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California Government Code**

Notice

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Crown Pointe Estates at Malibu, LLC
21800 Oxnard St, Ste 1190
Woodland Hills CA 91367



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**SECOND AMENDED AND COMPLETELY RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND
GRANT AND RESERVATION OF EASEMENTS
FOR
MARISOL - TRACT NOS. 4483 AND 5457
(A Planned Residential Development)**

**THIS DECLARATION CONTAINS AN ALTERNATIVE DISPUTE RESOLUTION PROVISION WITH A
WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY.
YOU MUST READ THE PROVISION CAREFULLY (PAGE XV-1, ARTICLE XV,
SECTION 15.02) AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.**

Document Prepared By:
Murakami Law Office
371 Van Ness Way, Suite 130
Torrance, CA 90501
Tel: (310) 961-5260

[PD Multi: 03/10/06]
[This Set: 01/05/11]

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**SECOND AMENDED AND COMPLETELY RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND
GRANT AND RESERVATION OF EASEMENTS FOR
TRACT NOS. 4483 AND 5457**

This Declaration is dated this 12th day of January, 2011 (for reference purposes), by Crown Pointe Estates at Malibu, LLC, a California Limited Liability Company ("Declarant").

RECITALS

- A. The First Amended and Completely Restated Declaration of Covenants, Conditions, Grant and Restrictions and Reservation of Easements of CROWN POINTE ESTATES ("Prior Declaration") was recorded November 18, 2005, as Instrument No. 20051118-0284965, Official Records of Ventura County affecting that certain real property in Ventura County, State of California described as:
- Lots 1 through 9, inclusive, and Lot 11 of Tract No. 4483, County of Ventura, State of California, as per Map filed in Book 146, Pages 19 through 22, inclusive, of Miscellaneous Records (Maps), in the Official Records of the County Recorder of said County (the "Original Phase 1 Property").
- B. Pursuant to Article XI, Section 11.2 of the Prior Declaration, the Prior Declaration may be amended by an amendment executed by fifty-one percent (51%) majority of the voting power of the Association, fifty-one percent (51%) majority of the voting power of the Association other than Declarant, and the prior written approval of the County of Ventura Planning Director.
- C. Declarant is also the owner in fee of that certain real property in the County of Ventura, State of California, described as:
- Lots 1 through 4 of Tract 5457, County of Ventura, State of California, as per Map recorded in Book 159, Pages 37 through 38, inclusive, of Maps, in the Office of the County Recorder of said County ("Lots 1-4 of Tract 5457"). The Original Phase 1 Property, including the additional area added to Lot 9 pursuant to a lot line adjustment and Lots 1-4 of Tract 5457 shall hereinafter be referred to as the "Phase 1 Property", as more particularly described in attached Exhibit "A".
- D. Declarant also owns in fee certain additional real property ("Additional Property") which is adjacent to the Property and located in said County of the State of California, legally described in attached Exhibit "B".
- E. Declarant intends to develop the Phase 1 into a residential planned development ("Development") under the provisions of California Civil Code Section 1351(k), et seq.
- F. Declarant intends to subdivide the Additional Property and to annex and bring the Additional Property within the coverage of this Declaration and within the jurisdiction of the same Association that has been established to administer, operate and maintain the Common Areas and the Association Maintenance Areas of the Property.
- G. If the Additional Property or any portion thereof is annexed by utilizing the annexation procedures provided for herein, the term "Property" (as defined in Article I herein) shall mean the Phase I Property and the Additional Property so annexed.
- H. Declarant desires to impose a general plan for the development, maintenance, improvement, protection, use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

- I. Subject to the specific terms, covenants, conditions, restrictions and easements set forth herein, Declarant intends to cause to be created certain easements, rights, and/or licenses for particular purposes.
- J. Declarant intends by this document to impose upon the Property, including any portions of the Additional Property that may be annexed in the future and brought within the coverage of this Declaration and the jurisdiction of the Association, mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Lots and the Owners thereof.
- K. Declarant, as the owner in fee of the real property covered in the Prior Declaration, except Lot 7, hereby declares, with the consent and approval of the owners of Lot 7 and the County of Ventura Planning Director, both of which are attached hereto, that the Prior Declaration is terminated, rescinded and cancelled in all respects and that the Prior Declaration be of no further force and effect, and all rights, duties and obligations which may exist or may arise by virtue of the Prior Declaration shall terminate and be superseded by this Second Amended and Completely Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Marisol.
- L. This Declaration, and all Governing Documents for this Property, shall be deemed in full force and effect upon recordation of the first Grant Deed conveying fee title of a Lot to an Owner in the Property.

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

SUMMARY

The following "plain English" summary of the contents of this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements is provided solely for the convenience of the reader. This summary is not a part of the Declaration and should not be relied upon except as an explanatory index to the detailed provisions of the Declaration.

Article I provides definitions of the terms commonly used in this Declaration. Defined terms are capitalized throughout the Declaration.

Article II defines the extent of a lot and of common areas, and assigns maintenance and insurance obligations to the owners and the Association respectively. Except for the subdivision of the Additional Property by Declarant, no Lot shall be further subdivided or separated into smaller Lots and no easement shall be conveyed or transferred, without the prior written approval of the Board of Directors. Owner maintenance obligations generally include all elements of the Lot. Association maintenance obligations generally include all common areas, including structural and exterior elements; the Association is obligated to inspect for mold and termites. Declarant retains the right, but is not obligated, to conduct preventive inspections and maintenance. The Association may maintain general liability insurance as provided by law, may maintain higher policy limits, and can alter insurance coverage upon notice to members. Owners must insure their own separate interest.

Article III defines the manner in which residential lots may be used. Lots can only be used as a single family dwelling, and some uses incompatible with community living or public health are prohibited; the Lot may be leased as long as certain information is given. Usual uses of common areas are allowed. Residents must not cause a nuisance, such as offensive odors or excessive noise, and owners are responsible for the behavior of guests. Any use or alteration of a Lot must not affect insurance rates. Association or Vehicle Code parking restrictions must be obeyed. Customary household pets are allowed on a Lot; pets in common areas must be on a leash and must not be allowed to create noise or a nuisance. Residents may install their own antennas or satellite dishes only in limited situations. Owners must indemnify the Association for damage they cause. Exterior lighting must not disturb others. Certain kinds of window coverings are not allowed. Air conditioning, heating, mechanical and electrical devices and the like must not disturb others, and non-original wiring and equipment can be installed only with approval. These use restrictions do not apply to the Declarant until all Lots (except required rental Lots) are sold, but the Declarant must take reasonable steps to avoid disturbing owners with such work.

Article IV defines owners' membership and voting rights and the Association's legal form. Every owner is automatically a member of the Association and must abide with this Declaration and the Association's bylaws and rules and regulations. For up to two years, there are two classes of membership, which allows the Declarant to control the Association during that time. The voting rights of the two classes, of co-owners of a Lot, and of owners whose payments of assessments are delinquent are described. Upon sale of a Lot, membership is automatically transferred to the new owner.

Article V describes in detail the duties and powers of the Association to govern its members and maintain the common areas and association maintenance areas. The Association's duties commence upon recordation of this Declaration. The Association has the power to enforce its own rules. The board has authority to alter lot boundaries in certain cases. The Association has the right to enter any Lot as necessary to ensure compliance or in an emergency.

Article VI describes assessments which owners pay in order to fund Association functions, including maintenance, insurance, etc. Every owner agrees to pay assessments, which are the owner's personal obligation and can become a recorded lien upon the lot; assessments cannot exceed the amount necessary to accomplish their purpose. Assessments begin when the first escrow in the project closes. Assessment amounts are equal for every Lot. The Board of Directors of the Association must levy regular and special assessments according to law, and must maintain separate bank accounts for operating and reserved funds. The Board may increase assessments in order to fund extraordinary expenses. The Board must pass a resolution containing written findings as to the necessity for the extraordinary expense and why it was not or could not have been reasonably foreseen while

preparing the budget. The resolution must be distributed to the Members together with the notice of assessment. The Association has various remedies for delinquent assessments, including foreclosure for amounts over \$1,800, charging interest and penalties and suspending voting rights. An owner who does not use common facilities is not excused from paying assessments. The Board may increase assessments in order to fund extraordinary expenses. The Board must pass a resolution containing written findings as to the necessity for the extraordinary expense and why it was not or could not have been reasonably foreseen while preparing the budget. The resolution must be distributed to the Members together with the notice of assessment. California homestead and exemption laws do not protect a delinquent owner from imposition of a lien on the Lot.

Article VII addresses alterations which owners may wish to make to their Lots. The Association's approval must be obtained for most such changes. An architectural committee of 3 members shall be appointed; Declarant appoints all committee members the first year and a majority for up to the next 4 years after that. The committee adopts and promulgates guidelines for architectural alterations. The committee reviews proposed plans and may retain consultants, such as professional architects, for that purpose, and may charge reasonable fees for the review. Plans for alterations require approval by the committee. The committee may give written authorization for variances from the architectural guidelines. Members of the committee, Board or Association are not liable for any defect in construction based on approved plans, and the owner making the alterations may be required to indemnify the Association and its agents. The committee's decisions may be appealed within 15 days, and the committee must respond within 45 days or the plans are deemed approved. Construction by a licensed contractor must begin within 6 months of approval, and the committee must retain a set of the approved plans. The work must proceed diligently and, if possible, during reasonable daylight hours; the owner must agree to indemnify the Declarant, committee and all other owners from claims arising from the work. The work must be completed within 12 months (except for initial home construction on a vacant lot which must be completed within 24 months) of the date of committee approval of the plans. Upon completion, the committee must inspect the alteration for compliance with the plans and must issue a certificate of compliance, which is conclusive proof that the work complies with the plans; if a certificate of noncompliance is issued, the owner must remedy the noncompliance within 30 days. The Association has various remedies if the owner fails to bring the construction into compliance, but this right expires in 1 year or if the Lot is sold.

Article VIII provides certain protections to holders of the first mortgage on any Lot, in order to make it easier for owners to obtain purchase money loans or refinancing. Any lien by the Association against a Lot for nonpayment of assessments is subordinate to the rights of a mortgagee. Mortgagees are not required to cure violations of the Declaration if cure would be impossible or impractical. An owner's violation of this Declaration does not entitle the Declarant or Association to take back the Lot. However, an injunction can be obtained against violation so long as the validity of the mortgage is not impaired. The mortgagee's rights are not impaired if the owner gives a right of first refusal to the Association or other party. For certain kinds of changes, at least 51% of owners and at least 67% of first mortgagees must approve. Any first mortgagee has the right to inspect the Association's books and records. If condemnation awards or insurance proceeds are received for any Lot, a mortgagee has the right to receive those moneys up to the amount of the mortgage balance still owed. Insurance policies must name the mortgagee in the loss payable clause of the policy. A mortgagee has the right to attend Association meetings but not to vote, except in limited circumstances. Mortgagees have the right to pay taxes and insurance premiums on common areas and to be reimbursed by the Association for such payments. Mortgagees are entitled to notice of certain kinds of events affecting their security. A loan given to facilitate resale of a Lot after foreclosure is treated as a first mortgage. The provisions of this article prevail over any conflicting provisions in another part of the Declaration. The Association must charge as regular assessments sufficient amounts to periodically maintain, repair or replace improvements which the Association is required to maintain.

Article IX concerns restoration or other disposition in the case of damage or destruction of common areas. After a casualty loss, the property is to be repaired or restored to its previous condition, but if insurance proceeds cover less than 85% of the loss, the owners must vote whether to levy a reconstruction assessment, rebuild to a lesser standard, or not rebuild. Notice of material damage must be given to mortgagees. If the Association elects not to rebuild, a licensed appraiser must appraise the Lots as of just before the casualty, and insurance proceeds must be distributed proportionately to those

values. If a Lot is damaged, the owner must immediately secure the Lot against further damage, and must promptly rebuild.

Article X concerns condemnation of common areas by a governmental entity. The board will represent the owners at the condemnation hearing and will give the necessary notices and disburse the condemnation proceeds in the manner described in the article on destruction of improvements.

Article XI addresses procedures for additional property to be annexed and deannexed. Declarant may annex (add) additional property to the development by following necessary procedures set forth in that Article and with Department of Real Estate approval. Annexation may also be by 66 2/3% vote of association members other than Declarant. Declarant is not obligated to develop or annex additional real property into this Project and may deannex property under certain conditions set forth in the Article. The Association may merge or consolidate with another homeowners' association (as permitted by law) upon approval by 66 2/3% of association members other than Declarant, and association properties, rights and obligations may be transferred to another homeowner's association or added to a surviving corporation through a merger. To the extent reasonably possible, the resulting association will administer the provisions of this Declaration and the restrictions of any other property as a uniform plan.

Article XII addresses easements within the property. Easements are established upon the recordation of this Declaration. Easements are reserved to facilitate Declarant marketing, Association maintenance, owner use, access to botanical gardens, community landscaping (including perimeter landscaping, slopes, streetscapes, botanical gardens and dune areas), and drainage. Owners' respective rights when there are encroachments are explained.

Article XIII concerns the Declarant's obligation to complete common area improvements. The Declarant has posted a bond to ensure completion of any common area improvements that have not been completed by the time the first escrow closes, and the Association must decide whether to enforce that obligation.

Article XIV concerns amendments to the Declaration. Until the first Lot is sold, the Declarant can unilaterally amend the Declaration, but afterwards, amendment can only be made by a 67% vote of each class of membership. Any amendment affecting the rights of the Declarant must be approved by the Declarant. Minor amendments to correct clerical errors or to clarify are non-material and may be made by the Board without a membership vote.

Article XV provides detailed procedures for resolution of construction defect claims and other disputes. The article provides for economical, streamlined means of resolving disputes between or among the Declarant, Association and individual owners, except for disputes involving payment of assessments. There is no right to a jury trial or trial by a judge. Procedures applicable to all non-assessment types of disputes require notice of the claim, informal meeting and conferring, mediation, and if those means fail, judicial reference; there is an automatic right of appeal from the judgment entered upon a judicial referee's award. In disputes between the Association and an individual owner, the procedures set forth in this article apply, and the parties must also comply with particular provisions of the Civil Code. In disputes arising from construction defects, the Declarant has elected to define contractual pre-litigation procedures which must be followed, rather than the statutory pre-litigation procedures set forth in the Civil Code.

Article XVI covers miscellaneous issues not addressed elsewhere in the Declaration. The Declaration's term is 60 years, automatically extendable for 10 years at a time, but once the Declarant no longer owns an interest in the project except as owner of a "Class A" membership, the members can agree that it is in the best interest of the members to terminate the Declaration. How written notices must be given is specified. If any part of the Declaration is declared invalid, the remainder of the Declaration is valid. The singular includes the plural. In any lawsuit connected with enforcement of this Declaration, each party shall bear its own attorney's fees. Certain documents must be given to owners. Certain disclosures about noise are made. For 10 years after the last lot is sold, the Declarant has certain rights to inspect documents which are in addition to its rights as an owner of a lot. In case of future changes in the laws governing common interest developments, those laws will override this Declaration, which will be automatically amended to conform to the changes in the law, without necessity for formally amending or recording an amended Declaration.

ARTICLE I

DEFINITIONS

Article I provides definitions of the terms commonly used in this Declaration. Defined terms are capitalized throughout the Declaration.

The following definitions apply unless otherwise required by the context:

"Additional Property" - The real property described in Exhibit "B", all or any part of which may be annexed as part of this Development, and made subject to this Declaration. The Additional Property may be subdivided into three separate Lots by Declarant at any time in the future, to include up to three separate lots or otherwise as approved by the appropriate jurisdiction, without any additional consent required from the Department of Real Estate or any other Owner in the Project.

"Alternative Dispute Resolution" - Resolution of disputes arising out of claims of construction defects or violations of Governing Documents in which Declarant and/or the Association and/or one or more Owners are parties, as set forth below in the Article entitled "*Dispute Notification and Resolution Procedures*".

"Approval" - Prior written approval.

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

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

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

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

"Association" - CROWN POINTE OF MALIBU HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation formed (or to be formed) to govern the Project. The term includes its agents, the Board or any committee as applicable.

"Association Maintenance Area(s)" - Those areas subject to an easement in favor of the Association to perform its duties as enumerated in this Declaration, but not for common access or enjoyment by all Owners (except that the Owner of the Lot on which any portion of the Association Maintenance Area is located shall have access to that specific area). Association Maintenance Areas within the Project shall include but not be limited to the rock facing on the outside of the perimeter walls, the streetscape between the perimeter walls/fencing to the sidewalk/street, the slopes behind Lots 2 through 4 of Tract No. 5457, the Project drainage facilities, and slopes located on Lot 5 of Tract No. 5457, which lot is also referred to herein as Neptune's Net, pursuant to the terms of the Neptune's Net Agreement (defined below), all as shown and described on Exhibit "C" attached hereto.

"Beneficiary" - The lender on the security of a Promissory Note and Deed of Trust.

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

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

"Code Section" - Refers to Codes of the State of California (e.g "Civil Code", "Vehicle Code"). Reference to any specific Code Section includes any future successor Code Sections. Any applicable new legislation or future amendment of any Code Section referenced in this Declaration shall

automatically amend this Declaration in the same way, without necessity for execution and recording of any amendment to this Declaration.

"Common Area(s)" The areas shown and described as Common Area on Exhibit "C" attached hereto. The Common Areas are subject to non-exclusive easements and rights of common use in favor of the Association and all Owners for the common use and enjoyment of the Owners subject to the terms specified in this Declaration.

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

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

"Construction Defect" - Any deficiency with respect to water, structural, soil, fire protection, plumbing and sewer, electrical or other areas of construction, as defined in Sections 896 and 897 of the California Civil Code.

"Declarant" - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein, including any Mortgagees acquiring Declarant's interest in the Project by foreclosure or deed in lieu of foreclosure.

"Declaration" - This instrument and any amendments.

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

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

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

"Eligible First Mortgage" - Any "First Mortgage" the holder of which has requested notice of certain matters from the Association in accordance with Section 8.11(b) of this Declaration.

"Eligible First Mortgagees" - Holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents and other Association matters.

"Entitlement Conditions" - The conditions required by the County of Ventura to be included in the CC&Rs for Tracts 4483 and 5457 and any conditions that may be required in the future by the County in connection with the annexation of the Additional Property.

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

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

"First Close of Escrow" - The date on which the first deed is recorded after the date that this Declaration is recorded, conveying fee title to a Lot to the first Owner pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the Department of Real Estate.

"First Mortgage" or "First Mortgagee" - A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Lot or any other portion of the Project, including a First Mortgagee's blanket Mortgage recorded prior to the recording of this Declaration.

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

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

"Governing Documents" - All documents governing the Property, including this Declaration, the Articles, Bylaws, Tract Map, any maintenance manuals and any Rules and Regulations.

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

"Improvements" - Any structure or anything attached to a structure or to the land within the Project, consistent with the provisions of Business and Professions Code Section 7151 and Civil Code Section 3106.

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

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

"Manager" or "Managing Agent" - The party contractually engaged by the Association or Declarant to manage the Common Area(s) and perform other duties of the Association.

"Member" - Any person who is an Owner based upon the provisions of the Governing Documents.

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

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

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

"Neptune's Net Agreement" - that certain executed "Agreement Between Adjacent Property Owners" recorded December 12, 2008 as Instrument No. 20081212-001783200, of Official Records.

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

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

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

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

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

"Project" or "Property" - The real property described in Exhibit "A" and any Additional Property which is annexed pursuant to this Declaration. The Project is a "Planned Residential Development" as defined in Section 1351(k) of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 1351(c) of the California Civil Code.

"Quorum" - Members entitled to vote (in person or by proxy) holding one third (1/3) of the total voting power of the Association constitute specifically, a quorum for business transactions at all Member meetings (except as otherwise specifically provided in this Declaration or the Bylaws of the Association).

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

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

"Restricted Dune Areas" - Those portions of Lots 4 through 9 of Tract 4483 south of the retaining walls or toe of rear slope on each of those Lots as shown on Exhibit "B" attached hereto.

"Rules and Regulations" - The rules as established and adopted from time to time by the Board as provided for in this Declaration.

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

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

"Tract Map" - Any of the subdivision maps already recorded for Tracts 4483 and 5457 in Ventura County, as more particularly described in Exhibit "A" to this Declaration and any subdivision map that may be recorded in the future with respect to the Additional Property.

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

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

ARTICLE II

PROPERTY RIGHTS AND MAINTENANCE OF PROPERTY

Article II defines the Lots and assigns maintenance and insurance obligations to the owners and the Association respectively.

2.01 Restriction on Further Subdivision.

Except for subdivision of the Additional Property by Declarant, no Lot (including Lot 11) shall be further subdivided or separated into smaller Lots by an Owner and no easement shall be conveyed or transferred by any Owner, without the prior written approval of the Board of Directors. No application for rezoning of any Lot, and no application for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Board and the proposed use otherwise complies with the provisions of this Declaration.

2.02 Common Area(s) and Purposes.

- (a) Use of the Common Area(s) must be consistent with all reasonable provisions and limitations described in the Governing Documents.
- (b) Common Area(s) may only be used for purposes specified in this Declaration or otherwise approved by the Association and compatible with usage customarily associated with common areas located within residential developments in California. Notwithstanding the foregoing, the Common Area shall initially be used primarily as a botanical garden and for the clustered mailbox area for the Project, but portions thereof may also be used by the Association as and for an organic garden, or for growing crops or other similar activities, as determined by the Association and subject to such rules and regulations as the Association may establish from time to time. Owners shall not have any exclusive rights to use any specific portion of the Common Area, all such rights shall be non-exclusive at all times.

2.03 Easements of Enjoyment.

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

Lot Owners shall not have general access to Association Maintenance Areas, but shall have the right to access and use that portion of the Association Maintenance Areas which is located on such Owner's lot. Notwithstanding the foregoing, Owners may not disturb, construct any Improvements, or interfere with Association's duties relating to the Association Maintenance Areas.

2.04 Delegation of Use.

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

2.05 Owner's Maintenance and Repair Obligations.

- (a) In accordance with the Governing Documents, each Owner must maintain, repair, and replace all of the following, except as otherwise specifically stated herein:
- (1) All of the Owner's Lot (see the Tract Maps for detailed descriptions of each Lot), including Improvements, slopes and landscaping thereon, in a neat, clean, sanitary and attractive condition, and is solely responsible for the cost of repairs and Improvements, except for any Common Area or Association Maintenance Areas located on an Owner's Lot which areas shall be maintained by the Association; and
 - (2) Any damage to any real or personal property in the Project caused by an Owner or an Owner's Occupants or invitees, even if the damage is to an area otherwise maintained by the Association or another Owner. All the repairs shall be subject to prior approval of the Board.
- (b) Any change to the exterior appearance of a Lot must be approved by the Board in accordance with the Governing Documents and applicable laws.
- (c) Owners shall consider drought-tolerant landscaping for their Lots.
- (d) Each Owner shall comply with the storm water pollution prevention plan ("SWPPP") that was prepared by the Declarant and filed with the State of California, including, without limitation, any "best management practices" contained therein, and any other SWPPP or drainage area management plan prepared by governmental authority. A copy of the SWPPP applicable to the Property shall be on file with the Association or its property manager.

2.06 Association Maintenance and Repair Obligations.

- (a) Common Areas. The Association is responsible for maintaining, repairing, modifying, replacing, and altering Common Areas and any other real property acquired by the Association, including the botanical garden areas (including landscaping and CJM memorial), clustered mailboxes, and all related facilities, Improvements and landscaping in a safe, neat, clean, orderly, sanitary and attractive condition. Ellice Street shall be maintained by the Association until the County or other governmental entity accepts the road into the County road system and agrees to maintain it.
- (b) Association Maintenance Areas. The Association shall maintain, repair and replace all Association Maintenance Area Improvements and real property, including but not limited to the following:
- (1) Rock facing on the outside of the perimeter walls and wrought iron fencing and streetscape landscaping between the perimeter walls/fencing to the sidewalk/street;
 - (2) Slope landscaping located on Lot 5 of Tract No. 5457 (Neptune's Net) in accordance with the provisions of the Neptune's Net Agreement;
 - (3) Slopes behind Lots 2 through 4 of Tract No. 5457; and
 - (4) All Project storm drain facilities as designated on Exhibit "D" attached hereto.
- (c) The Association shall maintain, repair and replace all common landscaping, medians and streetscapes located within the Project and those located along those portions of the arterial streets that adjoin the Project, and are not maintained by any landscape maintenance district or other public agency.

- (d) **Damage by Owner and Others.** Association responsibility for maintenance and repair does not extend to damage caused by a willful or negligent act by an Owner, family member, guest, tenant, or invitee. The cost and responsibility for any and all such repair must be borne by the person causing the damage, or the relevant Lot Owner.
- (e) **Graffiti Removal.** The Association shall cause to be removed forthwith all graffiti that is placed upon the perimeter walls of the Project and/or on any other Improvement within the Common Area and Association Maintenance Areas of the Project. The Association, and its agents and contractors, shall have access upon and over all of the Lots in the Project in order to accomplish the same.
- (f) **SWPPP.** The Association shall comply with the storm water pollution prevention plan ("SWPPP") that was prepared by the Declarant and filed with the State of California, including, without limitation, any "best management practices" contained therein, and any other SWPPP or drainage area management plan prepared by governmental authority. A copy of the SWPPP applicable to the Property shall be on file with the Association or its property manager.

2.07 **Association Insurance.**

- (a) If necessary, the Board shall obtain and maintain the following specified (or equivalent) insurance coverages, provided it is financially reasonably prudent to do so:
 - (1) A master or blanket policy of fire insurance for the full insurable value of all of the improvements within the Common Areas, without deduction for depreciation or coinsurance.
 - (A) The form, content, and term of the policy and its endorsements and the issuing company shall satisfy the minimum requirements for this type of Project by FNMA and FHLMC.
 - (B) The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or its equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild.
 - (C) The policy shall name as insured the Association, the Owners and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described hereinafter.
 - (D) Notwithstanding subparagraph (a)(1) above, the Board may, after consultation with its insurance professional and if it deems it prudent to do so, purchase coverage with deduction for depreciation and/or coinsurance.
 - (2) Comprehensive public liability insurance in a reasonably prudent amount that covers the Association, Board, Managing Agent, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area(s) against physical injury, death and property damage arising out of a single occurrence. The Board should consider maintaining insurance in the amount specified by Civil Code Sections 1365.7 and 1365.9.
 - (3) If available, an extended coverage endorsement clause known as "Special Form", and a clause that permits a cash settlement to cover the full value of Improvements in case of destruction and a subsequent decision not to rebuild.

