

APPENDIX C<sup>1</sup>  
TO  
SECOND AMENDED AND RESTATED  
DECLARATION OF ESTABLISHMENT OF  
CONDITIONS, COVENANTS AND RESTRICTIONS  
FOR  
SAN IGNACIO HEIGHTS

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APPENDIX C ARTICLE A - EASEMENTS, LICENSES & ENCROACHMENTS

SECTION 1: Easement for Encroachments. Each Lot and the property included in the Common Areas shall be subject to an easement for encroachments created or necessary to be created by activities conducted and conditions existing upon the Properties, including, construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist.

SECTION 2: Easement for Enjoyment. There is hereby created a blanket, nonexclusive easement upon, across, over and under all of the Common Areas for the use and enjoyment of all Members, their guests, invitees and licensees, subject to reasonable regulations of the Association, and for ingress, egress, installation, replacement, operation, repair and maintenance of all utilities, including but not limited to, water, sewer, gas, telephone, electricity, television antennae system, and any equipment or facilities for the installation of a cable communications system.

SECTION 3: Drainage Easement. A drainage easement is hereby created upon, across, over and under each Lot for the benefit of all other Lots.

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<sup>1</sup> Unless otherwise noted, these provisions were taken from the Amended and Restated Declaration of Establishment of Conditions, Covenants and Restrictions for San Ignacio Heights Lots 1 Through 92 and Common Areas A, B and C and Lots 93 Through 135 And Common Areas A and B recorded at Docket 9330, Page 1006, etc.

SECTION 4: Utility Easements. There is hereby reserved in the successors and assigns of Declarant a perpetual exclusive easement and right-of-way across and upon all Common Areas for the construction, maintenance, operation and repair of a cable television system or security system or both, and facilities appurtenant to either or both. The successors and assigns of Declarant shall have the right to excavate for, place, lay, construct, operate, use, maintain, repair, replace, reconstruct, enlarge, alter, improve, add to, relocate, and remove at any time and from time to time, underground structures, equipment and materials, with required appurtenances, necessary for the operation of said cable television system. The successors and assigns of Declarant shall have the right of ingress and egress from said easement by such route or routes in, upon, over and across the hereinbefore described lands or any portion or portions thereof as they may determine, together with the right to clear and keep clear said easement and rights-of-way from any and all obstructions. Without limiting the generality of the foregoing, the successors and assigns shall have the right to trim and cut trees, foliage, and roots upon and from within the above-described easement and rights-of-way whenever in its judgment the same shall be necessary for the convenient and safe exercise of the right herein granted. All cable television system equipment or security system equipment installed by the successors and assigns of Declarant in and upon the herein-described easement shall remain regardless of the manner in which the same are affixed to land, the personal property of such successors and assigns and shall not become or be deemed to be a part of the realty. The successors and assigns of Declarant shall have the right to assign, directly or indirectly, said cable television or security system easement to any party or person as it may determine. Nothing herein contained shall obligate the successors and assigns of Declarant or any other person to provide a cable television system or security system in the Properties. In the event that such cable television system or security

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system is built, the type and quality of the system shall be within the absolute discretion of the constructing entity. Notwithstanding any other provision of this Declaration, this section may not be amended without the prior written consent of the successors and assigns of Declarant.

SECTION 5: Golf Course Easement. A blanket easement is reserved and granted unto the successors and assigns of Declarant, and to the public, upon, across, over and under any roadways for access to any adjacent or nearby golf course, and from one hole to another and from any hole to the golf course clubhouse, driving range or related facilities. This easement is limited to reasonable and necessary access for the play of golf, and is solely for the benefit of users of the golf course. The easement is confined to roads and cart paths built by Declarant or its successors and assigns.

SECTION 6: Permissible Encroachments. Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, improvements and fixtures which have been initially constructed on the Properties by Declarant, or its successors and assigns, in the course of original construction may from time to time encroach upon the Common Areas or other Lots in the Properties. Such encroachments caused incidentally by Declarant, or its successors and assigns, are permissible and each Owner, by acceptance of the Deed to his Lot, consents thereto and agrees that title to the land lying within such incidental encroachments, and regardless of the platted lot line of the Lot upon which such structure or other work of construction has been constructed, is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

SECTION 7: Additional Easements and Miscellaneous Provisions.

