

# DISCOVERY BAY COVENANTS, CONDITIONS & RESTRICTIONS

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Revised

June 1, 1985

AMENDED DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS

FOR

DISCOVERY BAY

THIS DECLARATION is made on the date hereinafter set forth by the DISCOVERY BAY PROPERTY OWNERS' ASSOCIATION, a California nonprofit corporation, herein called "Declarant".

W I T N E S S E T H

WHEREAS, Declarant is an association representing all property owners of residential subdivision lots within certain real property in the County of Contra Costa, State of California, commonly known as "Discovery Bay"; and

WHEREAS, "Discovery Bay" real property encompasses nearly 2,000 acres under a general plan development, which real property is more particularly described in Exhibits "A" and "B" hereto, which Exhibits and all others referred to in this Declaration are attached to it and are incorporated in it by such reference and made a part of it as if set forth in full; and

WHEREAS, on October 1, 1970, Veronica Development Corporation recorded a "DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS, AGREEMENTS AND CHARGES AFFECTING REAL PROPERTY KNOWN AS DISCOVERY BAY UNIT NUMBER ONE, A RESIDENTIAL SUBDIVISION IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, at Page 283 of Volume 6225 of Official Records of Contra Costa County, said property as described on Exhibit "A", which provided for the creation of "Discovery Bay Property Owners Association" and a "Design and Environmental Control Committee"; and

WHEREAS, a "Design and Environmental Review Committee" was created by Veronica Development Corporation by recordation of a Declaration of November 12, 1970, at Page 495 of Volume 6253 of the Official records of Contra Costa County; and

WHEREAS, individual Property Owners created "Declarant", August 6, 1973, as a California nonprofit Corporation; and

WHEREAS, Veronica Development Corporation and its successor Discovery Bay Corporation recorded additional Declarations affecting "Discovery Bay" as set forth in Exhibit "B" hereto; and

WHEREAS, Veronica Development Corporation and Discovery Bay Corporation as owners and subdividers of Discovery Bay assigned all their rights, powers and duties under each of the said recorded Declarations to the Design and Environmental Review Committee as set forth in a Notice of Assignment recorded March 25, 1976, at Page 251 of Volume 7803 of the Office Records of Contra Costa County; and

WHEREAS, since the original recordation of a Declaration of Covenants, Conditions and Restrictions for "Discovery Bay" substantial development and construction has occurred involving approximately 1,200 residential structures and encompassing most of the property described in Exhibits "A" and "B"; and

WHEREAS, portions of the real property described in Exhibit "A" and Exhibit "B" are currently owned and being developed by the Hofmann Company, a California corporation, under a general plan that has been approved by Contra Costa County; and

WHEREAS, the Hofmann Company desires to subdivide, improve, develop and sell the remainder of the "Discovery Bay" real property in phases as an interdependent and interrelated community composed of residential dwellings and private facilities for the benefit of the Owners and Residents thereof, as well as the community; and

WHEREAS, the Hofmann Company and Declarant deem it desirable to improve, maintain, and construct the development of a general plan for the protection, maintenance, improvement, development, use, occupancy and enjoyment of the real property described in Exhibit "A" and properties described in Exhibit "B" which are subsequently annexed to "Discovery Bay" and to amend and re-establish Covenants, Conditions and Restrictions identical for all the property for the purpose of enforcing and protecting the value, desirability, and attractiveness of "Discovery Bay"; and

WHEREAS, the property owners have deemed it desirable for the efficient preservation of the value, desirability and attractiveness of "Discovery Bay" to delegate and assign the powers of administering and enforcing the amended Covenants, Conditions and Restrictions to the Declarant.

NOW THEREFORE, Declarant hereby declares that various developers of "Discovery Bay" have established covenants, conditions and restrictions pursuant to the "Discovery Bay" general plan of development for the protection, maintenance, improvement, development, use, occupancy and enjoyment of "Discovery Bay" property owners and have fixed the covenants, conditions and restrictions upon and subject to which all of "Discovery Bay" and each portion thereof shall be held, used, sold and conveyed. Declarant hereby further declares on behalf of individual owners, two-thirds of whom have consented in writing, that said covenants, conditions and restrictions, as amended, are re-established and ratified and that all "Discovery Bay" residential property shall be held, transferred, sold, and conveyed subject to the covenants, conditions and restrictions hereinafter set forth, to wit.

## **CHAPTER 1 - ADMINISTRATION**

### **ARTICLE 1.1: MUTUAL AND RECIPROCAL COVENANTS AND AGREEMENTS**

All of these covenants, conditions and restrictions shall be made for the direct, mutual and reciprocal protection and benefit of each and every lot shown on the subdivision maps covering the real property described in Exhibit "A", except these lots owned by the Developer until such time as the lot is initially sold and such portions of property described in Exhibit "B" as are annexed, (as Exhibit "B") and shall be intended to create mutual and equitable servitudes upon each of said lots in favor of each other and to create reciprocal rights and obligations between respective owners of all the lots shown 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, their 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 "Discovery Bay."

### **ARTICLE 1.2: DISCOVERY BAY PROPERTY OWNERS ASSOCIATION**

A nonprofit corporation, the Discovery Bay Property Owners Association, (hereinafter referred to as the "Declarant" or "Association") has been established, which has for its purpose the doing of any and all things necessary to promote the general welfare of the Residents and Owners of real property located in the area known as "Discovery Bay" or any part thereof.