- (4) At the option of the Board, a fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months' aggregate Assessments on all Lots and reserve funds) that could be affected by the dishonest act of any Member of the Association or Board, managing agent, employee, or Occupant, who handles funds for the Owners' benefit. Fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice.
- (5) Workers' compensation insurance, in compliance with all applicable laws (if there are any employees or any workers hired to work in the Common Areas and Association Maintenance Areas). If contractors are utilized, the Association should require evidence of Workers Compensation insurance and a certificate of insurance verifying comprehensive general liability insurance in a minimum amount of \$1,000,000.00, naming the Association as additional insured. The contractor's policy shall have a minimum 30 day notice of cancellation provision.
- (6) Director and officer liability insurance ("D&O") in an amount that satisfies Civil Code section 1365.7(a)(4). In the absence of gross negligence, intentional misconduct, or fraud, the Association shall indemnify directors and officers from personal liability for claims made as a result of the performance of their duties.
- (7) Any other insurance policy the Association deems appropriate.
- (b) Association insurance policies shall contain the following provisions, if available:
 - (1) Statements that the policies are primary and non-contributing;
 - (2) Statements that an Owner's conduct will not constitute grounds for avoiding liability;
 - (3) Inflation Guard Endorsement (if obtainable at a reasonable cost);
 - (4) Standard Mortgage clause, and name as Mortgagee FNMA or servicer (if applicable).
- (c) The Board shall consider including in the Association policy the following types of coverage:
 - (1) Flood insurance available under the appropriate programs for the National Flood Insurance Agency, or any other such agency.
 - (2) Earthquake insurance.
- (d) Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.
- (e) Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors, and the Owners and occupants of the Lots and Mortgagees, and all Owners are deemed to have waived subrogation rights as to the Association and/or other Owners, whether or not their policies so provide.
- (f) All insurance policies must require a written thirty (30) day notice of modification or termination of coverage from the insurer to the Association, Declarant, Owners and their Mortgagees, and any interested party who requests such a notice.
- (g) The Board shall adopt policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area Improvements or any other matters covered by insurance maintained by the Association.

- (h) At least annually, the Board must review the Association's insurance policies.

2.08 Board's Authority to Alter Insurance Coverage.

Subject to the provisions of Section 2.07(a)(2) above, the Board shall have the power and right to deviate from the insurance requirements contained in this Article in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums.

2.09 Owner Insurance.

- (a) Each Owner shall obtain and maintain, at his or her expense, fire and casualty coverage as may be required by the Owner's individual Mortgagee, or, if no Mortgagee encumbers a Lot, fire and casualty coverage as the Board may determine, with respect to damage or destruction to Improvements on the Owner's Lot.
- (b) An Owner may carry whatever personal liability and property damage liability insurance on the Owner's Lot that he or she desires.
- (c) An Owner shall consider including in the policy coverage for earthquake insurance.
- (d) All such individually carried insurance shall also contain a waiver of subrogation rights by the carrier as to other Owners, the Association, Declarant, and institutional First Mortgagee of such Lot.

2.10 Preventive Maintenance.

- (a) Inspections by Declarant. For a period of ten (10) years after the last sale by Declarant, Declarant shall, in its sole discretion, be entitled to inspect all Common Areas and Association Maintenance Areas of the Property with or without notice to the Association and shall, within its sole discretion and at its expense, be entitled to cure any defect, whether or not the Association or any Owner has complained of such defect. Also in its sole discretion, Declarant may request permission to inspect individual separate interests for the sole purpose of discovering and repairing structural defects. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.
- (b) Inspections by Association. The Board shall cause the condition of Common Areas and Association Maintenance Areas to be inspected in conformity with the applicable maintenance guidelines, if any, and in the absence of recommendations in any applicable maintenance guidelines for frequency of inspections, at least once every year. The Board may offer to Owners the opportunity to have a Lot inspected by the Association's inspector at the same time, at the Owner's expense.
- (c) Cooperation. The Board shall use its best efforts to obtain the consent of all Owners, upon three (3) days' notice, for entry into and/or inspection of Lots pursuant to paragraphs (a) and (b) above.

Refusal by an Owner to allow access, or failure of the Board to attempt in good faith to obtain Owner consent for such entry and/or inspection, shall be deemed a failure to mitigate damage in the event of a defect as defined in Section 896 of the California Civil Code which could have been avoided through preventive maintenance.

ARTICLE III

OWNERS GENERAL USE RESTRICTIONS

Article III defines the manner in which residential Lots may be used.

3.01 Single Family Residential Use.

- (a) A Lot may only be used for a single family dwelling. Notwithstanding anything else in this Declaration, Lot 11 may be utilized for any lawful purpose and shall not be limited to single family residential use.
- (b) Subject to Declarant's rights herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Lot, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Lot affecting other residents.
- (c) No structure shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling and other outbuildings incidental to residential use of the Lot. The construction of all dwellings (including second dwelling units) shall be located within the approved building envelopes identified on Exhibit "E" attached hereto and incorporated herein by reference and shall be limited to one-story on all Lots unless a second story envelope is specifically designated on Exhibit E. No structures, furniture, fixtures, play equipment or any other equipment in excess of 6 feet in height (other than customary patio umbrellas, not to exceed 9 feet in height) shall be located outside the approved building envelopes on Lots 1 through 9 of Tract 4483 and Lots 1 through 4 of Tract 5457. No structures, furniture, fixtures, play equipment or any other equipment of any kind shall be located on the slope areas to the south of the building pads of any Lot, except for the existing stairs and retaining walls (as the same may be replaced or repaired in the same location) a water return trough and related walls and accessory hardscape reasonably required for a pool located at or near the edge of the building pad.
- (d) Any future Project grading, and accessory uses/structures (including fencing) to the homes built on Lots shall be designed to avoid the existing southern coastal bluff sage community, thus avoiding any potential adverse impacts to that community.

3.02 Leasing.

An Owner may lease a Lot, for residential purposes provided:

- (a) There is a written agreement and the term is for not less than ninety (90) days;
- (b) The lease states it is subject to all the provisions of the Governing Documents and that any failure to comply with any provision of this Declaration or the other Governing Documents shall constitute a default under the terms of said agreement;
- (c) A copy of this Declaration is made available to each tenant or lessee by the Owner so leasing;
- (d) Owners must give the Board the names and telephone numbers of all Occupants, tenants, and their roommates;
- (e) Tenants/lessees/Occupants shall have no voting rights in the Association;
- (f) No Owner may lease a Lot for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration;

- (g) Owners, at all times, are responsible for their tenant's or lessee's compliance with all of the provisions of the Governing Documents in the occupancy and use of the Lots; and
- (h) The Association and each Owner shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.
- (i) Assignment of Rents. Each Owner hereby presently assigns to the Association, absolutely and regardless of possession of the property, all current and future rents and other monies under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all delinquent Assessments pursuant to this Declaration.

The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder.

Upon revocation of such authority the Association may, upon demand, collect and retain such monies, whether past due and unpaid or current. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to Owner or lessor, as the case may be.

The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible. The Association's rights under this Section shall be subordinate to the rights of any First Mortgagee.

3.03 Nuisances.

- (a) Illegal, offensive, obnoxious actions, or noxious odors that interfere with any Occupant's quiet enjoyment are not permitted anywhere on the Property.
- (b) An Occupant may not cause the level of noise or sound from the Lot to interfere with the quiet enjoyment of an Occupant of another Lot (i.e., loud music or television, shouting, slamming of doors, and other such actions.)
- (c) The Board shall have the right to determine if any unreasonable action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation.
- (d) Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of children and other family members or persons residing in or visiting his or her Lot. Any damage to the Common Area(s), Association Maintenance Area(s), personal property of the Association, or property of another Owner, caused by such children or other family members or persons residing or visiting shall be repaired at the sole expense of the Owner of the Lot where such children or other family members or persons are residing or visiting.

3.04 Debris, Trash and Refuse.

- (a) Weeds, rubbish, debris, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Lot, Association Maintenance Area(s) or the Common Area(s).
- (b) Rubbish or storage containers, woodpiles, machinery, equipment and other unsightly objects are prohibited to be visible from other Lots, Association Maintenance Area(s) or Common Area(s). Rubbish containers may be placed temporarily for pick-up (not to exceed twenty-four (24) hours before and after scheduled trash collection hours, except with Board approval).

- (c) Driveways must be kept clean and free of oil stains.
- (d) No person shall discharge into the Project's sewer system or storm drain any toxic or noxious liquids or materials in such concentrations as to be detrimental to or endanger the public health, safety, welfare, violate any law, subject any Owner to liability under state and/or federal law for any clean-up, or cause injury or damage to neighboring property or business elsewhere on the Project.

3.05 **Signs.**

- (a) For as long as Declarant owns any portion of the Project, Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property, as long as the activities do not unreasonably interfere with any Owner's use of the Property.
- (b) Subject to Civil Code Sections 712 and 713, and any local ordinance, an Owner may advertise a Lot for sale or lease with sign(s) with a size, format, and location previously approved by the Board.
- (c) All Owners are subject to Civil Code Sections 1353.5 and 1353.6 in regard to the display of non-commercial flags, banners, signs and posters. Notwithstanding the foregoing, nothing contained in this Section shall be construed in such manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the County.
- (d) No other sign, poster, display, or advertising device may be displayed anywhere on the Property visible outside a Lot without the prior written consent of the Board.
- (e) If Civil Code Sections 712, 713, 1353.5 and 1353.6 are amended, this provision automatically shall be amended in the same manner. If these sections are repealed and no successor sections are enacted, this provision shall remain in full force and effect. The Civil Codes may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

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

- (a) **Authorized Vehicles.** The following vehicles are authorized within the Property: motorized land vehicles designed and used primarily for noncommercial passenger transport, such as automobiles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less (collectively, "Authorized Vehicles"). Authorized Vehicles may be parked in any portion of the Property intended for parking of motorized vehicles.
- (b) **Prohibited Vehicles.** The following vehicles are prohibited within the Property: recreational vehicles (e.g. motorhomes, travel trailers, camper vans, boats, etc.), commercial-type vehicles (e.g. stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, etc.), buses or vans designed to accommodate more than ten (10) people, vehicles having more than two (2) axles, trailers, inoperable vehicles or parts of vehicles, aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board (collectively, "Prohibited Vehicles"). Prohibited Vehicles shall not be parked, stored or kept on any public or private street within, adjacent to or visible from the Property or any other common parking area, except for brief periods for loading, unloading, making deliveries, emergency repairs, or unless specifically authorized by the Board.
- (c) All applicable provisions of the California Vehicle Code will be enforced on any private streets on the Property in accordance with California Vehicle Code Section 22658 (or any successor statute regarding removal of parked cars and required warning signs). The Association may establish

"Parking" and "No Parking" areas within the Common Area(s), in accordance with California Vehicle Code Section 22658 (or successor statute).

- (d) The Association (through the Board) may establish parking Rules and Regulations for the Project and adjacent public streets, which shall be enforceable against the Owners to the same extent as if the adjacent streets were private streets.
- (e) The Association has the right and obligation to enforce all parking restrictions and to remove any violating vehicles in accordance with the California Vehicle Code, or other applicable laws.
- (f) Parking is permitted in driveways, as long as it does not obstruct free traffic flow, constitute a nuisance, violate the Rules and Regulations, or otherwise create a safety hazard.
- (g) Under no circumstances may explosives, fireworks, or highly flammable material such as gasoline, kerosene, oil, oil-based paints, solvents, etc. be stored in any garage.
- (h) Garage doors, if any, may not be left open, except as temporarily necessary or while used for entering or exiting.
- (i) All vehicles owned or operated by or within the control of an Owner or a resident of an Owner's Lot and kept within the Property shall be parked in the Owner's garage, and each Owner shall maintain his garage in a manner which ensures that it is capable of accommodating no less than the number of Authorized Vehicles the space was originally designed for by Declarant. Vehicles shall not be restored or repaired on the Property, unless parked wholly within a garage with the doors closed.
- (j) Garage space shall not be converted into any use (such as a recreational room or storage room) that would prevent its use as parking for the number of vehicles the space was designed to contain. Owners are to use their assigned garages for parking of their vehicles. The Association may establish rules for guest parking of vehicles.
- (k) Neither the Association nor any of its officers, directors, agents or employees shall be liable to any Owner, or to any member of his family, his guests, servants, employees or invitees, for any theft or, or injury to, any vehicle on the Project, except as provided by Section 22658(d) of the Vehicle Code. Each Owner shall indemnify, defend, and hold harmless the Association and the Association's officers, directors, agents, employees, and representatives from any injury, damages, claims, liabilities, costs or expenses caused by, arising out of, or related to the provisions of this Section, or any offending vehicle.
- (l) The street parking along Ellice Street may not be used on a long-term or routine basis by Owners or tenants in the Project or their guests or invitees.
- (m) Vehicles may not be washed on the Property except as provided for by the Board.
- (n) The provisions of this Section are intended to comply with California Vehicle Code Section 22658 (regarding illegally parked cars) in effect on the date this Declaration was recorded. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect. Vehicle Code §22658 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

3.07 Animal Regulations.

- (a) Customary household pets may be kept in a Lot, provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times. The Board may

establish rules and regulations governing size, weight and number restrictions of animals that may be allowed in the Development.

- (b) In addition, small domesticated animals (e.g., birds, hamsters, fish, turtles) may be kept in a contained environment (cage or aquarium), provided they are not kept, bred or raised for commercial purposes, and subject to the following sub-paragraphs of this Section.
- (c) Animals that bother or annoy other Owners or residents (e.g., excessively barking dogs) may not be kept on the Property or in a Lot.
- (d) An animal may only enter the Common Area(s) while on a leash which is held by a person capable of controlling it.
- (e) Owners must prevent their pets from soiling the Common Area(s), and are solely responsible for any required clean-up.
- (f) The Board shall determine whether specific pets are a nuisance and should be removed from any Lot.
- (g) Each Owner shall defend, indemnify and hold harmless all other Owners, the management company, the Association and the Board of Directors from any and all losses, costs, and liability arising from having any pet on the Property.
- (h) Notwithstanding the foregoing, no domestic dogs shall be within the Common Area that are deemed by the Board to be vicious or potentially dangerous dogs. All vicious and potentially dangerous dogs must be kept indoors or in a securely fenced area within the Owner's Lot from which it cannot escape, and into which children or other individuals cannot trespass. A dog shall be deemed "vicious" for purposes of this Section if, when unprovoked:
 - (1) It has bitten a person (however, a dog may be vicious even though it is not proven to have bitten any person);
 - (2) In an aggressive manner, it inflicts injury on or kills a human being; or
 - (3) It has previously been determined to be and is currently listed as a potentially dangerous dog (as determined by the Board of Directors or local governmental authority) and, after its Owner or keeper has been notified of this determination, it continues to engage in behavior deemed potentially dangerous.
- (i) A dog shall be deemed "potentially dangerous" for purposes of this Section if, when unprovoked:
 - (1) On two separate occasions within the prior 36-month period, it engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the Owner or keeper of the dog; (2) It has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the Owner or keeper of the dog; or (3) The dog has run loose or, if leashed, was not under the control of a responsible adult on two occasions per sub-paragraph (d) above.
- (j) The Association shall have the right to cause a dog found to be in violation of any provision of this Section to be removed from the Property and to enforce this Section pursuant to the terms of this Declaration or any other provision or amendment thereto.

3.08 Antennas and Satellite Dishes.

Notwithstanding the foregoing, all restrictions on video or television antennas (including satellite dishes) shall be subject to all applicable federal state and local laws, including, but not limited to, the Federal Telecommunications Act of 1996 and California Civil Code Section 1376, as same may be amended from time to time. Furthermore, all amendments, modifications, restatements

and interpretations of the laws applicable to the installation, use or maintenance of an antenna or over-the-air receiving device shall be interpreted to amend, modify, restate and/or interpret this Section.

3.09 Temporary Structures.

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

3.10 Basketball Standards.

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

3.11 Exterior Clotheslines.

Exterior clotheslines may not be erected, and clothes may not be dried outdoors.

3.12 Exterior Lighting.

- (a) Any exterior electrical, gas or other artificial lighting installed on any Lot shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Lot. Further rules regarding exterior lighting may be promulgated by the Architectural Committee.
- (b) In order to maintain the rural character of low-level nighttime lighting and to preserve the scenic qualities of Pacific Coast Highway, intensive outdoor lighting for outdoor activity (including, but not limited to, tennis courts or other sports facilities) is prohibited on the Lots.

3.13 Window Covers.

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

3.14 Common Walls/Fences.

- (a) An easement exists appurtenant to any Lot for any "Common Walls/Fences" (walls and/or fences on boundary lines between the Lots and/or Common Area(s)) originally installed by the Declarant, whether or not the fences/walls are located precisely on the Lot boundary line.
- (b) Owners with a Common Wall/Fence have an equal right to use the fence/wall, with the following provisions:
 - (1) Each Owner has exclusive right to use the surface of the wall/fence facing the Residence;
 - (2) Owners may not drive nails, screws, bolts or other objects more than half way through any Common Wall/Fence;
 - (3) Owners may not interfere with the adjacent Owner's use and enjoyment of the Common Wall/Fence;

- (4) Owners may not threaten or impair the structural integrity of the Common Wall/Fence; and
- (5) If any portion of the wall/fence (other than the surface of one (1) side only) is damaged by any cause other than the act or negligence of either party, it must be repaired or rebuilt at the relevant Owners' joint expense.

3.15 **Air Conditioners and Other Equipment.**

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

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

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

3.17 **Use/Alteration Affecting Insurance Rates.**

- (a) Acts that threaten cancellation or an increase of Association insurance rates for the Property may not be committed without Board approval.
- (b) If a particular Owner's use or activity is the cause of increased insurance rates, the responsible Owner is personally liable for the additional insurance premiums.

3.18 **Owner's Failure to Comply.**

Each Owner acknowledges by acceptance of the deed or other conveyance for a Lot, whether or not it shall be expressed in any such deed or other instrument, that the covenants, conditions and restrictions set forth in this Article benefit the Association, and that the Association has a substantial interest in assuring compliance with, and enforcement of, this Section. In the event that an Owner fails to comply with the conditions, obligations, regulations, and maintenance set forth within the Governing Documents, the Board may deliver written notice to such Owner demanding compliance and informing said Owner of the particular condition, obligation, regulation or maintenance requirement that has been violated. Upon receipt, Owner shall have thirty (30) days, unless an alternate reasonable time is established by the Board, to correct the violation. In the event that said Owner continues the violation beyond the designated period, the Board shall have the right to enter onto the property to remedy the violation, and the Owner shall be charged a Special Assessment equal to the Board's cost of repair, for which the Board may obtain a court order and judgment for the Special Assessment which shall continue to accrue until judgment is entered.

3.19 **Declarant's Exemption from Use Restrictions.**

- (a) Conveyance of a substantial number of the Lots is essential to the establishment and welfare of the Project. In order that all work necessary to complete the Project and to establish a

substantially occupied Project may proceed as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (1) Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines it to be reasonably necessary or advisable in connection with the completion of said work;
 - (2) Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part of parts of said real property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary to complete said work, establish said property as a residential Project and dispose of the same by sale, lease or otherwise;
 - (3) Prevent Declarant from maintaining or displaying such sign(s), pennants and flag(s) on the Project (except upon Lots owned by others) as may be necessary for the sale, lease or disposition thereof; or
 - (4) Subject Declarant to the architectural control provisions of Article VII for construction of any Lot or other improvements on the Project.
- (b) The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project. So long as Declarant, its successors and assigns, owns one (1) or more of the Lots established and described in this Declaration, Declarant, and its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Lots and the Common Area(s) by Owners, while completing any work necessary to those Lots or Common Area(s).

3.20 Documents to Subsequent Owners.

Owner acknowledges being obligated to provide to subsequent purchasers of Owner's Lot all documents received in conjunction with the initial sale of the Lot, including, but not limited to, copies of (a) this recorded Declaration (and any amendments), (b) the recorded Notice of Builder's Election of Alternative Pre-litigation Procedures for Construction Claims, (c) filed Articles of Incorporation, (d) Bylaws of the Association, (e) any maintenance manual and warranty information, and (f) any other related disclosures.

3.21 Restricted Dune Areas.

In order to preserve the natural appearance and scenic beauty of the dune areas as shown on Exhibit "B" attached hereto and to minimize erosion to the greatest extent possible, there is hereby established a construction and clearing restricted zone on all Lots with such dunes. The dune areas shall be preserved substantially in their present state except for moderate trimming and landscape maintenance. Construction of Improvements (other than wood decks subject to approval of the Architectural Committee) and major clearing of trees and underbrush is hereby restricted. Notwithstanding the foregoing, Declarant and Association hereby reserve the right to exempt Lots hereof from said construction and clearing restrictions in those cases where it, in its sole discretion, determine that such exemption will not materially lessen the natural appearance and scenic beauty of the dune areas.

3.22 Assumption of Risk of Injury or Property Damage Due to Coastal Bluffs.

Each Owner, by accepting a deed to a Lot, expressly acknowledges that the proximity of the Owner's Lot to a coastal bluff creates a risk of personal injury and property damage as a result of possible erosion and bluff instability. Each Owner assumes the risk of such personal injury or property damage and, as part of the consideration for the sale of the Lot to the Owner, waives

and agrees not to make any claim or to sue Declarant, the Association, or the other Owners, including the seller of the Lot, based on or arising from any personal injury or property damage caused by the above, including any theory of recovery based on design defects, concealment of the risk, or negligence.

Each Owner shall warn any tenant, family member, guest, invitee, or licensee entering the Owner's Lot of the dangers and risks of personal injury or property damage as a result of the Project's proximity to the coastal bluff and shall indemnify and hold harmless Declarant, the Association, and the other Owners from and against any claim or action brought by the Owner's tenant, family member, guest, invitee or licensee who is injured or whose property is damaged by erosion or effects of bluff instability.

ARTICLE IV

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Article IV defines owners' membership and voting rights.

4.01 Organization.

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

4.02 Membership.

Every Owner is automatically an Association member. Each Member shall be obligated promptly, fully and faithfully to comply with the provisions of this Declaration, and the Bylaws of the Association, and any Rules and Regulations from time to time which may be prescribed by its officers or directors.

4.03 Membership Classes.

(a) The Association has two (2) classes of voting membership:

- (1) Class A Members - All Owners (other than Declarant).
- (2) Class B Member - Declarant, entitled to three (3) votes for each Lot owned by Declarant.

(b) Class B Membership irreversibly ceases and converts to Class A Membership on the first to occur of the following:

- (1) Two (2) years after the First Close of Escrow in the most recent Phase; or
- (2) Four (4) years after the date of the First Close of Escrow in the Property.

4.04 Voting Rights and Requirements.

(a) Voting rights shall commence for each Lot within the Project when Assessments against the Lot have been levied by the Association.

(b) Co-Owners shall have the following voting rights:

- (1) Each Co-Owner has an indivisible interest in a single Membership.
- (2) Each Lot's vote is cast as a single Lot, without fraction. If Co-Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.
- (3) If a Co-Owner casts a vote representing a certain Lot, it will be presumed for all purposes to be a vote with the authority and consent of all other Co-Owners of the Lot.

(c) After Notice and Hearing as provided herein, the Board has the right to suspend the voting rights of any Owner delinquent more than forty-five (45) days in the payment of Assessments.

- (d) Unless otherwise specifically required, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (and after conversion, approval of Class A only).
- (e) If Membership approval of a specified prescribed majority (e.g. 67%) of the voting power (other than Declarant) is required, the following rules apply:
 - (1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or
 - (2) After conversion to all Class A memberships, the required vote is the prescribed majority of the Total Voting Power of Members other than Declarant.
- (f) With the exception of the provisions of the Article herein entitled "*Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements*", no provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Lots which Declarant owns.

4.05 **Transfer of Membership.**

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

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

Article V describes in detail the duties and powers of the Association to govern its members and maintain the common areas.

5.01 Commencement of Duties.

- (a) The Association's responsibility for the management, maintenance and administration of the Property in accordance with the Governing Documents commences upon recordation of this Declaration.
- (b) The Association's responsibility to maintain Common Areas and Association Maintenance Areas shall commence upon recordation of this Declaration. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other improvements on Common Areas or Association Maintenance Areas for a specified period in which said contractors or subcontractors shall perform such maintenance, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Assessments.
- (c) In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the improvements in Common Areas or Association Maintenance Areas, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to assume and undertake maintenance responsibilities pending resolution of the dispute, in accordance with the provisions set forth in the Article herein entitled "*Dispute Notification and Resolution Procedures*".

5.02 Specific Association Duties and Powers.

The duties and powers of the Association are those set forth in the Governing Documents, together with its general and implied powers as a nonprofit mutual benefit corporation, generally to do all things which are necessary or proper for the peace, health, comfort, safety and general welfare of its Owners, including the following:

- (a) Enforce the applicable provisions of the Governing Documents and other instruments for the ownership, management and control of the Project.
- (b) Contract for goods and/or services for Common Areas/Association Maintenance Areas and facilities for the Association subject to the limitations set forth below, including but not limited to hiring a professional security company or patrol to provide security services to the Project on such basis as the Board may determine with the assent of sixty-seven percent (67%) of the voting power.
- (c) Borrow money with the assent of sixty-seven percent (67%) of the voting power and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.
- (d) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.
- (e) Have the authority, through the Board, to enter into a maintenance agreement, as reviewed by DRE, with Declarant for temporary suspension of a portion of Regular Assessments.