A. Provisions applicable to Lots 10 through 15 and 42 through 79 –Rear Yard and Front Yard Easements.

The following provisions shall apply only to Lots 10 through 15 and 42 through 79.

The Plat depicts easements along the side boundaries of certain Lots shown thereon, in particular Lots 10 through 15, and Lots 42 through 79. Said easements are for ingress, egress, utilities, vehicular and pedestrian use, maintenance of adjacent walls and structures, landscaping, drainage, and for the general use and enjoyment of the respective Owner benefitted by the easement as set forth herein.

In each case, the Owner of a Lot having the benefit of an easement over an adjacent Lot may be referred to herein as the "benefitted" Owner.

Diagrams 1 through 4 of Appendix C Exhibit A, attached hereto, show the general manner in which homes are intended to be built on the Lots and the location of the necessary easements. The diagrams are not a representation of any model or home design. Diagram 1 shows the general purposes and location of these easements. Diagrams 1 through 4 show the easement dimensions for various combinations of adjoining floor plans. These combinations may also be reversed.

As seen from these Diagrams, in each case, an Owner shall have an easement onto an adjacent Lot for additional rear yard area (Rear Yard Easements), and an easement on the opposite side of the Lot for additional front yard area and ingress and egress for access related purposes (Front Yard/Access Easements), and for such other uses as are not inconsistent therewith. These other uses shall be limited to underground utilities, maintenance, drainage, landscaping, and, in the case of yard easements, use and enjoyment. Lots at the end of a row or adjacent to Common Area may have easements on the Common Area or only one side of the Lot, subject to the provisions of the Plat.

The Owner of each Lot is hereby granted blanket easements across adjacent Lots for purposes of maintenance and repair of walls, structures and appurtenances. Each Owner

benefitted by the Front Yard/Access Easements and Rear Yard Easements shall be solely responsible for all landscaping related thereto and shall keep said areas in a clean, neat and well landscaped condition.

Notwithstanding the above, each Owner shall be solely responsible for maintenance and repair to his home and to the walls of his home.

No improvements may be built upon the Front Yard/Driveway Easements or Rear Yard Easements unless the same have been approved by the Architectural Committee.

In addition to the requirement of Architectural Committee approval, after improvements have been constructed by the Declarant, or the successors and assigns of Declarant, any Owner wishing to modify the color, composition of building materials, location, or structure of his dwelling unit wall lying immediately adjacent to a Rear Yard Easement benefitting an adjacent Owner, shall first obtain the written consent of the adjacent Owner benefitted by the Rear Yard Easement. This requirement shall not apply to any changes being made by the successors and assigns of Declarant, nor shall it apply to changes to patio yard walls which are approved by the Architectural Committee.

The Owner benefitted by Rear Yard Easements shall not attach any equipment or fixtures to said walls, other than plants or vines which do not destroy the integrity of the wall or pose an unsightly appearance or threaten its strength, durability or lasting life. Further, the Owner benefitted by a Rear Yard Easement shall not water his yard or plants to the extent that the foundation of adjacent walls will be undermined.

Each Owner, by acceptance of a deed, acknowledges the provisions of these covenants and further acknowledges that due to the placement of homes on particular Lots, the shape and terrain of certain Lots, the configuration of streets, and other factors, the precise dividing line

between the Front Yard/Access Easements and Rear Yard Easements shown on Appendix C Exhibit A Diagrams 1 through 4 attached hereto may of necessity fluctuate several feet in either direction as a result of construction of models by developer. This possible fluctuation is explained by the overlapping of the easements shown on the plat. Regardless of such fluctuation, the easements intended hereby shall apply to the fullest extent, and the precise location of Rear Yard Easements and Front Yard/Access Easements shall be determined by the final construction of improvements.

Any incidental deviation in the location of the Front Yard/Access Easements and Rear Yard Easements from the locations shown on Appendix C Exhibit A Diagrams 1 through 4 which was caused in the course of original construction by the Declarant, or its successors and assigns, shall be deemed valid, and the Owner of the constructed improvements shall be deemed to have a permanent and valid easement of encroachment.

