

RECORDED 1016-176

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DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AGREEMENTS
AND CHARGES AFFECTING REAL PROPERTY KNOWN AS MARIN BAY UNIT 2-A
A RESIDENTIAL SUBDIVISION IN THE COUNTY OF
MARIN, STATE OF CALIFORNIA

THIS DECLARATION, made and dated this 17th day of September,
1962, by LATIPAC-PERINI COMPANY, a joint venture,

WITNESSETH:

WHEREAS, LATIPAC-PERINI COMPANY, hereinafter called "Declarant" is the owner of real property in the County of Marin, State of California, as shown (on a map entitled "MARIN BAY, UNIT 2-A, said map having been filed in the office of the County Recorder of the County of Marin, State of California, on the 17th day of July, 1962, in Map Book 11, page 25;) and

WHEREAS, Declarant intends to, and is desirous of, selling certain numbered lots shown on said map; and

WHEREAS, Declarant is desirous of subjecting said real property to the conditions, covenants, restrictions, agreements and charges hereinafter set forth, each and all of which are for the protection and benefit of said property, of each portion thereof and for each owner thereof, and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any owner thereof;

NOW, THEREFORE, Declarant hereby declares that said real property is, and shall be, held, transferred, sold and conveyed subject to the conditions, covenants, restrictions, agreements and charges hereinafter set forth in the various articles of this Declaration, to wit:

I. MUTUAL AND RECIPROCAL COVENANTS AND AGREEMENTS

All of said conditions, covenants, restrictions, agreements and charges shall be made for the direct and mutual and reciprocal protection and benefit of each and every lot shown on said map, as recorded, and shall be intended to create mutual and equitable

servitudes upon each of said lots in favor of each other lot shown on said map, and to create reciprocal rights and obligations between respective owners of all of the lots shown on said map and to create a privity of contract and estate between the purchasers of said lots, their heirs, successors in interest and assigns, and shall, as to the owners of each lot shown on said map, his heirs, successors in interest and assigns, operate as covenants running with the land for the protection and benefit of all other lots in each and every part of Marin Bay, Unit 2-A.

II. DEFINITION OF TERMS

Whenever used in this Declaration, the following terms shall have the following meanings:

(a) The term "said property" means and refers to the real property shown and described on a certain map entitled "Marin Bay, Unit 2-A, said map having been recorded at and filed in the office of the County Recorder of the County of Marin, State of California, as hereinbefore stated.

(b) The term "said map" means and refers to that certain map described and defined in Article II, Section (a) of this Declaration.

(c) The term "lot" means and refers to the numbered subdivision of land delineated and specified on said map and as contained within the respective blocks wherein said property is segregated.

(d) The term "Public Authority" means and refers to any city, county, state or federal governmental body or agency having competent authority to permit, regulate, enjoin or initiate any improvement or activity on said property hereinbefore described.

(e) The terms "dwelling house", "structure", "accessory building" and similar expressions mean and refer to the main portion of such structure and all projections therefrom, such as bay, bow or oriel windows, exterior chimneys, covered porches or porticoes and the like, including in the case of dwelling houses, garages, incorporated in and forming a part thereof, but shall not include eaves of such structures nor any open pergola nor any uncovered porch, stoop or steps, the balustrades or sides of which do not extend laterally more than three (3) feet above the level of the first floor of said structure.

(f) The terms "purchasers" and "owners" mean and refer not only to those acquiring title to any lot in fee simple, but also all persons entitled to purchase a lot or lots on said property under outstanding contracts of sale and persons having a possessory interest in any lot or lots as tenants or otherwise, and the heirs, successors in interest and assigns of each of them.

(g) The term "set back" means and refers to the horizontal distance between the furthestmost applicable projection of any dwelling house or other structure referred to and a given line, street, lot or plot.