5.03 Right of Entry.

- (a) The Association has the right to enter any Lot to determine compliance with the Governing Documents and to perform its duties, including the duties to enforce the Governing Documents. The Association shall also have a right of entry upon and access to slopes and drainageways located upon or under any Lot when such access is essential for the maintenance or stabilization of slopes or drainage, or both.
- (b) In case of emergency, or by court order, a Lot may be entered immediately.
- (c) Absent an emergency or court order, a Lot may only be entered at reasonable hours after the Owner has received three (3) days' written notice. The written notice of entry must state explicitly the Association's reason(s) for the necessity to enter any Lot.
- (d) Entry must be made with as little inconvenience as possible to the Owner/Occupant and without a breach of the peace. If the Association has reason to expect a breach of the peace upon entry, it may take such preventive steps as it deems necessary, including obtaining the assistance of law enforcement.

ARTICLE VI

COVENANTS FOR ASSESSMENT

Article VI describes assessments which owners pay in order to fund Association functions, including maintenance, insurance, etc.

6.01 Assessments.

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

6.02 Commencement; Due Dates of Assessments.

- (a) Regular Assessments against the Lots within the first Phase commence upon recordation of this Declaration. Regular Assessments against the Lots in a subsequent Phase commence on the first day of the month following the First Close of Escrow in that particular Phase of the Project. However, the closing of escrow for any Lot which is leased by a buyer back to Declarant for use as a model for sales purposes shall not be deemed a First Close of Escrow for purposes of commencing Assessments.
- (b) Regular Assessments shall be due and payable in any reasonable manner established by the Board.

6.03 Equal Assessment Rate.

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

6.04 Emergency Assessments.

- (a) Notwithstanding any other provision of this Article, the Board may increase Assessments in order to fund any of the following:
 - (1) An extraordinary expense required by an order of the court;
 - (2) An extraordinary expense necessary to repair or maintain the property or any part of it for which the Association is responsible if a threat to personal safety on the property is discovered;

- (3) An extraordinary expense necessary to repair or maintain the property 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.
- (b) Prior to imposition or collection of an assessment for emergency purposes, the Board must pass a resolution containing written findings as to the necessity for the extraordinary expense and why it was not or could not have been reasonably foreseen while preparing the budget. The resolution must be distributed to the Members together with the notice of Assessment.

6.05 Assessment Duties of the Board of Directors.

- (a) The Board must levy Regular and Special Assessments in compliance with Civil Code Section 1366.
- (b) The Board must establish separate bank accounts for operating monies and reserve monies. In the event of transfer or conveyance of an Owner's fee simple title to a Lot, said Owner shall have no further right or interest in any Assessments collected prior to such transfer. Assessments collected in accordance with the provisions of the Governing Documents shall be appurtenant to a Lot and shall automatically transfer to a new Owner in the event of sale.
- (c) The Board may not impose Special Assessments in a fiscal year aggregating more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year unless approved by a majority of the votes cast at a meeting in which the need for a Special Assessment is determined. Special Assessments levied by the Board in order to restore funds to the reserve account are included in this limitation.

6.06 Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association.

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
 - (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 1366 (or any successor statutes);
 - (2) Reasonable collection costs and attorney's fees; and
 - (3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Lot when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Lot.
- (c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Board as a disciplinary measure for failure of an Owner to comply with the Governing Documents may not become a lien against the Owner's Lot enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. However, this does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for Delinquent Assessments and/or charges to reimburse the Association for the loss of interest or for costs reasonably incurred including attorney's fees in its efforts to collect other Delinquent Assessments.
- (d) In addition to all other legal rights and remedies, the Association may:
 - (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);

- (2) Judicially foreclose the lien against the Lot, including the Assessment, interest, collection costs and late charges;
 - (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
 - (4) Bid on the Lot through authorized agents at the foreclosure sale, to acquire and thereafter to hold, lease, mortgage or convey; or
 - (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.
- (e) The Association may not foreclose a lien unless the amount of Delinquent Assessments exceeds one thousand eight hundred dollars (\$1,800) exclusive of late charges, interest and fees and costs of collection, or unless the Assessments have been delinquent for longer than twelve (12) months.
 - (f) Foreclosure action may not proceed until thirty (30) days after a Notice of Delinquent Assessment is duly recorded with the relevant County recorder that meets the requirements of Civil Code Sections 1367 and 1367.1.
 - (g) The decision either to record a lien for Delinquent Assessments or to initiate foreclosure upon such a lien shall be made only by the Board and may not be delegated to an agent of the Association. The Board's decision shall be by majority vote of Directors present in an open meeting and shall be recorded in the minutes of that meeting. The confidentiality of the affected Owner shall be maintained by identifying the matter in the minutes by the parcel number of the property rather than the name of the Owner.
 - (h) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.

6.07 Collection of Assessment Debts Not Collectible Through Foreclosure.

Delinquent Regular or Special Assessments of less than one thousand eight hundred dollars (\$1,800), exclusive of interest, charges and fees, may be collected in any of the following ways, as provided by Civil Code Section 1367.1(b) or successor statute:

- (a) By a civil action in small claims court;
- (b) By recording a lien on the Owner's separate interest upon which the Association may not foreclose until the amount of Delinquent Assessments exceeds one thousand eight hundred dollars (\$1,800) or the delinquency is for longer than twelve (12) months); or
- (c) Any other manner provided by law except judicial or non-judicial foreclosure.

6.08 Right of Redemption.

A nonjudicial foreclosure by the Association shall be subject to a right of redemption from a foreclosure sale within ninety (90) days after the foreclosure sale.

6.09 Nonuse and Abandonment.

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

6.10 Waiver of Exemptions.

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

ARTICLE VII

ARCHITECTURAL CONTROL

Article VII addresses alterations which owners may wish to make to their Lots. The Association's approval must be obtained for most such changes.

7.01 The Architectural Committee.

- (a) The Architectural Committee shall consist of not fewer than three (3) persons as fixed from time to time by resolution of the Board.
- (b) Declarant shall initially appoint the Architectural Committee. Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until one (1) year after issuance of the original DRE final subdivision public report for the Property, at which time the Board may appoint members, as further described herein.
- (c) Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until (i) five (5) years after the First Close of Escrow, or (ii) close of escrow has occurred on ninety percent (90%) of the Lots within the Property, whichever shall first occur, at which time the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board.
- (d) As long as Declarant has the right to appoint some but not all of the members of the Architectural Committee, the Board shall have the right but not the obligation to fill the remaining vacancies on the Architectural Committee.
- (e) Persons appointed by the Board to the Architectural Committee must be Members; however, persons appointed by Declarant to the Architectural Committee need not be Members, in Declarant's sole discretion. The Board may appoint individual Directors to the Architectural Committee.
- (f) The address of the Architectural Committee shall be the address established for giving notice to the Association unless another address is specified for such purpose in the Architectural Guidelines or Architectural Committee Rules. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Guidelines shall be kept.
- (g) Meetings of the Architectural Committee shall be held from time to time as necessary. Notice, hearing and conduct of the meetings must be in accordance with the Bylaws of the Association and general corporation laws regarding committee meetings.
- (h) In addition to the powers set forth in this Article, the Architectural Committee may perform other duties delegated to it by the Board.

7.02 Architectural Guidelines.

- (a) The Board may, from time to time, adopt and promulgate Architectural Guidelines to be administered through the Architectural Committee. The Architectural Guidelines may include such limitations and restrictions on Improvements as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the placement, kind, shape, height, materials, species and location of any Improvement; and time limitations for the completion of the Improvements, including but not limited to window treatments and dressings and the location and design of fences.

- (b) Initial guidelines have been established by the Declarant and the County of Ventura in connection with the various Entitlement Conditions for projects covered by this document as set forth in Exhibit F attached. Any change in the Architectural Guidelines shall require a 30-day written notice to the membership for their review and comment before the Board can approve the changes. Any change to the initial guidelines set forth in Exhibit F shall require the consent and approval of the County of Ventura.
- (c) The Board is required to annually disclose to the Members items that require architectural approval. The disclosure shall also describe the Improvements which, if completed in conformity with the Architectural Guidelines, do not require approval by the Architectural Committee. The annual membership notice shall contain the procedures used for reviewing architectural applications.
- (d) All dwellings on Lots 1 through 4 of Tract 5457 and Lots 1 through 9 of Tract 4483 shall be constructed in a similar home development style, in order to preserve and promote a consistent community character throughout the Project.

7.03 Plan Review Functions of the Architectural Committee.

- (a) The Architectural Committee shall consider and act upon proposals or plans submitted pursuant to the terms of this Declaration or the Architectural Guidelines. Unless all of the rules of the Architectural Committee have been complied with, such plans and specifications shall be deemed not submitted.
- (b) The Architectural Committee has the power, but not the duty, to retain Persons (including, but not limited to, architects and other professionals) to advise its members in connection with decisions; however, the Architectural Committee does not have the power to delegate its decision-making power.
- (c) The Architectural Committee may, from time to time, adopt, amend and repeal its rules, subject to approval by the Board. Among other things, said rules may require the prepayment of a reasonable deposit to be applied toward the payment of any Special Assessment levied by the Board if an Owner fails to restore any portion of the Property to a clean and attractive condition; may assess a reasonable fee as appropriate for the type and nature of the Improvement, to cover the cost of inspections that may be necessary to insure compliance and in connection with the review of plans and specifications for proposed Improvements, including, without limitation, a procedure for approval of preliminary plans and drawings as well as final approval; may specify the number of sets of plans to be submitted; and may require such detail as it deems proper, including without limitation, floor plans, site plans, elevation drawings, and descriptions or samples of exterior material and colors, landscape planting plans, drainage plans, lighting plans, electrical plans, mechanical plans, and the like.

7.04 Approval.

- (a) Declarant is not subject to the provisions of the Governing Documents pertaining to architectural control. Any Improvements constructed by Declarant shall automatically be in compliance with the Governing Documents and shall not be subject to further architectural control until and unless there has been a change or alteration made by a successor in title to Declarant as to any Residence in the material, texture, color or appearance of any such Improvement upon such Residence.
- (b) Other than such Improvements by Declarant, no Improvements shall be made upon the Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee except as may otherwise be provided for in the Architectural Guidelines. Normal maintenance, repair or reconstruction by any successor in title to Declarant in the event of destruction, in substantial conformance with the Improvements

constructed by Declarant, shall not be deemed to be an Improvement that requires approval pursuant to the provisions of this Article.

- (c) The Architectural Committee shall review plans and specifications submitted for its approval as to style, exterior design, appearance and location and shall approve such plans and specifications only if it deems that the proposed Improvement will not be detrimental to the appearance of the Property as a whole; that the Improvement complies with the Architectural Guidelines; that the appearance of any Improvements will be in harmony with the surrounding structures; that the construction of any Improvement will not detract from the beauty and attractiveness of the Property or the enjoyment thereof by the Owners; and that the upkeep and maintenance of any Improvement will not become a burden on the Association.
- (d) Plans and specifications shall be approved by the Committee as to style, design, appearance and location only, and are not approved for (i) engineering design, (ii) compliance with zoning and building ordinances, and other applicable statutes, ordinances or governmental rules or regulations, (iii) compliance with the requirements of any public utility, (iv) any easements or other agreement, or (v) preservation of any view.
- (e) The Architectural Committee may (i) determine that the proposed Improvement cannot be approved because of its effect on existing drainage, utility or other easements, (ii) require submission of additional plans and specifications or other information or materials prior to approving or disapproving plans and specifications submitted, or (iii) condition its approval of plans and specifications for any Improvement on such changes therein as it deems appropriate.
- (f) The Architectural Committee may also condition its approval of a proposed Improvement on approval by a holder of an easement which may be impaired thereby or upon approval of any such Improvement by the appropriate governmental agency. Any Architectural Committee approval conditioned upon the approval by a governmental agency or an easement holder shall not imply that the Association is enforcing any government codes or regulations or provisions of any easement agreement, nor shall the failure to make such approval conditional imply that approval by any such governmental agency or easement holder is not required.
- (g) The Architectural Committee shall issue its decisions in writing. If an Owner's application is disapproved, the Committee shall include an explanation for the disapproval.
- (h) In the event the Architectural Committee fails to approve or disapprove plans and specifications within sixty (60) days after the same have been duly submitted in accordance with the Architectural Committee's rules, such plans and specifications will be deemed approved.

7.05 Variances.

- (a) The Board may authorize a variance from compliance with the Architectural Guidelines or with provisions of this Article when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations may require. Such variance shall be evidenced in writing, signed by a majority of the members of the Board and delivered to such Owner, and shall become effective upon execution. A copy of the resolution of the Board authorizing such variance must be retained in the permanent records of the Association.
- (b) No violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which any such variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of the Governing Documents for any purpose except as to the particular Residence and particular provision of this Article covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all government laws and regulations affecting use of the Residence including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by any governmental or municipal authority.

7.06 Non-Liability for Approval.

- (a) Each Owner shall be solely responsible for any violation of this Declaration, the Architectural Guidelines, or any applicable instrument, law or regulation, caused by an Improvement made by such Owner even though same is approved by the Committee.
- (b) By approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Owners, the Board nor the Declarant, nor agents, employees, attorneys or consultants of any of the foregoing, assume liability or responsibility therefor, or for any defect in any Improvement constructed from such plans and specifications or for any obstruction or impairment of view caused or created as the result of any Improvements approved by the Architectural Committee. The Committee shall have a right to require, as a condition of approval, that an Owner provide indemnification on terms and conditions satisfactory to the Committee.

7.07 Appeal.

- (a) All decisions of the Architectural Committee are subject to review by the Board, except with regard to Improvements made by Declarant.
- (b) If an application is disapproved, the notice to the Owner shall include a description of the procedure for appealing the decision to the Board. The hearing for reconsideration must be at an opening meeting of the Board. If the disapproval was by the Board, then there shall be no requirement for reconsideration by the Board.
- (c) Written request for an appeal to the Board of a decision rendered by the Architectural Committee must be received by the Board via certified mail with return receipt not more than fifteen (15) days following the final decision of the Architectural Committee.
- (d) Unless the composition of the Architectural Committee is identical to that of the Board, the Board must review and decide upon the proposal within forty-five (45) days after receipt of the appeal, otherwise the proposal will be deemed approved.

7.08 Commencement of Construction.

Upon approval by the Committee, an Owner must commence construction pursuant to such approval within nine (9) months of the date of such approval, or such approval shall no longer be valid and such Owner shall be obligated to resubmit its request for approval pursuant to the requirements of this Article. One (1) set of plans as finally approved shall be stamped approved and shall be retained by the Committee as a permanent record. The construction shall be performed by a contractor licensed by the State of California.

7.09 Proceeding with Work.

- (a) Upon receipt of approval from the Committee pursuant to this Article, the Owner shall satisfy, as soon as practicable, all conditions thereof and shall commence construction and shall thereafter work diligently to perform and complete all construction, reconstruction, additions, grading, refinishing, alterations and excavations pursuant to said approval and in accordance with the following provisions:
- (b) Except in the case of a bona fide emergency, all work shall be performed during reasonable daylight hours (from 7:00 am to 5:00 pm Monday through Friday, 8:00 am to 5 pm on Saturday, and no work on Sunday). All persons performing such work shall use their best efforts to minimize (i) the duration of the work, (ii) the inconvenience to other Owners in the Project and (iii) the accumulation of debris and construction materials on and around the Lot. 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. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all appropriate governmental laws and regulations and shall obtain all required governmental permits and approvals therefor. Approval by the Committee does not satisfy necessary and appropriate approvals and permits that may be required from any governmental entity with appropriate jurisdiction.

- (c) The Owner of any Lot upon which any work of Improvement is being performed shall indemnify, defend and hold harmless Declarant, the 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 by such Owner, its contractors, subcontractors, agents and employees.

7.10 Failure to Complete Work.

The Owner must complete the construction and landscaping, reconstruction, refinishing, or alteration of all Improvements on, in, under and/or about his Lot within a reasonable period of time, not to exceed twelve (12) months after commencing construction for repairs or remodeling thereof (or twenty-four (24) months for construction of new home), unless an extension of time has been granted in writing by the Committee. If Owner fails to comply with this Section, the Committee may proceed in accordance with the other provisions of this Article as though the failure to complete the Improvement were a noncompliance with approved plans.

7.11 Inspection; Compliance and Noncompliance Statements.

- (a) Owner shall notify the Architectural Committee upon completion of Improvements, whereupon the Architectural Committee shall inspect the Improvements in order to determine whether the completed Improvements conform to plans and specifications approved by the Architectural Committee.
- (b) The Architectural Committee shall inspect the Improvements either within sixty (60) days after notification by the Owner of the completion of an Improvement or within ninety (90) days after the cessation of work on the Improvements if the Owner fails to notify the Architectural Committee of completion. The Architectural Committee may, but is not obligated to, inspect the work at any time prior to completion as it deems appropriate to determine that the work is being performed in compliance with the Committee's approval granted in all material respects. The Committee's inspection rights shall include the right to require an Owner to take such action as may be necessary to remedy any non-compliance with the Committee-approved plans for the Owner Work or with the requirements of this Declaration.
- (c) If for any reason an inspection has not been made within sixty (60) days of notification by the Owner of the completion of an Improvement or if the Owner has not been notified of any noncompliance within thirty (30) days after such inspection, the Improvement shall be deemed to be completed in substantial conformance with approved plans and specifications.
- (d) If the Improvements upon such Residence comply or by virtue of the passage of time are deemed to comply with the plans and specifications approved by the Architectural Committee, the Architectural Committee shall, upon request, issue a statement (hereinafter a "Compliance Statement") which will evidence such compliance.
- (e) If any of the Improvements upon such Residence, whether prior to or after completion, do not comply with the provisions of the Governing Documents, the Architectural Committee shall issue a statement (hereinafter a "Noncompliance Statement") delineating the corrective action that is required to bring such Improvements into compliance with the Governing Documents. If an Owner fails to remedy any such noncompliance noticed by the Committee, then the Committee shall notify the Board in writing of the same.

- (f) Any Compliance or Noncompliance Statement issued by the Architectural Committee shall be executed by any person or persons authorized by resolution of the Board or by the president and secretary of the Association, and a copy thereof shall be retained in the records of the Association.
- (g) In the event the Architectural Committee has issued a Noncompliance Statement as to any such Residence, the Architectural Committee shall provide a Compliance Statement, upon request, after the corrective work has been satisfactorily completed. Such Compliance Statement shall then evidence that the Improvements upon such Residence comply with the provisions of the Governing Documents.
- (h) A Compliance Statement shall be conclusive evidence of compliance with the provisions of the Governing Documents as to the Improvements described in the Compliance Statement and further approval of any such Improvements shall not be required unless there is a change or alteration in material, exterior appearance, color or texture in such Improvements.
- (i) In the event an Improvement was commenced without the required approval of the Architectural Committee, or, if such Improvement was not completed within the time limitation established for such Improvement in the Architectural Guidelines or in substantial conformance with the approved plans and specifications, the Board shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance, and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If the noncompliance is not cured within such thirty (30) day period, the Board, after notice and hearing as provided herein, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance and the Architectural Committee shall correct the violation or take other appropriate action.

7.12 Remedy for Noncompliance.

- (a) In the event of issuance of a Noncompliance Statement, then the Owner shall remedy or remove the same within forty-five (45) days from the date that the written Noncompliance Statement is delivered to the Owner.
- (b) If the Owner does not correct the noncompliance within that period, then the Association shall have the right (i) to enter the Owner's Lot and to cause the noncompliance to be corrected and the cost of the same shall be reimbursed to the Association by the Owner and if not timely reimbursed, then the Association shall be entitled to pursue any and all legal rights and remedies against the Owner including the levying of a special assessment for the same against the Owner's Lot as herein permitted and/or (ii) to bring an action for damages or injunctive relief to remedy the same.
- (c) After the lapse of one (1) year after notice of completion of the Improvement or after correction of nonconforming work, whichever occurs later, the Association shall have no further right to exercise its remedies under this section. However, the Association's remedies shall expire upon transfer of the Lot if such transfer occurs within either of the one-year periods specified in this paragraph, unless the Association has commenced exercise of its rights under this section and is diligently pursuing its rights against such Owner.

7.13 No Guarantee of Views.

- (a) Depending upon location, some Lots in the Property may enjoy some unique view potential. The view, if any, from a Lot in the Property is subject to the limitations and disclaimers set forth in this section.
- (b) There are no express or implied easements for views or for the passage of light and air to any Lot in the Property. Although the provisions of this Article may have some effect on preserving views

from and providing for the passage of light and air to an individual Lot, nevertheless Declarant, the Architectural Committee, and the directors, officers, employees, consultants, agents and contractors of the foregoing, do not make any representations or warranties, express or implied, concerning the view, if any, that a particular Lot will enjoy. Furthermore, the payment by any Owner of any "premium" does not constitute a representation or warranty, express or implied, concerning the view, if any, the Lot will enjoy.

- (c) Each Owner, by accepting a Deed to his respective Lot, expressly acknowledges and agrees that any view which his Lot may enjoy as of the date of purchase may be impaired or obstructed by the installation of trees, other landscaping or other types of barriers, the growth or relocation of landscaping, the construction or other installation of Improvements in the Property and/or on any property adjoining the Property in accordance with applicable laws, codes, ordinances and regulations, and each Owner expressly consents to any such obstructions.
- (d) Each Owner further understands that the provisions of this Declaration establish certain architectural and landscaping controls applicable to the Property, and that each Owner has the right to enforce such controls. Except as expressly set forth in this Declaration, there are no rights concerning the preservation of any view.

ARTICLE VIII

MORTGAGEE PROTECTION

Article VIII provides certain protections to holders of the first mortgage on any Lot, in order to make it easier for owners to obtain purchase money loans or refinancing.

8.01 Subordination of Lien and Foreclosure.

- (a) Any lien for Regular or Special Assessments created or claimed in this Declaration:
 - (1) Is subject and subordinate to the rights of any First Deed of Trust that encumbers any part of the Property made for value in good faith; and
 - (2) May not in any way impair or invalidate the obligation or priority of a First Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgage to the Subordination by Lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.
 - (3) The provisions of this paragraph (a) do not preclude other mortgagee protections provided by California law.
- (b) No breach of any provision of Declaration, nor the enforcement of any of its lien provisions, nor the Foreclosure of any lien created by or claimed under this Declaration, shall invalidate, affect or impair the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through Foreclosure sale, trustee's sale, or otherwise.
- (c) Upon foreclosure of a First Mortgage, the purchaser:
 - (1) Will take the Lot title free of any Assessment lien accrued up to the time of the foreclosure sale, except that in the event the net sale proceeds exceed what is owed on all encumbrances prior to the Assessment lien, the Association shall be entitled to receive payment on any Assessment lien; and
 - (2) Is only obligated to pay Assessments or other Association charges accruing after the title to the Lot is acquired.
- (d) Any First Mortgagee who obtains title to a Lot pursuant to the remedies in the Mortgage or by a deed in lieu of foreclosure shall not be liable for more than six (6) months of the Lot's unpaid Regular Assessments or charges accrued before acquisition of the title to said Lot by the Mortgagee.

8.02 Mortgagees Are Not Required to Cure Certain Breaches.

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

8.03 Effect of Breach of Declaration.

- (a) Breach of this Declaration may not:
 - (1) Cause any forfeiture or reversion of title; or

- (2) Create any right of reentry.
- (b) Breach of this Declaration may be enjoined or abated by court action by the Association, Declarant, or any Owner, and damages may also be awarded provided that:
 - (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and
 - (2) This Declaration binds any Owner whose title is derived through Foreclosure, trustee's sale or otherwise.

8.04 Exemption From Right of First Refusal.

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

8.05 Restrictions on Certain Changes.

- (a) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees (based on one vote per Lot for each Eligible First Mortgage held) must give written approval before the Association may do any of the following:
 - (1) Alter the method of determining Assessments or other charges levied against an Owner.
 - (2) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Lots or the Common Area(s).
 - (3) Fail to maintain Fire and Extended Coverage on insurable Common Area(s) as specified in this Declaration.
 - (4) Amend the Governing Documents concerning any material provision, including but not limited to the following:
 - (A) Voting rights;
 - (B) Reductions in reserves for maintenance, repair, or replacement of the Common Area/Association Maintenance Area Improvements;
 - (C) Responsibility for maintenance and repairs;
 - (D) Reallocation of interests in the Common Area or rights to its use;
 - (E) Redefinition of any Lot boundary;

- (F) Convertibility of Lots into Common Area or Common Area into Lots;
 - (G) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
 - (H) Hazard or fidelity insurance requirements;
 - (I) Imposition of any restrictions on the leasing of Lots except as provided herein;
 - (J) Imposition of any restrictions on a Lot Owner's right to sell or transfer his or her Lot;
 - (K) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration;
 - (L) Any provisions that expressly benefit mortgagees, insurers, or guarantors; or
 - (M) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.
- (b) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of the votes of the First Mortgagees (based on one vote per Lot for each Eligible First Mortgage held), in addition to the vote required from Owners, must give written approval before the Association may, by act or omission, do any of the following:
- (1) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Lot or Common Area (other than granting easements as specified in this Declaration);
 - (2) Partition or subdivide any Lot;
 - (3) Seek to abandon or terminate the legal status of the Property;
 - (4) Use hazard insurance proceeds for losses to the Property (Lot or Common Area) for other than repair, replacement or reconstruction of the Property;
 - (5) Change the pro rata interest or obligation of any Lot for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of each Owner in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;
 - (6) Change or alter the priority of any liens created by or claimed under this Declaration;
 - (7) Modify or amend any provisions that are for the express benefit of First Mortgagees, insurers or governmental guarantors of First Mortgages;
 - (8) Modify or amend any provisions of this Declaration regarding insurance;
 - (9) Modify or amend any provisions of this Declaration which is a requirement of the FHA, FHLMC or FNMA.
- (c) An Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within sixty (60) days after the Eligible First Mortgagee receives notice of the proposed action, provided notice was delivered personally or by certified or registered mail, return receipt requested.
- (d) Any addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

8.06 Inspection of Association Books and Records.

Any First Mortgagee has the right to examine the books and records of the Association during business hours and after notice to the Association. Any First Mortgagee shall be entitled, upon written request, to have an audited financial statement for the immediately preceding year, free of charge to the party so requesting.