The provisions of this Section 7 of Appendix C Article A, requiring architectural approval or concerning consent of adjacent owners, shall not apply to any construction or alteration of improvements completed by Declarant, or its successors and assigns, and no approvals or consents called for herein shall apply to any construction, alterations, or modifications of improvements completed by Declarant or its successors and assigns.

The successors and assigns of Declarant may elect instead of constructing dwelling units 5 feet or more from the property lines, as shown by the Diagrams above, to build Dwelling Units directly on the lot lines as "zero lot line" homes. If homes are built by the successors and assigns of Declarant having walls directly on the lot lines dividing adjacent lots, then the Front Yard/Driveway and Rear Yard Easements described above shall be deemed abandoned as to those lots. Each Owner of any zero lot line home constructed shall have an easement for incidental roof

and yard drainage over the Lot immediately adjacent to the common wall of the Dwelling Unit. The easement shall be limited to 5 feet in width.

(Note: The following paragraph was added to the CC&Rs by Amendment recorded at Docket 9444, Pages 108 through 127.)

Notwithstanding the foregoing, the easements for Lots 73 through 79, which are shown on the Plat, recorded in Book 43 of Maps and Plats at 76, shall be deemed abandoned and reversed such that the front and rear side yard easements are on the opposite sides of the Lots. More specifically, the said easements on Lots 73 through 79 shall correspond to Appendix C Exhibit B attached hereto, and not the referenced Plat, and the legal descriptions of the new easements are shown on Sheets 1 through 16 attached to Appendix C Exhibit B. Said easements are created and granted hereby.

B. Provisions applicable to Lots 3 through 9 and 21 through 41—zero lot line dwellings and adjoining front yard walls.

Lots 3 through 9 and 21 through 41 are presently planned for dwellings having an exterior wall parallel to and on or immediately adjacent to one side property line of the Lot (within 12 inches). These Lots are known as "Zero Lot Line lots" and the wall of each Dwelling Unit lying on or immediately adjacent to the property line (within 12 inches) shall be a party wall as provided in Appendix C Article B hereof.

As shown on Appendix C Exhibit A Diagram 5 hereto, each Zero Lot Line Lot may have a wall built which attaches the dwelling on said Lot to the party wall of the dwelling on the adjacent Lot. This adjoining wall is referred to as the Adjoining Front Yard Wall.

There is hereby created a perpetual easement over each of Lots 3 through 9 and 21 through 41 for the attachment of the Adjoining Front Yard Wall to the party wall along the

side lot line. The easement shall be solely for attachment of such wall and any necessary bearing and reinforcing materials and related structures installed by Declarant, or its successors and assigns, and no alterations may be made, except by Declarant, or its successors and assigns, or by the Owner of the Lot predominantly benefitted by the Adjoining Front Yard Wall with the express written approval of the Architectural Committee.

C. Provisions applicable to Lots 1 and 2, 16 through 20, and 80 through 92—single family detached dwellings.

Lots 1 and 2, 16 through 20, and 80 through 92 are presently planned for single family detached structures with patio walls enclosing rear yards. The dividing property line between each Lot may have a common patio wall which will be considered a party wall pursuant to Appendix C Article B hereof.

D. Provisions applicable to all lots.

The Owner of each Lot is granted an easement across adjacent Lots for purposes of accomplishing regular maintenance and repair of structures and improvements, including party walls. Each Owner, however, shall be solely responsible for maintenance of that Owner's landscaping and shall keep the landscaping and yard areas in a neat, clean and well maintained condition.

All walls, whether party walls or bearing walls of a Dwelling Unit which are on or immediately adjacent to a property line between two Lots or on or immediately adjacent to Rear Yard Easements or Front Yard/Access Easements shall be considered party walls pursuant to Appendix C Article B hereof. No Owner shall take any action which may destroy the integrity of the wall or pose an unsightly appearance or threaten its strength, durability, or lasting life. Without limitation, no Owner shall place any plants or shrubs close to the wall in a fashion that watering of



yards or plants will threaten the foundation of the adjacent walls or cause the foundations to be undermined.