Ownership of a residential lot shall be the sole qualification for membership and all Discovery Bay Property Owners are automatically members of the Association for as long as they own the property. Membership shall not be transferred, pledged, or alienated in any way except upon the sale of a lot or residence and then only to the purchaser thereof. Any attempt to make a prohibited transfer is void and shall not be reflected on the records of the Association. In the event any owner shall fail or refuse to transfer the membership registered in his name to the purchaser of his lot or residence, the Association shall have the right to record the transfer on the records of the Association. All voting in the Association shall be in accordance with the Bylaws of the Association. The Association may assess its members to cover reasonable administrative expenses (i.e. electronics, meetings, legal, office, printing, etc.) incurred by the Association in connection with carrying out its duties under this Declaration. Such assessments, if unpaid as stipulated in the Bylaws, shall constitute a lien against the subject property.

### **ARTICLE 1.3: DESIGN AND ENVIRONMENTAL REVIEW COMMITTEE (DERC)**

The Design and Environmental Review Committee (DERC) shall be appointed by the Discovery Bay Property Owners Association (DBPOA) and shall consist of not more than five (5) members. The appointment of such members shall be disclosed by a written document setting forth the fact of the appointment, the names and business addresses of the members, and the period for which they are appointed. Said document shall be signed by the Association, acknowledged before a Notary Public and recorded in the office of the County of Contra Costa, State of California. Committee members shall serve at the pleasure of the Association for a period of two (2) years. Any changes in the membership of the committee shall be similarly acknowledged and recorded. DERC may act by any three (3) of its members, and any authorization, approval or action taken by DERC must be in writing signed by the Chairman.

DERC may, at its discretion, require a payment of a fee to accompany plans, specifications, or other documents when deemed warranted by DERC and such documents shall not be considered to have been submitted to DERC, nor shall approval of the same be given, until such fee is received.

In the event DERC fails to approve or disapprove any plan, specification, color scheme, location or other matter involving the Covenants, Conditions and Restrictions within ninety (90) days after submission with all fees, then such plan, specification or matter shall be deemed conclusively approved by the DERC. Provided however, that at any time prior to the end of the ninety (90) day period DERC may extend the period for construction of such plan, specification or matter for not more than thirty (30) additional days by giving written notice of such extension to the lot owner.

At any time after giving reasonable notice any member or agent of DERC may enter and inspect any lot and the improvements located thereon for the purpose of determining whether such improvements are in compliance with the provisions of this Declaration and the requirements of the DERC.

#### **ARTICLE 1.4: DERC APPROVAL**

No structure, tennis courts, swimming pool or other improvement shall be constructed or maintained on any lot, or 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 thereof 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 tree and hedges, the grading plan, 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 DERC, and a copy of such plans and specifications and other data as finally approved, deposited with DERC prior to submittal to any local County agency. Such approval shall be given to those plans, specifications, and proposals with DERC, in its sole discretion, find to be consistent with the intent of this Declaration and such approval may be given subject to conditions as DERC deems necessary to fulfill said intent. Such conditions may include, but are not limited to, a requirement that the pitch, surfacing and color scheme of the roof of any proposed structure shall be of a design and material acceptable to DERC. Subsequent to approval, no plan, specification, or proposal shall be changed without the written consent of DERC, nor shall any change be made in the exterior color scheme of any structure without such approval.

All charges and fees received by DERC shall be applied to the payment of the following expenses, to wit:

- (a) Those incident to the enforcement of the covenants, conditions, and restrictions, contained in this Declaration and to the collection of the charge or fee provided in this Article.
- (b) The reasonable expenses incurred by DERC in connection with carrying out its duties under this Declaration.

DERC shall not be obligated to carry out any of the duties given to it by this Declaration except to the extent possible from the money so collected or otherwise received by it. If DERC shall assign the rights of enforcement herein to any corporation or association as herein provided, then such corporation or association shall have the rights to receive such charges or fees, to enforce the collection thereof and to expend the same as herein before set forth. Following such assignment and the delivery to said corporation or association of the money then on hand, DERC shall be discharged of all responsibility.

#### **ARTICLE 1.5: VARIANCES**

Notwithstanding anything in this Declaration DERC may in its absolute discretion, allow reasonable variances from, and adjustments of, any of the covenants, conditions, or restrictions, when this is deemed by DERC necessary or desirable in order to overcome practical difficulties and/or prevent unnecessary hardships in the application of the covenants, conditions and restrictions herein, provided however that this is done in conformity to the intent and purposes hereof, and provided further, however, that in every instance such variances or adjustments shall not in any material way whatsoever be detrimental, injurious or adverse to other property subject to this Declaration.

#### **ARTICLE 1.6: ENFORCEMENT AND REMEDY**

Violation or breach of any of the provisions herein contained shall give to Declarant and DERC or either of them, and to their agents or other representatives, 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 provision hereof is violated or breached, in whole or in part, shall render it lawful for Declarant or DERC to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate the same or either to prevent him or them from so doing or to recover damages for such violation or any combination of the same. Should any such suit be instituted and should the plaintiff be successful, the lot owner shall pay all the court costs and expenses and a reasonable attorney's fee as may be fixed by the court.

#### **ARTICLE 1.7: AMENDMENTS**

The provision of this Declaration may be amended from time to time by action of a simple majority (51%) of the votes of the owners of residential lots in the area subject to this Declaration, with one (1) vote for each residential lot.

Elections shall be conducted by a secret ballot mailed to the owner of each residential lot at the mailing address of record for that lot. It is the responsibility of each lot owner to keep the Discovery Bay Property Owners Association informed of their correct mailing address and any changes of ownership.

#### **ARTICLE 1.8: DURATION OF RESTRICTIONS**

All the covenants, conditions, restrictions, and other provisions 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 last day of January, 2008, and may, as then in force, be automatically extended 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 unless canceled, in whole or in part, by recordation of an appropriate agreement executed by a simple majority of the voting owners of the residential lots. Such extensions shall apply to all of the residence lots subject to this Declaration unless it shall be specified to the contrary in said recorded agreement.