8.07 Condemnation Awards and Insurance Proceeds.

Condemnation awards or insurance proceeds for losses to or taking of Lots or Common Areas shall be distributed to the Owner(s) in proportion to the fair market value of their Lot, provided that if at the time of distribution there is a Mortgage on any individual Lot, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Lot is mortgaged. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.

8.08 Loss Payable Endorsement.

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

8.09 Mortgagee's Right to Attend Meetings.

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote except as provided in Section 8.05.

8.10 Payments by Mortgagees.

(a) First Mortgagees may pay the following jointly or severally:

- (1) Taxes or other charges in default which may be a charge against any part of the Common Area(s); and
- (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s).

(b) Upon such payments, the Association:

- (1) Owes immediate reimbursement to First Mortgagees making such payments; and
- (2) Must, upon Mortgagee's request, execute an agreement that reflects the First Mortgagees' entitlement to such reimbursement.

8.11 Notices to Mortgagees.

(a) Each Eligible First Mortgagee is entitled to timely written notice of:

- (1) Any condemnation or casualty loss that affects a material portion of the Project or the Lot securing its Mortgage;

- (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage or any other breach or default under the Governing Documents by the Owner of any Lot on which it holds the mortgage;
 - (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees.
- (b) To obtain the information above, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the Lot number or address of the Lot for which it has the Mortgage.

8.12 Loan to Facilitate Resale.

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

8.13 Control if Mortgagee Protections Conflict With Other Provisions.

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

8.14 Reserves.

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

ARTICLE IX

DAMAGE AND DESTRUCTION TO IMPROVEMENTS

Article IX concerns restoration or other disposition in the case of damage or destruction of common areas/association maintenance areas.

9.01 Restoration of the Property.

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

- (a) If insurance proceeds cover at least eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners to make up the balance of costs (according to the Article "Covenants for Assessments").
- (b) If insurance proceeds cover less than eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners, unless at least sixty-seven percent (67%) of the Owners (other than Declarant) determine either:
 - (1) To rebuild in a less expensive manner than substantial replacement, utilizing all available insurance proceeds. The Association will levy a reconstruction Assessment equally against the Owners to raise any rebuilding cost in excess of insurance proceeds; or
 - (2) Not to rebuild. All net insurance proceeds for the damage (after expenses of clearing debris and making the damaged area aesthetically pleasing) are at the Association's discretion to perform its functions according to the Governing Documents or to distribute equally to the Owners (subject to the rights of Mortgagees of record).
- (c) If the estimated cost of repair does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall cause the repair to occur without the consent of Members irrespective of the available amount of insurance proceeds. The Board is empowered to levy a Special Assessment if necessary as described herein.
- (d) If the Owners and Mortgagees determine that restoration costs would be substantial and reconstruction would not be in their best interests, the Owners may proceed as provided below.

9.02 Notice to Owners and Listed Mortgagees.

Immediately upon learning of any material damage or destruction to the Common Area/ Association Maintenance Area or any Lot, the Board must notify all Owners, and First Mortgagees, insurers or guarantors of any relevant Mortgagees who have filed a written request for Board notice (see "*Mortgagee Protection*" Article).

9.03 Sale of Property and Right to Partition.

If the Association elects not to rebuild, an appraiser licensed by the State of California Office of Real Estate Appraisers shall determine the relative fair market values of all Lots as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such values.

9.04 Damage to Dwellings.

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

ARTICLE X

CONDEMNATION

Article X concerns condemnation of common areas by a governmental entity.

10.01 Representation by the Board in Condemnation Proceedings.

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

10.02 Distribution of Award.

- (a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).
- (b) Any award must first be distributed to the Owner(s) in proportion to the fair market value of their Lot, provided that if at the time of distribution there is a Mortgage on any individual Lot, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Lot is mortgaged.
- (c) If a condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.
- (d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Lots as determined by an appraiser licensed by the State of California Office of Real Estate Appraisers and hired by the Board with approval of fifty-one percent (51%) of the Mortgagees. If said percentage of Mortgagees do not approve the Board's selection of appraiser, then any Mortgagee may hire a licensed appraiser at its own cost, and the award amount will be calculated based upon the average of all appraisals obtained.
- (e) An Owner or Mortgagee who disputes such appraisal shall be entitled to hire an independent, licensed appraiser, and in the event of disagreement between the appraisers the Board shall resolve the dispute.

ARTICLE XI

ANNEXATION

Article XI addresses procedures for additional property to be annexed and deannexed.

11.01 Annexation of Additional Property.

Additional Property may be annexed to the Property and become subject to this Declaration by any of the following methods, subject to the approval of Ventura County as set forth in section 17.02 herein:

- (a) Declarant may annex any portion of the Additional Property without approval by the Association, Board, or Owners if the plan for phased development is approved by the DRE; or
- (b) By majority vote of sixty-six and two-thirds percent (66 2/3%) of the voting power of the Owners (other than Declarant).

11.02 Contents of Annexation Document.

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

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

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

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

11.04 Deannexation.

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

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

11.05 Association's Merger or Consolidation.

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

ARTICLE XII

EASEMENTS

Article XII addresses easements within the property.

12.01 Creation of Easements.

- (a) Easements referred to herein are established upon recordation of this Declaration, and the provisions hereof with respect to such easements shall be covenants for the use and benefit of Lots and Property superior to all other encumbrances.
- (b) Individual grant deeds to Lots shall state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

12.02 Reservation of Easements for Declarant's Construction and Marketing Activities.

- (a) For as long as Declarant owns any portion of the Property or Additional Property (and without unreasonably interfering with other Owners), the Declarant and its representatives reserve easements and rights for the following purposes without the need to seek or obtain Board approval:
 - (1) Improvements. Easements over i) the Common Area/Association Maintenance Area for the purpose of constructing, erecting, completing, operating and maintaining thereon, therein or thereunder roads, streets, walks, and driveways, as long as any Lot remains unsold; and ii) the Property for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation lines, sanitary sewer lines and drainage facilities, provided that access for such purpose is not otherwise reasonably available;
 - (2) Construction and Sales. Easements for construction, display, maintenance, sales and exhibit purposes over the Common Area/Association Maintenance Area in connection with the erection and sale or lease of Residences within the Property provided, however, that such use shall not be for a period beyond the sale by Declarant of all Lots within the Property;
 - (3) Utilities. Easements, whether or not shown on the Tract Map, over the Property for the installation and maintenance of electric, telephone, cable television, community antenna television system, water, gas, sanitary sewer lines and drainage facilities. Declarant further reserves the right to grant and transfer easements over the Lots and Common Area(s)/Association Maintenance Area(s) for installation, maintenance and repair of the Service Lines and Facilities (as defined below).
- (b) The easements reserved to Declarant, or granted and conveyed by Declarant pursuant to this Section shall not unreasonably interfere with the use and enjoyment by the Owners of the Property, and any repair or restoration necessitated by any such installation, construction or maintenance shall be completed by the holder of the easement that has entered upon the Property for any such purpose within a reasonable time after the occurrence of such damage or need for restoration.

12.03 Certain Easements for Association.

- (a) The Association has, and may grant, nonexclusive easements and rights of way for ingress, egress and access to all portions of the Property as reasonably required to perform its maintenance obligations and other duties established in this Declaration, and further has utility

and drainage easements as hereinafter provided to maintain the health, safety, convenience and enjoyment of the Project.

- (b) Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and sale of the Property. Such right of Declarant shall expire upon the later of (i) the close of escrow for the sale of all Lots in the Project by Declarant, or (ii) expiration of five (5) years from the date of issuance by the DRE of the Final Subdivision Public Report for the Project.
- (c) Each Lot subject to the jurisdiction of this Declaration is hereby declared to be subject to an easement in favor of the Association on, in, over and under such Lot, including the right of ingress to and egress from such Lot, for the purpose of performing any of the Association duties under this Declaration, and maintaining, repairing and replacing the Common Areas and Association Maintenance Areas as more particularly described in Exhibit "C" attached hereto.

12.04 Certain Easements for Owners.

- (a) Declarant grants nonexclusive easements for enjoyment, ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Area to all Owners, subject to other provisions of the Governing Documents. Notwithstanding any provision to the contrary herein, this easement granted to all Owners of the Project pursuant to this section 12.04(a) and the area designated as Common Area pursuant to this Declaration may only be modified upon the unanimous written consent of all such Owners.

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

Easements for Service Lines and Facilities in Lots or Common Area(s) is granted in favor of the Owner of a Lot or Association served by said Service Lines and Facilities to the full extent necessary for the maintenance and repair by the Owner, Association, or servicing company;

If Service Lines and Facilities serve more than one Lot, each Owner served is entitled to reasonable use and enjoyment and access for repair, replacement and maintenance of all necessary portions of the Service Lines and Facilities. In the event of a dispute between Owners respecting the repair, replacement or maintenance of the Service Lines and Facilities, or the sharing of the cost thereof, said Owners shall first contact the appropriate utility company in an effort to resolve the dispute; provided however, if said dispute remains unsolved, the matter shall be submitted to the Board who shall decide the dispute and the decision of the Board shall be final and conclusive on the Owners.

- (c) Notwithstanding that an Owner may install Improvements within said easement area with the approval of the Architectural Control Committee, each Owner acknowledges that such Improvements may be removed by the respective utility or Public Agency to maintain, repair or replace any of the foregoing facilities without any liability to the Owner to repair or restore such Improvements.
- (d) Declarant hereby reserves, for its benefit and the benefit of the Association and each Owner, nonexclusive easements on, over, across and through all Lots for the construction, installation, inspection, maintenance, repair and replacement of drainage lines and improvements, and subdrain lines, access ports, and the like, wherever same may be located, in accordance with the provisions of this Declaration. Such easements over such portions of each Lot shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

12.05 Drainage Easements.

- (a) Each Lot is hereby declared to be subject to an easement appurtenant or right in favor of the Association and all Owners, and the same is hereby granted by Declarant, for drainage and surface water runoff from any other Lot from which water emanates in accordance with any drainage or surface water runoff patterns resulting from grading of the Project or installation of drainage facilities as part of the construction or any reconstruction of the Project in accordance with grading and drainage facilities plans approved or required by the County of Ventura or by any other governmental body having jurisdiction, including without limitation the Project drainage facilities shown on Exhibit D attached.

Each Lot through which an underground or other drainage device or pipe was laid or installed for purposes of carrying away surface water or rain water from any other Lot as part of the construction or reconstruction of the Project, including without limitation the Project drainage facilities shown on Exhibit D attached, is hereby declared to be subject to an easement appurtenant or right in favor of the Owner of such other Lot and in favor of the Association, and the same is hereby granted by Declarant, in order to install, maintain, repair, and replace such drainage device or pipe, including the right to excavate in order to obtain access.

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

12.06 Easements for Vehicular and Pedestrian Traffic.

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

12.07 Easements for Clustered Mailboxes.

In order to comply with the various requirements of the County and the United States Postal Service, kiosk mailboxes may be installed within that portion of the Common Area as designated by the Board for such purpose. Easements are hereby created, granted and established on and over that portion of the Common Area in favor of all Owners in the Project, the Association and the United States Postal Service for delivery and deposit and retrieval of mail.

12.08 Encroachment.

- (a) Easement rights are hereby created, established and granted to Declarant, the Association and Owners of any Lot or Common Area, originally constructed by Declarant, or as reconstructed, with improvements encroaching on, over and across any portion of a contiguous Lot or Common

Area, as shown in the Tract Map, resulting from engineering errors, errors or adjustments in original construction, reconstruction, repair, settling, shifting, or any other movement.

- (b) If a portion of a Lot encroaches on, over and across any portion of a contiguous Lot or Common Area, the encroaching Lot Owner's easement rights shall be exclusive.
- (c) If a portion of the Common Area encroaches on, over and across any portion of a contiguous Lot, the Association's easement rights shall be non-exclusive.
- (d) Declarant, the Association and Owners of the encroaching improvements shall have the right to maintain, repair or replace the encroaching improvements.
- (e) In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design.
- (f) In interpreting this Declaration, the Tract Map and all instruments of conveyance, the existing physical boundaries of Lot(s), including any encroachment as defined in (a) above, shall be the actual boundaries, rather than any description and/or depiction set forth in this Declaration, the Tract Map, or instrument of conveyance.
- (g) Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of same over the Common Area(s) are specifically reserved for the benefit of the Owners. The foregoing easements shall not unreasonably interfere with an Owner's use and enjoyment of such Owner's Lot.
- (h) The easements for the maintenance of the encroaching improvement shall exist for as long as the encroachments exist; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

ARTICLE XIII

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

Article XIII concerns the Declarant's obligation to complete common area improvements.

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

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

ARTICLE XIV

AMENDMENT

Article XIV concerns amendments to the Declaration.

14.01 Amendment.

- (a) Before the First Close of Escrow, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration (subject to the Article entitled "*Mortgagee Protection*") by recording an instrument of amendment in the relevant County Recorder's Office.
- (b) After the First Close of Escrow, this Declaration may only be amended in the following ways (and subject to the Article entitled "*Mortgagee Protection*"):
 - (1) If there is only one Membership Class, approval by at least sixty-seven percent (67%) of Members other than Declarant, and by at least sixty-seven percent (67%) of the total voting power, including Declarant; and an instrument signed by two (2) Association officers certifying that the amendment was approved by at least sixty-seven percent (67%) of Members other than Declarant, and also approved by at least sixty-seven percent (67%) of the total voting power, including Declarant.
 - (2) If Class B Membership exists, approval by at least sixty-seven percent (67%) of the Members of each Class, and an instrument signed by two (2) Association officers certifying that the amendment was approved by sixty-seven percent (67%) of the Members of each Class.
- (c) Any amendment must be properly recorded in the County Recorder's Office.
- (d) The percentage of Owners needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 1356, or any successor statutes).
- (f) While the Declarant holds or directly controls at least twenty-five percent (25%) of the votes, any proposed amendment to any Governing Documents must comply with Business and Professions Code Section 11018.7.
- (g) No amendments to any provisions in this Declaration including, but not limited to, the Article entitled "*Dispute Notification and Resolution Procedures*" or other Governing Documents which specifically benefit the Declarant as developer, shall be made without the written consent of the Declarant.
- (h) Notwithstanding any other portion of this Section, for so long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration by recording an instrument in writing, signed by Declarant, without the consent of the Association or any other Owner, provided that such amendment is made in order to conform this Declaration to the requirements of the DRE, VA, FHA, FNMA, FHLMC, or any other governmental entity.
- (i) An amendment for the purpose of correcting technical errors, clerical mistakes or for clarification shall not be construed as a material change to the Governing Documents and may be made upon a majority vote of the Board of Directors without vote of the Membership.
- (j) All future changes to this Declaration with respect to the maintenance duties of the Association and the matters set forth in Section 17.02 herein must be approved, in writing, by the County

Planning Director and are subject to additional terms and conditions set forth in Article XVII herein.

ARTICLE XV

DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES

Article XV provides an expedited means of resolving any claims, disputes and disagreements relating to either the Governing Documents or construction defects, which may arise between or among i) Owner, and/or ii) the Association, and/or iii) Declarant. To the extent permitted by law, all such disputes shall be resolved under the "Alternative Dispute Resolution" procedures provided by this Article.

15.01 Scope and Purpose of Article.

- (a) **Disputes Subject to Resolution Under This Article.** Any and all claims, controversies, breaches or disputes by or between the Association, any Owner or Owners, and/or Declarant arising from or related to this Declaration, the Property, any Lot and/or any improvements constructed thereon, the sale of any Lot or any transaction related hereto, whether such dispute is based on contract, tort, statute, or equity, shall be resolved pursuant to the procedures set forth in this Article.
- (b) **Exclusion of Disputes Relating to Assessments.** Notwithstanding paragraph (a) of this Section, this Article does not apply to disputes between the Association and Owner relating to the imposition or collection of assessments.
- (c) The California Civil Code contains various provisions intended to facilitate the resolution of disputes arising in common interest developments. These provisions include, but are not limited to those set forth in Civil Code Sections 895 through 945.5, 1363.810 through 1363.850, 1369.510 through 1369.590, and 1375 through 1375.1. Where required by law, the provisions of this Article are superseded by contrary provisions of the cited statutes. Nothing in this Article shall prevent the parties from agreeing in writing at or after the time a dispute arises to resolve their dispute by procedures other than those set forth in this Article.

15.02 No Right to Trial.

Each of the Parties to any dispute, claim or disagreement relating to either the Governing Documents or construction defects has waived or shall waive his/her/its right to trial by jury or by a judge sitting without a jury and shall resolve the dispute through the Alternative Dispute Resolution procedures set forth in this Article.

15.03 Procedures Applicable to Resolution of Disputes Between the Association and an Owner.

This Section 15.03 applies to a dispute between the Association and an Owner involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the Governing Documents.

(a) Obligation to Meet and Confer Before Initiating Formal Claim.

- (1) Any party to a dispute may request in writing that any other party meet and confer in an effort to resolve the dispute.
- (2) If the meet-and-confer procedure is invoked by the Association against an Owner, the Owner may elect not to participate in the procedure, but must within fifteen (15) days inform the Association of such election. However, if the meet-and-confer procedure is invoked among any other parties, then all parties shall participate in the procedure.

- (3) No fee shall be charged to participate in the meet-and-confer process.
 - (4) Within twenty (20) days of the request, all parties intending to participate in the meet-and-confer procedure shall meet promptly at a mutually convenient time and place to meet and confer.
 - (5) The parties shall explain their positions to each other, and confer in good faith in an effort to resolve the dispute. If the parties so desire, they may explain their positions to each other in writing in advance of the meet-and-confer session, but such formality shall not be required.
 - (6) Any resolution reached by the parties upon meeting and conferring shall be binding on the parties and judicially enforceable if it satisfies all three of the following conditions: (i) The agreement is in writing and is signed by all parties to the dispute, and (ii) the agreement is not in conflict with the law or with the Governing Documents, and (iii) the agreement is either consistent with the authority granted to its designee by the Association or Declarant, as the case may be, or is ratified by the Board of Directors of the Association or by Declarant, as the case may be.
- (b) Mediation. If the parties are unable to resolve any dispute, the matter shall be submitted to mediation by an unaffiliated mediator.
- (1) Selection of Mediator. The mediator shall be selected and paid for by Declarant, if a party, or else by the party initiating the claim. However, the parties may agree to split the cost of the mediator among them, and if so, the mediator shall be selected jointly by the parties so agreeing. No person with any affiliation with any party, or with any financial or personal interest in the mediation's result shall serve as a mediator except by the written consent of the parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the arbitration process. The parties are encouraged to use the mediation services of low-cost or free neighborhood mediation or conciliation services if available.
 - (2) Location and Timing of Mediation Proceedings. The mediation shall be held in the county where the Property is located. The mediator shall hold the mediation conference within 15 days after receiving the request to mediate.
 - (3) Inadmissibility of Mediation Proceedings. Prior to the commencement of the mediation proceedings, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code Sections 1115 et seq., or pursuant to any similar successor statute, in order to exclude the use of any testimony or evidence produced at the mediation at any subsequent proceeding. Pursuant to California Evidence Code Section 1119(a), "No evidence of anything said or of any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled in any arbitration, administrative adjudication, civil action or other non-criminal proceeding in which, pursuant to law, testimony can be compelled to be given".
 - (4) Own Costs and Attorney's Fees. Except as provided in subparagraph (1) of this paragraph, each party shall bear its own costs and attorneys' fees in connection with the mediation. The parties are not required to have attorneys participate in the mediation.
 - (5) Submission to Judicial Reference in Event of Unsuccessful Mediation. In the event that mediation does not resolve the dispute, the parties shall submit the dispute to judicial reference, as provided in the next Section.

15.04 Submission of Disputes Involving Declarant, Other Than Construction Defect Disputes, to Judicial Reference.

If any party commences a lawsuit for a dispute against Declarant, except for a construction defect dispute, all of the issues in such action, whether of fact or law, shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(a), 639(a) and (d), and 641 through 645.1, or any successor statutes thereto. Any party to such lawsuit may commence a judicial reference pursuant to Code of Civil Procedure Section 638.

- (a) Inclusion of Necessary Parties. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding.
- (b) Allocation of Costs and Fees. Declarant shall advance the fees necessary to initiate the dispute resolution process. The parties shall share equally in the fees and costs of the referee, unless the referee orders otherwise.
- (c) Qualifications of Referee. The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters. The referee shall not have any relationship to the parties or interest in the Project.
- (d) Authority of Referee. The referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The referee shall be the only trier of fact or law in the reference proceedings and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.

The referee shall apply the laws of the State of California, including the rules of evidence, unless expressly waived by all parties to the judicial reference proceeding. The referee shall have the power to grant all legal and equitable remedies and award compensatory and/or punitive damages in the judicial reference proceeding, except that no punitive damages shall be awarded against Declarant for any construction defect.

- (e) Timeliness of Reference Proceedings. The participants in the judicial reference shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. The referee shall promptly commence the judicial reference proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.
- (f) Reference Venue and Procedures. The proceedings shall be heard in the county in which the Property is located.
 - (1) The referee may require one or more prehearing conferences.
 - (2) The parties shall be entitled to discovery and to avail themselves of the subpoena power of the court ordering the reference, and the referee shall oversee discovery and may enforce all discovery orders and subpoenas in the same manner as any trial court judge.
 - (3) A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for posthearing motions and any appeals, and the parties shall share equally in the cost of the record unless the parties agree or the referee orders otherwise.
- (g) Discovery. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Such parties shall also be entitled to conduct further tests and inspections as provided in subparagraph (b) above. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the referee upon a

showing of good cause or based on the mutual agreement of the parties to the judicial reference proceeding. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

- (h) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee, as provided herein, any provisional remedies are sought by the parties to the dispute, such relief may be sought in the Superior Court of the County in which the Project is located. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.
- (i) **Statement of Decision.** The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the dispute had been tried by the court.
- (j) **Judgment and Appeal.** The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. Upon entry of judgment, the decision of the referee shall be appealable as if rendered by the court.

15.05 Resolution of Construction Defect Disputes Against Declarant.

- (a) The Association shall not initiate any claim against Declarant except with the vote or written assent of the Members holding more than seventy-five percent (75%) of the voting rights of Class A Members, if two classes exist, or, if only one class exists, more than seventy-five percent (75%) of the voting rights of all Members other than Declarant. Declarant, and its representatives on the Board of the Association, shall have no control over the issue to decide whether to initiate a claim under such statutory provisions. Prior to voting to pursue such a claim, the Board shall inform the Members of alternatives to remedy the deficiencies without litigation and of potential adverse consequences of litigation.
- (b) If a dispute between the Association and Declarant is not resolved despite the proceedings set forth in Civil Code Section 1375, further litigation shall comply with all of the requirements of Section 1375.05 of the Civil Code.
- (c) Upon resolution of a dispute subject to Civil Code Section 1375 and/or 1375.05, the Association shall disclose to its Members all of the matters specified in Section 1375.1 of the Civil Code.

15.06 Special Provisions Applicable to Resolution of Construction Defect Disputes; Declarant's Election to "Opt Out" of Statutory Pre-Litigation Procedures.

Notice of Procedures for Actions for Construction Defects. The Property is subject to Title 7 of Part 2 of Division 2 of the California Civil Code (commencing with Section 895) (the "Right to Repair Act"). The procedures established by the Right to Repair Act impact the Owners' and Association's legal rights.

- (a) **Election.** Declarant has elected to establish pre-litigation mediation procedures ("**Contractual Pre-Litigation Procedures**") to be used in lieu of the procedures set forth in California Civil Code Sections 910-938 ("**Statutory Pre-Litigation Procedures**") for resolution of disputes

related to or arising out of construction defects as defined by California Civil Code Section 895 through 897. Said claims shall be handled by the procedures set forth below, in this Section 15.06. If such Contractual Pre-Litigation Procedures fail to resolve a dispute governed by the Right to Repair Act, such dispute shall be resolved according to the neutral binding arbitration procedures set forth in Section 15.06(g) entitled "Arbitration of Disputes".

- (b) Duty to Mitigate and to Maintain; Limitation on Remedies. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss that Owner may suffer as a result of any Claimed Defect in the Property, which reasonably might have been avoided had Owner adhered to commonly accepted maintenance practices and maintenance recommendations by Declarant or by the manufacturer of manufactured products and appliances, or had given Declarant timely notice and opportunity to cure the Claimed Defect.
- (c) The measure of damages related in any way to alleged patent and/or latent construction defects and/or alleged failure to disclose claims shall not exceed the lesser of the actual costs of repair thereof or diminution in value. Declarant shall not be liable for punitive damages. The referee shall be entitled to determine whether such repair(s) or correction(s) have been satisfactorily performed.
- (d) Notification to Declarant of Claim.
 - (1) If Owner/Association discovers a material, structural or other defect in the Property covered by California Civil Code Section 895 et seq. ("Claimed Defect") that Owner/Association feels may be the responsibility of Declarant or any director, officer, partner, member, employee or agent of Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively "Declarant Parties"), Owner/Association shall notify Declarant, in writing, at Declarant's address for service of process registered with the California Secretary of State.
 - (2) Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect sufficient to determine the nature and location, to the extent known, of the claimed violation, including a citation to the specific subdivision and paragraph number of Civil Code Section 896 alleged to be violated, if any, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner/Association or an agent of either will be available during ordinary business hours for service calls or inspections by Declarant.
 - (3) Owner's/Association's written notice to Declarant is a condition precedent to Owner's/Association's right to institute a legal proceeding, and Owner/Association shall not pursue any other remedies available, at law or otherwise, including without limitation the filing of any lawsuit or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect.
- (e) Declarant's Rights of Inspection.
 - (1) Declarant shall, in its sole discretion, be entitled to inspect the Property regarding the reported Claimed Defect and, within its sole discretion, be entitled to cure such Claimed Defect. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.
 - (2) If the parties submit the Claimed Defect to mediation, then prior to the mediation, Declarant shall have the right to perform an inspection or testing of each and every alleged violation. Declarant and Owner/Association shall schedule a mutually convenient date and time during normal business hours for the inspection. Declarant shall not be responsible for any damages arising from a delay in performing the inspections resulting

from the unavailability of Owner/Association or the failure of the Owner/Association to provide Declarant with reasonable access to complete such inspections and testing. Declarant shall have the right to invite other parties to observe or participate in any of the inspections and/or testing. Owner/Association shall provide access to all areas of the Property to perform the inspections and testing. Owner/Association shall not be responsible for any costs incurred by Declarant to perform the inspection and/or testing. Declarant shall be responsible for any damage caused by the inspection or testing. Declarant shall restore the Property to its pre-testing condition within ten (10) business days after completion of the final inspection or testing, unless otherwise agreed by the parties. Such inspections or testing can be observed and electronically recorded, videotaped, or photographed by either party or their legal representative. Nothing that occurs during the inspection or testing (or any inspection or testing by Owner/Association) may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent proceeding. If Owner/Association performs own inspections or testing, the Owner/Association shall give Declarant at least three (3) business days advance notice of any such inspection or testing. Declarant and its agents, employees and consultants have the right to observe such inspections and testing. If Declarant does not conduct the inspection pursuant to this paragraph before the mediation, it may do so at any other point prior to entry of judgment.