III. COMMITTEE APPROVAL

No structures, either residence or accessory building, tennis court, swimming pool or other improvements shall be constructed or maintained upon any lot, nor shall any alteration in the exterior of a structure for which it is necessary to secure a permit under any applicable building ordinance or law be made unless complete plans and specifications therefor, showing the exterior design, nature, kind, shape, height, building material and color scheme thereof, the general plan of landscaping with special reference to location of proposed tree and hedge planting and kind of trees and hedges, the grading plan, the location on the lot and type of any mailbox, television antenna or aerial, the location and height of any wall or windbreak and the floor plan of any proposed structure plotted on the lot, shall have been submitted to and approved in writing by the Architectural Review Committee, hereinafter referred to as the "Committee" and more particularly defined in Article XXXI of this Declaration, and a copy of such plans and specifications and other data, as finally approved, deposited with the Committee. The pitch, surfacing and color scheme of the roof of any proposed structure, as a condition to the approval of plans by the Committee, shall be of a design and material acceptable to the Committee. No change in the exterior color scheme of any dwelling house or accessory building shall be made subsequent to final approval by the Committee of the plans, specifications and proposals as originally submitted to the Committee, as provided hereinbefore, without written approval of the Committee. After the expiration of one (1) year from the date of issuance of the building permit by the appropriate Public Authority, authorizing construction or alteration of any structure, or after the expiration of one (1) year from the date of such construction or alteration, whichever is later, the structure or alteration described in such permit

shall, in favor of purchasers and encumbrancers from the owner causing such structure to be erected or alteration to be made, be deemed to comply with the provisions of this Declaration, unless notice to the contrary shall have been given to such purchaser or encumbrancer or to a person residing on the lot, or unless legal proceedings shall have been instituted to enforce such compliance.

IV. ONLY RESIDENTIAL PURPOSES

No lot, in whole or in part, shall be used for anything other than residential purposes. No trade, traffic or business of any kind, whether professional, commercial or industrial, shall be engaged in or carried on upon said property, or any part thereof. Without restricting the generality of the phrases "professional trade, traffic or business", "commercial trade, traffic or business" or "industrial trade, traffic or business", said phrases are also intended to prohibit any use of the subjected real property for stores, shops, clinics, nurseries or nursery schools, schools or colleges, for-hire parking areas, gasoline service stations, theaters, hospitals, sanitariums, factories, restaurants, drive-in restaurants; saloons and taverns, signboards, landscape nurseries, hotels, motels and other professional, commercial or industrial uses, provided however, that Declarant reserves the right to designate or set aside any portion of said property not already purchased for use as a school. Without restricting the generality of the phrase "residential purposes", it is intended that the same shall not prohibit the use of the subjected said property for single family dwelling houses, parks and churches, provided however, that no church may be erected on any lot without prior written approval of the Committee.

V. SINGLE FAMILY DWELLINGS

Only one building structure shall be erected or maintained on any lot, regardless of the size of the lot, and said building structure shall not be designed or intended to be used for any purpose other than that of a single family dwelling house, provided however, that this restriction shall not prevent the erection and

maintenance of a garage or other customary accessory building appurtenant to each single family dwelling house and erected upon the same lot and used by the occupant or occupants of such single family dwelling house and provided further, that a separate garage may contain separate rooms for living quarters for bona fide servants or domestic employees but may not contain a kitchen, and provided further, that no single family dwelling house shall be designed or constructed to include more than one (1) kitchen. Upon lots 9, 10, 29, 34, 56, 57 and 58 only a secondary kitchen may be located in a guest house if such a structure is approved and built.

VI. TEMPORARY OR MOVABLE STRUCTURES

No structure shall be moved from without to within or from within to without any lot without written approval of the Committee. No garage carport, out-door privy, shack, tent, trailer or temporary structure, placed or maintained on any lot shall at any time be used as a residence, except as provided in Article V of this Declaration. No dwelling house on any lot shall be occupied while in course of construction nor until made to comply with all conditions set forth herein.

VII. DWELLING COST, QUALITY AND SIZE

No two bedroom dwelling house shall be permitted to be constructed on any lot at a cost or a value of less than the sum of Sixteen Thousand Dollars (\$16,000); no three bedroom dwelling house shall be permitted to be constructed on any lot at a cost or a value of less than the sum of Eighteen Thousand Dollars (\$18,000), based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenant to assure that all dwelling houses shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at a minimum cost state herein, for the minimum permitted dwelling house size, provided however, that no material used in the construction of a dwelling house on any lot shall be of a second hand or used nature. The ground floor area of the main structure, exclusive of open porches, garages, carports, patios and like appurtenances not enclosed by the proper walls of the residence structure,

shall be not less than twelve hundred (1200) square feet for a one story two bedroom dwelling house and fourteen hundred (1400) square feet for a one story three bedroom dwelling house. In the case of two-story dwelling houses, the area on the ground floor shall be not less than eight hundred and fifty (850) square feet. All exterior walls of each dwelling house shall be finished in the same material and shall be painted or stained as a part of and at the time of erection. This paragraph shall not prohibit the erection of structures of a generally acknowledged type of architecture as may be recognized by the Committee, but it is intended, among other things, to prohibit false fronts and similar structures. Where dwelling houses are built on lots having a frontage of two (2) streets, an effort shall be made to specially feature the real of such dwelling houses so as to make the structure architecturally interesting and attractive.

