




STAFF REPORT

SAN CLEMENTE ZONING ADMINISTRATOR

Meeting Date: March 18, 2015

PLANNER: John Ciampa, Associate Planner 

SUBJECT: **Minor Exception Permit 15-064 and Minor Architectural Permit 14-484**, a request to consider a remodel and first and second story addition to a legal nonconforming residence. The project also requests a reduction in the required side yard setback for a new second floor deck over the existing garage and an increase in the allowed height of walls and gates along the front property line.

LOCATION: 510 Avenida La Costa

ZONING/GP: Residential Low, Coastal Zone (RL-6-CZ)

BACKGROUND:

- The subject parcel is 11,830 square feet that was improved with a 1,685 square foot, single-family residence, in 1961. The house is located in the Riviera community that was mass graded with tiered pad elevations to take advantage of ocean views.
- The residence is legal non-conforming because it has a 3.82 side yard setback when 6 feet is required.
- The applicant is requesting a Minor Architectural Permit (MAP) to add 839 square feet (49.8 percent) to the legal non-conforming house. 126 square feet would be added to the first floor and 713 square feet for a new second story. The addition would be located within the required setbacks. The project would also modify the design of the house from a 1960s beach cottage to a modern design.
- The applicant is also requesting a Minor Exception Permit (MEP) to reduce the side yard setback for the proposed second floor deck by 10 percent and to increase the allowed height for a gate and walls to five feet within the front yard setback. The increased height for the wall and gates is to deter vandalism and theft because the applicants have had security issues with their vehicles being broken into and vandalized.
- Per Zoning Ordinance Section 17.16.190, Minor Exception Permit is required for the 10 percent (seven inch) reduction in the side yard setback for a deck and to increased height of walls and fences above 42-inches within the front yard setback. The request complies with the findings for the following reasons:

Deck

- The reduction of the side yard setback for the deck is for seven inches and is within the existing buildings footprint.
- The setback reduction would only be necessary for a portion of the deck because the house does not sit perfectly square on the lot.
- The deck would provide separation of 12.5 feet to the adjacent house.

Gates/Walls

- The increased height is necessary to deter future vandalism to the property.

- The MEP is only requested for 34 percent (24 linear feet) of the frontage of the property. The remaining frontage of the property would have walls that do not exceed 42-inches.
- The vehicle and pedestrian gate would be constructed of an open metal railing to maintain the open street scene of the neighborhood. The proposed five foot walls comprise only a small section of the frontage to support the pedestrian and vehicle gates.
- Per Zoning Ordinance Section 17.72.050, Expansion of Nonconforming Structures, additions of up to 50% of the gross floor area, are permitted with the approval of a MAP.
 - The proposed project is 49.8 percent of the gross floor area (839 square feet) to comply with the non-conforming provision of the Zoning Ordinance.
 - The project complies with all other development standards, including but not limited to, height, lot coverage, and setbacks.
 - The project is in keeping with the general appearance of the existing neighborhood in that the house is kept to two stories and should not create any massing impacts to the adjacent properties based on the topography of the area.
- The property has CC&R's that limit the development to 16 feet in height. The applicant understands this and has obtained HOA approval which has been verified by staff.
- Given the findings can be met, and the project does not exceed the 50% threshold for additions, staff supports the proposed request.
- Public notices were sent in compliance with local and state laws and to date staff has received one letter from a neighboring property owner that is provided as Attachment 4.

RECOMMENDATION

STAFF RECOMMENDS THAT the Zoning Administrator approve, MAP 14-484 and MEP 15-064, Donello Residence, subject to the attached Resolution and Conditions of Approval.

Attachments:

1. Resolution No. ZA 15-013
Exhibit 1 Conditions of Approval
2. Location Map
3. Photos
- 4 Letter from Neighboring Property Owner
Plans

RESOLUTION NO. ZA 15-013

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING MINOR ARCHITECTURAL PERMIT 14-484 AND MINOR EXCEPTION PERMIT 15-064, DONELLO RESIDENCE, A REQUEST TO CONSIDER AN EXPANSION OF A LEGAL-NONCONFORMING RESIDENCE, REDUCTION IN THE SIDE YARD SETBACK FOR A DECK, AND THE INCREASE IN THE PERMITTED HEIGHT FOR WALLS AND GATES WITHIN THE FRONT YARD SETBACK FOR A HOUSE LOCATED AT 510 AVENIDA LA COSTA

WHEREAS, on December 1, 2014, an application was submitted and deemed complete on February 19, 2015, by Derek Wolf, 668 N. Coast Hwy, #215, Laguna Beach, CA 92651, for Minor Architectural Permit (MAP) 14-484 and Minor Exception Permit 15-064, a request to consider remodel and first and second story addition to a legal non-conforming residence, reduction in the side yard setback for a deck, and a increase in the permitted height of gates and walls within the front yard setback for a house located at 510 Avenida La Costa. The subject site is in the Residential Low Density and Coastal Zone zoning districts (RL-6-CZ). The site's legal description is Lot 27, of Tract 2964 and Assessor's Parcel Number 690-191-17; and