- (3) Regardless of whether Declarant conducts an inspection pursuant to this paragraph, the Parties shall cooperate as necessary to provide entry at reasonable times and under reasonable conditions for the purpose of curing the defect at any point after notification of the claim, including after entry of judgment.

(f) Offer to Repair.

- (1) Cash payment in lieu of repair. Upon inspection, Declarant may offer Owner/Association a cash payment in lieu of repair which, if accepted, may be paid in exchange for a written full release of the claim.
- (2) Repair. Declarant may offer to repair the defect in exchange for a written full release of the claim, and if Owner/Association authorizes the repair, Declarant shall propose to Owner/Association two alternative contractors to perform the repairs ("proposed contractors"). The proposed contractors shall satisfy the contractor qualifications set forth in Civil Code sections 917 and 918, and at least one shall be neither owned nor financially related to Declarant. However, if the Owner/Association selects a proposed contractor not owned or financially controlled by Declarant, then Declarant shall be entitled to have the selected proposed contractor perform a second inspection in addition to the inspection described above in paragraph (e).
- (3) Post-Repair Mediation. Declarant's offer to repair shall be accompanied by either an offer to mediate the dispute if Owner/Association so chooses, or a demand for mediation in which all parties shall participate in good faith, in the event that Owner/Association is dissatisfied with the quality of the repair that is made. Any such post-repair mediation shall be conducted pursuant to the provisions of Section 15.03(b) of this Declaration.

(g) Arbitration of Disputes.

AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL

NOTICE: BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THIS PROPERTY, EACH OWNER SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION ENTITLED "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT. DECLARANT AND

EACH OWNER ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT AND EACH OWNER ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF DECLARANT OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THEY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT.

- (1) Agreement to Arbitrate. Owner/Association and Declarant shall resolve any dispute arising out of construction defect claims covered by Civil Code Section 895 *et seq.* not resolved through the above described mediation procedure, exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall be binding on and enforceable by every Owner, the Association, Declarant and Declarant Parties. Alternatively, Owner/ Association, Declarant or Declarant Parties may elect to resolve such disputes through a small claims court proceeding, in which case the party filing the small claims action will have waived the right to any relief in excess of the jurisdiction of the small claims court.
- (2) If a dispute is subject to the Contractual Pre-Litigation Procedures under the Right to Repair Act or any successor statutes, such dispute shall be subject to binding arbitration under this Section after the Contractual Pre-Litigation Procedures are concluded and fail to resolve the dispute.
- (3) Federal Arbitration Act. As many of the materials and products incorporated into the Lots constructed on the Property are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce. Notwithstanding any contrary provision of this Declaration, the Federal Arbitration Act (9 U.S.C. §1, *et seq.*) and the California Arbitration Act now in effect and as may be amended will govern the interpretation and enforcement of this arbitration provision to the extent the California Arbitration Act is not inconsistent with the Federal Arbitration Act. To the extent any state law, ordinance or regulation is inconsistent with the rules of the arbitration service under which the arbitration is held, the rules of the arbitration service shall govern the arbitration proceeding.
- (4) Arbitration Provider. The arbitration shall be conducted by the American Arbitration Association (“AAA”) or by any other entity offering arbitration services as may be mutually acceptable to the parties, so long as said entity is qualified by the California Secretary of State to do business in California.
- (5) Advancement of Expenses. All fees charged by the arbitrator and the arbitration provider to initiate the arbitration shall be advanced by Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may direct Owner/Association, as applicable, to reimburse Declarant for up to fifty percent (50%) of the arbitration fees advanced by Declarant within sixty (60) days after the final arbitration award.
- (6) Preliminary Procedures. If state or federal law requires Declarant or Owner/Association to take steps or procedures before commencing an action in court, then Declarant or Owner/Association must take such steps or follow such procedures, as the case may be, before commencing the arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.
- (7) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but may receive hearsay evidence. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.
- (8) Qualifications of Arbitrator. The arbitrator shall be neutral and impartial and shall be either a retired judge or a member or former member of the California State Bar with at least

fifteen (15) years experience with substantial experience in the type of matter in dispute and with a strong emphasis on the laws governing real estate matters, especially those dealing with residential real estate development and construction. The arbitrator shall not have any relationship to the parties to the dispute or any interest in the Property.

- (9) Appointment of Arbitrator. The arbitrator to preside over the dispute shall be selected no later than sixty (60) days after a notice of claim is filed, and may be challenged by any party for bias.
- (10) Participation by Other Parties. Declarant or Owner/Association, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.
- (11) Venue. The arbitration shall be conducted in the county where the Property is located unless the parties agree to some other location.
- (12) Time of Commencement. The arbitration process shall commence promptly, within the time provided by the arbitration agreement or by the rules of the arbitration provider. If no such date is provided by the arbitration agreement or rules, then the process shall commence on a date agreed upon by the parties or determined by the arbitrator.
- (13) Rules. The arbitration shall be conducted in accordance with rules and procedures that are reasonable and fair to the parties.
- (14) Rules of Law. The arbitrator must follow California substantive law, including statutes of limitations and the provisions of Title 7 of Division 2 of Part 2 of the California Civil Code, sections 895 through 945.5, including all future amendments thereto, but may receive hearsay evidence.
- (15) Discovery. The parties to the proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Such parties shall also be entitled to conduct further tests and inspections as provided in subparagraph (e) above. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the proceeding. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (16) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the arbitrator, as provided herein, any provisional remedies are sought by the parties to the dispute, such relief may be sought in the Superior Court of the County in which the Project is located. The arbitrator shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.
- (17) Remedies. The arbitrator is authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the proceeding or hearing, except that the award of punitive damages shall be prohibited.
- (18) Timely Completion and Award. The arbitration process shall be concluded in a prompt and timely manner, including the issuance of any decision or ruling following the proceeding or hearing. The arbitrator's award shall contain findings of fact and

conclusions of law to the extent required by law if the case were tried to a judge. The decision of the arbitrator shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the dispute had been tried by the court.

- (19) Attorneys' Fees and Costs. Each party shall bear its own attorneys' fees and costs (including expert witness costs) in the arbitration.
 - (20) Judgment and Appeal. The arbitrator's award upon all of the issues considered by the arbitrator is binding upon the Parties, and upon filing of the award with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. Upon entry of judgment, the arbitration award shall be appealable as a judgment rendered by the court.
 - (21) Participation in Judicial Proceeding. The initiation of or participation by any party in any judicial proceeding concerning this arbitration provision or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration provision, and notwithstanding any provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration provision.
- (h) All inspections, permit applications, repairs and mediation conferences, if any, shall be pursued diligently, and every effort shall be made to complete any repairs within 120 days of the initial notice of claim.
 - (i) Standing. Declarant and Declarant Parties shall have the right to enforce the provisions of this Article regardless of whether Declarant or Declarant Parties hold any right, title or interest in and to the Property or any portion thereof.
 - (j) Severability. In the event that any phrase, clause, sentence, section, article or other portion of this Article shall become illegal, void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, void or against public policy, the remaining portions of this Article shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

Article XVI covers miscellaneous issues not addressed elsewhere in the Declaration.

16.01 Term of Declaration.

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Lots record a signed, written instrument:
 - (1) At least one (1) year before the beginning of any ten (10) year period; and
 - (2) Agreeing to change or terminate this Declaration.

16.02 Notices.

Any approval, disapproval, demand, document or other notice ("Notice") which Declarant, the Association, or any Owner may desire to give to another party must be in writing and may be given either by i) personal delivery; ii) by United States mail which shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the mail, first class or registered, postage prepaid, addressed to the person to be notified; or iii) by any other method provided by Civil Code Section 1350.7.

TO DECLARANT: Crown Pointe Estates at Malibu, LLC
21800 Oxnard St Ste 1190
Woodland Hills CA 91367

Or to any other address Declarant may later designate in writing.

TO ASSOCIATION: Crown Pointe of Malibu Homeowners Association
21800 Oxnard St Ste 1190
Woodland Hills CA 91367

Or to any other address Association may later designate in writing.

TO OWNERS: To be later designated in writing and given to the Secretary of the Board. If no address has been given to the Secretary then addressed to the Lot of such person.

16.03 Partial Invalidity.

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

16.04 Number.

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

16.05 Attorneys' Fees.

In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, each party shall bear its own attorneys' fees.

16.06 Disclosures.

- (a) Declarant does not in any manner guarantee or warrant that the Property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Property, including noise or sound emanating from Lots, heating, ventilation air conditioning systems, plumbing, Common Area(s)/Association Maintenance Area(s), garages, etc.
- (b) Some Lots have a steep slope that descends southward to Pacific Coast Highway. In its existing condition, the slope on some of the Lots may not have a minimum safety factor required for construction. Owners have been advised that the slope could be subject to erosion and surficial slope failures. Any proposed construction adjacent to the descending slope could be located entirely within areas that are identified as having a minimum factor of safety. Slopes constructed within the site will require maintenance or protection to reduce the risk of erosion and degradation with time due to natural or manmade conditions. The slopes (fill or soil cut slopes) should be planted with dense, deep rooting, drought-resistant groundcover and shrubs. A reliable irrigation system should be installed, adjusted so that over-watering does not occur, and periodically checked for leakage. Over-watering of slopes can cause erosion and surficial failures, and should be avoided. The slopes should not be watered before forecasted rain. All drainage structures (including gunited ditches) should be cleaned each fall before the rainy season and, if necessary, after major rain storms. Drainage structures should be clear of soil or debris for the entire length to an approved outlet or drainage course. Burrowing animals (e.g. ground squirrels) can destroy slopes and therefore, where present, immediate measures should be taken to eliminate them.
- (c) The area below Lots 1 through 4 of Tract No. 4483 are gently sloped descending towards Pacific Coast Highway. In this area, slope stability has been determined not to be an issue. The recommended location of the sewage disposal systems is not expected to affect the stability of the slope. The slopes of Lots 5 through 9 of Tract No. 4483 are steeper and higher and sewage disposal systems need to be located within the northern portion of the Lots to prevent sewage effluent from affecting the slope stability.

16.07 Declarant's Rights After Sale of All Lots in the Project.

For a period of ten (10) years after the close of escrow for the sale of the last Lot in the Project covered by a Final Subdivision Public Report, in addition to Declarant's rights as an Owner and a Member, Declarant shall have the following rights:

- (a) Access to and the right to inspect the Association books and financial records;
- (b) Access to and the right to inspect the Association's maintenance records;
- (c) Right to receive notice of, attend and speak at all regular and special meetings of the Board of Directors and meetings of the Members;
- (d) Right to receive copies of the minutes of the meetings of the Board of Directors and meetings of the Members, upon request and payment of the actual costs to copy and distribute such records; and
- (e) Right to inspect all Common Areas/Association Maintenance Areas of the Property upon three (3) days' notice to the Association and, within its sole discretion, be entitled to cure any defect,

whether or not the Association or any Owner has complained of such defect. During said period, the Board shall use its best efforts to obtain the consent of all Owners, upon three (3) days' notice, to inspection of Lots by Declarant for the sole purpose of discovering and repairing structural defects. Refusal by an Owner to allow inspection, or failure of the Board to attempt in good faith to obtain owner consent for inspection of Lots, may be deemed a failure to mitigate damage in the event of a defect as defined in Section 896 of the California Civil Code which could have been avoided through preventive maintenance. The purpose of this right of inspection is to allow Declarant to repair defects at an early stage before substantial damage has occurred. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.

16.08 Supremacy of Legislation.

The provisions of this Declaration are automatically supplemented and superseded by any state or federal enactment, and judicial interpretations of laws, affecting common interest developments. Any reference to a specific Code section in this Declaration is also a reference to future amendments thereof and to any successor statutes. The terms of this Declaration shall be deemed automatically amended to conform to such future changes in Code sections without necessity for recording any such amendment.

16.09 No Enhanced Protection Agreement.

In no event shall any of the provisions contained within the Governing Documents, other documentation, representations or warranties provided by Declarant or its agent to Owner be construed, interpreted or understood to be an "enhanced protection agreement" ("EPA") under California Civil Code Section 901 unless Declarant otherwise expressly states that such document, representation, or warranty constitutes an EPA under said section of the Civil Code.

16.10 Changing the Project Marketing Name.

The Project shall be marketed under the name MARISOL. Declarant may at Declarant's sole discretion, change the marketing name of the Project upon notification to the DRE.

ARTICLE XVII

COUNTY OF VENTURA AS A THIRD PARTY BENEFICIARY

17.01 **County of Ventura.**

The Owners of all Lots subject to these covenants, conditions and restrictions recognize that proper maintenance of the Common Area, the Association Maintenance Area and the Lots (to the extent required by the Entitlement Conditions) is for the benefit of all citizens of the County of Ventura ("County"), and the County is an intended third party beneficiary of the covenants, conditions and restrictions and may upon notice exercise the powers and rights set forth herein.

In the event the County determines that the Association has not adequately maintained the Common Area and the Association Maintenance Area and/or a particular Lot Owner has not maintained the Owner's Lot (to the extent required by the Entitlement Conditions) then the County may give written notice to the Association and/or to the Lot Owner of the particular Lot that is deficient, detailing the specific reasons why the County believes the Common Area, Association Maintenance Area and/or the particular Lot is not adequately maintained. Should the Association and/or particular Lot Owner fail to correct the deficiencies set forth in the notice within 45 days from receipt of said notice, the County may either (1) direct County staff to enter onto the Common Area, Association Maintenance Area and/or Lot and correct the deficiencies and/or (2) authorize the County Attorney's office to commence litigation against the Association or particular Lot Owner if on a particular Lot (as opposed to Common Area or Association Maintenance Area) for purposes of bringing such areas into compliance. Any and all costs and fees, including legal fees and costs, incurred by the County in pursuing these remedies shall be a lien (1) against the Association maintenance fund and the Common Area if due to an Association deficiency, and shall be the personal obligation of the members of the Association, and (2) against the particular Lot if due to a deficiency by a particular Lot Owner (not the Association) and shall be the personal obligation of that particular Lot Owner.

17.02 **Approval of County Regarding Amendments.**

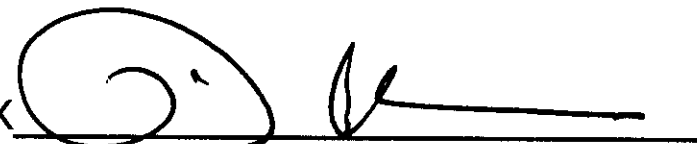
The Association may amend this Declaration only to the extent that such modifications do not conflict with the terms and conditions required under applicable Entitlement Conditions for this Project duly adopted by the County of Ventura, including without limitation the initial architectural review guidelines set forth in Exhibit F attached. No amendment or termination of this Declaration, shall be effective without the prior approval of the County of Ventura, Planning Director, which affects any such provisions hereof required by the County of Ventura, including, without limitation, the annexation of the Additional Property and the deannexation of any portion of the Project.

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

"Declarant"

CROWN POINTE ESTATES AT MALIBU, LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY

By: RimRoc Investments, LLC, a California limited liability company
Its: Managing Member

X 
By: Richard G. Morris
Its: General Manager

STATE OF CALIFORNIA)
COUNTY OF) ss.

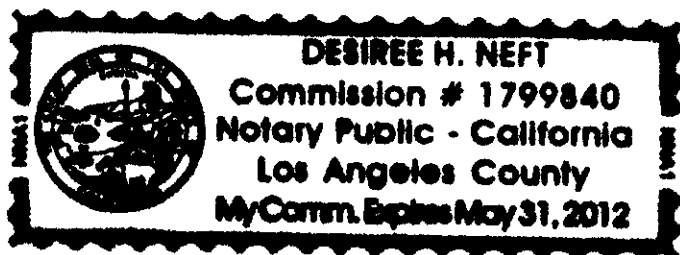
On JANUARY 12, 2011, before me, DESIREE H. NEFT,
Notary Public, personally appeared:
RICHARD G. MORRIS

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

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

WITNESS my hand and official seal.

(SEAL)




Notary Public

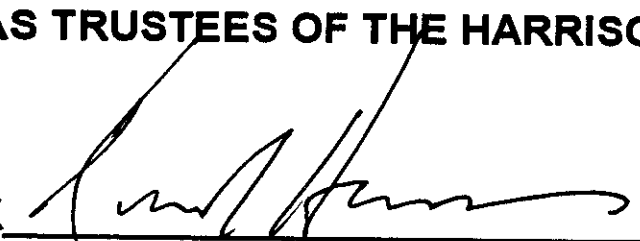
CONSENT AND APPROVAL OF LOT 7 OWNER

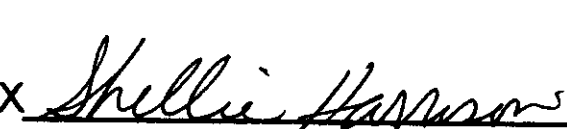
The undersigned, as the owners of the following real property at the time of recordation of this Declaration, hereby consents to and approves this Declaration, including, without limitation, the grant of easements, and this consent is made a part thereof:

LOT 7 OF TRACT NO. 4483, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 146, PAGES 19 THROUGH 22, BOTH INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

EXCEPT ONE-EIGHTH OF ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED BY MARBLEHEAD LAND COMPANY, A CORPORATION IN DEED RECORDED NOVEMBER 17, 1940 IN BOOK 628, PAGE 87 OF OFFICIAL RECORDS OF SAID COUNTY.

**KENNETH HARRISON AND SHELLIE HARRISON,
AS TRUSTEES OF THE HARRISON REVOCABLE FAMILY TRUST DATED MAY 3, 1995**

x 
Kenneth Harrison
Trustee

x 
Shellie Harrison
Trustee

STATE OF CALIFORNIA)
COUNTY OF) ss.

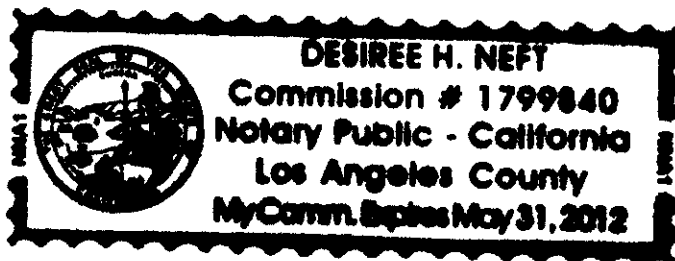
On FEBRUARY 7, 20 11, before me, DESIREE H. NEFT,
Notary Public, personally appeared:

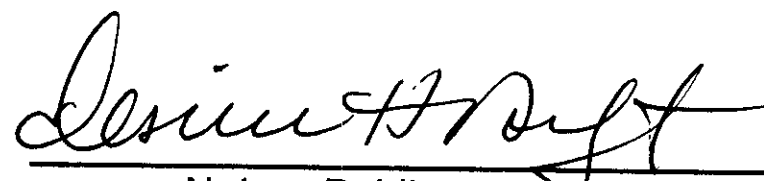
KENNETH HARRISON AND SHELLIE HARRISON
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are
subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in
~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

(SEAL)




Notary Public

CONSENT AND APPROVAL OF VENTURA COUNTY

Ventura County hereby consents to and approves the foregoing Second Amended and Completely Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Tract Nos. 4483 and 5457 and this consent is made a part thereof and shall be effective upon recordation of the foregoing document in the Office of the Ventura County Recorder.

X Kim Prillhart
 By: Kim Prillhart
 Its: Ventura County Planning Director

Date: 1-24-11

STATE OF CALIFORNIA)
 COUNTY OF) ss.

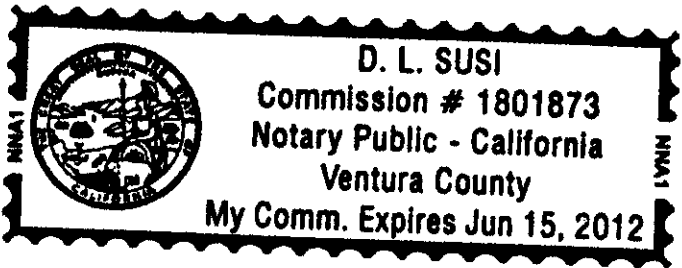
On January 24, 2011, before me, Denise Lydia Susi,
 Notary Public, personally appeared:
Kim Prillhart

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

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

WITNESS my hand and official seal.

(SEAL)



DL Susi
 Notary Public

SUBORDINATION BY LIENHOLDER

FIRST REGIONAL BANK, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Marisol ("Declaration") to which this instrument is attached, hereby subordinates the lien of said Deed of Trust to the recording of this Declaration, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by Lienholder shall not constitute said Lienholder's subordination to any future Assessment liens.

Deed of Trust recorded on March 28, 2008 as Instrument No. 20080328-48545 of the Official Records of the Ventura County Recorder.

FIRST REGIONAL BANK

X *R.E. Downing*
By: *Ralph Downing*
its: SUP

X _____
By: _____
its: _____

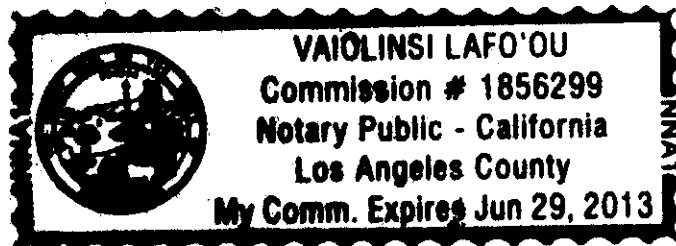
STATE OF CALIFORNIA)
COUNTY OF Los Angeles ss.

On January 26, 2011, before me, Vaiolinsi Lafo'u
Notary Public, personally appeared:
Ralph E. Downing (R.E. Downing)
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

(SEAL)



Vaiolinsi Lafo'ou
Notary Public

SUBORDINATION BY LIENHOLDER

MARY SCHELL, AS TRUSTEE UNDER THE BIRK S. MCCANDLESS INTER VIVOS TRUST AGREEMENT DATED AUGUST 16, 1995, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Marisol ("Declaration") to which this instrument is attached, hereby subordinates the lien of said Deed of Trust to the recording of this Declaration, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by Lienholder shall not constitute said Lienholder's subordination to any future Assessment liens.

Deed of Trust recorded on December 12, 2008 as Instrument No. 20081212-178323 of the Official Records of the Ventura County Recorder.

MARY SCHELL, AS TRUSTEE UNDER THE BIRK S. MCCANDLESS INTER VIVOS TRUST AGREEMENT DATED AUGUST 16, 1995

x Mary Schell
By: Mary Schell
its: Trustee

STATE OF CALIFORNIA)
COUNTY OF Santa Clara) ss.

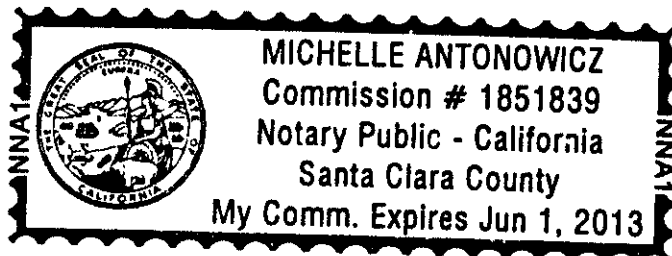
On 1-17, 2011, before me, Michelle Antonowicz
Notary Public, personally appeared:

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

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

WITNESS my hand and official seal.

(SEAL)



Michelle Antonowicz
Notary Public

EXHIBIT "A"

PHASE 1 PROPERTY

LOTS 1 THROUGH 8, INCLUSIVE AND 11 OF TRACT NO. 4483, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 146, PAGES 19 THROUGH 22, INCLUSIVE, OF MAPS, IN THE OFFICIAL RECORDS OF THE COUNTY RECORDER OF SAID COUNTY;

LOT 9 AND A PORTION OF LOT 10 OF TRACT NO. 4483, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 146, PAGES 19 THROUGH 22, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SHOWN AND DESCRIBED AS PARCEL B OF PARCEL MAP WAIVER/LOT LINE ADJUSTMENT NO. PMW/LLA SD 05-0026, RECORDED OCTOBER 19, 2005, AS DOCUMENT NO. 20051019-259721 OF OFFICIAL RECORDS;

LOTS 1 THROUGH 4, INCLUSIVE, OF TRACT NO. 5457, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 159, PAGES 37 AND 38 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

EXCEPT ONE-EIGHTH OF ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED BY MARBLEHEAD LAND COMPANY, A CORPORATION, IN DEED RECORDED NOVEMBER 27, 1940, IN BOOK 628, PAGE 87 OF OFFICIAL RECORDS.