#### **ARTICLE 1.9: 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 real property shown and described on a certain map that has been recorded at and filed in the office of the County Recorder of the County of Contra Costa, State of California, at the book and page of maps as stated in Exhibit "A" hereto.

(b) The term "said map" means and refers to maps described and defined in Exhibit "A" hereto.

(c) The term "lot" means and refers to a 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 herein before 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 windows, exterior chimneys, covered porches, and the like, including the case of dwelling houses, garages, incorporated in and forming a part thereof, but shall not include eaves of such structure or any open pergola or uncovered porch, stoop or step, the sides of which do not extend more than three (3) feet above the level of the first floor of said structure. Unless the context indicates to the contrary, the term "structure" or "structures" includes "dwelling house", "accessory building" and all other buildings of every type.

(f) The term "owners" means and refers to those acquiring title to any recorded lot in fee simple, their 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.

(h) The term "committee" means and refers to the Design and Environmental Review Committee established by this Declaration.

(i) The term "boat" or "vessel" means and refers to any structure designed and constructed to be propelled by motor, sail, paddle, or oars on the water.

(j) The terms "dock", "pier", "slip" and "wharf" means and refers to any structure permanently affixed to the land and not designed and constructed to be propelled by motor, sail, paddle, or oars on the water.

(k) The term "front" means and refers to that portion of any lot adjacent to the street.

(l) The term "berthing area" means and refers to the water area between the water's edge and the mooring line.

## **CHAPTER 2 - DESIGN**

### **ARTICLE 2.1: DWELLING HOUSE DESIGN, MATERIALS, QUALITY AND SIZE**

Without a variance in each case, no dwelling house shall be constructed on any lot unless said house contains at least 1,350 square feet of total floor area. (Garages shall not be included in total floor area.) The design and exterior material of each dwelling house must be compatible with the existing marina oriented Discovery Bay development and recognized by DERC as to conformance to a generally architecturally interesting and attractive on all sides. False fronts or similarly designed structures, and repetitious treatments shall be prohibited.

The materials shall be water oriented, mainly wood with approved stains or paint color and type of finish. Other material such as plaster wall may be acceptable if the overall design has a definite architectural character, by means of good design and detail, and all at the discretion of DERC.

DERC shall review each plan submittal individually with due regard to location, lot size, orientation, adjacent structures and other design concerns, and therefore no precedence shall be set by any individual plan approval.

Whatever has been approved prior to the writing and approval of these CC&Rs is not to be construed as precedence or reason for the committee to give approvals for future design acceptance.

No variance granted to a property owner shall at any time create a precedence with regard to other lots or dwellings.

### **ARTICLE 2.2: WORKMANSHIP**

No structure shall be erected or maintained within the area subject to this Declaration by anyone not qualified or skilled or without properly issued permits by an appropriate government authority. And no dwelling, structure, garage, outbuilding or appurtenances of any kind, or portion thereof, shall be erected, placed, or maintained, that does not comply with the specific standards and minimum requirements set forth by the appropriate public governmental agencies or authorities.

### **ARTICLE 2.3: COMPLETION OF CONSTRUCTION**

Any construction which has been started shall be completed without delay, except delays caused by acts of God, strikes causing stoppage of work or delivery of materials, or other forces beyond the control of the property owner. Changes in the financial status of the owner shall not be an excusable delay.

All exterior construction and paint and/or stain finishing of a single family dwelling shall be completed within ten (10) months after the date of DERC approval of the plans and specifications for same, provided however that DERC, in its sole discretion, may grant an extension as needed.

If at any time the approved construction or erection of any improvement has been commenced, there should occur a cessation of work upon any such improvement, and such

cessation continues for a period of one hundred eighty (180) days or more, then, whether the cessation was caused by failure of the owner and/or his contractor to secure labor, material, or other necessities for construction, or failure to discharge liens, attachments or injunction by any court order, or where the cessation is not caused by provisions of this Declaration, the existence of such unfinished improvement, structure, or undertaking shall be deemed a public nuisance, and DERC may, at its sole discretion, pursue such legal remedies as necessary to assure completion or removal of the structure or improvement in accordance with the approved plans.

#### **ARTICLE 2.4: HEIGHT**

No dwelling house shall be built, altered, or remodeled on any lot where the vertical distance from the average surface grade of that portion of the lot covered by the dwelling house to the highest point of the roof shall exceed thirty (30) feet.

#### **ARTICLE 2.5: BASEMENTS**

In addition to limitations of the height of any structure subject to this Declaration, no structure shall contain a basement.

#### **ARTICLE 2.6: SETBACKS**

No main wall of any structure shall be erected or maintained nearer than twenty (20) feet to the front, or five (5) feet to the side property line of the lot (except multiple dwelling units). Side yard setbacks shall total fifteen (15) feet with a minimum of five (5) feet on one side. All such measurements shall be at right angles to the given property line at the point closest to the center of said lot. For the purpose of this Article fireplaces, chimneys, steps and open decks shall not be considered to be a part of a structure. This definition shall not be construed to permit any portion of a structure to encroach upon another lot, and in the event of a conflict between these requirements and any other later imposed by any governmental body or authority, the requirements of the latter shall govern.

Construction is prohibited of permanent structures (including buildings, roof overhangs, fences, walkways) other than water and sewerage facilities within or over any water, storm drain, or sewerage facility easement.