WHEREAS, the Planning Division completed an initial environmental assessment of the above matter in accordance with California Environmental Quality Act (CEQA) and recommends that the Zoning Administrator determine this project categorically exempt from CEQA as a Class 1 and Class 3 exemptions pursuant to CEQA Guidelines Section 15301(e) and 15303(e) given that the project involves an addition to an existing structure that increases existing floor area less than 50 percent or 2,500 square feet and includes accessory structures including gates and walls; and

WHEREAS, on December 11, 2014, and February 5, 2015, the City's Development Management Team reviewed the proposed project for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

WHEREAS, on March 18, 2015, the Zoning Administrator held a duly noticed public hearing on the subject application and considered evidence presented by the City staff, the applicant, and other interested parties.

NOW, THEREFORE, the Zoning Administrator of the City of San Clemente hereby resolves as follows:

Section 1: The project is categorically exempt from CEQA as a Class 1 and Class 3 exemptions pursuant to CEQA Guidelines Section 15301(e) and 15303(e) because the project involves an addition to an existing structure that increases existing floor area less than 50 percent or 2,500 square feet and includes accessory structures including walls and gates.

Section 2: With regard to MAP 14-484, the Zoning Administrator finds as follows:

- A. The architectural treatment of the project complies with the San Clemente General Plan, in that the project is consistent with policies related to maintaining the character of neighborhoods and ensuring projects are compatible with surrounding development.
- B. The architectural treatment of the project complies with this title in areas including, but not limited to, height, setback, color, etc. in that the addition complies with all development standards with the exception of the side yard setback which renders the property legal-nonconforming.
- C. The architectural treatment of the project complies with the architectural guidelines in the City's Design Guidelines in that the scale, mass, form, setbacks, and materials are compatible with adjacent structures and the pattern of development in the neighborhood.
- D. The general appearance of the proposal is in keeping with the character of the neighborhood in that the residence will continue to be single-family, the residence will not extend closer to the coastal canyon edge. The existing neighborhood has an eclectic mix of architectural styles, both one- and two-stories; the proposed project is modern in style.
- E. The proposal is not detrimental to the orderly and harmonious development of the City in that the scale, mass, form, of the addition is in character with the neighborhood and comply with the development standards. The gates and walls will not be detrimental to the orderly and harmonious development of the City because the fencing will have an open design to maintain the open street scene and would not create any line of sight obstructions.

Section 3: With regard to MEP 15-064, the Zoning Administrator finds as follows:

- A. The requested minor exception will not interfere with the purpose of the zone or the standards of the Residential Low zoning district as the request is to continue the single family residential use.
- B. The neighboring properties will not be adversely affected as a result of the approval of the minor exception permit in that:
 - I. The reduction of the side yard setback for the deck is for seven inches and is within the existing buildings footprint.
 - II. The setback reduction would only be necessary for a portion of the deck because the house does not sit perfectly square on the lot.
 - III. The increased height for the gates and walls is necessary to deter future vandalism to the property.
 - IV. The MEP for the gates and walls is only requested for 34 percent (24 linear feet) of the frontage of the property. The remaining frontage of the property would have walls that do not exceed 42-inches.
 - V. The vehicle and pedestrian gate will be constructed of an open metal railing

to maintain the open street scene of the neighborhood. The proposed five foot walls comprise only a small section of the frontage to support the pedestrian and vehicle gates.

- C. The proposal is not detrimental to the orderly and harmonious development of the City in that the gates will be constructed of open metal gates to maintain the open street scene and not create any issues with line of sight for vehicles backing out of the driveway.

Section 4: The Zoning Administrator of the City of San Clemente hereby approves MEP 15-064 and MAP 14-484, Donello Residence, subject to the above Findings and the Conditions of Approval attached hereto as Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Zoning Administrator of the City of San Clemente on March 18, 2015.