VIII. SET BACKS

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No main wall of any dwelling house shall be erected or maintained on any lot that shall be nearer to the front property line than fifteen (15) feet, or nearer than five (5) feet to either of its interior property lines, or nearer than fifteen (15) feet to the rear property line, provided however, that the set back from exterior property lines adjacent to streets on corner lots shall not be less than ten (10) feet and provided, further, that the set back from the rear property line on Lots 86 through and inclusive of Lot 102 as shown on the Map shall not be less than twenty five (25) feet. For the purposes of this covenant, fire place chimneys, steps and open porches shall not be considered to be parts of a dwelling house, provided however, that this shall not be construed to permit any portion of a dwelling house on a lot to encroach upon another lot.

IX. HEIGHT

No dwelling house shall be erected or maintained on any lot which shall be more than two (2) stories in height. Said two (2) stories, including the floor joists between them, shall not exceed twenty-two (22) feet in height from the top of the floor of the first

story to the underside of the ceiling of the second story. The vertical distance from the average surface grade of that portion of the lot covered by the dwelling house to the topmost point of the roof shall not exceed thirty (30) feet; provided, however, that the topmost point of Mansard roof shall, for the purposes of this Article, be considered the apex of the roof and provided, further, that the committee may, in the exercise of its discretion, limit the height of any dwelling house to a height of less than thirty (30) feet in the event that such a limitation shall be deemed by the committee to be necessary to preserve to other lots or dwelling houses subject to these Covenants and unimpeded line of sight for view. A dwelling house is set at the level of the surface grade of the premises on which it is erected.

X. EXCAVATIONS

No excavation for store, gravel, sand or earth shall be made on any lot, except that Declarant, its successors in interest and assigns may grant a revocable permit granting the owner of any lot the right to excavate for the purpose of building basements or cellars of dwelling houses, swimming pools and subterranean fuel oil tanks, provided however, that Declarant reserves the right at any time to excavate and grade on any lot thereof then owned by Declarant and to remove material or deposit material on said lots in connection with the work of laying out and improving said lot.

XI. LANDSCAPING

No portion of any dwelling house site between the street line and the main structure thereon shall be used for the planting or growing of garden vegetables. No landscaping shall be begun on any lot nor any planting or removal of trees take place until the plans and specifications therefor have been first approved in writing by the committee.

XII. DRILLING OF WELLS

No well for the production of, or from which there is produced water, oil, or gas or any other mineral substance shall be dug

or operated on said property. No tank for the storage of fuel may be maintained above the surface of said property.

XIII. ANIMALS

No stable, poultry house or yard, or rabbit hutch or house shall be constructed or maintained on any lot. No fowl or animals, other than a reasonable and usual number of household pets, shall be kept on any lot. The Declarant, its successors in interest and assigns may grant a revocable permit giving the owner of any of said lots the right to keep and maintain a limited number of animals as pets, provided the same are not kept and maintained for commercial purposes or in unreasonable quantity. It shall be the duty of the Declarant, its successors in interest and assigns to revoke any permit so granted if such use of said property shall become a nuisance to the neighbors adjacent.

XIV. NUISANCES

No noxious or offensive activity shall be carried on upon said property, nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

XV. SIGNS

No sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than two hundred (200) square inches in size denoting only the name and profession of any professional man living on said lot or one "For Sale" or "For Rent" sign of a size not greater than eighteen (18) inches by twenty four (24) inches in dimension. Declarant, however, is to have the exclusive right to maintain larger signs for the purpose of development advertising. No other signs of any character whatsoever shall be erected upon any lot without the prior written approval of the Committee.