No permanent structures of any kind (buildings, fences, balconies, patios, etc.) other than drainage structures shall be constructed within or over any drainage or access easement. Landscaping, including trees, shrubs, and ground cover, and improvements such as paving and bridges may be accomplished within drainage easements upon obtaining an encroachment permit from the County.

#### **ARTICLE 2.7: GARAGES**

No enclosed garage on any lot shall be constructed to accommodate more than three (3) vehicles at any one time.

At least two (2) vehicles must be accommodated in an enclosed garage. An alternate carport for an additional vehicle may be included, if such carport is substantially attached to the dwelling, with the same architectural style as the dwelling house on the lot and shall be finished in substantially the same manner and in the same material as said house.

No garage shall be used in such a manner as to be contrary to the purpose of its construction or in such a way or manner as to obstruct or interfere with the enjoyment and pleasure and privacy of owners or occupants of other residential lots, or users of common greens, canals, lagoons, or other similar areas, nor shall any such building be used or permitted for any activity which by unreasonable noise, odor, or any other means whatsoever becomes or constitutes an annoyance or a nuisance for any other owner or use of a lot.

No garage shall be used for storage of any explosives, inflammable or combustible material, which by its nature or quantity in any way whatsoever endangers or adds to any dangerous condition for any lot, its owners or occupants.

#### **ARTICLE 2.8: SLOPE CONTROL AREAS AND ELEVATION CONTROL EASEMENTS**

The Slope Control Area (S.C.A.) and the Elevation Control Easement (E.C.E.) are those portions of a lot designated as such on the Final Subdivision Map recorded for each Tract of Discovery Bay. Both the S.C.A. and E.C.E. are easements in favor of Reclamation District #800 and are subject to its jurisdiction and control.

Without prior written consent of Reclamation District #800 the Slope Control Areas and Elevation Control Easements shall not in any way or manner whatsoever be altered, increased, or decreased, changed or affected in any way, nor shall any structure, installation, improvement, planting or other obstruction or material be placed upon, nor shall any act, activity or activities be undertaken thereon, which may damage, interfere with, alter or change the established slope ratios or elevations, create erosion or sliding problems or damage thereof, or in any way whatsoever change, alter or interfere with the direction of, volume of, or rate of flow of water through waterways or drainage channels, whether these be covered or not.

Slope Control Areas and Elevation Control Easements as defined above shall at all times be kept and maintained by the owner of such lot of which the said Slope Control Easements is a part, save and except for such improvements for which a public authority or district is responsible.

Failure of the owner of any lot or lots subject to the requirements in this article to comply with these regulations, restrictions and conditions shall entitle the District, in its own discretion, after five (5) days written notice to the owner at the address of his residence lot or any other such address submitted by him for notice purposes, to restore, alter or reconstruct, at the expense of the Owner of said lot, the Slope Control Area and Elevation Control Easement in question to the condition which it is required to be in. Pursuant to the aforesaid conditions, requirements and regulations, of this Article and any prevalent regulation or ordinance of Reclamation District #800, and to keep, maintain or preserve same in such condition, all at the expense of the owner of the lot or lots.

All such expenses shall become a lien upon the lot or lots where such work of restoration, reconstruction or maintenance is accomplished which shall be enforceable by the District pursuant to the provision hereof and shall also constitute and be a personal liability of the person who was, or is, the owner of said lot or lots at the time when the expenses were incurred by the District and said personal liability of the then owner shall remain his personal liability for the applicable statutory period of limitations.

To foreclose such lien or enforce such liability, the District shall be entitled to recover, in addition to such costs and expenses, its cost of suit together with reasonable attorney's fees to be fixed by the Court.

#### **ARTICLE 2.9: BERTHING AREA AND DOCKING**

All berthing areas shall at all times by the owner, and at his own expense, be kept free, clear and unobstructed except for such uses approved by DERC and Reclamation District #800.

No structure, installation or building, or any other obstruction whatsoever shall be constructed, installed, erected or maintained or placed upon any portion of any berthing unless in accordance with Plans and Specifications approved by DERC and Reclamation District #800.

In order to obtain the maximum attractiveness of any and all berthing areas, the DERC shall insist that such structures, improvements or floats be of material and design compatible with or equal to the materials and design used and approved for the main dwelling of the lot. The DERC shall approve in advance the covering of any berth, the maximum area of such cover, the maximum height of such cover over the surface of the adjoining water. No covered berths shall be permitted except on lots specifically designated by DERC.

The maintenance, stability, and safe condition of the retaining banks in the areas adjoined and abutted by waters, whether tidal or otherwise, is of paramount importance to property owners, and in keeping with this interest, any excavation, disturbance of soil, earth or gravel, and any and all

construction, installation or improvements shall first be considered in relation to its effect upon, or stability and safety to the said retaining banks and/or areas as interpreted by the District and/or the DERC and by the regulatory restrictions, conditions or ordinances or laws in effect at any time as these are enforced by and all governmental bodies or public agencies with proper jurisdiction in the area.

To Reclamation District #800 and/or the DERC is reserved the irrevocable right to enter any lot or lots at all times deemed necessary, with or without prior notice to the owner of any lot, for the purpose of repairing, strengthening, maintaining or fortifying the retaining banks thereon, dredging canals, lagoons, lakes or waterways for the purpose of, or to place repair, maintain or improve navigational aids of any kind or description whatsoever, whether required by an governmental agency, body or authority or not. The District or any agent of same exercising such right or entry and/or right of performance shall use due care and consideration in performing such entry, duties or tasks so as not to cause undue damage or inconvenience for any owner of any lot or lots, provided however that they may remove floats, boats, piers or any construction, installation or improvement needed to achieve the goal set by the District and/or the DERC in their efforts to improve or preserve the property values of the area and the interest of the owners.