SAN CLEMENTE ZONING ADMINISTRATOR

James Pechous, Zoning Administrator

CONDITIONS OF APPROVAL
MAP 14-484 MEP 15-064, Donello Residence

1. The applicant or the property owner or other holder of the right to the development entitlement(s) or permit(s) approved by the City for the project, if different from the applicant (herein, collectively, the "Indemnitor") shall indemnify, defend, and hold harmless the City of San Clemente and its elected city council, its appointed boards, commissions, and committees, and its officials, employees, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (i) the City's approval of the project, including without limitation any judicial or administrative proceeding initiated or maintained by any person or entity challenging the validity or enforceability of any City permit or approval relating to the project, any condition of approval imposed by City on such permit or approval, and any finding or determination made and any other action taken by any of the Indemnitees in conjunction with such permit or approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (ii) the acts, omissions, or operations of the Indemnitor and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising the Indemnitor with respect to the ownership, planning, design, construction, and maintenance of the project and the property for which the project is being approved. The City shall notify the Indemnitor of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that the Indemnitor defend such Action with legal counsel reasonably satisfactory to the City. If the Indemnitor fails to so defend the Action, the City shall have the right but not the obligation to do so and, if it does, the Indemnitor shall promptly pay the City's full cost thereof. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this condition shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of the City. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]* (PIng.)_____
2. Thirty (30) days after project approval, the owner or designee shall submit written consent to all of these imposed conditions of approval to the Community Development Director or designee. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]* (PIng.)_____
3. Minor Architectural Permit 14-484 and Minor Exception Permit 15-064 shall become null and void if the use is not commenced within three (3) years from the date of the approval thereof. Since the use requires the issuance of a building

- permit, the use shall not be deemed to have commenced until the date that the building permit is issued for the development. [Citation - Section 17.12.150.A.1 of the SCMC] (PIng.) _____
4. A use shall be deemed to have lapsed, and MAP 14-484 MEP 15-064 shall be deemed to have expired, when a building permit has been issued and construction has not been completed and the building permit has expired in accordance with applicable sections of the California Building Code, as amended. [Citation - Section 17.12.150.C.1 of the SCMC] (PIng.) _____
 5. The owner or designee shall have the right to request an extension of MAP 14-484 MEP 15-064 if said request is made and filed with the Planning Division prior to the expiration date as set forth herein. The request shall be subject to review and approval in compliance with section 17.12.160 of the Zoning Ordinance. [Citation - Section 17.12.160 of the SCMC] (PIng.) _____
 6. Prior to the issuance of building permits, the applicant or designee shall include within the first four pages of the working drawings a list of all conditions of approval imposed by the final approval for the project. [Citation - City Quality Assurance Program] (PIng.) _____
 7. Prior to issuance of certificate of occupancy, the project shall be develop in conformance with the site plan, floor plans, elevations, details, and any other applicable submittals approved by the Zoning Administrator on March 18, 2015, subject to the Conditions of Approval. Any deviation from the approved plans or other approved submittal shall require that the owner or designee submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the City Planner or designee. If the City Planner or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain the approval of the Zoning Administrator or Planning Commission. [Citation - Section 17.12.180 of the SCMC] (PIng.) _____
 8. 50 percent of the front yard setback area shall have a surface that remains permeable and is to be landscaped and permanently maintained, as provided for in Sections 17.68.040 of the Zoning Ordinance. [Citation - Section 17.68.040 of the SCMC] (PIng.) _____
 9. A separate Building Permit is required. Plans to construct new building, add or alter the existing building configuration, change in use, add or alter structural, mechanical, electrical or plumbing features of the project must be reviewed and approved through a separate building plan check / permit process. (Bldg.) _____
[S.C.M.C – Title 8 – Chapter 8.16- Fire Code, Title 15 Building Construction - Chapters 15.08, 15.12, 15.16, 15.20]

10. Project has not been reviewed for Building Code compliance. Prior to issuance of building permits, code compliance will be reviewed during building plan check. (Bldg.)_____
[S.C.M.C – Title 8 – Chapter 8.16- Fire Code, Title 15 Building Construction - Chapters 15.08, 15.12, 15.16, 15.20]
11. Prior to issuance of building permits, applicant shall secure all utility agencies approvals for the proposed project. (Bldg.)_____
[S.C.M.C – Title 15 Building Construction]
12. Building permits shall not be issued unless the project complies with all applicable codes, ordinances, and statutes including, but not limited to, the Zoning Ordinance, Grading Code, Security Ordinance, Transportation Demand Ordinance, Water Quality Ordinance, Title 24 of the California Code of Regulations as adopted by the City including, but not limited to the California Administrative, Building, Electrical, Plumbing, Mechanical, Energy, Green, and Fire Codes. (Bldg.)_____
[S.C.M.C – Title 8 – Chapter 8.16 – Fire Code, Title 15 Building and Construction Chapters 15.08, 15.12, 15.16, 15.20, 15.21, Title 16 Subdivisions, Title 17 Zoning]
13. Prior to the issuance of building permits, the owner or designee shall pay all applicable development fees in effect at the time, which may include, but are not limited to, Regional Circulation Financing and Phasing Program (RCFPP), park acquisition and development, water and sewer connection, drainage, Public Facility Construction, transportation corridor, Avenida La Pata Supplemental Road Fee and school fees, etc. (Bldg. Permit Tech)_____
[S.C.M.C. – Title 15 Building and Construction, Chapters 15.52, 15.56, 15.60, 15.64, 15.68, 15.72]
14. Prior to the Building Division's approval to pour foundations, the owner or designee shall submit evidence to the satisfaction of the City Building Official or designee that a registered civil engineer that is licensed to do surveying or land surveyor has certified that the forms for the building foundations conform to the front, side and rear setbacks are in conformance to the approved plans. (Bldg.)_____
[S.C.M.C – Title 15 – Chapter 15.08, Title 17- Chapter 17.24]
15. Prior to the Building Division's approval of the framing inspection, the owner or designee shall submit evidence to the satisfaction of the City Building Official or designee that a registered civil engineer that is licensed to do surveying or land surveyor has certified that the height of all structures are in conformance to the approved plans. (Bldg.)_____
[S.C.M.C – Title 15 – Chapter 15.08, Title 17- Chapter 17.24]
16. Prior to the issuance of any permits, in the event that Grading Plans are required due to anticipated soil processing placing or recompacting 50 cubic yards of soil or more, plan check fees shall be submitted for the Engineering Department plan