E. Easements over Common Areas.

In addition to all other rights and easements herein provided, a perpetual easement for ingress and egress is reserved and granted across Common Area C: a) in favor of Declarant and in favor of its successors and assigns, guests and invitees, including the owners of subdivision lots from within the land described in Appendix C Exhibit C and referred to as the "Annexation Land"; and b) in favor of Declarant, and its successors and assigns, and the public for access to the San Ignacio Golf Course, pro shop, clubhouse, and future commercial parcels, and adjacent land, portions of which are within the Annexation Land. Without limitation, all owners of any part of the Annexation Land, as well as the public and all guests and invitees of any owner of any portion of the Annexation Land, shall enjoy said perpetual rights of ingress and egress. It is understood, however, that the successors and assigns of Declarant have no intention of annexing any property from the Annexation Land other than residential subdivisions and common areas as shown on the plats for such subdivisions.

F. Association easement for maintenance.

As shown on the Plat, Lots 1 and 2, 16 through 20, and 80 through 92 contain an area designated for Association easement and maintenance. Such areas, located within the boundaries of said Lots, shall be maintained by the Association for purposes of drainage control, slope maintenance, landscaping, and limited vehicular parking as provided on the Plat.

The cost of such maintenance shall be borne by the Association and included in the Association's annual budget for expenses and assessments, and also included in the Association's policies of liability insurance.

G. Lots 93 through 135.

Lots 93 through 135 are governed by the provisions of this Declaration and the above provisions, as further set forth by the Declaration of Annexation recorded Docket 9107, Page 989, Pima County Recorder.

(The provisions set forth herein as Sections Eight and Nine were originally added to the CC&Rs pursuant to the Declaration of Supplemental Conditions, Covenants and Restrictions for San Ignacio Heights recorded at Docket 10696, Pages 1711 through 1731 and created, granted and established supplement covenants and easements for use, enjoyment, and maintenance of adjacent walls and structures, landscaping, sidewalks, drainage, underground utilities and related incidental uses over and across Lots 158, and 160 through 164 of San Ignacio Heights Resub as more particularly described herein and on Appendix C Exhibit D attached hereto and incorporated herein (the "Rear Side-Yard Easements"). Each Owner of said Lots 158, and 160 through 164 of San Ignacio Heights Resub is referred to herein as a "Burdened Owner". Each Owner having the benefit of a Rear Side-Yard Easement over, onto and across an adjacent Lot is referred to herein as a "Benefitted Owner".)

SECTION 8: Rights and Obligations of Benefitted Owners and Burdened Owners.

A. Maintenance and Repair.

Each Burdened Owner and Benefitted Owner is hereby granted blanket perpetual easements over and across adjacent Lots for the maintenance and repair of walls, structures or appurtenances located upon Rear Side-Yard Easements. Each Benefitted Owner shall keep the Rear Side-Yard Easement benefitting his Lot in a clean, neat and well-landscaped condition. Notwithstanding the foregoing, however, each Burdened Owner and Benefitted Owner shall be

solely responsible for maintenance and repair of such Owner's home, and to the walls of such Owner's home.

B. Construction of Improvements upon Rear Side-Yard Easements.

The Architectural Committee must approve the construction of any walkways, patios, structures, buildings, barbecues, benches or other improvements upon the Rear Side-Yard Easements. Such approval is contingent upon compliance with Pima County building and use setbacks, which setbacks may require that the easement area and additional land measured from the Lot lines (rather than from the easement boundary line) remain free of structures. The Architectural Committee must additionally approve any modification of the color, composition of building materials, location or structure of the wall lying immediately adjacent to Rear Side-Yard Easements. No Architectural Committee approval is necessary for any improvements or modifications made by the successors and assigns of Declarant.

Each Benefitted Owner and Burdened Owner shall comply with the provisions governing party walls as set forth in the Declaration. In addition, no Burdened Owner or Benefitted Owner shall attach any equipment or fixtures to walls lying immediately adjacent to Rear Side-Yard Easements, other than plants or vines which do not destroy the integrity of the wall, pose an unsightly appearance or threaten its strength, durability or lasting life, nor shall such Owner water his yard or plants to the extent that the foundation of such walls will be undermined.