Nothing in the aforesaid provisions, restrictions, conditions, or covenants shall in any way or manner be construed as imposing any obligation whatsoever upon the District, DERC, and/or any of its agents to perform any of the said acts or activities herein authorized at the request of any lot owner or lot owners, public and/or governmental agencies or authorities with, or without, jurisdiction in the area, the intention of this provision being solely to provide the District and/or DERC authority to maintain the lots in this unit pursuant to these covenants and also in compliance with the prevailing local ordinances, laws, and/or regulations as imposed by and controlled by the pertinent governmental authorities having jurisdiction in the area affected and in the manner concerned.

#### **ARTICLE 2.10: DOCKS AND DOCKING FACILITIES:**

Docks, Docking Facilities, Wharves, Piers, pontoons or any such device shall not be constructed, erected, installed, or maintained unless in accordance with Plans and Specifications and design approved by the DERC. All such facilities shall also comply with conditions, restrictions, rules and regulations of Reclamation District #800 and any other public governmental body or authority. With regard to architectural design, DERC at all times shall be the sole and only judge, and in its own discretion approve or disapprove of any plans, specifications or proposals whether or not such plans comply with the requirements of Reclamation District #800.

#### **ARTICLE 2.11: RESUBDIVISION OF LOTS**

No lot shown on any subdivision map of Discovery Bay shall be resubdivided for the purpose of making two (2) or more lots, but two (2) lots may be combined to create one (1) new lot, and three (3) or more lots may be combined and redivided into lots no one of which shall contain fewer square feet or less frontage than the smallest of the original lots, nor shall the number of lots so created exceed the number of lots so combined unless prior written approval of the DERC is obtained.

### **CHAPTER 3 - SPECIFIC RESTRICTIONS**

#### **ARTICLE 3.1: ONLY RESIDENTIAL PURPOSES/SINGLE FAMILY DWELLINGS**

1) No residential lot, in whole or in part, shall be used for anything other than residential purposes, except as may be permitted by the Discovery Bay Property Owners Association and Contra Costa County Ordinances. No retail trade, traffic, noise 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 subject real property for stores, shops, clinics, nurseries or nursery schools, churches, schools or colleges, for-hire parking area, gasoline service stations, theaters, hospitals, sanitariums, factories, restaurants, drive-in restaurants, saloons or taverns, sign boards, landscape nurseries, hotels, motels or other professional, commercial or industrial uses, any facility or provisions whatsoever for the care and/or cure of victims of alcohol, drugs, TB, or any mental or physical affliction or ailment, specified or not, including but no limited to victims of desertion or abandonment, adult or otherwise.

2) Only one structure shall be erected or maintained on a lot, regardless of the lot, and said 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, if any accessory building defined herein has not been constructed on the lot, prevent the erection and maintenance of a detached 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.

### **ARTICLE 3.2: TEMPORARY AND MOVEABLE STRUCTURES/TEMPORARY STORAGE**

No permanent or temporary residence shall be permitted upon any lot or upon the waters adjacent to any lot nor shall any temporary building, construction, improvement, tent, shack, trailer, outhouse or privy, house trailer, basement, garage, float, floating structure, platform, boat or contraption whatsoever be permitted, provided however, that this Article shall not prohibit the use by a property owner of a self-propelled registered vessel or boat with sleeping facilities abroad for recreational accommodations for a period not to exceed thirty (30) days and provided further, however that DERC, in its sole discretion shall be empowered to permit temporary buildings necessary for and during the actual period of construction of a permanent dwelling, on condition of the immediate and complete removal of such temporary structure, erection or improvement, when construction of the permanent building has been completed.

Within the area subject to this Declaration, no structure, building, improvement, float or contraption, or any part thereof shall be moved to any lot or any area, whether covered with water or not, without prior approval in writing by DERC.

No building material of any kind or character whatsoever, whether intended to be used on the lot or otherwise, shall be placed, stored, accumulated or allowed on any lot provided, however, that DERC shall be empowered to grant permission to do so for a maximum of sixty (60) days for materials actually intended to be used and actually used for the construction improvement or alteration of buildings or improvements on the lot, where such materials are actually stored. No boat, vehicle, float, trailer, plane or any contraption or assembly of any kind whatsoever shall at any time be stored, temporarily or otherwise upon any lot, public street, walk, parkway, or common area in such a manner as to be exposed to the view of neighbors or the public. Any occupancy of a boat or aforementioned structures longer than thirty (30) days shall be interpreted as an illegal residence.

### **ARTICLE 3.3: FRONT YARDS**

All concrete slabs, pads, and walkways between the dwelling house and the front property line must be approved by DERC.

### **ARTICLE 3.4: EXTERIOR SERVICE YARDS**

Exterior service yards shall either be so located so as not to be open to the view of any adjacent lot or lots, or to the public from either the front, the side or the rear of the lot or lots, or in the alternative, shall be so enclosed with a fence, landscaping or other appropriate screening device or installation as approved by DERC, in its sole discretion, by a written permit.

### **ARTICLE 3.5: EXCAVATIONS**

No excavation shall be made on any lot, except that DERC may grant permits giving the owner of any lot the right to excavate for the purpose of building a foundation of a dwelling house, or building a swimming pool.

No excavation or grading shall be done on any lot unless a permit has been obtained from the Reclamation District #800.

### **ARTICLE 3.6: FENCES, WALLS, HEDGES, TREES, AND LANDSCAPING**

No landscaping, planting, removal or addition of trees, shrubs, bushes or other plants, for the purposes of screening or fencing, shall be commenced by any owner of any lot or lots until plans and specifications therefore have been approved by DERC.