check of soils reports and grading plans. [Citation – Fee Resolution No. 08-81 and Section 15.36 of the SCMC] (Eng.)_____

17. Prior to the issuance of any permits, in the event that Grading Plans are required due to anticipated soil processing placing or recompacting 50 cubic yards of soil or more, the owner or designee shall submit for review, and shall obtain the approval of the City Engineer or designee for, a soils and geologic report prepared by a registered geologist and/or geotechnical engineer which conforms to City standards and all other applicable codes, ordinances and regulations. [Citation – Section 15.36 of the SCMC] (Eng.)_____
18. Prior to the issuance of any permits, in the event that Grading Plans are required due to anticipated soil processing placing or recompacting 50 cubic yards of soil or more, the City Engineer shall determine that development of the site shall conform to general recommendations presented in the geotechnical studies, including specifications for site preparation, treatment of cut and fill, soils engineering, slope stability analysis, and surface and subsurface drainage. [Citation – Section 15.36 of the SCMC] (Eng.)_____
19. Prior to the issuance of any permits, in the event that Grading Plans are required due to anticipated soil processing placing or recompacting 50 cubic yards of soil or more, the owner or designee shall submit for review, and obtain the approval of the City Engineer, a precise grading plan, prepared by a registered civil engineer, showing all applicable onsite improvements, including but not limited to, grading, building pad grades, storm drains, sewer system, retaining walls, water system, etc., as required by the City Grading Manual and Ordinance. [Citation – Section 15.36 of the SCMC] (Eng.)_____
20. Prior to the issuance of any permits, in the event that Grading Plans are required due to anticipated soil processing placing or recompacting 50 cubic yards of soil or more, the owner shall demonstrate to the satisfaction of the City Engineer that the project meets all requirements of the Orange County National Pollutant Discharge Elimination System (NPDES) Storm Drain Program, and Federal, State, County and City guidelines and regulations, in order to control pollutant run-off. The owner shall submit for review, and shall obtain approval of the City Engineer for, plans for regulation and control of pollutant run-off by using Best Management Practices (BMP's). [Citation – Section 13.40 of the SCMC] (Eng.)_____
21. Prior to the issuance of any permits, in the event that Grading Plans are required due to anticipated soil processing placing or recompacting 50 cubic yards of soil or more, the owner shall provide surety, improvement bonds, or irrevocable letters of credit for performance, labor and materials as determined by the City Engineer for 100% of each estimated improvement cost plus a 10% contingency, as prepared by a registered civil engineer as required and approved by the City Attorney or the City Engineer, for each applicable item, but not limited to, the

following: grading earthwork, grading plan improvements, retaining walls, frontage improvements; sewer lines; water lines; storm drains; and erosion control. [Citation – Section 15.36 of the SCMC] (Eng.)_____

22. Prior to issuance of any permits for applicable projects with building permit valuations exceeding \$50,000, the owner or designee shall submit for review, and shall obtain the approval of the City Engineer or designee for frontage improvement plans. The owner or his designee shall be responsible for the construction of all required frontage and onsite improvements as approved by the City Engineer including but not limited to the following: [Citation – Section 15.36, 12.08.010, and 12.24.050 of the SCMC] ■ ■ (Eng.)_____
- A. Per City Municipal Code Section 12.08.010 (A), when building permit valuations exceed \$50,000, unless a waiver is obtained from the City Manager, the owner or designee shall construct sidewalk along the property frontage. This requirement includes construction of compliant sidewalk up and around drive approach or other obstructions to meet current City standards (2% cross fall) when adequate right-of-way exists. When adequate right of way does not exist, the City may require a Condition of Approval requiring a sidewalk easement in order to install compliant sidewalk. Since the street right-of-way is approximately 7 feet behind the curbface a sidewalk easement is not anticipated to be required to be granted to the City for the sidewalk to go up and around the drive approach.
 - B. An Engineering Department Encroachment Permit is required for any work in the public right-of-way.