XVI. CARE AND APPEARANCE OF PREMISES

Grass, weeds and vegetation on each lot shall be kept mowed at regular intervals so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, plants which die and animal

droppings shall be promptly removed by the lot owner. After a dwelling house is erected on any lot, Declarant may, at its option, after giving the owner thirty (30) days written notice addressed to the owner at said lot, have the grass, weeds and vegetation cut when, and as often as, the same is necessary in Declarant's judgment, and to have dead trees, shrubs and plants removed from any lot. Upon the failure to perform any of the foregoing acts on a lot after notice the owner of such lot shall be obligated to reimburse Declarant for the cost of such work, said cost to become an assessment against the owner of the lot, his successors in interest and assigns, on which the work shall be done or performed. No device or area devoted to or used for the burning of trash, rubbish, papers, etc., or garbage containers shall be located between the front or the side of any house or a projection of the line thereof, and the adjacent street. Any such area or device shall be screened by means of an adequate fence, approved by the Committee, so that it may not be seen from the street and shall be operated by the owner or occupant in such a manner that the operation is not noxious to the neighbors. In the event of failure of the owner so to construct a screening fence, the Committee may erect the same and the cost of such erection shall become an assessment against the owner, his successors in interest and assigns, of the lot on which the work is performed. No basketball standards or fixed sports apparatus shall be attached to the front of any dwelling house or be erected in any front yard or in a side yard of a corner lot that is adjacent to a side street. The owner, at his own expense, shall maintain in first class condition at all times the sidewalk, planting strips and trees, if any, between the curb line of any street and the property line of his lot, in the same manner, at the same place and of the same width as was or shall be established by the Declarant at the time of the original construction of the sidewalk.

XVII. PROVISION FOR UPKEEP

Each lot shall, from the date of the sale thereof by Declar-

ant, be subject to an annual charge or assessment of twenty four dollars (\$24.00) without regard to the square foot area thereof, to be paid annually in advance to the Committee on the 1st day of January of each year, provided, however, that the first annual assessment on any lot shall become due and payable thirty (30) days following the sale by Declarant of the lot, and if such due date falls in any other month than January, a credit in an amount to be determined on a monthly pro rata basis will be given the owner of said lot at the time he pays his next accruing annual assessment. When due, such charge or assessment shall be a lien upon the lot and shall continue to be a lien thereon for a period of three (3) years or until fully paid, whichever shall first occur. If such charge or assessment is not paid within thirty (30) days after it becomes due it shall be delinquent and shall bear interest from date of delinquency at the rate of ten (10) percent per annum. If not paid within thirty (30) days after the delinquency date, Committee may bring court action to collect the same and there shall be added to the amount thereof the costs of preparing and filing the complaint in such action and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

All charges and assessments shall be applied by the committee towards the payment of the cost of the following upkeep and maintenance expenses to wit:

(a) Expenses, if any, incident to the enforcement of the conditions, covenants, restrictions, agreements and charges contained in this Declaration, and to the collection of the charge or assessment provided for in this Article,

(b) Street lighting, creating and maintaining ornamental features, repairs to streets, curbs, medial strips, sewers and any other utilities not maintained by or at the expense of the Public Authorities, including trees, grass plots and planted areas within the lines of such streets or any recreational areas, the construction and maintenance of suitable public bus stop shelters, all within the said property,

(c) Caring for vacant and unimproved lots and plots on said property, removing grass and weeds therefrom and any other thing necessary and desirable in the judgment of the committee to

improve, beautify and make more convenient or enjoyable for living conditions and surroundings of the inhabitants and other owners in said property,

(d) Sweeping and cleaning streets, sidewalks and any portions of said property maintained for the general use of owners of property therein until such time as the sweeping and cleaning of streets are provided for by the Public Authorities,

(e) A reasonable proportion of the expenses connected with the maintenance of an office for the transaction of the business of the committee in carrying out the foregoing purposes,

(f) Taxes and assessments, if any, which may be levied by Public Authorities on any unaccepted streets or portions thereof or park plots now or hereafter opened, laid out or established, and other open spaces maintained for the general use of property owners on said property,

(g) Any purpose contributing to the general welfare, enjoyment or advantage of said property, including expenditures for improvements or maintenance in areas surrounding said property.

The Committee shall not be obligated to carry out any of said purposes except to the extent possible from the money so collected. If the Committee shall assign the rights of enforcement herein to any corporation or association as hereinafter provided, then such corporation or association shall have the right to receive such charges and assessments and to enforce the collection thereof, and to expand the same as hereinbefore set forth, and upon such assignment and the delivery of the money then on hand being made by the Committee, the said Committee shall be discharged of all responsibility in the premises.