No portion of any lot between the street line and the main dwelling or other structure thereupon shall be used for the planting or growing of garden vegetables, and all front yard areas shall at all times be kept in an orderly, neat and attractive manner. With regard to this condition the front line of any structure shall be considered extended to any and all sidelines of the lot.

Grass, weeds and other 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, and plants which die and animal droppings shall be promptly removed by the lot owner.

The rear yards of any lot or lots shall at all times be kept in such a manner and style to be harmonious and neat and in the case of abutment to common greens, parkways, canals and waterways shall not be adversely affected by fencing, hedges, shrubs or bushes or by any other means.

In order to minimize the leaf problems in canals, lagoons, waterways or other areas covered with water, all nondeciduous trees, shrubs, bushes other plants shall be placed, planted or maintained so that when fully matured each shall be set back from the water's edge a distance not less than its own diameter measured from its outer edge to the water. Deciduous trees must be at least 30 feet from water's edge at normal high tide.

DERC may order the owner of any lot to remove trees which unreasonably interfere with the planting of trees on any adjacent lot and may order the owner of any lot to cut back or remove any trees which unreasonably impair or obstruct the view from any other lot. The owner agrees to abide by any order of DERC directing him not to plant any trees or directing him to cut down, 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 DERC may at any time institute or prosecute any suit or suits which DERC 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 trees which DERC has ordered removed, cut down or cut back. Should any such suit be instituted, the owner of the lot affected shall pay reasonable attorney's fees for the plaintiff's attorneys as may be fixed by the court.

No wall, fence, coping or similar construction or installation shall be erected, constructed, installed, or kept on any lot within fifteen (15) feet of any berthing area or waterway that is over three (3) feet in height of solid design. It is the intent to encourage wherever possible "open" fences to preserve the view of the water.

No fence may be constructed on the Slope Control Area. Fencing on each side of house may be no higher than six (6) feet along length of house; three (3) feet from house to rear end of lot; three (3) feet and of open design from front of house to sidewalk, except off-water houses may have six (6) foot fences or of lot.

### **ARTICLE 3.7: 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) clothes dryer located in a yard enclosed by a lattice fence or other enclosure approved by DERC. Such enclosure shall be located in the side yard of any house.

### **ARTICLE 3.8: GARBAGE**

No garbage, refuse, rubbish, trash, cuttings, weeds, manure or waste of any description whatsoever shall be deposited, kept, placed upon, whether subterranean or not, on any part of any lot or lots. Each owner of a lot shall gather trash, garbage, and waste or such in approved or suitable containers. Such containers shall be kept out of the view of other owners of adjacent lots or of the view of the public. Such containers shall not be placed upon the public streets, sidewalks, parkways or adjacent to same except for the purposes of collection not to exceed a period of 24 hours, nor shall such containers at any time be filled to such capacity as to prevent the secure and complete covering of the contents by an animal proof lid.

### **ARTICLE 3.9: PERMANENT STORAGE**

No permanent storage of any of the items enumerated in Article 3.2, but not limited to same, shall be permitted without the written approval of DERC. Such approval shall also be required for the storage of any other material, product, substance or item, which in any way whatsoever may become or be a nuisance, detriment or annoyance to the area or any of its inhabitants, specifically foods, feeds, or consumables of any kind whatsoever, which may attract flies, bugs, mosquitoes, pests or cause sickness or produce smoke, steam, odor or stench of any kind whatsoever, or any liquid or solid which may in any way whatsoever endanger the area as such, or any of its inhabitants, by fire, explosion or other such disastrous action. Metal storage sheds shall be permitted in side yards so long as they are screened from the view of the public or neighbors.

### **ARTICLE 3.10: EXTERIOR LIGHTS**

No exterior lights of any description or construction shall be placed, installed, erected, or maintained upon any lot or upon any improvement on same under such conditions or in such a place that such light constitutes a nuisance, annoyance, hindrance or burden upon any other owner, or in such a manner, place, or position that such light could be confusing, mistaken for, or in any way interfere with a light or fixture erected for the purposes of navigation on any of the waters upon or adjacent to the areas subject to this Declaration. No light upon, or adjacent to, any lot shall be of a flickering revolving, oscillating, rotating, or moving nature, nor shall any light be used for the purpose of advertising, except that a reasonably small stationery light may be used to illuminate the number or identification of the dwelling house.

### **ARTICLE 3.11: NUISANCES AND NOISE**

No noxious or offensive activity shall be carried on upon said property, nor shall anything by done thereon, which may be or may become a nuisance to the neighborhood. No noise or sound shall at any time be permitted if such noise is of such intensity or duration as to constitute a nuisance as defined by the Ordinances of Contra Costa County.

### **ARTICLE 3.12: PARKING**

No parking of commercial vehicles, farm implements, RV's, trailers, house trailers, horse trailers, boat trailers, airplanes, or conveyances not licensed by DMV, seldom used, broken-down or dilapidated vehicles or boats or implements of any description or kind shall at any time be permitted or tolerated on any street, lane, parkway, parking lot or parking pad, whether private or not, nor shall such be permitted to be stored, kept, placed or permitted upon or on any lot or vacant lot except that a RV, boat, and/or trailer may be parked in the driveway or on a pad if not over six (6) feet at highest point from the ground and does not protrude into the sidewalk. Visiting motor homes, campers, or house trailers may not be parked on the street more than 72 hours except that the Association may grant permission to park such vehicle for periods in excess of 72 hours.