All Conditions of Approval are standard, unless indicated as follows:

- Denotes modified standard Condition of Approval
- ■ Denotes a project specific Condition of Approval



LOCATION MAP

ATTACHMENT 2

MAP 14-484/MEP 15-064, Donello Residence
510 Avenida La Costa





FEB 17 2015

SAN CLEMENTE
PLANNING DIVISION

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February 8, 2015

City of San Clemente
Attn: James Holloway Zoning Administrator
910 Calle Negocio, Suite 100
San Clemente, CA 92673

RE: 510 Avenida Lacosta Permit 13-286 and 512 Avenida Lacosta

Dear Sirs:

I own the property at 506 Avenida Lacosta.

My understanding is the city granted a permit to build a two story structure in excess of the 16 foot height limit at 510 Avenida Lacosta over my objections and in clear violation of the Covenants Conditions and Restrictions of October 1, 1956 and as amended October 20, 1999. I enclose for your review a copy of the Declarations as amended.

The relevant section pertaining to height restrictions is contained in Article 9. Throughout the Declarations there is language to the effect the Declarations are for the benefit of the other parcels and owners in the Riviera District. The restrictions are enforceable by any of the lot owners.

I am now informed and believe the owners of 512 Lacosta, Norman and Lisa Scheel, have obtained permission to build a structure also in excess of 16 feet above the natural grade and that it also has two stories of living quarters. Thereafter, the owners of 510 Lacosta, John and Jill Donello applied for another approval to amend their building plans as their view was impaired by the Scheel's proposed structure. This new plan is pending at the newly constituted Riviera Committee of Architecture.

My contention is that the prior Committee of Architecture exceeded its authority in approving both the Donello and the Scheel plans and committed a taking of other homeowners property rights by failing to disclose what they were doing in violation of the Declarations. As such, the prior actions of the Committee of Architecture are void. In fact both the Donellos and the Scheels knew that it would take an amendment of the Declarations to have the lawful approval of the Committee of Architecture and therefore participated in the impairment of the Declarations and

cannot benefit from their actions to the loss of the other lot owners.

What happened during the approval process by the Committee is no secret. The Donello's architect claimed that Article 9 language was ambiguous and could be interpreted to mean the 16 foot height limitation could be measured from an upslope of the natural grade outside the perimeter of the principal residential building. The clear and unambiguous language of the Article 9 and common sense do not allow for such an interpretation.

On the matter of the second story, there is not even any pretense of an ambiguity. The Declaration expressly states which lots may have a second story. Neither the Donello or Scheel lots are permitted to have second stories. The argument goes that there are some lots which contain living quarters above partially or completely excavated garages and that such structures are precedence for allowing two stories. In fact there is not one single lot with two stories of living quarters.

The real remedy of the Donellos and the Scheels is to attempt to amend the Declarations to allow what they want to build. At this point I believe the current board and the Committee of Architecture agree with my position.

Based on the foregoing discussion and the Declarations, I hereby request that the City of San Clemente revoke any approvals or permits to build the structures in question and allow the homeowners of the Riviera District to go through the process of considering the proposed structures at 510 and 512 Lacosta.

Sincerely,


JOHN W. BOYER, ESQ.

JWB/jwb
Encl.

cc.

Riviera Homeowners Association
Steve Evans, President
2407 Calle Majorca
San Clemente, CA 92672

Jill and John Donello
510 Avenida Lacosta
San Clemente, CA 92672

Norman and Lisa Scheel
512 Avenida Lacosta
San Clemente, CA

The DECLARATION OF ESTABLISHMENT OF RESTRICTIONS, recorded October 1, 1956, was amended October 20, 1999. This FIRST AMENDMENT TO THE DECLARATION OF ESTABLISHMENT OF RESTRICTIONS is presented here, followed by the original document. These documents apply to all 114 parcels. This web site is for the convenience of the Riviera District homeowners and real estate agents.

The Orange County Clerk/Recorder can provide copies of the documents.
The First Amendment is 19990736924.
The revisions apply to Instrument 131823, Book 3662, and pages 305-313.

FIRST AMENDMENT TO DECLARATION OF ESTABLISHMENT OF RESTRICTIONS

RECITALS

- A. Whereas, Bank of America executed that certain "Declaration of Establishment of restrictions" dated September 20, 1956 which was recorded on October 1, 1956, as Instrument Number 131823, in Book 3662, Pages 305 to 313 Inclusive, in the office of the Recorder of Orange County, California (the "Declaration"); and
- B. Whereas, the Declaration affects and encumbers the following real property located in the City of San Clemente, County of Orange, State of California:
All of Tract 2964, consisting of one hundred fourteen (114) lots, numbered consecutively 1 to 114, inclusive, as per a map recorded in Book 90, Pages 1,2,3,and 4 of Miscellaneous Maps, in the office of the Recorder of Orange County, California ("Tract 2964"); and
- C. Whereas, Bank of America, (now know as "Bank of America NT&SA"), resigned as Declarant under the terms of the Declaration and relinquished its right under the Declaration to appoint members of the committee of Architecture in an instrument entitled "Relinquishment of the Right" dated December 15, 1998 and recorded on December 22, 1998, as Instrument Number 1998-00883875, in the office of the Recorder of Orange County, California; and
- D. Whereas, pursuant to Article 3, Section 4 of the Declaration, a majority of the owners of the lots in Tract 2964 now have the right to elect and appoint the members of the Committee of Architecture,