SECTION 9: Location and Limits of Rear Side-Yard Easements.

The provisions hereof have created, granted and reserved the Rear Side-Yard Easements over and across Lots 158, and Lots 160 through 164 of San Ignacio Heights Resub. However, the precise limits and locations of said easements depend upon the actual construction of improvements thereon. Any portion of the Rear Side Yard Easements described on Appendix C Exhibit D, attached hereto, which is not physically enclosed within a rear yard easement area, and

does not actually benefit the Owners of an adjacent Lot, as determined by the actual initial construction of improvements upon such Lots, shall be deemed abandoned.

Due to the placement of homes and other improvements, the shape and terrain of the land, the configuration of streets, and other factors, the precise boundary of the Rear Side-Yard Easements may deviate from the general locations shown on Appendix C Exhibit A. Regardless of any such fluctuation, the construction of improvements thereon shall be deemed valid, and the Owner of the constructed improvements shall be deemed to have a permanent and valid easement of encroachment.

The terms and provisions hereof shall be binding upon the successors and assigns of the parties hereto. Each easement granted hereby shall be a right appurtenant to and running with the land.

The provisions hereof may be amended by the successors and assigns of Declarant so long as the successors and assigns own any of Lots 158 or 160 through 164 of San Ignacio Heights Resub or thereafter in the same manner as for an amendment of the Declaration, except that an amendment serving to relocate a Rear Side Yard Easement between two (2) Lots may be accomplished by a separate instrument executed and recorded by the Owners of such adjacent Lots.

#### APPENDIX C ARTICLE B - PARTY WALLS

SECTION 1: General Rules of Law to Apply. Each wall, whether a patio yard wall or bearing wall of a Dwelling Unit, which is built as a part of the original construction of a building upon the Properties and placed on or immediately adjacent to the dividing line between Lots, or on or immediately adjacent to a Rear Yard Easement or Front Yard/Access Easement (including rear patio walls) shall constitute a party wall, and, to the extent not inconsistent with the provisions of

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this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. Each Owner is deemed to acknowledge that some portions or all of the Properties may be developed with structures having common lot lines and common party walls. In many instances, this will be the case for both rear yards and common Dwelling Unit walls. Each owner, therefore, in the case of such a structure, consents to the placement of the walls of the Dwelling Unit on or immediately adjacent to the dividing lines between Lots or along the boundaries of the Rear Yard Easements and Front Yard/Access Easements as set forth herein.

The Adjoining Front Yard Walls on Lots 3 through 9 and 21 through 41 are not party walls, though they adjoin a party wall common to the adjacent Lot.

SECTION 2: Alterations. No Owner may alter the appearance or structure of a party wall (except that landscaping shall not be precluded) without the consent of the Architectural Committee and such Committee may, but need not, deny approval if all Owners having an interest in the party wall have not consented to the alteration. No such approval shall be required of the successors and assigns of Declarant, and this section shall not apply to improvements constructed, altered or repaired by Declarant or its successors and assigns.

SECTION 3: Sharing of Repair and Maintenance. The cost of ordinary repair and maintenance of a party wall shall be shared equally by the Owners of the Lots which are divided by the wall.

SECTION 4: Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it and is hereby granted a permanent access easement across adjoining Lot(s) for such restoration. The Owners of the Lots which are divided by the wall shall share equally in the cost of such restoration.

SECTION 5: Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of repairing all damage resulting from such exposure.

SECTION 6: Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner sharing a party wall under this Article shall be appurtenant to and shall run with the land.