### **ARTICLE 3.13: SIGNS**

No signs, billboards, notices or advertising displays or devices, illuminated or not, shall be erected, installed, displayed or maintained upon any residential lot or any part thereof, except one (1) front and one (1) rear "For Sale", "For Rent" or "For Lease" sign, not more than eighteen (18) by twenty-four (24) inches in size, with lettering, printed in a workmanlike manner, and displayed upon the lot or property to which it refers in an attractive manner, not more than thirty-six (36) inches above the ground. No other signs of any character whatsoever shall be erected on any lot without the prior written approval of DERC.

### **ARTICLE 3.14: AERIALS**

No visible radio, television or other aerial, antenna, tower or transmitting or receiving aerial, antenna, tower earth station or support thereof shall be erected, installed, placed or maintained externally upon any lot or building, structure or improvement except such devices used for such purposes, which are and remain an inseparable part of a boat's equipment for such purposes, and excepting such devices which may be erected, installed, maintained and used under eaves or entirely within the individual dwelling structure or garage. DERC may grant a temporary variance for individual television antennas until such time as cable television may be made available.

### **ARTICLE 3.15: AUCTIONS**

No auction whether it be over real property or otherwise shall be permitted on any lot subject to this Declaration.

### **ARTICLE 3.16: DRILLING**

No drilling of wells for the production of, in search of, or from which there is produced or intended to produce oil, water, gas, mineral substances of any kind whatsoever, shall be permitted upon any lot subject to this Declaration, nor shall any derrick, tower or other structure designed for or intended for use in boring for any storage tank, tunnel, mineral excavation or shaft whatsoever be permitted, maintained, installed or tolerated upon any lot.

In the event that any operator shall undertake to extract any oil, gas minerals, coals, petroleum or any other carbon base substances within or under any real property subject to this Declaration or in the event that any operator shall explore for the same and in the further event that such extraction or exploration shall involve any slant or angular drilling with the consent of any owner of any real property subject to this Declaration, no entry shall be allowed by any owner, nor shall any entry be made by any operator upon any real property subject to this Declaration at a point closer to the natural surface of the real property subject to this Declaration than five hundred (500) vertical feet below the surface thereof. Any such exploration or extraction shall be conducted and maintained in such a manner as to be without any impairment whatsoever to the full use and enjoyment of the entire surface of the real property subject to this Declaration and shall be conducted in such a manner as to preserve the residential character of the real property subject to this Declaration.

### **ARTICLE 3.17: BOATS AND FLOATING OBJECTS**

No boat, float or other floating object whatsoever, shall at any time be used for a permanent residence upon any lot, whether covered by water or not, nor shall any such boat or object be permanently anchored, moored or secured in any way whatsoever to any wharf, piling or embankment, or adjacent to same and used for permanent residence.

No boating shall be permitted upon the water within Willow Lake except for boats with small electric motors, or under power or natural forces and/or oars or paddles.

No boat, craft or floating contraption whatsoever shall at any time inconvenience, endanger or annoy any person swimming or floating in all waters.

In the event of a conflict between the aforesaid restrictions and such rules as may be set forth by any public governmental agency or authority, the latter shall govern.

No waste of any nature shall be discharged into any storm drain, gutter, canal, lagoon, bay, lake or waterway. Except for routine maintenance, no boat construction, repair, conversion, or remodeling shall be done on any lot or waterway.

**ARTICLE 3.18: HUNTING**

Use of or discharge of firearms, explosives and/or similar devices or substances is prohibited.

**ARTICLE 3.19: FISHING**

No fishing that can be a hazard or obstruct free navigation or swimming shall be permitted.

No commercial fishing of any kind whatsoever shall be permitted nor shall any fish be taken, or attempted to be taken, in any area which by DERC has been closed to fishing in general, including but not limited to, frogs, mollusks, crustaceans, and/or all other creatures covered by the California State Regulations for Sport Fishing.

**ARTICLE 3.20: 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. Three (3) household pets of any domestic type or kind shall be deemed a reasonable and usual number.

**ARTICLE 3.21: MAINTENANCE, RESTORATION, AND REPAIR OF STRUCTURE**

The owner of the lot shall maintain the appearance of the exterior of all structures erected thereon in a first-class condition.

Should any structure, or any part thereof, including windows, be damaged or destroyed by fire or other casualty or by intentional mischief, the owner shall, at this own cost and expense, repair and restore the same or cause the same to be restored substantially in accordance with the original plans and specifications for the structure which are on file with the Building Department, County of Contra Costa, or as approved by DERC.

Said repair and restoration work shall be commenced within sixty (60) days after the occurrence of the destruction or damage, time being of the essence of this covenant, and once commenced, said work shall be pursued diligently to completion.

**ARTICLE 3.22: AIRCRAFT OR BALLOONS**

No aircraft or balloons, including but no limited to hot air balloons, small airplanes, ultralight aircraft, or helicopters shall be stored, take off or land on any property subject to this Declaration, and all ordinances of Contra Costa County relating to such craft shall be observed and enforced by DERC and/or the Association.

## **CHAPTER 4 - MISCELLANEOUS**

### **ARTICLE 4.1: INVALIDITY**

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

### **ARTICLE 4.2: WAIVER OF BREACH**

Waiver by DERC and/or the Association of the enforcement of any of the conditions, covenants, restrictions, agreements, charges or other provisions herein contained in any instance shall not constitute a waiver of the right to enforce any other conditions, covenants, restrictions, agreements, charges or other provisions thereafter. DERC and/or the Association shall have the right to waive any or all the provisions contained herein, provided that no such waiver shall be effective unless specifically evidenced in writing.

