

WITH AMENDMENTS 1-5 POSTED

*Contracts*

Recording requested by: CAL-ISLAND DEVELOPERS, LTD. After recordation, deliver copies to: Trapp, Gayle, Teker, Weeks & Friedman, Perez Bros. Bldg.; Agana, Guam. The real property affected by this instrument is registered land, the name of the registered owner being Cal-Island Developers, Ltd., and the numbers of the certificates of last registration being Nos. 38661 and 38662.

TERRITORY OF GUAM, DEPARTMENT OF LAND MANAGEMENT  
OFFICE OF THE RECORDER

240688

INSTRUMENT NUMBER \_\_\_\_\_

This instrument was filed for record on \_\_\_\_\_

Day of Oct, 19 74, at 10:46 <sup>A.M.</sup> P.M.

and duly recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_

Recording Fee 34.00 Voucher No. 64011

*L. C. Perez*  
Deputy Recorder

(Space above this line for Recorder's use.)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration, made on the date hereinafter set forth by CAL-ISLAND DEVELOPERS, LTD., a California limited partnership admitted to engage in business in Guam, whose Guam post office address is P. O. Box 8467, Tamuning, Guam 96911, ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the municipality of Yigo, territory of Guam, which is more particularly described as:

~~Unit 1, Perez Acres Subdivision of Tract No.~~

SEE AMENDMENT NO. 1, DATED  
FEB 25, 1975, (PAGE 2)

LAW OFFICES  
TRAPP, GAYLE, TEKER, WEEKS & FRIEDMAN  
A PROFESSIONAL CORPORATION  
PEREZ BROS. BUILDING  
P. O. BOX 3367  
AGANA, GUAM 96910  
TELEPHONE 777-9891

1 ~~1043 (Lots Nos. 7024-2NEW-1A and 7024-3NEW-1),~~  
2 Municipality of Yigo, territory of Guam, which  
3 unit contains 80 lots, together with roads,  
4 easements, 4 common areas and 1 ponding area,  
5 and is shown on Drawing No. 3418-2, consisting  
6 of 3 sheets, prepared by K. A. Cockerill, a  
7 registered surveyor and recorded in the office  
8 of the Recorder, territory of Guam, under  
9 Instrument No. 236566, which drawing is  
10 ~~incorporated herein by reference.~~

11 The foregoing consists of Unit 1 (Stage 1) of a total  
12 subdivision development encompassing four units (stages). As the  
13 remaining units are needed for development, they will be annexed  
14 to the Properties pursuant to Section 4 of Article VIII hereof.

15 NOW, THEREFORE, Declarant hereby declares that all of  
16 the properties described above shall be held, sold and conveyed  
17 subject to the following easements, restrictions, covenants, and  
18 conditions, which are for the purpose of protecting the value  
19 and desirability of, and which shall run with, the real property  
20 and be binding on all parties having any right, title or  
21 interest in the described properties or any part thereof,  
22 their heirs, successors and assigns, and shall inure to the  
23 benefit of each owner thereof.

#### ARTICLE I

#### DEFINITIONS

24 Section 1. *Association.* "Association" shall mean and  
25 refer to Perez Acres Homeowners Association, a Guam corporation,  
its successors and assigns.

Section 2. *Owner.* "Owner" shall mean and refer to the  
record owner, whether one or more persons or entities, of a fee

1 simple title to any Lot which is a part of the Properties,  
2 including contract sellers, but excluding those having such  
3 interest merely as security for the performance of an obligation.

4 Section 3. *Properties.* "Properties" shall mean and  
5 refer to that certain real property hereinbefore described, and  
6 such additions thereto as may hereafter be brought within the  
7 jurisdiction of the Association.

8 Section 4. *Common Area; description.* "Common Area"  
9 shall mean all real property, owned by the Association for the  
10 common use and enjoyment of the owners. The Common Area to be  
11 owned by the Association at the time of the conveyance of the  
12 first lot is described as follows: SEE AMENDMENT NO 2, DATED

13 ~~Lot "A", containing 23,903 square feet, FEB 25, 1975~~  
14 ~~Lot "B", containing 40,732 square feet, (PAGE 5)~~  
15 ~~Lot "D", containing 161 square feet, and~~  
16 ~~Lot "E", containing 1,671 square feet,~~  
17 ~~all as shown on sheets 1 and 2 of said~~  
18 ~~Drawing No. 3412, incorporated herein by~~  
19 ~~reference.~~

20 Section 5. *Lot.* "Lot" shall mean and refer to any plot  
21 of land shown upon any recorded subdivision map of the Properties  
22 with the exception of the Common Area.