WHEREFORE, IT IS AGREED AS FOLLOWS:

This document (hereafter called the "First Amendment") amends the Declaration as follows:

1. The first paragraph following Article 3, Condition 17 which begins with the words "PROVIDED HOWEVER ..." is amended to read as follows: "PROVIDED, HOWEVER, that said conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until December 31, 2006, after which time said conditions and restrictions shall be automatically extended for successive twenty (20) year periods, absent the recording of an instrument signed by a majority of the then owners of the lots agreeing to a modification or termination of said conditions and restrictions."
2. The second paragraph following Article 3, Condition 17 which begins with the words "PROVIDED FURTHER..." is amended to read as follows: "PROVIDED, FURTHER,

that the foregoing conditions and/or restrictions shall operate as covenants running with the land, and any breach of such covenants may be enjoined, abated or remedied by appropriate proceedings by the owner of any of said lots, including the bona fide owner or holder of an agreement of sale covering any of the said lots, but by no other person or entity."

3. Except as set forth herein, the terms and conditions of the Declaration shall remain unchanged and in full force and effect. In the event of a conflict between the terms of this First Amendment and the Declaration, the terms of the First Amendment shall control. This First Amendment may be executed in multiple counterparts, each of which shall constitute one and the same First Amendment.

IN WITNESS WHEREOF, the owners comprising a majority of owners of the lots subject to the Declaration have executed this First Amendment in counterpart by each signing the Certification of Individual Lot Owner attached hereto and made a part hereof.

DECLARATION OF ESTABLISHMENT OF RESTRICTIONS

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association, having its principal place of business in San Francisco, California, sometimes hereinafter referred to as Declarant, hereby declares:

ARTICLE 1

THAT the owner of all of Tract 2964 consisting of 114 lots, numbered 1 to 114, inclusive, in the City of San Clemente, County of Orange, State of California, as per map recorded in Book 90, Pages 1,2,3 and 4 of Miscellaneous Maps, Records of said County.

ARTICLE 2

THAT said Bank of America National Trust and Savings Association desire to create, establish and place on said tract above described certain conditions, covenants, and restrictions hereinafter set forth.

ARTICLE 3

THAT said, BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION hereby certifies and declares that there shall be and that there is hereby imposed upon said tract and all of the lots contained therein, the following conditions, restrictions, reservations, covenants and easements (hereinafter for brevity referred to as "conditions") which shall apply to and shall bind the lots in said tract and each of them, and the owner or owners thereof and each of them and their Executors, Administrators, Heirs, Devisees, and Assigns and all of their successors in interest (and wherein hereafter benefits are created in favor of or burdens imposed upon said owner or owners, such benefits and burdens shall be deemed to run in favor of and shall be deemed to have been imposed upon the Executors, Administrators, Heirs, Devisees and all successors in interest of said owner or owners) that said conditions are imposed pursuant to a general plan for the improvement of said tract, and each and every lot therein contained, and are intended to be and are designed for a mutual

benefit of the owners of the lots in said tract and shall inure to and pass with each and every lot therein. Said conditions are imposed upon each and every lot in said tract, as an obligation or charge against the some for the benefit of each and every other lot in said tract and the owner or owners thereof, and with the right of enforcement of said conditions and each of them vested in the owner or owners of any one or more of the other lots in said tract.

SAID CONDITIONS are as follows, to-wit:

1 – That said lots shall be used for no other purpose than to erect and maintain thereon a single-family residence with appurtenant outbuildings.

2 – That no professional occupation, business, industry, factory or commercial workshop shall be conducted on any of said lots; nor shall any condition be permitted thereon which may be, or become, an annoyance or nuisance to the neighborhood, or which shall cause or create any excessive smoke, dust, fumes, odors, or noise.

3 – That for the purpose of these restrictions, a "building site" shall be defined as a lot, as shown on the Record Map of said Tract No. 2964, or as a single holding or parcel which shall have a frontage or not less than 40 feet on a dedicated street, an average width of not less than 60 feet and a total area of not less than 6,000 square feet, and that no building shall be constructed on a any portion of said lots which is not a "building site", in accordance with the above definition; except that Lots 40 and 41 may be divided into not more than two parcels each, having an area of not less than 6,000 square feet, subject to approve thereof by the hereinafter mentioned Committee of Architecture.