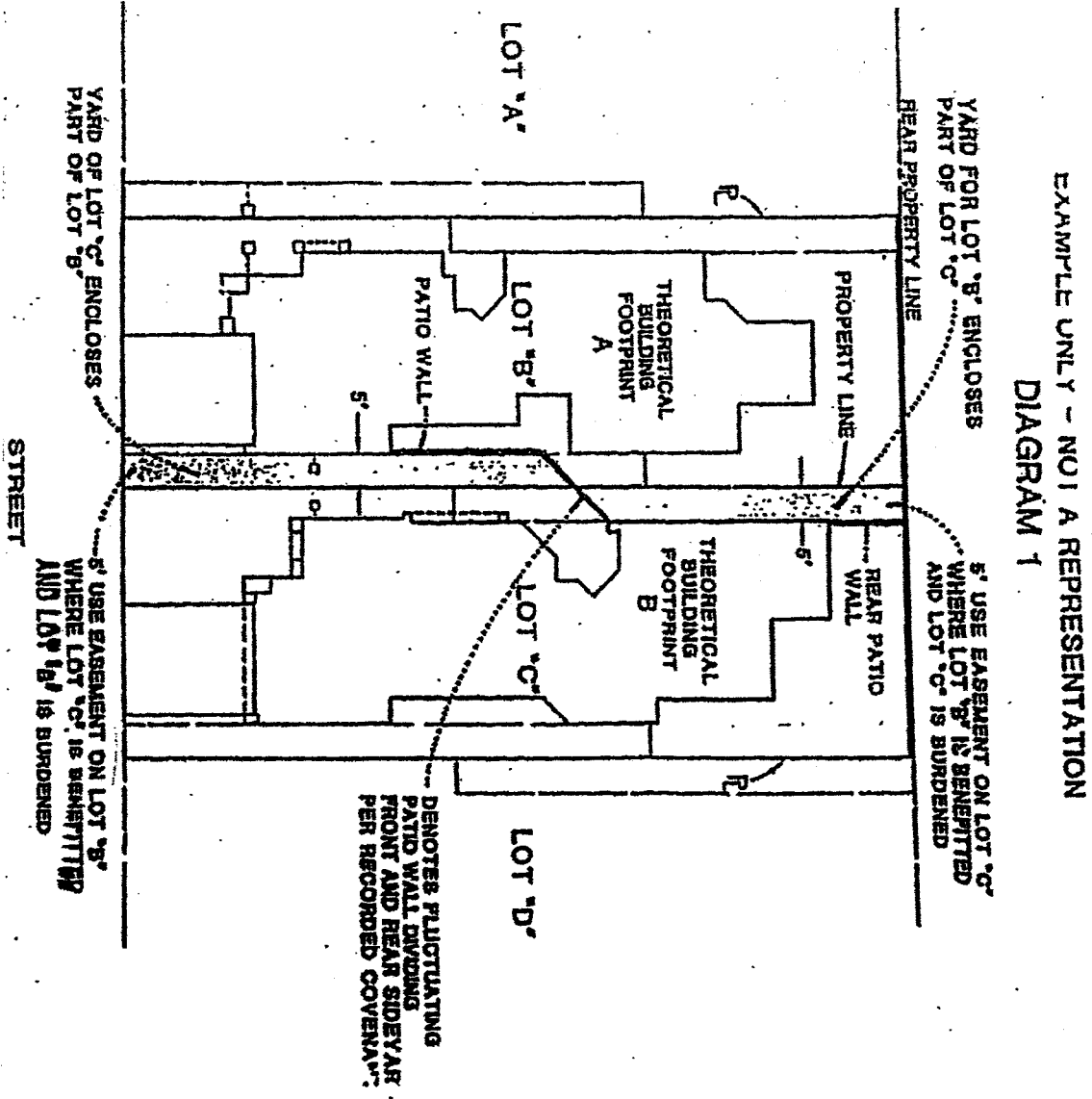
SECTION 7: Arbitration. In the event any dispute arises concerning a party wall, or the provisions of this Article, each party shall choose one (1) arbitrator and the two (2) arbitrators shall choose a third (3<sup>rd</sup>) arbitrator, and the dispute shall be decided by a majority of all the arbitrators. This section does not apply to the successors and assigns of Declarant, and the successors and assigns of Declarant shall not be required to arbitrate any disputes.

SECTION 8: Private Agreements. Private agreements between owners may not modify the provisions of this Article.

SECTION 9: Eaves, Steps and Open Porches. For purposes of this Article, eaves, steps and open porches shall not be considered to be part of a Dwelling Unit.