23 Section 6. *Declarant.* "Declarant" shall mean and refer  
to Cal-Island Developers, Ltd., its successors and assigns, if  
such successors or assigns should acquire more than one undeveloped  
Lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. *Owners' easements of enjoyment.* Every Owner

1 shall have a right and easement of enjoyment in and to the  
2 Common Area which shall be appurtenant to and shall pass with  
3 the title to every Lot, subject to the following provisions:

4 (a) The right of the Association to charge reasonable  
5 admission and other fees for the use of any recreational  
6 facility situated upon the Common Area;

7 (b) The right of the Association to suspend the voting  
8 rights and right to use of the recreational facilities by an  
9 Owner for any period during which any assessment against his Lot  
10 remains unpaid; and for a period not to exceed 60 days for any  
11 infraction of its published rules and regulations;

12 (c) The right of the Association to dedicate or trans-  
13 fer all or any part of the Common Area to any public agency,  
14 authority, or utility for such purposes and subject to such  
15 conditions as may be agreed to by the members.

16 No such dedication or transfer shall be effective  
17 unless an instrument signed by two-thirds (2/3) of each class  
18 of members agreeing to such dedication or transfer has been  
19 recorded.

20 (d) The right of individual owners to the exclusive  
21 use of parking spaces as provided in this Article.

22 Section 2. *Easements.*

23 (a) Lot "C", containing 33,516 square feet, as shown  
24 on said recorded Drawing No. 3418-2 has been dedicated to the  
25 government of Guam for use as a covered basin ponding area. The  
26 Declarant, however, expressly reserved the surface rights thereto

for the use of the Association and its members, such use, including, without limitation, the right of the Association to maintain and landscape the area and to use the same for recreational and related activities.

(b) All utility easements as shown on said recorded Drawing No. 3418-2 are for the purpose of servicing and maintaining the lines and other transmission facilities and appurtenances for electricity, telephone, water, sewer, storm water and other public services and utilities. The affected public utility or governmental authority shall enjoy the right of ingress to and egress from the Common Area in order to maintain and repair the lines and other transmission facilities and appurtenances for electricity, telephone, water, sewer, storm water, drainage and other public services and utilities. Said public utility or governmental authority shall be responsible for and shall repair any and all damage done to the Properties landscaping as a result of their ingress thereto or egress therefrom.

Section 3. *Parking Rights.* Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces (one covered and the other uncovered) which shall be as near and convenient to each Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The Association shall permanently assign two (2) vehicle parking spaces for each dwelling.

Section 4. *Delegation of Use.* Any Owner may delegate,

1 in accordance with the Bylaws, his right of enjoyment to the  
2 Common Area and facilities to the members of his family, his  
3 tenant, or contract purchasers who reside on the property.

4 ARTICLE III

5 MEMBERSHIP AND VOTING RIGHTS

6 Section 1. *Owners to be members.* Every Owner of a Lot  
7 which is subject to assessment shall be a member of the Association  
8 Membership shall be appurtenant to and may not be separated from  
9 ownership of any Lot-which is subject to assessment.

10 Section 2. *Class A and Class B members.* The Association  
11 shall have two classes of voting membership:

12 *Class A.* Class A members shall be all Owners with  
13 the exception of the Declarant and shall be entitled to one vote  
14 for each Lot owned. When more than one person holds an interest  
15 in any Lot, all such persons shall be members. The vote for such  
16 Lot shall be exercised as they among themselves determine, but  
17 in no event shall more than one vote be cast with respect to any  
18 Lot.

19 *Class B.* The Class B member(s) shall be the  
20 Declarant and shall be entitled to three (3) votes for each Lot  
21 owned. The Class B membership shall cease and be converted to  
22 Class A membership on the happening of either of the following  
23 events, whichever occurs earlier:

(a) when the total votes outstanding in the Class  
A membership equal the total votes outstanding in the Class B  
membership, or

(b) on January 1, 1976.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. *Creation of the lien and personal obligation of assessments.* The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with costs, reasonable attorney's fees and interest at a variable rate equal to one and one-half percent (1 1/2%) above the prime rate of interest in Guam as set from time to time by the Bank of Hawaii, (except such rate of interest shall in no event exceed the maximum lawful rate for such obligations in Guam nor be less than six percent (6%) per annum), shall be a charge against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SEE AMENDMENT NO 3,  
DATED FEB 25, 1975  
(PAGE 6)

LAW OFFICES  
TRAPP, GAYLE, TEKER, WEEKS & FRIEDMAN  
A PROFESSIONAL CORPORATION  
PEREZ BROS. BUILDING  
P. O. BOX 2987  
AGANA, GUAM 96910  
TELEPHONE 777-9891

1 Section 2. *Purpose of assessments.* The assessments  
2 levied by the Association shall be used exclusively to promote  
3 the recreation, health, safety, and welfare of the residents in  
4 the Properties and for the improvement and maintenance of the  
5 Common Area, and the surface of the ponding area, and of the  
6 homes situated upon the Properties.