EXHIBIT "B"

ADDITIONAL PROPERTY

The Additional Property is that certain real property located in the unincorporated area of the County of Ventura, State of California, more particularly described as follows:

THAT PORTION OF SECTION 27, TOWNSHIP 1 SOUTH, RANGE 20 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA ACCORDING TO THE OFFICIAL PLAT THEREOF FILED IN THE DISTRICT LAND OFFICE APRIL 10, 1900, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID SECTION WITH THE NORTHEAST LINE OF THE STATE HIGHWAY, 100 FEET WIDE, AS DESCRIBED IN CASE NO. 8434 SUPERIOR COURT OF SAID COUNTY; THENCE ALONG SAID EAST LINE NORTH 0° 52' 44" WEST 372.17 FEET; THENCE NORTH 65° 25' 30" WEST 776.88 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 65° 25' 30" WEST 1091.88 FEET; THENCE NORTH 0° 52' 44" WEST 317.17 FEET; THENCE SOUTH 65° 25' 30" EAST 1091.88 FEET; THENCE SOUTH 0° 52' 44" EAST 317.17 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM ONE-EIGHTH OF ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES AS RESERVED BY MARBLEHEAD LAND COMPANY, A CORPORATION, IN DEED RECORDED NOVEMBER 27, 1940, IN BOOK 628, PAGE 87 OF OFFICIAL RECORDS

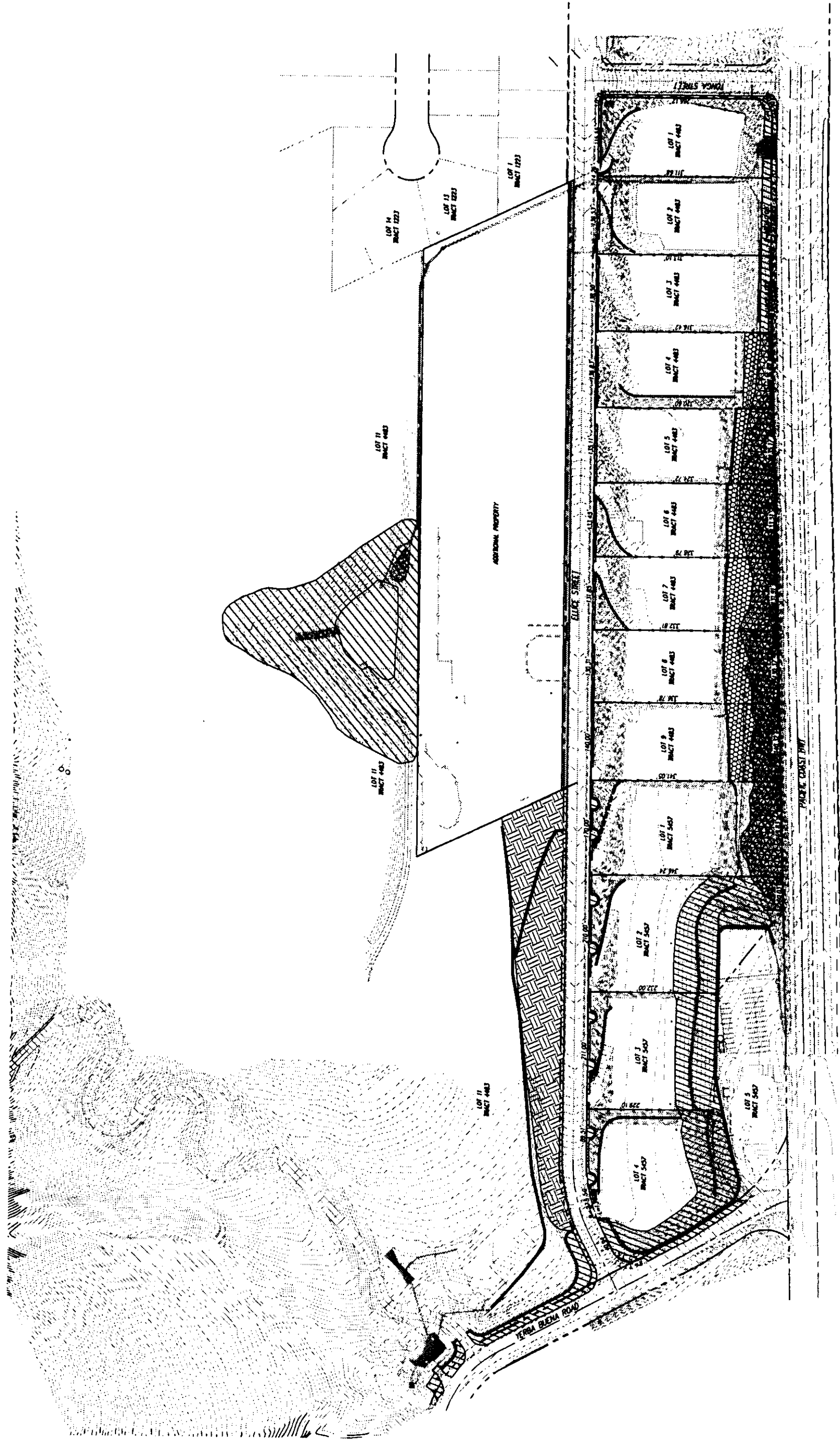
APN 700-0-260-140

EXHIBIT "C"

**COMMON AREA, ASSOCIATION MAINTENANCE AREAS, APPROVED BUILDING ENVELOPES
AND RESTRICTED DUNE AREAS**

(AS SHOWN ON THE MAP ATTACHED HERETO)

EXHIBIT C
COMMON AREA, ASSOCIATION MAINTENANCE AREAS & RESTRICTED DUNE AREAS

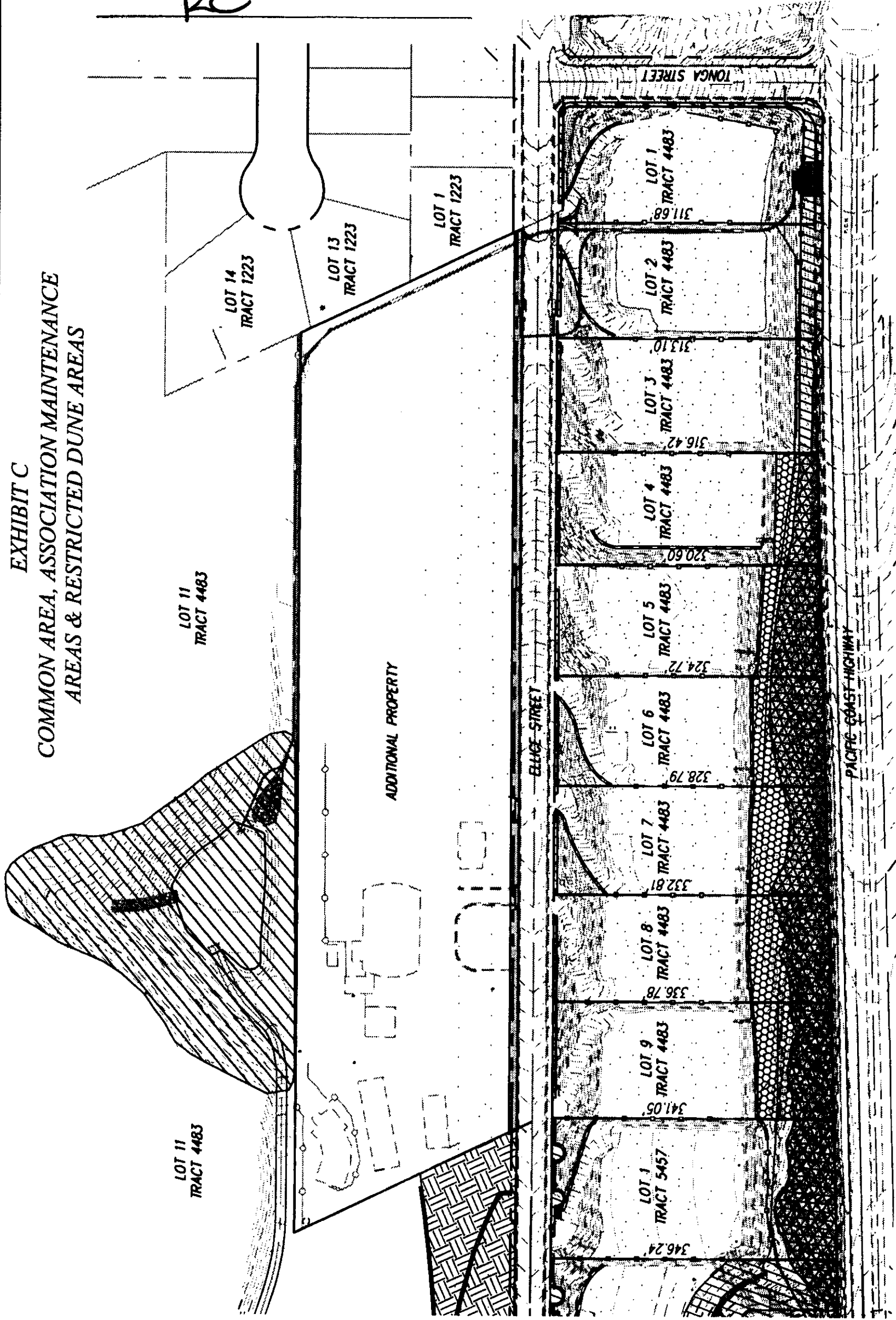


- OVERALL EXHIBIT
- ASSOCIATION MAINTENANCE AREA
 - RESTRICTED DUNE AREA
 - COMMON AREA
 - ADDITIONAL PROPERTY ASSOCIATION MAINTENANCE AREA
 - PARKING STALL
 - RETAINING WALL

I declare under Penalty of Perjury that the _____ Page(s) of the document to which this statement is attached reads as follows

PC

EXHIBIT C
COMMON AREA, ASSOCIATION MAINTENANCE
AREAS & RESTRICTED DUNE AREAS



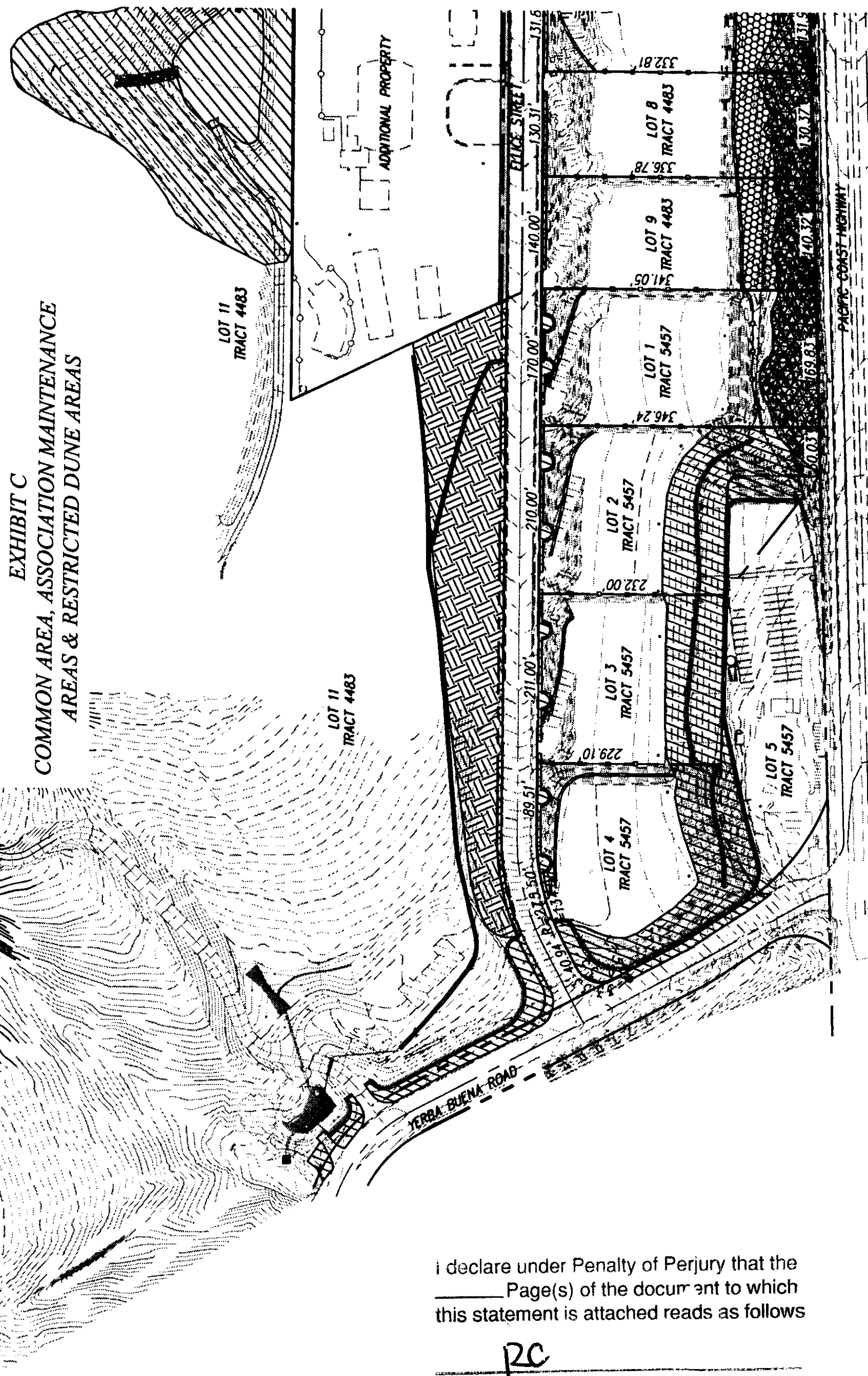
- ASSOCIATION MAINTENANCE AREA
- BLUFF RESTRICTED USE AREA
- COMMON AREA
- RESTRICTED DUNE AREA
- ADDITIONAL PROPERTY ASSOCIATION MAINTENANCE AREA
- PERIMETER WALL
- RETAINING WALL



SCALE: 1"=120'

EAST EXHIBIT

EXHIBIT C



20

WEST EXHIBIT

 ASSOCIATION
MAINTENANCE

**ASSOCIATION
MAINTENANCE AREA**

 BLUFF REST
USE AREA

**BLUFF RESTRICTED
USE AREA**

RESTRICTED

COMMON AREA

NEW AREA

**RESTRICTED DUNE
AREA**

ADDITIONAL PROPERTY
ASSOCIATION
MAINTENANCE AREA

PERIMETER WALL
RETAINING WALL

SCALE: 1"=120'

SHEET 1 OF 2 (WEST)

EXHIBIT "D"

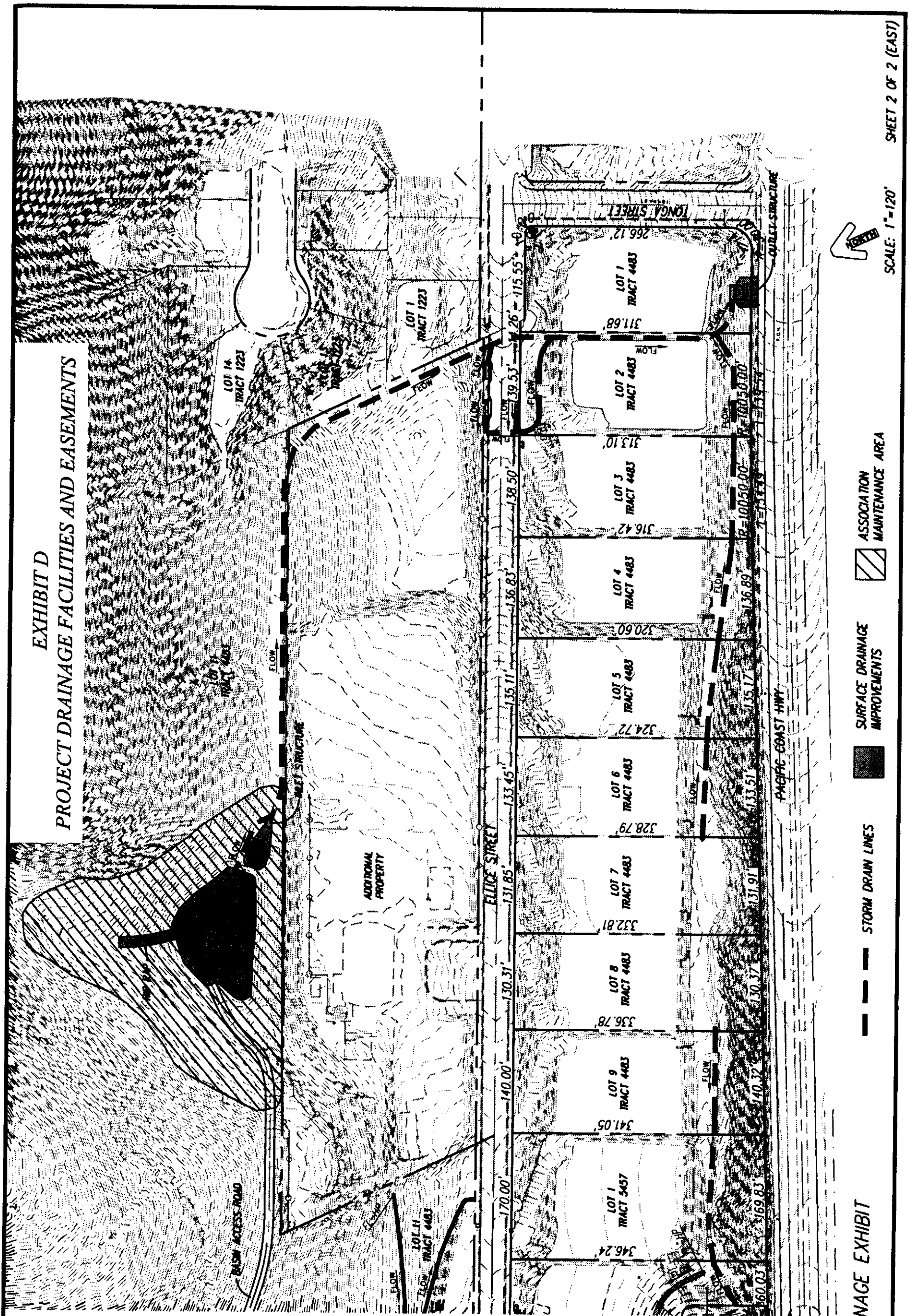
PROJECT DRAINAGE FACILITIES AND EASEMENTS

(AS SHOWN ON THE MAP ATTACHED HERETO)



101136

EXHIBIT D PROJECT DRAINAGE FACILITIES AND EASEMENTS



EAST DRAINAGE EXHIBIT

SURFACE DRAINAGE IMPROVEMENTS
 STORM DRAIN LINES
 ASSOCIATION MAINTENANCE AREA



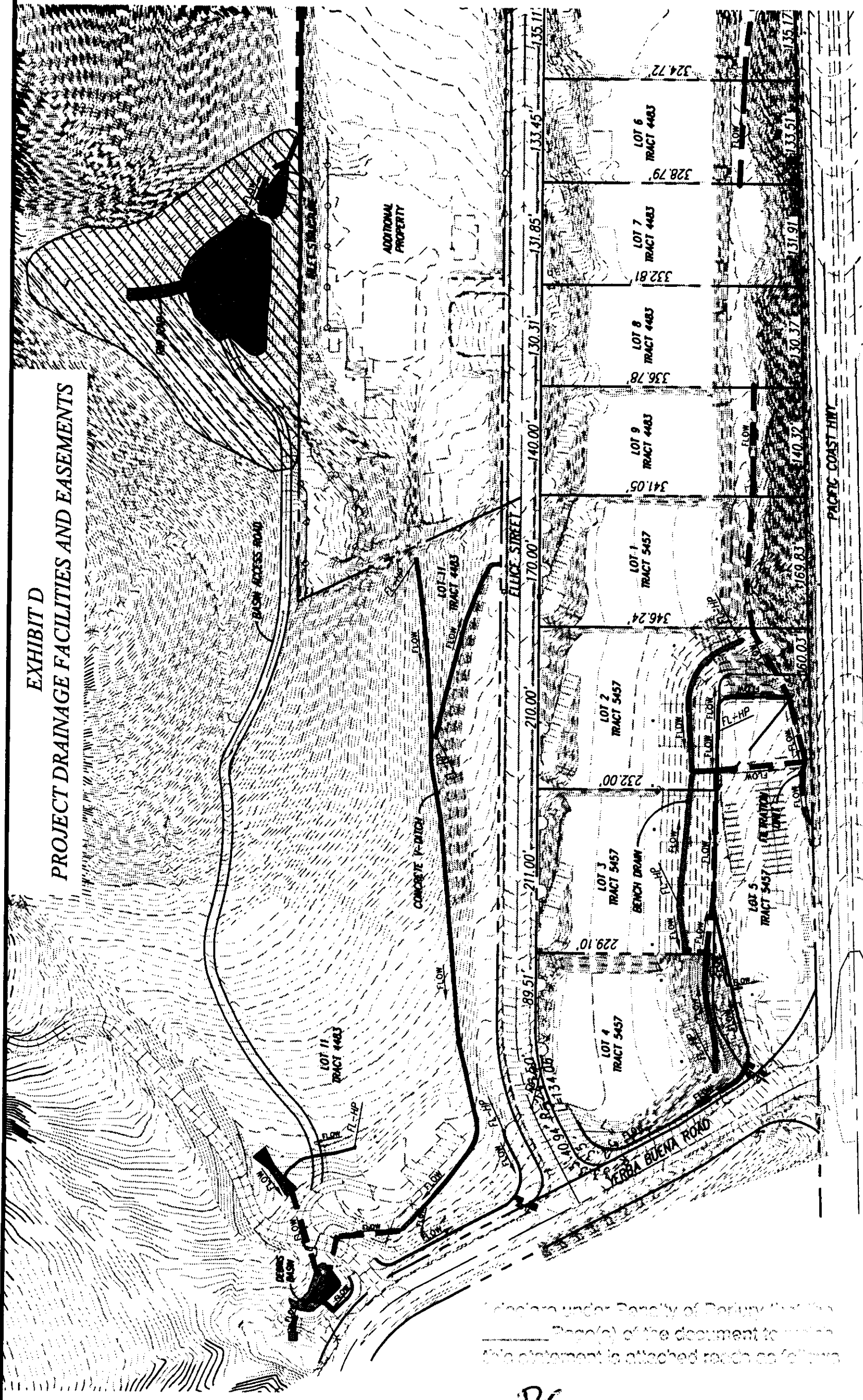
SCALE: 1"=120'

SHEET 2 OF 2 (EAST)

I declare under Penalty of Perjury that the _____ Page(s) of the document to which this statement is attached reads as follows

PC

EXHIBIT D PROJECT DRAINAGE FACILITIES AND EASEMENTS



- STORM DRAIN LINES
- SURFACE DRAINAGE IMPROVEMENTS
- ASSOCIATION MAINTENANCE AREA



SCALE: 1"=120' SHEET 1 OF 2 (WEST)

I declare under Penalty of Perjury that the _____ Page(s) of the document to which this statement is attached reads as follows:

PC

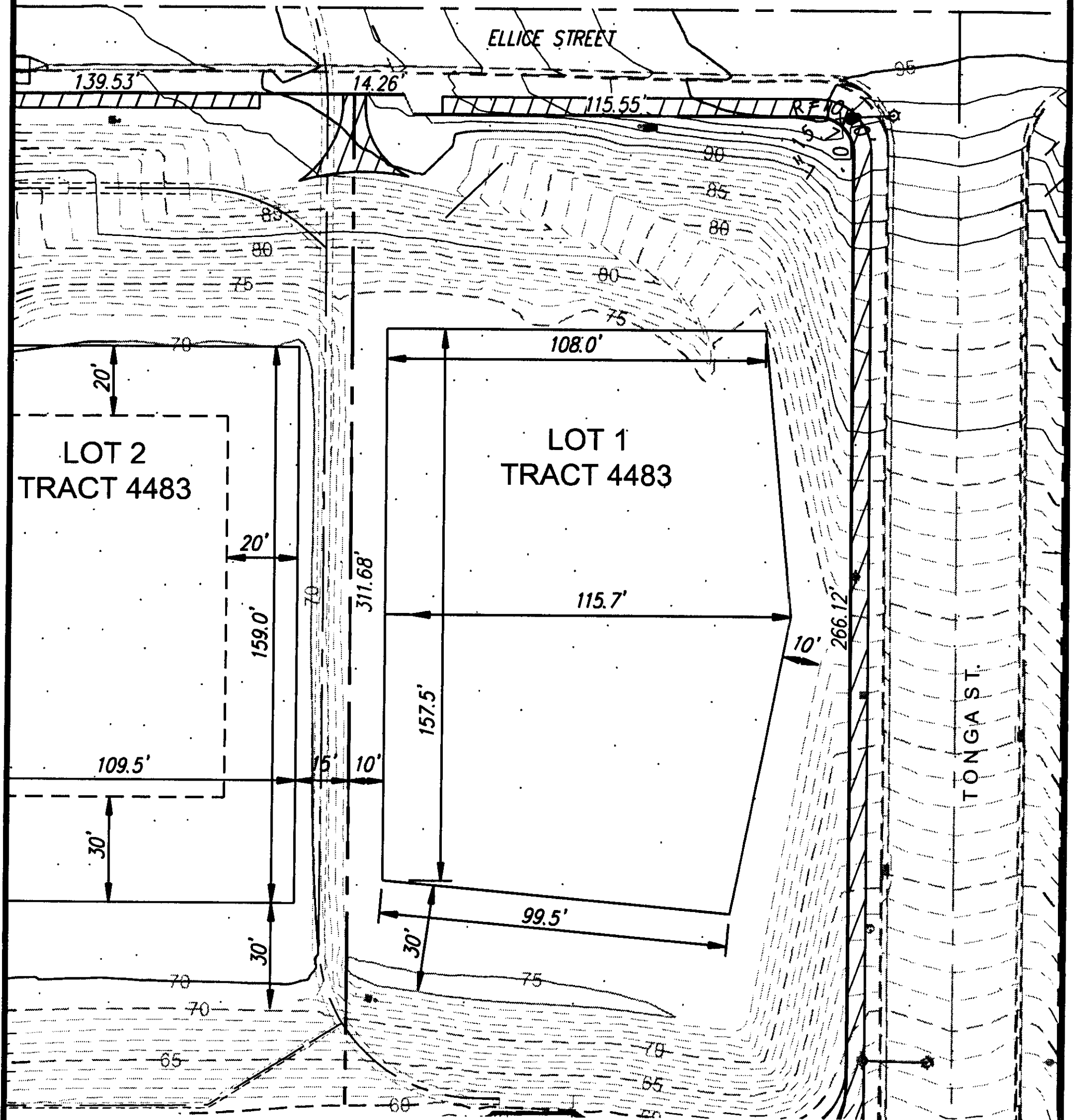
WEST DRAINAGE EXHIBIT

EXHIBIT "E"