XVIII. STORAGE

No garbage, refuse, rubbish or cuttings shall be deposited on any lot unless placed in a suitable container suitably located on the premises as provided in Article XVI of this Declaration, nor shall the occupant or owner of said lot store or permit to be stored upon his lot such quantities of manure and composting materials as to constitute an injury to the person or property of any other owner. No building material of any kind or character shall be placed or stored upon any lot until the owner is ready to commence improvements.

XIX. FENCES, WALLS, HEDGES AND TREES

No hedge over six (6) feet in height shall be grown on said

property nor shall any fence or wall of any kind or character be erected and maintained on said property except as herein provided. This Article is not intended to prohibit the erection and maintenance of a patio wall or a windbreak, neither of which shall be greater than six (6) feet above the finished graded surface of the ground upon which said patio wall or windbreak are situated; provided, however, that said patio wall or windbreak shall not exist on any lot in the area between the street and any set back line herein referred to applicable to such lot, and provided, further that no hedge, fence, wall or windbreak which obstructs or impairs the view from other lots shall not be placed or permitted to remain on any lot.

It is the purpose and intendment of these Covenants that hedges rather than fences shall be erected and maintained upon lots and upon property lines between lots subject to these Covenants. In the event that any owner or agent of an owner shall desire to erect a fence for enclosure or decorative purposes he shall cover any such fence with a planted hedge or vine according to plans approved by the Committee.

The Committee shall supervise the planting and growth of trees on said property and may cause the removal of trees which may have been planted in order to prevent one lot owner from planting trees, or allowing trees to grow so that the view from other lots may be obstructed or impaired. The owner agrees to abide by any order of said Committee directing him not to plant any trees or to cut down or cut back or remove any trees which may have been planted. The agreement contained in the last sentence shall be construed as a Covenant running with the land and not as a condition which might cause the owner's title to be forfeited. The owner further agrees that the members of said Committee may at any time institute or prosecute in their names or cause to be instituted or prosecuted in the name of any member of said Committee any suit or suits which the Committee may consider advisable in order to compel and obtain a decree for the specific performance by owner of his agreement to remove, cut

down, or cut back any tree which the committee has ordered removed, cut down or cut back. Should any such suit be instituted, owner agrees to pay reasonable attorney's fees for the plaintiff's attorneys as may be fixed by the Court.

XX. SANITARY IMPROVEMENTS

No cesspools, septic tanks, outside privies, or similar devices shall at any time exist on any lot, and all dwelling houses shall be equipped with inside toilets at all times; provided, however, that a cesspool or septic tank may be used on any lot not reasonably served by sanitary sewers, and provided, further, that written approval for such cesspool or septic tank has been first obtained from the Public Authorities having competent jurisdiction.

XXI. LAUNDRY

No poles, lines or other fixtures intended to be used for drying or airing clothes, rugs, drapes, curtains or other materials shall be installed or permitted to remain on any lot except for one (1) rotary clothes dryer located in a yard enclosed by a lattice, fence or other enclosure approved by the Committee. Such enclosure shall be located so as not to be between the front or side of any house, or a projection of the line thereof, and the adjacent street. In the event of failure of the lot owner to so construct a screening fence, the Committee may erect the same and the cost of such erection shall become an assessment against the lot owner.

XXII. ACCESSORY BUILDINGS

There shall be permitted to be erected and maintained an accessory building appurtenant to a dwelling house, provided that no accessory building shall be more than one (1) story in height, and provided further that this article is intended specifically to prohibit the construction or erection of "guest houses" or separate servant's dwellings, which for the purposes of this Declaration shall be considered to be dwelling houses. Lots containing more than one acre will be excepted from the restrictions prohibiting "guest houses".

For the purpose of this Declaration, a private garage (not more than one (1) story in height) for the use of the owner or occupant of the lot upon which said garage is erected shall be deemed to be an accessory building and such private garage may be incorporated in and be made a part of said dwelling house, provided however, that no garage shall be designed or constructed to accommodate more than three (3) automobiles at any one time. All separate garages and other accessory buildings shall be finished substantially in the same manner and of the same material and of the same style of architecture as the dwelling house on the lot.

XXIII. EASEMENTS

There are hereby reserved and retained to Declarant and created and imposed upon the property shown on said map, easements as delineated on said map, of the dimensions thereon shown and thereon designated as "easements"; said easements being for all or any of the following purposes:

(a) Service boxes, wires and conduits for the transmission of electricity for lighting, telephone and other purposes and for the necessary attachments in connection therewith,

(b) Public and private sewers, storm water drains, land drains and pipes, water and gas mains and pipes,

(c) Any other method of conducting and performing any public or quasi-public utility or function over or beneath the surface of the ground.