7 Section 3. *Maximum annual assessments.* Until January  
8 1 of the year immediately following the conveyance of the first  
9 Lot to an Owner, the maximum annual assessment shall be Four  
Hundred Twenty Dollars (\$420) per Lot.

10 (a) From and after January 1 of the year immediately  
11 following the conveyance of the first Lot to an Owner, the  
12 maximum annual assessment may be increased each year not more  
13 than 3% above the maximum assessment for the previous year with-  
14 out a vote of the membership.

15 (b) From and after January 1 of the year immediately  
16 following the conveyance of the first Lot to an Owner, the maximum  
17 annual assessment may be increased above 3% by a vote of two-thirds  
18 (2/3) of each class of members who are voting in person or by proxy  
19 at a meeting duly called for this purpose.

20 (c) The Board of Directors may fix the annual assessment  
21 at an amount not in excess of the maximum.

22 Section 4. *Special assessments for capital improvements.*  
23 In addition to the annual assessments authorized above, the  
Association may levy, in any assessment year, a special assessment  
applicable to that year only for the purpose of defraying, in



whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or upon the surface of the ponding area, including fixtures and personal property related thereto, provided, that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. *Notice and quorum for any action authorized under Sections 3 and 4.* Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article IV shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be fifty percent (50%) of all the votes of each Class of membership. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. *Uniform rate of assessment.* Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. *Date of commencement of annual assessments; due dates.* The annual assessments provided for herein shall commence as to all Lots on the first day of the month following

the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. The Association may require the members to pay their assessments to the bank or other financial institution holding the first mortgage on their respective Lots.

Section 8. *Effect of nonpayment of assessments: remedies of the Association.* Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a ~~variable rate equal to one and one-half~~ <sup>THE RATE OF SIX PERCENT (6%) PER ANNUM</sup> percent (1 1/2%) above the prime rate of interest in Guam as set from time to time by the Bank of Hawaii, (except that such rate of interest shall in no event exceed the maximum lawful rate for such obligations in Guam nor be less than six percent (6%) per annum). The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. *Subordination of the lien to mortgages.*

SEE AMENDMENT No. 4,  
DATED FEB 25, 1975  
(PAGE 7)

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V

#### EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area and the surface of the ponding area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. <sup>SEE AMENDMENT NO 5,</sup> <sup>DATED FEB, 25, 1975</sup> <sup>INSERT</sup> <sup>(PAGE 7)</sup>

In the event that the need for maintenance or repair <sup>OF THE LOT OR THE IMPROVEMENTS THEREON</sup> is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to, and become a part of the assessment to which such Lot is subject.

#### ARTICLE VI

#### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be

2 commenced, erected or maintained upon the Properties, nor shall  
3 any exterior addition to or change or alteration therein be  
4 made until the plans and specifications showing the nature,  
5 kind, shape, height, materials, including paint color, and  
6 location of the same shall have been submitted to and approved  
7 in writing as to harmony of external design and location in  
8 relation to surrounding structures and topography by the Board  
9 of Directors of the Association, or by an architectural committee  
10 composed of three (3) or more representatives appointed by the  
11 Board. In the event said Board, or its designated committee,  
12 fails to approve or disapprove such design and location within  
13 thirty (30) days after said plans and specifications have been  
14 submitted to it, approval will not be required and this Article  
15 will be deemed to have been fully complied with.

## ARTICLE VII

### PARTY WALLS

16 Section 1. *General Rules of Law to Apply.* Each wall  
17 which is built as a part of the original construction of the  
18 homes upon the Properties and placed on the dividing line between  
19 the Lots shall constitute a party wall, and, to the extent not  
20 inconsistent with the provisions of this Article, the general  
21 rules of law regarding party walls and liability for property  
22 damage due to negligence or willful acts or omissions shall  
23 apply thereto.

Section 2. *Sharing of Repair and Maintenance.* The  
cost of reasonable repair and maintenance of a party wall shall

1 be shared by the Owners who make use of the wall in proportion  
2 to such use.

3 Section 3. *Destruction by Fire or Other Casualty.* If  
4 a party wall is destroyed or damaged by fire or other casualty,  
5 any Owner who has used the wall may restore it, and if the other  
6 Owners thereafter make use of the wall, they shall contribute  
7 to the cost of restoration thereof in proportion to such use,  
8 without prejudice, however, to the right of any such Owners  
9 to call for a larger-contribution from the others under any rule  
10 of law regarding liability for negligent or willful acts or  
omissions.

11 Section 4. *Weatherproofing.* Notwithstanding any  
12 other provision of this Article, an Owner who by his negligent  
13 or willful act causes the party wall to be exposed to the  
14 elements shall bear the whole cost of furnishing the necessary  
15 protection against such elements.