4 – That no building, fence, wall, gates or other structure shall be erected on said lots until and unless the plans and specifications thereof shall have been approved in writing by a Committee of Architecture to consist of three persons and to be appointed as herein provided. So long as BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION shall elect to appoint the said committee, it shall have the power to do so. However, Bank shall have the right of election not to appoint said Committee after 75% of the lots composing said Tract No. 2964 have been improved with residential buildings as permitted herein. Should Bank thereafter elect not to appoint the said committee it shall give notice to that effect, and such record shall impart notice of such election to all persons and shall be conclusive evidence thereof; and, in that event, a majority of the resident owners of lots in the said Tract No. 2964 shall have the power to appoint, in writing, a new Committee to take the place of that appointed by the Bank.

The term "appointing power", as used herein, shall be deemed to mean the Bank until and if it elects to abandon its powers of appointment as provided herein, and thereafter a majority of the said resident owners. Appointees shall hold their appointment at the pleasure of the appointing power. Full power is reserved hereby to the appointing power to remove any member so appointed and to make further appointments from time to time to fill any vacancies in the membership of the said Committee. The recordation of any instrument of appointment or removal executed by the said Bank, while it is exercising the appointing power, shall impart notice to all persons of the Committee therein set forth and shall be conclusive in favor of all such persons; and any such instrument of appointment or removal purporting to be executed by a majority of such resident owners while they are entitled to exercise the appointing power shall impart similar notice and shall be conclusive evidence in favor of all persons until cancelled or modified by some decree or instrument thereafter recorded. The decision of the said Committee upon any plans submitted to it shall be final, and no structure of any kind shall be erected upon any of said lots until plans thereof shall receive the written approval of the said Committee; provided, however, that if the said Bank elects to abandon its

power of appointment, and if the majority of the said resident owners thereafter fail or neglect to appoint a new Committee, this provision of this paragraph shall not apply so long as the said resident owners fail or neglect to make such appointment. Whenever practicable, such approval shall be endorsed upon the plans and signed by a majority of the Committee. Such endorsement on any plans or specification filed as required by law shall constitute conclusive evidence of the approval of the said Committee. Any power or right vested by this paragraph in the said Bank may be exercised by its successor, or successors, in the same manner and with the same effect as the said Bank. Notwithstanding anything to the contrary herein contained, the right and power is hereby reserved to the Committee of Architecture, because if the irregular topography in said Tract No. 2964, reasonable variations in the building requirements and set back distances herein and hereafter established, provided said variations are, in the sole opinion of the Committee of Architecture, not injurious or undesirable to the neighborhood in which they occur, and the approval of the Committee of Architecture be given thereto in writing.

5 – That no building shall be moved or placed on any of said lots and any building or structure, including fences or walls constructed thereon, shall be constructed from new material and, if wood, shall be painted or stained with at least two (2) coats upon completion, unless specifically otherwise approved by the Committee of Architecture.

6 – That no garage, shack, trailer, outbuilding, tent building, structure, or shelter shall be erected, placed or maintained on any portion of said lots at any time prior to the erection of the main residential building in connection therewith, nor shall any trailer, tent, shelter, or other temporary structure be occupied as a residence or living quarters on said lots at any time.

7 – That no building shall be constructed on said lots nearer than six (6) feet to any side lot line, excepting that on Lots 10, 11, 12, 13, 19, 20, 21, 31, 32, 33, 34, 42, 55, 56, 57, 58, 59, 60, 84, and 85 of said Tract No. 2964 a building may be constructed not nearer than five (5) feet to any side line of the aforementioned lots, and excepting that on Lots 1 to 33, inclusive, 41 to 44, inclusive, and 60 to 114, inclusive, of said Tract 2964, a detached garage may be erected within two (2) feet of any side line of the latter mentioned lots only when the front thereof is 75 or more feet from the front line of the lot, provided that the said side line of the latter mentioned lots is not also a street frontage. The side yards specified herein shall exclude the outside wall or line of any fireplace or chimney used in connection with the principal residential building.

8 – That no building shall be erected on any of said lots clearer to the property line on a street frontage than the set-back line shown on the recorded map of said Tract 2964, excepting that, upon approval of the Committee of Architecture, a garage may be erected not closer than five (5) feet to a property line on a street frontage only if such garage shall be located in an embankment or slope so that two-thirds (2/3) of the total area of the side and rear walls thereof shall be below ground level.

9 – That no building or other structure erected on any of said lots shall exceed more than one (1) story or sixteen (16) feet in height above the highest point of the natural grade of the lot on the perimeter of this principal residential building, excepting that on Lots 29, 30, 31, 32, 42, 43, 44, 111, 112, 113, and 114 of said Tract No. 2964 any building may be not more than two (2) stories or 25 feet (25) feet in height above the highest point of the natural grade of the lot on the perimeter of the principal residential building. Natural grade of the lot is hereby defined as being the grade of the lot as of the time of the first sale thereof by the subdividers.

10 – that no fence, hedge, or wall having a height greater than six (6) feet shall be erected or maintained upon any of said lots, nor shall any wall, fence, or hedge situated within the front line set-back have a height greater than three (3) feet.