No permanent structure except a fence, windbreak or wall, as herein provided, shall be placed upon any easement.

XXIV. DRIVEWAYS

Lots 2 and 3 each are provided with a way of access to a public street immediately contiguous with a similar and adjacent way of access provided to another lot. All persons who shall own any of the lots numbered in this Article or who shall occupy any dwelling house constructed upon any of said numbered lots shall construct and maintain, or maintain as the case may be, jointly with the person or persons owning or occupying a lot or dwelling house with a contiguous and parallel access to a public street, a center dividing and planting

strip extending equidistant from the common property line.

Said center dividing and planting strip shall be cultivated with permanent and attractive planting. The strip shall be located at the point nearest a public street not closer than twelve (12) feet from the paved portion of said street. At such a point the strip shall be neither more nor less than eight (8) feet in width in order to provide for uniformity of appearance among the lots subject to these Covenants. No strip shall be less than forty (40) feet in length, but the width of any strip distal from a public street may be less than eight (8) feet. Upon each of the lots numbered in this Article no vehicular driveway greater in width than ten (10) feet shall be constructed or maintained. Adjacent to each of said driveways opposite the center planting strip provided in this Article to be constructed and maintained, each owner of each lot numbered in this Article or each occupant of a dwelling house upon any such lot shall install and maintain permanent and attractive planting.

No vehicular driveway greater in width than ten (10) feet shall be constructed or maintained upon any of Lots 16, 24, 29, 34, 56, 58, 57 or 78. Permanent and attractive planting shall be installed and maintained on both sides of any such driveway extending from the driveway to the property line.

XXV. COMPLETION OF CONSTRUCTION

Any dwelling house and appurtenant improvements on said property, the construction of which has been started, shall be completed without delay, except when such delay is caused by acts of God, strikes, actual inability of the purchaser to procure deliveries of necessary materials, or by interference by other persons or forces beyond the control of the purchaser to prevent. Financial inability of the purchaser or his contractor to secure labor or materials or discharge liens or attachments shall not be deemed a cause beyond his control.

If at any time after the sale by Declarant of a lot there should occur a cessation of work upon any dwelling house then under

construction thereon, and such cessation continues for a period of one hundred and twenty (120) days or more, then where the interruption is not excused by the provisions hereof, the existence of such incompleting building shall be deemed a nuisance, and the Committee shall have the right to enter upon the premises and remove the incompleting dwelling house, or carry such construction forward to completion, and the costs and expenses incurred in connection with such removal or completion shall constitute a lien upon said property under the Mechanic's Lien Law of the State of California, such lien to attach as of the time of the commencement of the work so undertaken to complete such construction or to effect such removal and the said lien may be enforced in the manner provided for the enforcement of mechanic's liens.

XXVI. RESUBDIVISION OF LOTS

No lot shown on said map shall be subdivided for the purpose of making two (2) or more lots, except that two (2) lots may be combined to create one new lot, and further excepted that three (3) or more lots may be combined and redivided into lots, no one of which shall contain a less number of square feet or less frontage than the smallest of said three (3) lots so combined or redivided as permitted herein without written approval of the Committee.

XXVII. EXTERIOR LIGHTING

Any exterior lighting installed on any lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of adjacent property, and a plan showing the location, intensity and focus of any exterior illumination other than indirect lighting shall be first approved by the Committee before the installation thereof.

XXVIII. ELECTRIC AND TELEPHONE UTILITIES

The purchaser of each lot agrees that if and when underground electric and telephone utility mains are available for use by the respective lot owners, each lot owner shall at his own cost and expense provide underground wires or conduits from such mains to the

improvements on the respective lots to the general purpose that no above surface telephone or electric wires shall exist on any lot and that the owner of each respective lot shall bear the cost of installing or placing such wires and conduits underground.

In the event that any public utility shall erect or threaten to erect any pole, standard, fixture or line above the surface of the ground of said property in controvention of any obligation made and incurred by it to Declarant, any owner, the Committee or the Declarant may institute in any appropriate court or in the Public Utilities Commission of the State of California, an action for injunctive relief. For the purpose of maintaining such an action the Committee and any owner who shall be plaintiff or petitioner shall be the assignee of all contract rights in the premises given to or acquired by Declarant from any public utility concerning utility service to said property.

