (TRO) or preliminary injunction, or other provisional remedy, shall not constitute a violation of this section.

4.5 The result of every act or omission whereby any conditions, covenants, restrictions or reservations herein contained is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against an owner, either public or private, shall be applicable against every such

result and may be exercised by the Association, or the owner or owners of any lot, building site, or portions of said property. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provisions thereof, the prevailing party shall be entitled to recover reasonable attorney's fees, and costs, except as provided in section 4.4 above. Such remedies shall be deemed cumulative and not exclusive.

4.6 Amendment, change, modification or termination of all or any of the restrictions, covenants, conditions or reservations set forth and established in this Declaration may be effected from time to time as to said property or any portion thereof by the vote, or written consent, of not less than seventy per cent (70%) of the then owners of record title to the property then covered by this Declaration.

4.7 The Association, in its sole discretion may allow reasonable variances and adjustments of these covenants, conditions and restrictions in the application of the regulations contained herein. Such variances and adjustments, however, shall not be effective unless they are in written form and duly executed by Association. Furthermore, such variances and adjustments shall be in keeping with the general plan for the development, improvement, maintenance and protection of all lots in the premises covered hereby.

4.8 Each grantee, owner, lessee and occupant of any building site, lot or parcel embraced within said property covered hereby or holder hereafter of a contract of sale covering any such building site, lot or parcel accepts such building site, lot or parcel and the possession thereof subject to all of the restrictions, covenants, conditions and reservations provided for in this Declaration and each and all of the restrictions, covenants, and conditions contained herein is and are for the benefit of each owner of said property or any portion thereof and as otherwise provided in this Declaration, and each and all of said restrictions, covenants and conditions shall inure to and pass with each and every building site, lot or parcel of said property and shall apply to and bind the respective owners of said property and their heirs and successors in interest.

4.9 All of the restrictions, covenants, conditions and reservations contained herein shall be construed together; but if it shall at any time be held that any one or more or any portion thereof is invalid or for any reason becomes unenforceable, no other restriction, covenant, condition or reservation shall be thereby affected or impaired.

4.11 Any and all of the rights and/or powers of the Association may be delegated, transferred, assigned or conveyed to any person, corporation or other association, and wherever Association is herein referred to, such reference shall be deemed to include its successors in interest.

By: Pam Vickery
Pam Vickery, President

On May 10, 2001, before me, Pamala Christolm, the undersigned, a Notary Public in and for said State, personally appeared Pam Vickery personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same in his/her/their authorized capacity(~~ies~~), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

PAMALA L. CHISHOLM
Commission # 1204251
Notary Public - California
Orange County
My Comm. Expires Jan 6, 2003

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CERTIFICATE OF SECRETARY OF ASSOCIATION
REGARDING APPROVAL OF AMENDMENTS

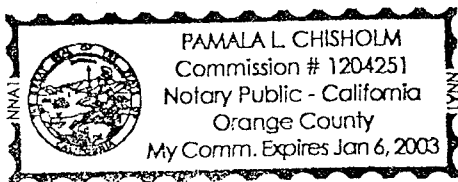
I, Victoria Broadhurst, hereby certify that I am the Secretary of Monarch Bay Terrace Property Owners Association, Inc. The Attached "Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Monarch Bay Terrace" were approved in writing by the Owners of at least three fourths (3/4) of the Lots in Tract 6265. I declare under penalty of perjury that this certificate is true and correct and that it was executed on May 2, 2001 at Laguna Niguel, California.

Victoria Broadhurst
Victoria Broadhurst, Secretary

STATE OF CALIFORNIA)
) SS
COUNTY OF ORANGE)

On May 9, 2001, before me, TAMALA Chisholm, the undersigned, a Notary Public in and for said State, personally appeared Victoria Broadhurst personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Tamara L. Chisholm
Notary Public

EXHIBIT "A"

LIST OF CURRENT OWNERS OF RECORD OF EACH LOT IN TRACT 6265 FOR
INDEXING

1. Tristan E. Krogus, Trustee
2. William P. Moffatt, Trustee
3. Becky Mears and Enzo Vuilo, Trustees of the Frankanna
Holding Group Trust dated 12/3/97
4. Robert Krueger
5. Citizens Business Bank
6. Jan and Trip Hoogland

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