16 Section 5. *Right to Contribution Runs with Land.* The  
17 right of any Owner to contribution from any other Owner under  
18 this Article shall be appurtenant to the land and shall pass to  
such Owner's successors in title.

19 Section 6. *Arbitration.* In the event of any dispute  
20 arising concerning a party wall, or under the provisions of  
21 this Article, each party shall choose one arbitrator, and  
such arbitrators shall choose one additional arbitrator, and  
the decision shall be by a majority of all the arbitrators.

ARTICLE VIII

GENERAL PROVISIONS

2  
3 Section 1. *Enforcement.* The Association, or any Owner,  
4 shall have the right to enforce, by any proceeding at law or in  
5 equity, all restrictions, conditions, covenants, reservations,  
6 liens and charges now or hereafter imposed by the provisions of  
7 this Declaration. Failure by the Association or by any Owner  
8 to enforce any covenant or restriction herein contained shall in  
no event be deemed a waiver of the right to do so thereafter.

9 Section 2. *Severability.* Invalidation of any one of  
10 these covenants or restrictions by judgment or court order shall  
11 in no wise affect any other provisions which shall remain in  
12 full force and effect.

13 Section 3. *Amendment.* The covenants and restrictions  
14 of this Declaration shall run with and bind the land, for a term  
15 of twenty (20) years from the date this Declaration is recorded,  
16 after which time they shall be automatically extended for suc-  
17 cessive periods of ten (10) years. This Declaration may be  
18 amended during the first twenty (20) year period by an instrument  
19 signed by not less than ninety percent (90%) of the Lot Owners,  
20 and thereafter by an instrument signed by not less than seventy-  
21 five percent (75%) of the Lot Owners. Any amendment must be  
recorded.

22 Section 4. *Annexation.* (a) Additional residential  
property and Common Area may be annexed to the Properties with  
-3 the consent of two-thirds (2/3) of each class of members.

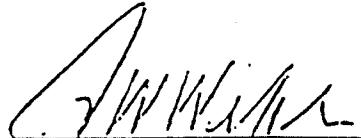
1 (b) Additional land within the area described in  
2 Drawing No. 3418-1, recorded under Instrument No. 236566, in the  
3 office of the Recorder, territory of Guam, may be annexed by the  
4 Declarant without the consent of members within five (5) years  
5 of the date of this instrument, provided that the Federal Housing  
6 Administration and the Veterans Administration determine that the  
7 annexation is in accord with the general plan heretofore approved  
8 by them.

9 Section 5. - *FHA/VA Approval.* As long as there is a  
0 Class B membership, the following actions will require the prior  
1 approval of the Federal Housing Administration or the Veterans  
2 Administration: Annexation of additional properties, dedication  
3 of Common Area, and amendment of this Declaration of Covenants,  
4 Conditions and Restrictions.

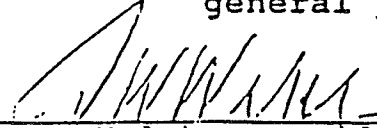
5 IN WITNESS WHEREOF, the undersigned, being the Declarant  
6 herein, has hereunto set its hand this 27th day of August, 1974.

7 CAL-ISLAND DEVELOPERS, LTD.,  
8 Declarant,

9 by James W. Welch and Cal-Island  
0 Development Company, general  
1 partners,

2   
3 JAMES W. WELCH, general partner,

4 CAL-ISLAND DEVELOPMENT COMPANY,  
5 general partner,

6 by   
7 James W. Welch, president.

TERRITORY OF GUAM,)
( ss:
City of Agana. )

On August 27, 1974, before me, FRANCES U. TAITANO,
a Notary Public in and for the territory of Guam, personally
appeared JAMES W. WELCH, known to me to be the person whose name
is subscribed to the foregoing Declaration of Covenants, Conditions
and Restrictions, and acknowledged that he executed the same on
behalf of CAL-ISLAND DEVELOPERS, LTD., a California limited part-
nership of which he is general partner.

WITNESS my hand and official seal.

[Signature]
FRANCES U. TAITANO,
Notary public in and for the
territory of Guam. My commission
expires May 14, 1978.

)SEAL(

TERRITORY OF GUAM,)
( ss:
City of Agana. )

On August 27, 1974, before me, FRANCES U. TAITANO,
a Notary Public in and for the territory of Guam, personally
appeared JAMES W. WELCH, known to me to be the president of
CAL-ISLAND DEVELOPMENT COMPANY, a corporation, who executed
the foregoing Declaration of Covenants, Conditions and Restrictions
and he acknowledged to me that such corporation executed the same
as general partner of CAL-ISLAND DEVELOPERS, LTD., a California
limited partnership.