XXIX. REZONING

Notwithstanding the foregoing restrictions, if any portion of said property shall be zoned by the appropriate Public Authority to a zone other than a single family residential district at a time when Declarant is the owner of said portion, then Declarant may erect and maintain on said portion or any part thereof any building or structure permitted by the zoning regulations then controlling. In the event of such a change in zoning affecting any portion of the property, then owned by Declarant, the Declarant may, but is not required to, cancel the conditions, covenants, restrictions, agreements and charges imposed by this Declaration, insofar as it applies to the said portion of the property subject to the change in zoning, such cancellation to be effected by recording in the office of the County Recorder of the County of Marin, State of California, a Declaration of Cancellation of Restrictions, duly executed by Declarant and setting forth therein the purpose of such instrument.

XXX. HOME OWNER'S ASSOCIATION

Declarant reserves the right at any time during the period

of the within restrictions, to establish a nonprofit corporation to be known as "THE MARIN BAY HOME OWNER'S ASSOCIATION", hereinafter referred to as the "Association", provided however, that membership in said association when formed shall not be a condition of occupancy or ownership of property within said property. The Association shall be formed for the declared purpose of doing any and all things necessary to promote the general welfare of the residents and owners of Marin Bay or any portion thereof. Declarant further reserves the right during the life of the deed restrictions herein set forth and during all renewals thereof to assign to the Association, irrevocably or for a lesser specified period of time, such rights and privileges of enforcement, supervision and control as are reserved by Declarant or as are granted to the Committee in this Declaration as Declarant may in its sole discretion deem advisable.

XXXI. ARCHITECTURAL REVIEW COMMITTEE

The Architectural Review Committee appointed by Declarant shall consist of not more than five (5) members, and their appointment shall be disclosed by a written instrument setting forth the fact of the appointment, the names and business addresses of the members, and the period for which they are appointed. Said instrument shall be signed by Declarant, acknowledged before a Notary Public and recorded in the office of the County Recorder of the County of Marin, State of California, Any changes in the membership of the Committee shall be similarly acknowledged and recorded. Declarant may replace any member of the Committee at any time, with or without cause. The Committee may act by any three (3) of its members, and any authorization, approval or power made by the Committee must be in writing signed by at least three (3) members thereof.

The Committee shall withhold or deny approval of or to any plans and specifications submitted to it as above provided unless a fee of TWENTY DOLLARS (\$20.00) shall have first been paid to the Committee.

In the event the Committee fails to approve or disapprove any plans, specifications, color scheme, location or other matter subject to the conditions and restrictions herein contained, within thirty (30) days after submission thereof, then such plans, specifications or proposals shall be deemed conclusively approved by the Committee, provided the date of submission of said plans, specifications or proposals to the Committee is evidenced by written receipt from the Committee or its authorized representative, provided however, that at any time prior to the end of the thirty (30) day period hereinbefore described, the Committee reserves the right to defer for a period of not more than thirty (30) days action to approve or disapprove said plans, specifications or proposals, the deferral period to commence on the date of receipt of written notice of deferral of action by the lot owner.

Any member or agent of the Committee may at any time after reasonable notice, enter, inspect and report upon any lot as to its improvement or maintenance in compliance with the provisions hereof; and the Committee or any agent or member thereof shall not thereby be guilty of any manner of trespass for such entry or inspection.

XXXII. ACCEPTANCE OF RESTRICTIONS

All purchasers of the property shown on said map by the acceptance of deeds therefor, whether from Declarant or from subsequent owners of said property or by the signing of contracts or agreements to purchase the same, shall thereby and by said act consent and agree to all of the restrictions, covenants and provisions hereof, and shall thereby covenant and agree to be bound by and keep and perform the same and shall be personally obligated to pay the charges or assessments hereinbefore provided for attaching as a lien during the period of their ownership.

XXXIII. ENFORCEMENT AND REMEDY

Violation of any of the restrictions or conditions or breach of any of the covenants or agreements herein contained shall give to Declarant and to the Committee the right to enter upon the property

upon or as to which said violation or breach exists, and summarily to abate and remove at the expense of the owner any erection, thing or condition that may be or exist thereon contrary to the provisions hereof without being deemed guilty of any manner of trespass. Every action or omission whereby any restriction or covenant is violated, in whole or in part, shall render it lawful for Declarant or the Committee to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from so doing or to recover damages or other dues for such violation. Should any such suit be instituted, the purchaser agrees to pay a reasonable attorney's fee for the plaintiff's attorney as that fee may be fixed by the Court.