### **ARTICLE 4.3: INTERPRETATION**

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

### **ARTICLE 4.4: 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.

### **ARTICLE 4.5: ASSIGNMENT OF POWERS**

In addition to the rights to assign reserved by Article 2 of Chapter 1 of this Declaration, Declarant also shall have the right to assign to any person or persons, association or corporation, the rights and obligations granted or reserved to it by the terms of this Declaration, and the provisions of said Article 2, Chapter 1 where appropriate, shall apply to assignments made pursuant to this Article.

In the event that any assignment shall be made by Declarant, provided by this Article, Declarant shall record and cause to be recorded at the office of the County Recorder of Contra Costa County, California, a notice of assignment setting forth the name and the identity of the assignee and the recordation date, including the official place of recordation and date thereof of the initial filing of the Declaration.

### **ARTICLE 4.6: PROVISION FOR COUNTY TO MAINTAIN**

In the event that Reclamation District #800 or any successor district shall fail to maintain, restore, alter or reconstruct any levee or elevation control easement within this unit of Discovery Bay to the elevations set forth on the Final Subdivision Map, or to maintain the levees therein to prevent flood hazard or inundation, or to maintain any Bay, any Lake and the waters thereof so as to prevent the creation of a health nuisance in the opinion of the Board of Supervisors of Contra Costa County, and continue to so fail for fifteen (15) days after demand by the County, the County may enter and do so and all expenses incurred by the County of Contra Costa for such work shall become liens pro-rata upon the lots in the subdivision, and the liens may be enforced by the County of Contra Costa. Such County expenses shall be apportioned to each subdivision lot based upon the ratio of the then current assessed valuation of all the lots in each Subdivision. In the event it

becomes necessary for the County to provide the aforesaid maintenance, the County may form a County Service Area or other appropriate local taxing entity giving to the County the jurisdiction to tax the owners of the subdivided property for the costs of such maintenance. All purchasers and owners of property and lots in Discovery Bay, by acceptance of these Covenants and Restrictions, hereby waive any legal rights which they have to protest the formation of such County Service Area or other local taxing entity either as real property owners or voters within said subdivision. Further the provisions of this Article shall not be amended as provided in these Covenants and Restrictions unless written permission is first obtained from the Contra Costa County Board of Supervisors for such amendment.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions to be executed this 1st day of June, 1985.

DISCOVERY BAY PROPERTY OWNERS ASSOCIATION, INC.

A California Non Profit Corporation

By: *Cheryl McDonald*

Cheryl McDonald, President.

By: *George V. Brim*

George V. Brim, Secretary.

**EXHIBIT A**

DISCOVERY BAY

UNIT ONE

MAP RECORDED

DATE        9-11-68  
BOOK        123  
PAGE        19 thru 36

ORIGINAL CC&Rs RECORDED

10-1-70  
6225  
283 thru 311

EXHIBIT A

ALL REFERENCES ARE TO CONTRA COSTA COUNTY RECORDS

TRACT/LOTS	MAP RECORDED BOOK/PAGE DATE	ORIGINAL CC&Rs RECORDED BOOK/PAGE DATE	6-1-85 CC&Rs RATIFIED & RECORDED BOOK/PAGE DATE	CC&Rs AMENDED & RECORDED BOOK/PAGE DATE
3653/106	123/18	6225/283 10-1-70	13883/251 9-4-87	
Amended	169/42			
4076/96	134/19 12-9-70	6271/170 12-9-70	13845/676 8-19-87	
4086/173	142/45 12-15-71	6541/430 12-15-71	13883/323 9-4-87	
	171/36 7-25-74	7390/296 10-8-74		
		8439/189 7-28-77		
4178/10	146/32 5-18-72	6669/134 6-7-72	13845/781 8-19-87	
4205/102	147/27 6-22-72	6680/283 6-22-72	14021/72 11-16-87	14693/284 11-3-88
4206/117	148/1 4-6-72	6690/159 7-6-72	14095/676 12-29-87	14693/306 11-3-88
4207/175	197/41 6-3-77	8380/356 6-17-77	13369/255 1-5-87	14693/302 11-3-88
4223/16	165/31 12-19-73	8439/189 7-28-77	14021/2 11-16-87	
4224/9	165/38 12-19-73	8439/189 7-28-77	13845/746 8-19-87	
4342/22	159/21 7-13-73	6995/369 7-13-73	14085/399 12-22-87	14693/304 11-3-88
4378/45	198/8 6-10-77	9130/474 12-5-78	14021/37 11-16-87	14693/296 11-3-88
4566/29	178/10 5-15-75	6680/283 6-22-72	14104/844 12-31-87	14693/288 11-3-88
Amended	179/9 6-27-75	8439/189 7-28-77		

TRACT/LOTS	MAP RECORDED	ORIGINAL CC&Rs RECORDED	6-1-85 CC&Rs RATIFIED & RECORDED	CC&Rs AMENDED & RECORDED
	BOOK/PAGE DATE	BOOK/PAGE DATE	BOOK/PAGE DATE	BOOK/PAGE DATE
4687/70	211/5 5-24-78	8998/67 9-6-78	14085/364 12-22-87	14693/290 11-3-88
5353/159	219/24 12-21-78	9218/435 2-7-79	13845/711 8-19-87	14693/299 11-3-88
5586/197	233/13 11-7-79	9610/128 1-31-80	14042/799 11-30-87	14693/294 11-3-88
		9716/329 1-30-80		
		9879/632 6-13-80		
		10302/544 4-29-81		
6026/111	250/83 4-17-81	10287/263 4-17-81	13883/286 9-4-87	14693/300 11-3-88
6144/182	277/42 3-28-84	1720/866 3-30-84	14042/764 11-30-87	14693/286 11-3-88
6504/34	291/35 7-22-85	12565/272 10-16-85	14085/434 12-22-87	14693/292 11-3-88