APPROVED BUILDING ENVELOPES

(AS SHOWN ON THE MAP ATTACHED HERETO)

EXHIBIT E APPROVED BUILDING ENVELOPES



ASSOCIATION
MAINTENANCE AREA

RESTRICTED DUNE
AREA

LOT LINE

APPROVED BUILDING ENVELOPES

FIRST
STORY

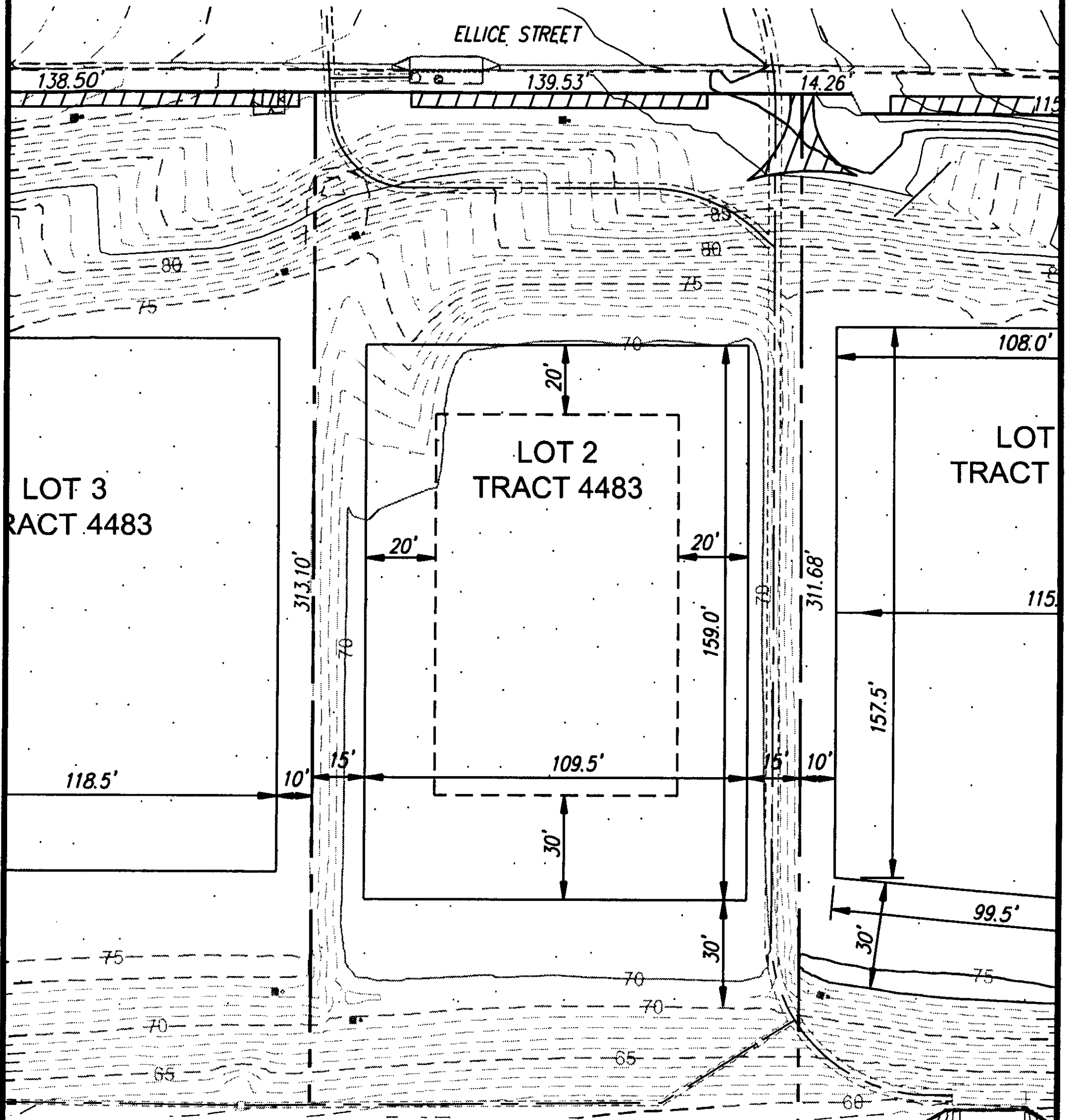
SECOND
STORY

LOT EXHIBIT
LOT 1 TRACT 4483

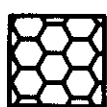
SCALE: 1"=40'

SHEET OF

EXHIBIT E APPROVED BUILDING ENVELOPES



 ASSOCIATION
MAINTENANCE AREA

 RESTRICTED DUNE
AREA

--- LOT LINE

APPROVED BUILDING ENVELOPES

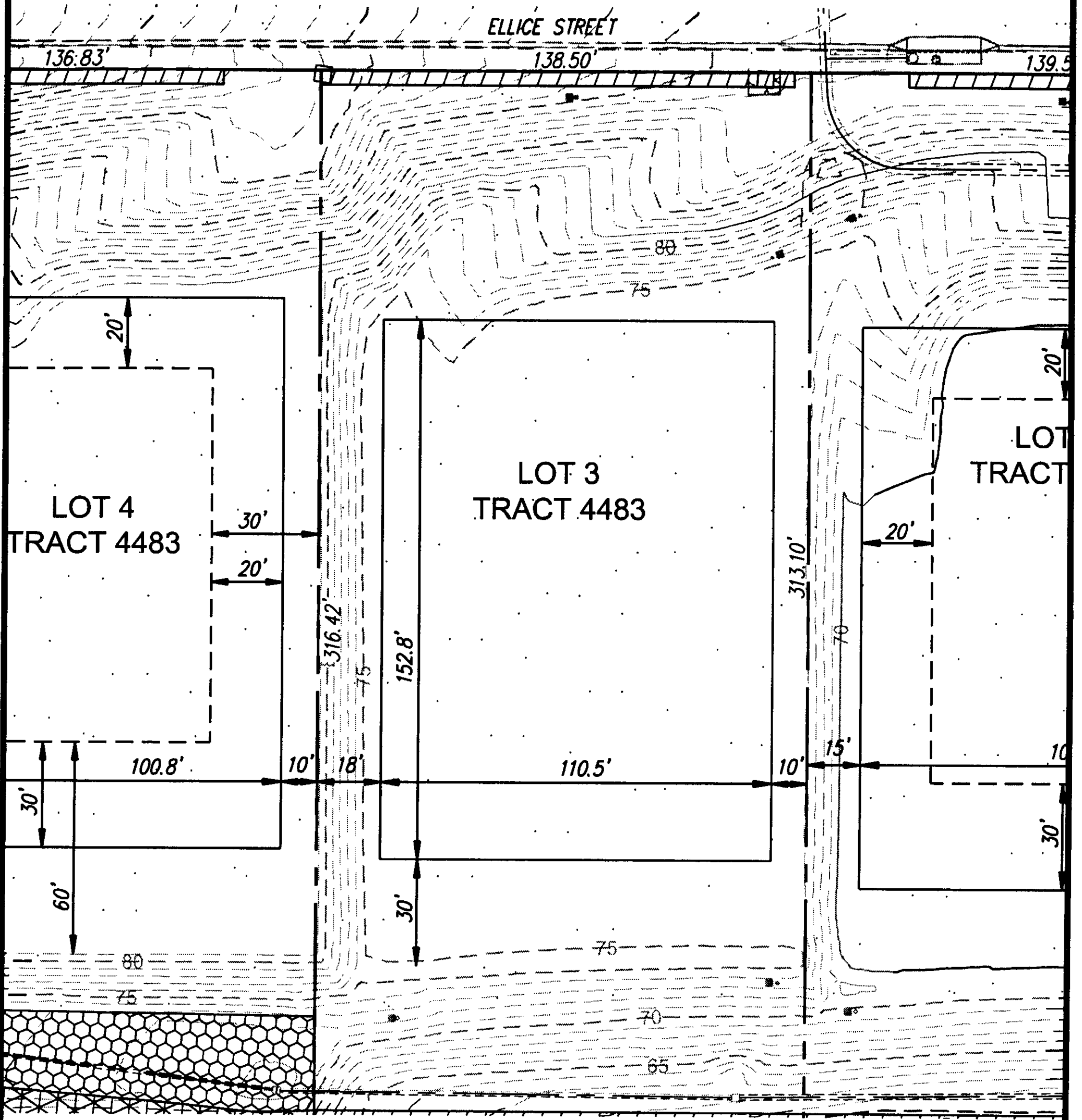
 FIRST
STORY  SECOND
STORY

LOT EXHIBIT
LOT 2 TRACT 4483

 SCALE: 1"=40'

SHEET OF

EXHIBIT E APPROVED BUILDING ENVELOPES



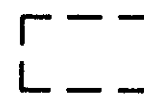
-  ASSOCIATION MAINTENANCE AREA
-  BLUFF RESTRICTED USE AREA
-  RESTRICTED DUNE AREA

--- LOT LINE

LOT EXHIBIT
LOT 3 TRACT 4483

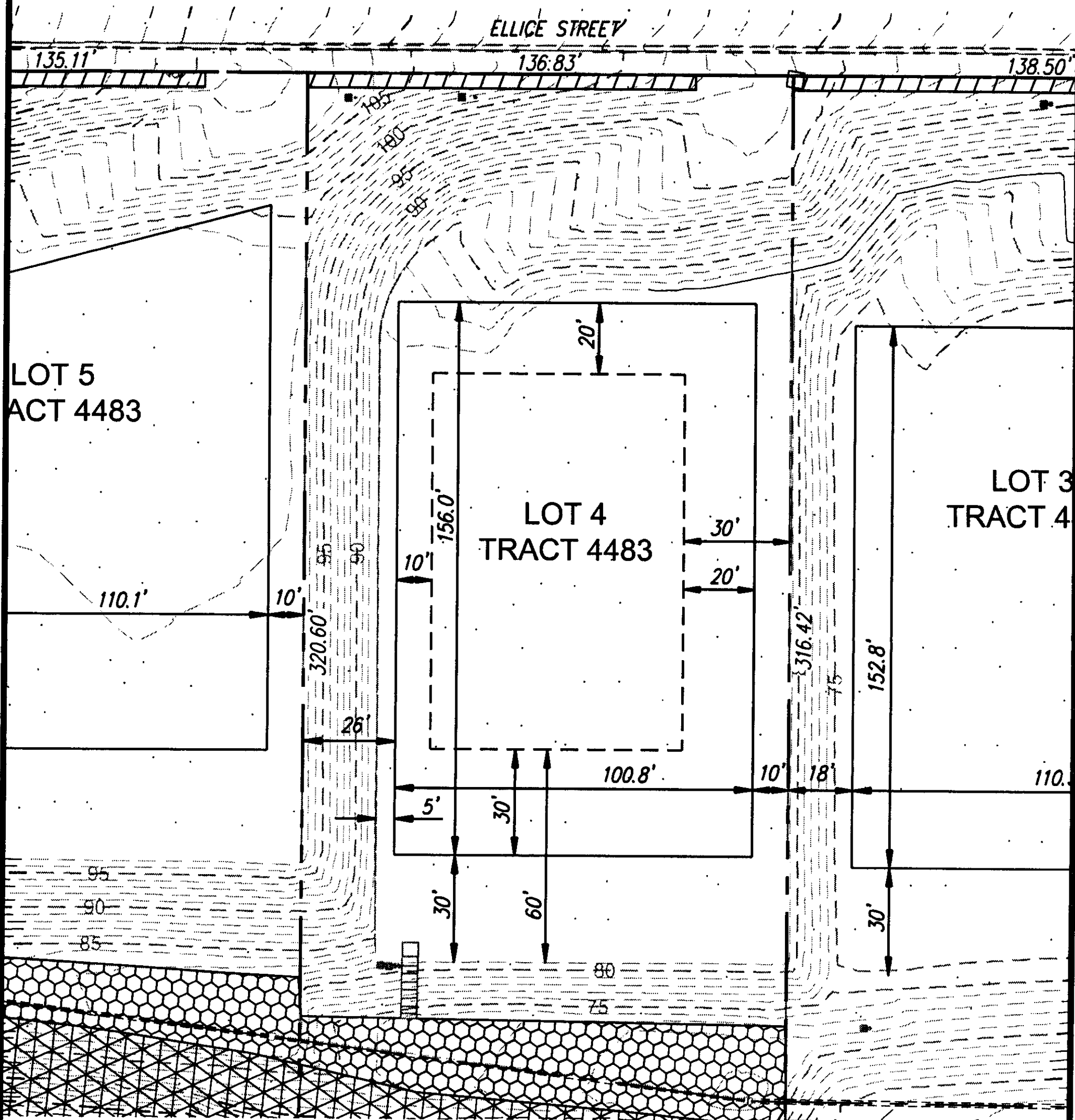
SCALE: 1"=40'

APPROVED BUILDING ENVELOPES

 FIRST STORY  SECOND STORY

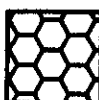
SHEET OF

EXHIBIT E APPROVED BUILDING ENVELOPES



 ASSOCIATION
MAINTENANCE AREA

 BLUFF RESTRICTED
USE AREA

 RESTRICTED DUNE
AREA

--- LOT LINE

APPROVED BUILDING ENVELOPES

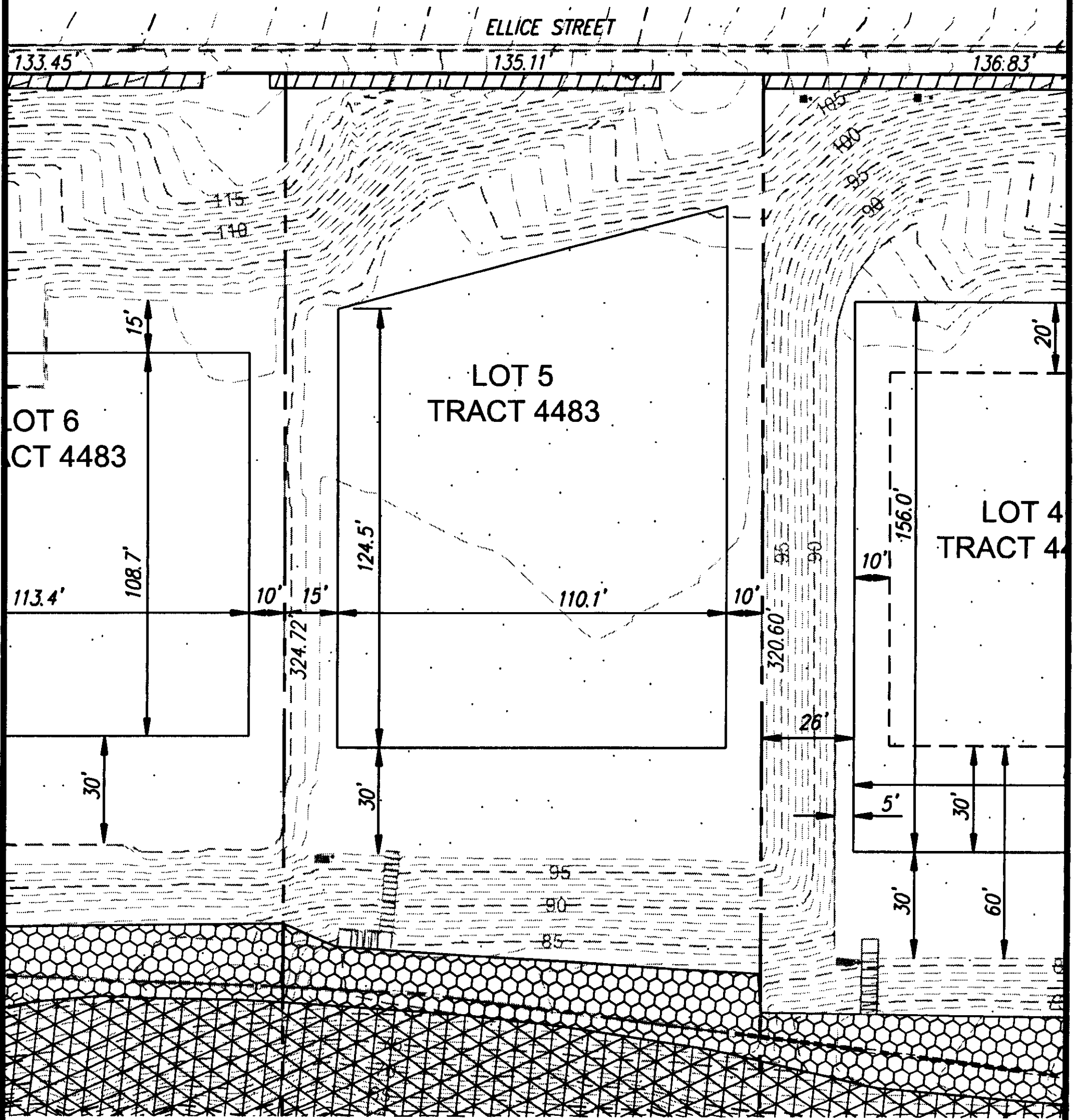
 FIRST
STORY  SECOND
STORY

LOT EXHIBIT
LOT 4 TRACT 4483

 SCALE: 1"=40'

SHEET OF

EXHIBIT E APPROVED BUILDING ENVELOPES



ASSOCIATION
MAINTENANCE AREA

BLUFF RESTRICTED
USE AREA

RESTRICTED DUNE
AREA

--- LOT LINE

APPROVED BUILDING ENVELOPES

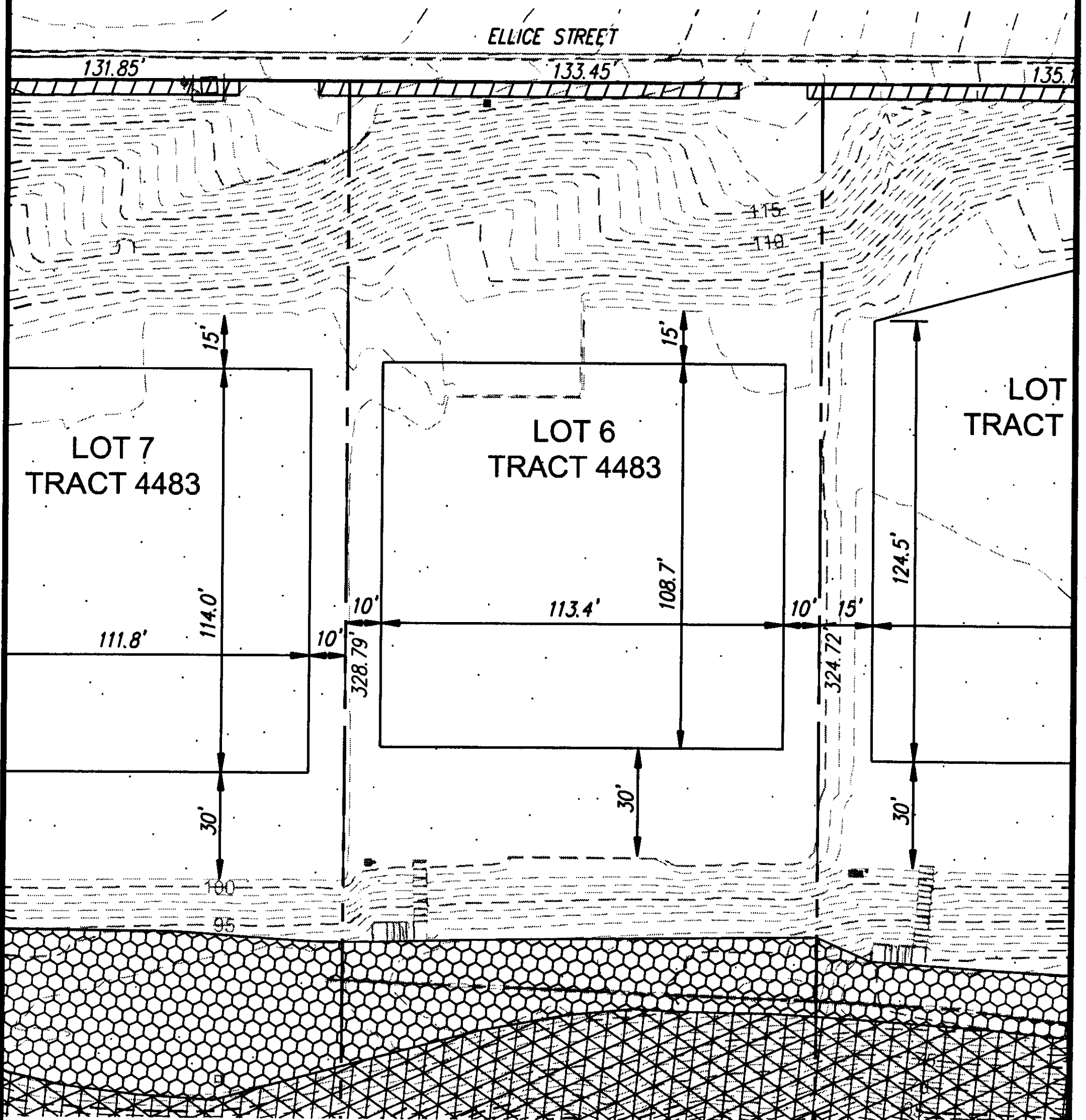
FIRST
STORY SECOND
STORY

LOT EXHIBIT
LOT 5 TRACT 4483

SCALE: 1"=40'

SHEET OF

EXHIBIT E APPROVED BUILDING ENVELOPES



ASSOCIATION
MAINTENANCE AREA

BLUFF RESTRICTED
USE AREA

RESTRICTED DUNE
AREA

--- LOT LINE

APPROVED BUILDING ENVELOPES

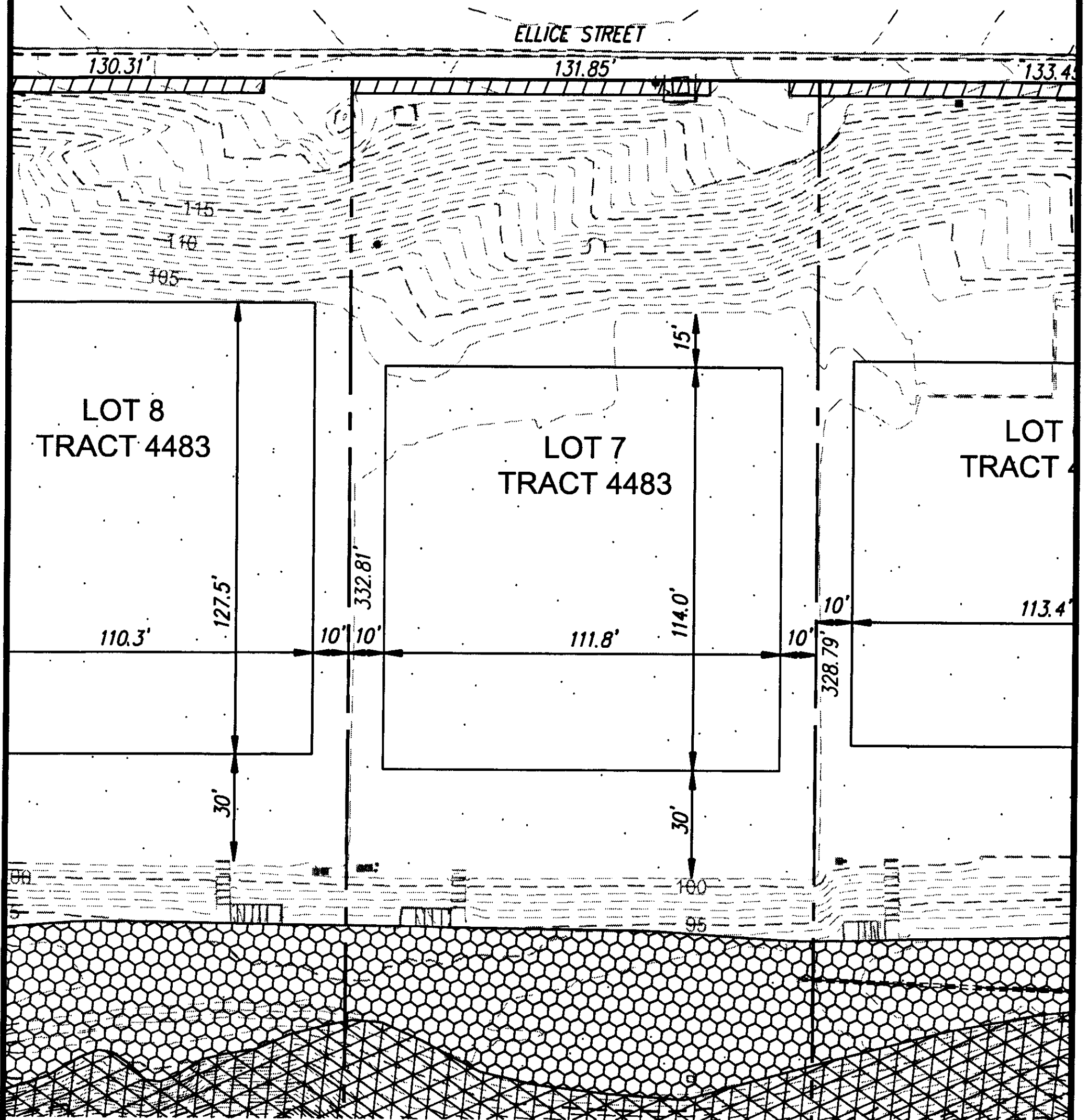
FIRST STORY SECOND STORY

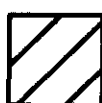
LOT EXHIBIT
LOT 6 TRACT 4483

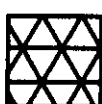
SCALE: 1"=40'