XXXIV. INVALIDITY

In the event any condition, covenant, restriction, agreement or charge herein contained be invalid or held invalid or void by any court of competent jurisdiction, such invalidity or void condition, covenant, restriction, agreement or charge shall in no way affect any other condition, covenant, restriction, agreement or charge herein contained.

XXXV. WAIVER OF BREACH

Waiver by Declarant of the enforcement of any of the conditions, covenants, restrictions, agreements or charges herein contained in any instance shall not constitute a waiver to enforce any of said conditions, covenants, restrictions, agreements or charges thereafter.

XXXVI. DURATION OF RESTRICTIONS

All the conditions, covenants, restrictions, agreements and charges set forth in this Declaration shall affect all of said property and are made for the direct protection and benefit thereof, and shall run with the land and continue until the 1st day of January, 1986, and may, as then in force be extended as to all or part of said property from that time for a period not exceeding twenty (20) years, and thereafter for successive periods of not more than twenty

(20) years, each without limitation, by the Declarant, evidenced by appropriate agreement entitled to record, of the owners of more than two thirds (2/3) of the lots shown on said map.

XXXVII. SUBORDINATION TO MORTGAGES AND DEEDS OF TRUST

Each and every restriction as to said property is hereby declared to be subject and subordinate to the lien of any mortgage or deed of trust now or hereafter made or existing in good faith and for value, and these restrictions shall in no way restrict, impair or defeat any right of sale contained in any such mortgage or deed of trust or the foreclosure of the same; provided however, that title to any property subject to these restrictions and obtained through sale under or foreclosure of any such mortgage or deed of trust shall thereafter be held subject to all provisions of these restrictions; except (and notwithstanding any provisions in these restrictions) that title to property acquired by the holder of a loan guaranteed or insured by the Federal Housing Administration or the Veterans Administration or any other governmental agency, or property acquired by any such agency directly, at foreclosure or otherwise, or from the purchaser at foreclosure sale or otherwise, by reason of or incident to, or as a consequence of such guaranty or insurance, either by way of purchase at a sale under power of sale or other judicial proceedings, or through foreclosure of deed of trust or mortgage on the property securing such loan, or by way of conveyance in full or partial satisfaction of the debts secured by such deed of trust or mortgage immediately upon any such acquisition shall be, and thereafter remain, free from any and all restrictions or impediments as to alienation.

XXXVIII. INTERPRETATION

In case of any uncertainty as to the meaning of any of the provisions of this Declaration, the Committee shall in all cases interpret the same and such interpretation shall be final and conclusive on all interested parties.

XXXIX. TITLE HEADINGS

The title headings as to the contents of particular Articles are inserted only as a matter of convenience and for reference, and in no way are, or are they intended to be a part of this Declaration or in any way define, limit or describe the scope or intent of the particular section or clause to which they refer.

XXXX. ASSIGNMENT OF POWERS

Any and all of the rights, powers and reservations of Declarant or the Committee herein contained may be assigned to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant or the Committee pertaining to the particular rights and powers and reservations assigned, and upon any such corporation or association evidencing its consent in writing to accept such assignment and assume such duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant or the Committee herein.

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

LATIPAC-PERINI COMPANY, a joint venture

By LATIPAC, INCORPORATED

By Edward C. Lee

By PERINI LAND & DEVELOPMENT COMPANY

By Louis R. Perini Jr.



Page 23 missing

STATE OF CALIFORNIA)
CITY OF SAN RAFAEL) ss.
~~CITY AND COUNTY OF SAN FRANCISCO~~)
COUNTY OF MARIN

On this 4th day of October, 1962, before me, Helen D. Griffin

Griffin, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared EDWIN C. M. LEE, known to me to be the Vice President of LATIPAC, INCORPORATED, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of said corporation, and he acknowledged to me that the said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 4th day of October, 1962.

Helen D. Griffin
NOTARY PUBLIC Helen D. Griffin
In and for the State of California,
City and County of San Francisco

My Commission Expires
October 26, 1963



35810

RECORDED AT REQUEST OF
MARIN TITLE GUARANTY CO.

AT 4:00 P.M. PAST 20 M.

OCT - 5 1962 John

Official Records of Marin County, Calif.

N. J. Lacomini
FEE \$ 20.00 RECORDED HL

BOOK 1618 PAGE 176