11 – That no residential building shall be erected on Lots 1 to 4, inclusive, 45 to 63, inclusive, 79, 80, 88, 89, 99, 100 and 105 to 110 inclusive, which contains less than 1350 square feet of enclosed ground floor space, excluding porches, patios, basements, cellars, and any garage incorporated into and forming a part of any such building. No residential building shall be erected on any of the other lots in said Tract 2964 which contain less than 1200 square feet of enclosed ground floor space, excluding porches, patios, basements, cellars, and any garage incorporated into and forming a part of any such building.

12 – That construction of any structure commenced on any of said lots shall be prosecuted with reasonable diligence until completion thereof and in no case shall the construction period exceed nine (9) months.

13 – That no stable, poultry house or yard, pigeon loft or house, or rabbit hutch or house, shall be constructed or maintained on any of said lots. No horses, cattle, cows, goats, sheep, rabbits, hares, or other animals, pigeons, pheasants, game birds, game or other birds, fowls or poultry shall be raised, kept or permitted upon any of said lots or any part thereof, except that dogs, cats, and small aviary or cage birds may be kept on any of said lots, provided that they are not kept, bred or raised thereon for commercial purposes or in an unreasonable manner.

14 – That no trash, rubbish, or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of any of said lots so as to render said premises unsanitary, unsightly, offensive, or detrimental to any other lot or lots in said Tract No. 2964, or to the occupant thereof.

15 – That no sign of any character, except one (1) ordinary "For Sale", "For Rent", or "Open for Inspection" sign shall be placed or maintained on any of said lots. Any such sign so placed or maintained on any of said lots shall have a surface area of not more than six (6) square feet. Should any sign or signs be erected or maintained upon any of said lots in violation of this provision, Declarant, or its duly authorized agent, may and they or either of them are hereby authorized to enter upon any of said lots to remove any and all such unauthorized signs.

16 – That the water drainage of the building site of any lot shall not be changed to make the water flow in any direction other than toward the street or streets upon which the particular lots faces.

17 – Anything herein contained to the contrary notwithstanding, Declarant shall have the right to permit maintenance of a temporary real estate office upon any lot or lots in the said Tract No. 2964 together with necessary and suitable advertising signs for the purpose of conducting the proper development, sale and management of the lots in said Tract No. 2964.

PROVIDED, HOWEVER, that said conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until December 31, 1986 after which time said conditions and restrictions shall be automatically extended for a further period of twenty (20) years unless an instrument signed by a majority of the then owners of the lots has been recorded

agreeing to change said conditions and restrictions in whole or in part or to terminate same.

PROVIDED, FURTHER, that a breach of any of the foregoing conditions and/or restrictions shall cause said premises to revert to the Declarant, its successors or assigns, each of whom respectively shall have the right of immediate re-entry upon said premises in the event of any such breach. And the foregoing conditions and/or restrictions shall operate as covenants running with the land, and a breach of any such covenants may be enjoined, abated or remedied by appropriate proceedings by Declarant, its successors or assigns, or by the owner of any of said lots, including the bonafide owner or holder of an agreement of sale covering any of said lots, but by no other person.

PROVIDED, FURTHER, that a breach of any of the foregoing conditions, or a re-entry by reason of any such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith, and for value, as to said premises, or any part thereof, but such conditions shall be binding upon and effective against any owner of said premises, whose title is acquired by foreclosure, Trustee's Sale or otherwise.

PROVIDED, FURTHER, no delay or omission on the part of the Declarant its successors or assigns, or of any other subsequent owners of any of said lots, in exercising any right or power in the event of a breach of any of the foregoing conditions, shall be construed as a waiver thereof or acquiescence therein, but any breach of conditions occurring shall be construed as continuous in character, and Declarant, its successors or assigns, or any subsequent owners of any of said lots, at any time during the continuance thereof, or upon the occurrence of any subsequent event or breach of conditions, may exercise their every right or power.

PROVIDED, FURTHER, that nothing herein contained shall be construed to be a guaranty, warranty, or representation as to any present or future existence or non-existence of any zoning law, ordinance, or regulation of any Governmental or political organization or authority concerning or limiting the type or character of or the right to erect buildings or structures on any of said lots, or the use to which the same may be a part.

PROVIDED, FURTHER, that if any paragraph, section, sentence, clause, or phrase of the conditions herein contained shall be, or become, illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be illegal or against public policy, the remaining paragraphs, sections, sentence, clause or phrases herein contained shall not be affected thereby.

IN WITNESS WHEREOF, said BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION on this 20th day of September, 1956 caused this instrument to be executed by its officers hereby duly authorized.

RECORDED AT REQUEST OF: Orange Co. Title Co.; 3662, 305; October 1, 1956.

Notarized by Virginia LaCroix, September 28, 1956.