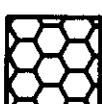
SHEET OF

EXHIBIT E APPROVED BUILDING ENVELOPES



 ASSOCIATION
MAINTENANCE AREA

 BLUFF RESTRICTED
USE AREA

 RESTRICTED DUNE
AREA

--- LOT LINE

APPROVED BUILDING ENVELOPES

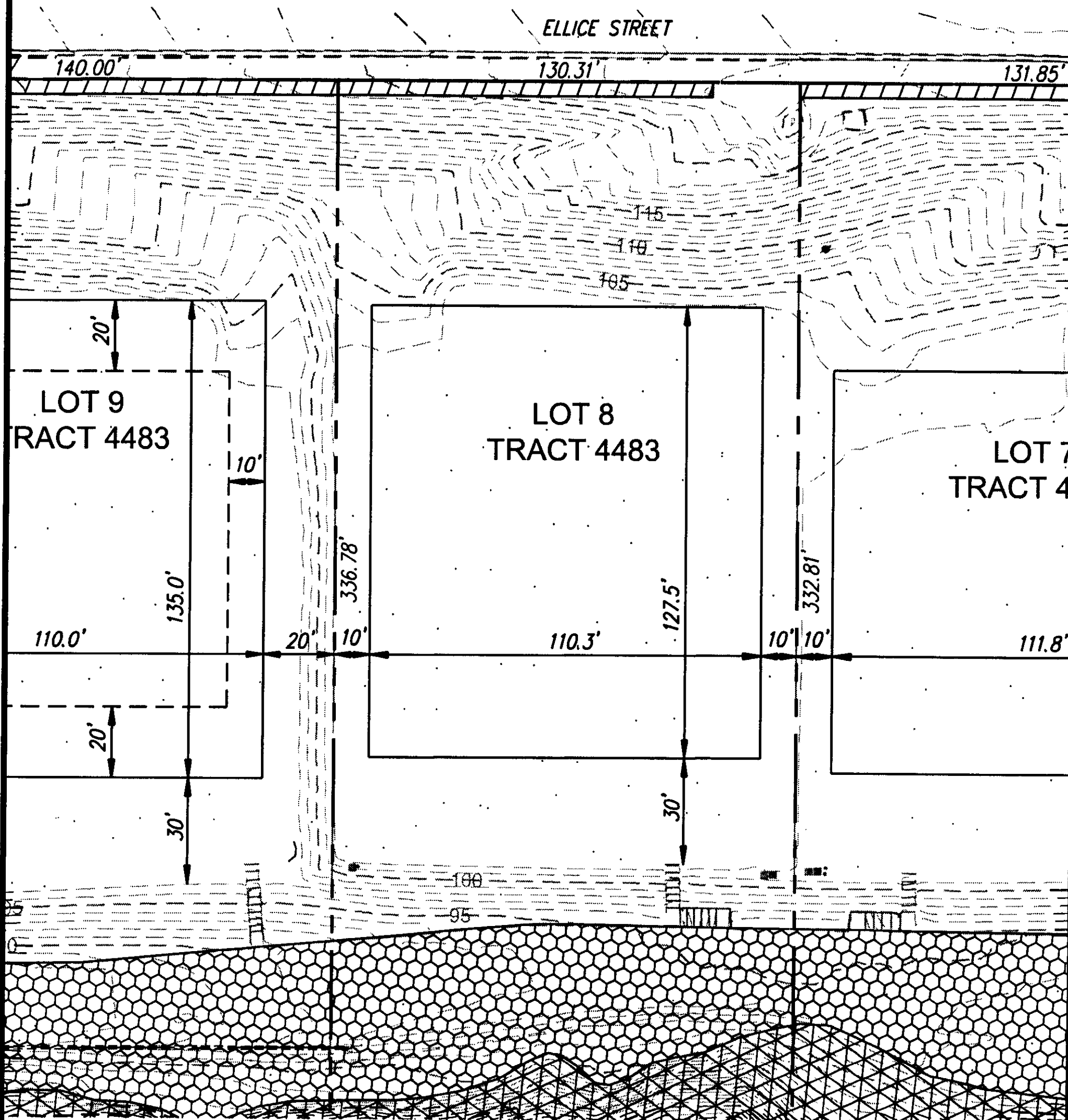
 FIRST
STORY  SECOND
STORY

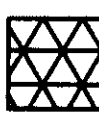
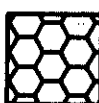
LOT EXHIBIT
LOT 7 TRACT 4483

 SCALE: 1"=40'

SHEET OF

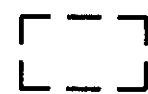
EXHIBIT E APPROVED BUILDING ENVELOPES



-  ASSOCIATION
MAINTENANCE AREA
-  BLUFF RESTRICTED
USE AREA
-  RESTRICTED DUNE
AREA

--- LOT LINE

APPROVED BUILDING ENVELOPES

 FIRST
STORY  SECOND
STORY

LOT EXHIBIT
LOT 8 TRACT 4483

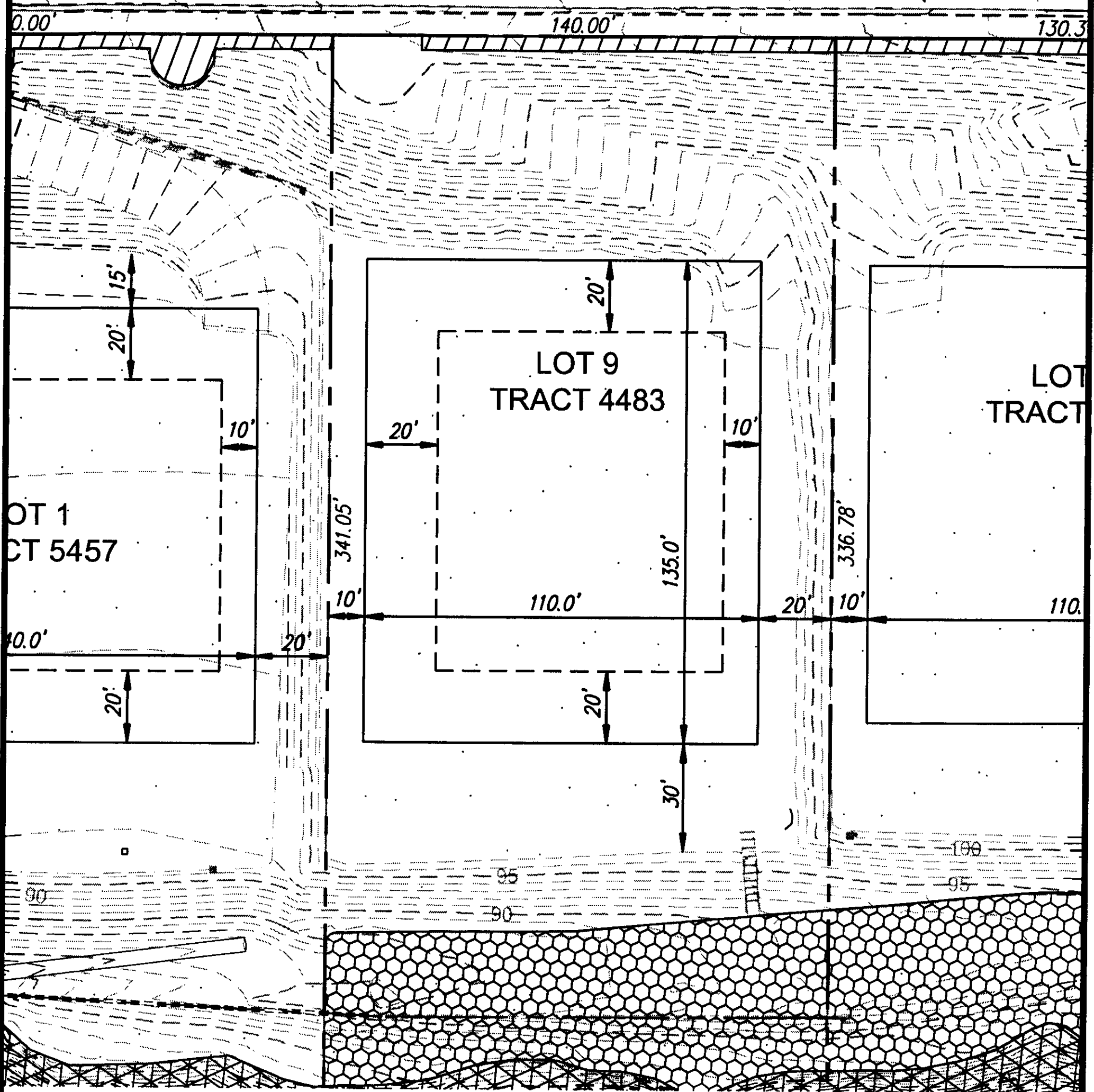

SCALE: 1"=40'

SHEET OF

EXHIBIT E

APPROVED BUILDING ENVELOPES

ELLICE STREET



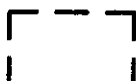
-  ASSOCIATION MAINTENANCE AREA
-  BLUFF RESTRICTED USE AREA
-  RESTRICTED DUNE AREA

--- LOT LINE

LOT EXHIBIT
LOT 9 TRACT 4483

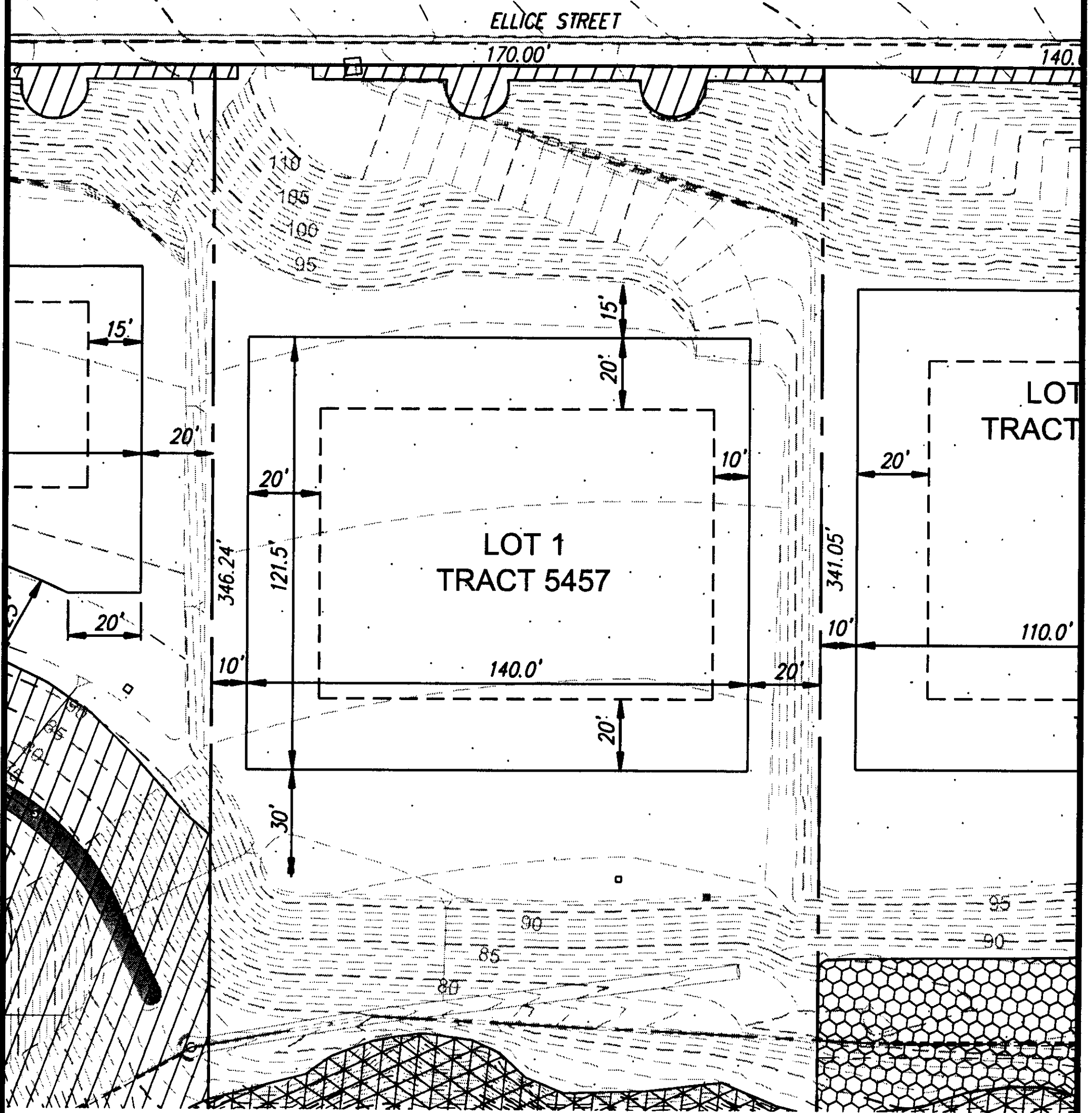

SCALE: 1"=40'

APPROVED BUILDING ENVELOPES

 FIRST STORY  SECOND STORY

SHEET OF

EXHIBIT E APPROVED BUILDING ENVELOPES



ASSOCIATION
MAINTENANCE AREA

BLUFF RESTRICTED
USE AREA

--- LOT LINE

APPROVED BUILDING ENVELOPES

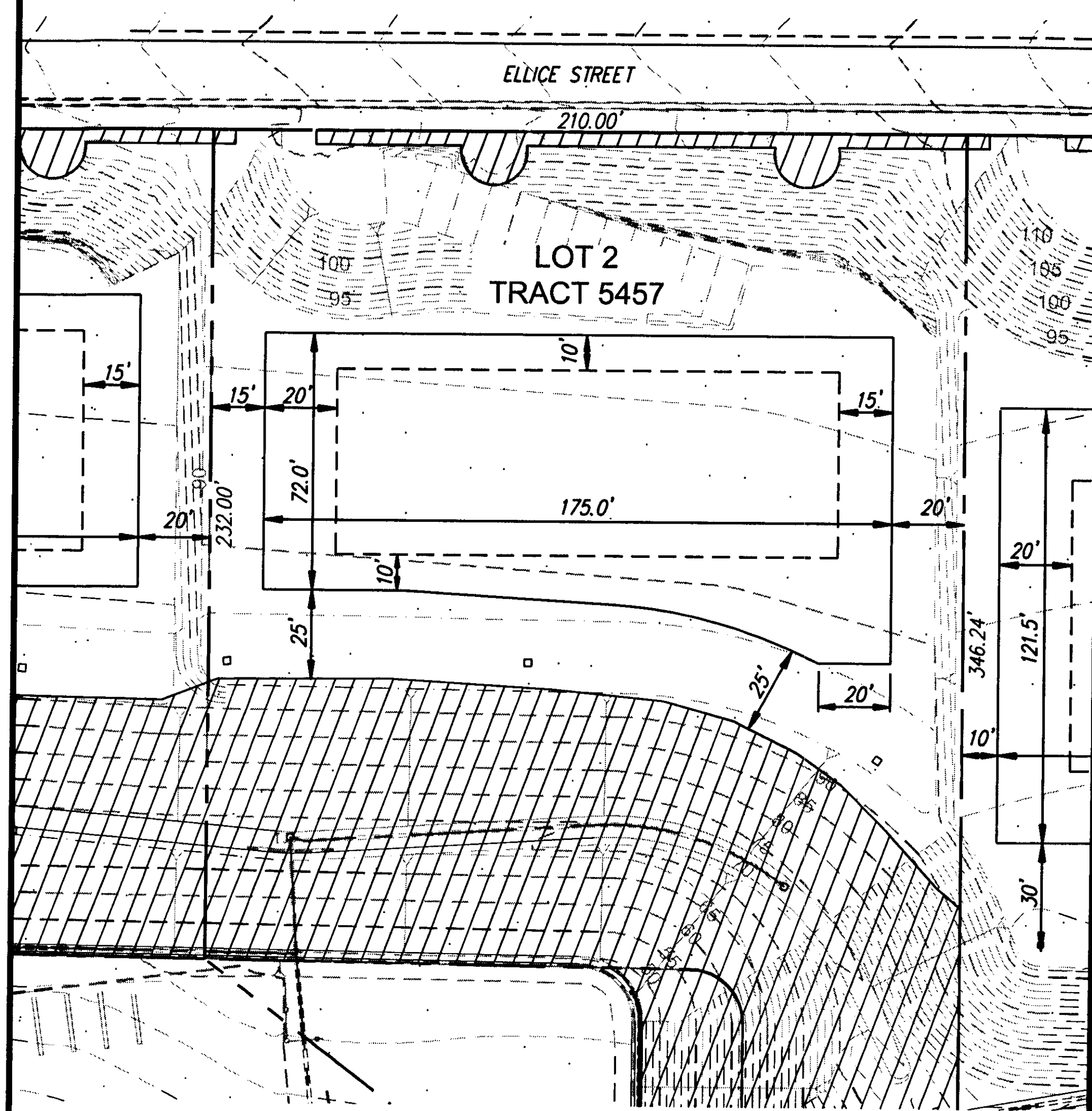
FIRST STORY SECOND STORY

LOT EXHIBIT
LOT 1 TRACT 5457

SCALE: 1"=40'

SHEET OF

EXHIBIT E
APPROVED BUILDING ENVELOPES



ASSOCIATION
MAINTENANCE AREA

LOT LINE

APPROVED BUILDING ENVELOPES

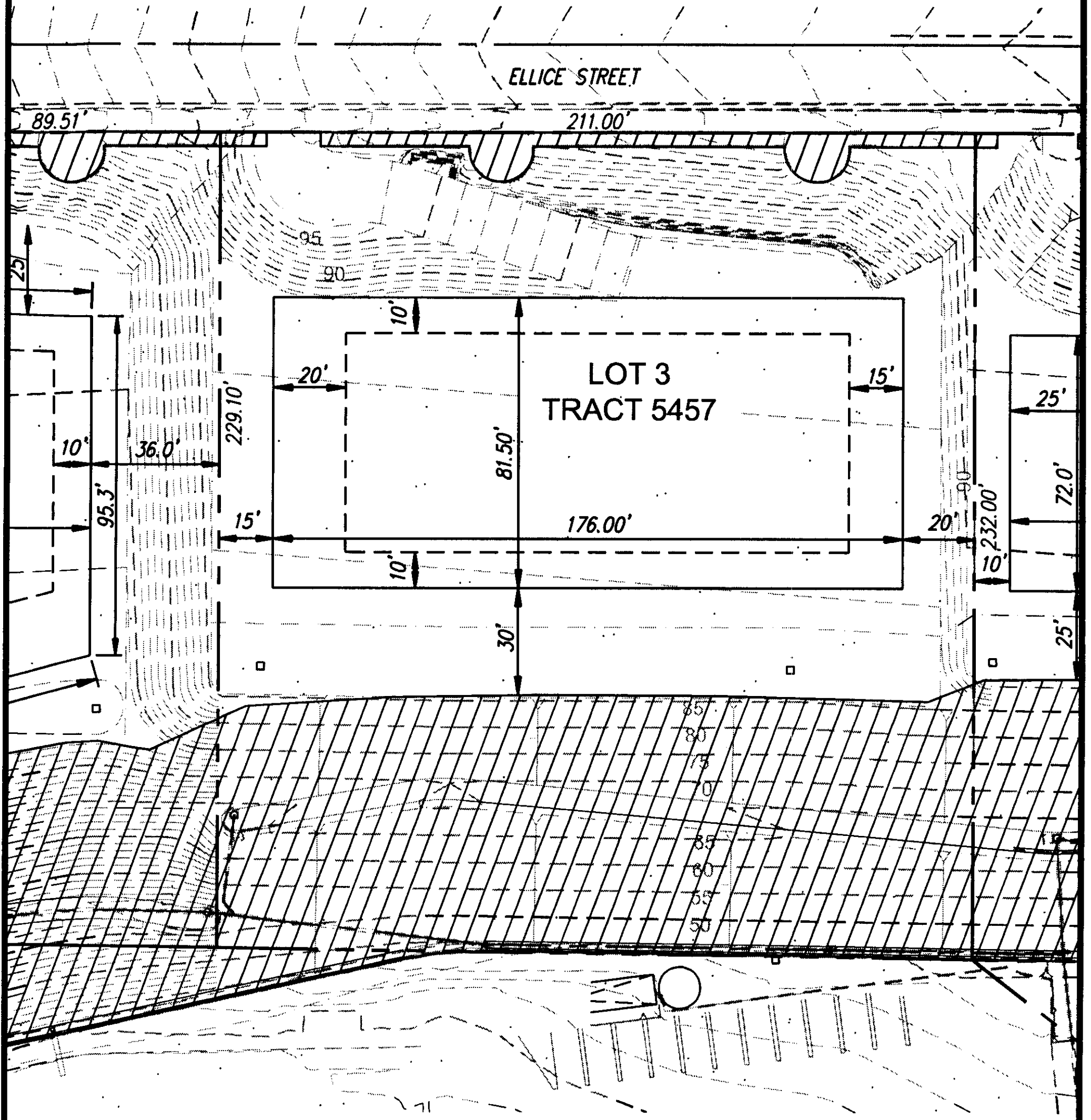
LOT EXHIBIT
LOT 2 TRACT 5457

SCALE: 1"=40'

FIRST STORY SECOND STORY

SHEET OF

EXHIBIT E APPROVED BUILDING ENVELOPES



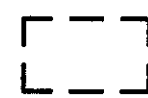
 ASSOCIATION
MAINTENANCE AREA

--- LOT LINE

APPROVED BUILDING ENVELOPES

LOT EXHIBIT
LOT 3 TRACT 5457


SCALE: 1"=40'

 FIRST
STORY  SECOND
STORY

SHEET OF

EXHIBIT E

APPROVED BUILDING ENVELOPES

The site plan illustrates Lot 4 Tract 5457, bounded by Ellice Street to the north and Yerba Buena Road to the south. The lot is irregularly shaped with a total area of 160.9'. The plan shows two approved building envelopes: a solid line for the first story and a dashed line for the second story. Key dimensions include a front lot line of 125.0', a side lot line of 125.0', and a rear lot line of 160.9'. The building envelopes are set back from the lot lines by various distances: 25' from the north lot line, 10' from the east lot line, 20' from the south lot line, and 15' from the west lot line. The plan also shows a curved boundary on the west side with a radius of 275.50' and a length of 434.66'. The lot is surrounded by association maintenance areas, indicated by hatched patterns. The plan includes a north arrow pointing towards the top right and a scale of 1" = 40'.

 ASSOCIATION
MAINTENANCE AREA

--- LOT LINE

APPROVED BUILDING ENVELOPES

LOT EXHIBIT
LOT 4 TRACT 5457

SCALE: 1" = 40'

FIRST
STORY

SECOND
STORY

SHEET OF



LOT EXHIBIT
LOT 4 TRACT 5457

———— LOT LINE

APPROVED BUILDING ENVELOPES

SHEET OF

EXHIBIT "F"

ARCHITECTURAL REVIEW COMMITTEE GUIDELINES

(continued)

- 13. Any structure larger than 5,000 square feet and/or any structure five miles from a fire station shall be provided with an automatic fire sprinkler system in accordance with Ventura County Ordinance No. 14.**
- 14. Street numbers and other identifying data shall be displayed as follows:**
 - (a) All residential dwellings shall display a street number in a prominent location of the residence in such a position that the number is easily visible to approaching emergency vehicles. The numerals shall be no less than four (4) inches in height and shall be of a contrasting color to the background to which they are attached and shall be installed prior to occupancy. Where structures are set back more than 150 feet from the street, larger numbers will be required so that they are visible from the street. In the event the structure(s) is/are not visible from the street, the address number(s) shall be posted adjacent to the driveway entrance. Residential dwellings shall have these numerals illuminated during the hours of darkness.**
- 15. Landscape improvements:**
 - (a) Exotic plants which are known to spread beyond their original plantings and invade native habitats. The maximum area for each Lot that can be landscaped in turf, exotic and non-native plant species shall not be greater than ten percent (10%) of the net Lot area.**
 - (b) Landscaping for each Lot shall consist of drought-tolerant landscaping species.**
 - (c) Landscaping (trees) should not be placed directly under any overhead lighting which could cause a loss of light at ground level.**
 - (d) Landscaping at entrances/exits or any intersection will not block or screen the view of a seated driver from another moving vehicle or pedestrian.**
- 16. Portions of this Project may be in a high fire hazard area and any structures so located shall meet Hazardous Fire Area Building Code Requirements.**

EXHIBIT F

ARCHITECTURAL REVIEW COMMITTEE GUIDELINES

The following guidelines have been established by the Declarant and the County of Ventura in connection with the various Entitlement Conditions for projects covered by this document.

1. All units should install and maintain ultra-low water consumption plumbing fixtures.
2. All units should install and maintain the following energy saving devices or construction features:
 - (a) Stoves, ovens, and ranges, when gas fueled, shall not have continuous burning pilot lights.
 - (b) All thermostats connected to the main space heating source shall have night setback features.
 - (c) Kitchen ventilation system shall have automatic dampers to ensure closure when not in use.
 - (d) For attenuation of interior noise levels of the homes, all window openings facing Pacific Coast Highway on the second story of two-story dwellings shall be equipped with acoustical windows rated at STC-30 or better and shall be installed consistent with manufacturer directions.
3. No improvement or alteration shall be approved which would result in sheet flow of drainage water between Lots located within or adjacent to the Project.
4. Roofing material made of asphalt shingles shall be prohibited.
5. No plans shall be approved which would allow vehicular access to any yard areas.
6. Rain gutters and downspouts shall be provided on all sides of the structure for all units where there is a directional roof flow. Water shall be conveyed to the street or drives in non-corrosive devices.
7. No roof mounted equipment (other than required vents) shall be permitted unless approved by the Board.
8. Excessively bright and/or unshielded front door lighting shall be prohibited.
9. Solar panels for heating within the Project shall be subject to the approval of the County of Ventura. All solar panels shall be designed so as to be part of the overall design of the structure supporting it.
10. All roof vent and metal flashing shall be painted to match the roof color. All deck drains shall drain to the side and not facing the street.
11. All grass or brush exposing any structure(s) to fire hazards shall be cleared for a distance of 100 feet prior to framing in accordance with Ventura County Fire Protection Ordinance.
12. All chimneys of any structure shall be required to install an approved spark arrestor.