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Appendix C Exhibit A  
Diagram 1

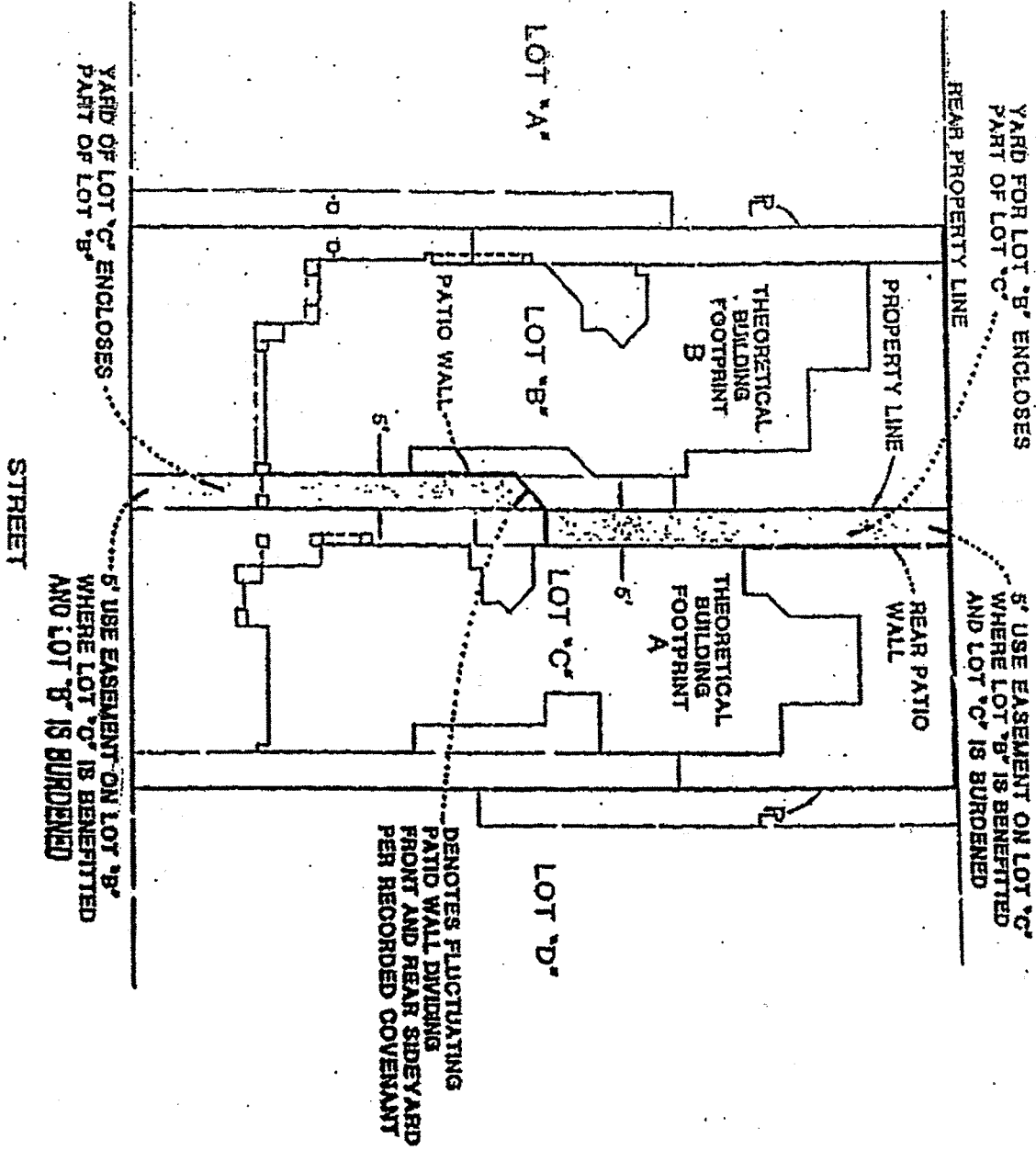


EXAMPLE ONLY - NOT A REPRESENTATION  
DIAGRAM 1

9330 1087

Appendix C Exhibit A  
Diagram 2

EXAMPLE ONLY - NOT A REPRESENTATION  
DIAGRAM 2

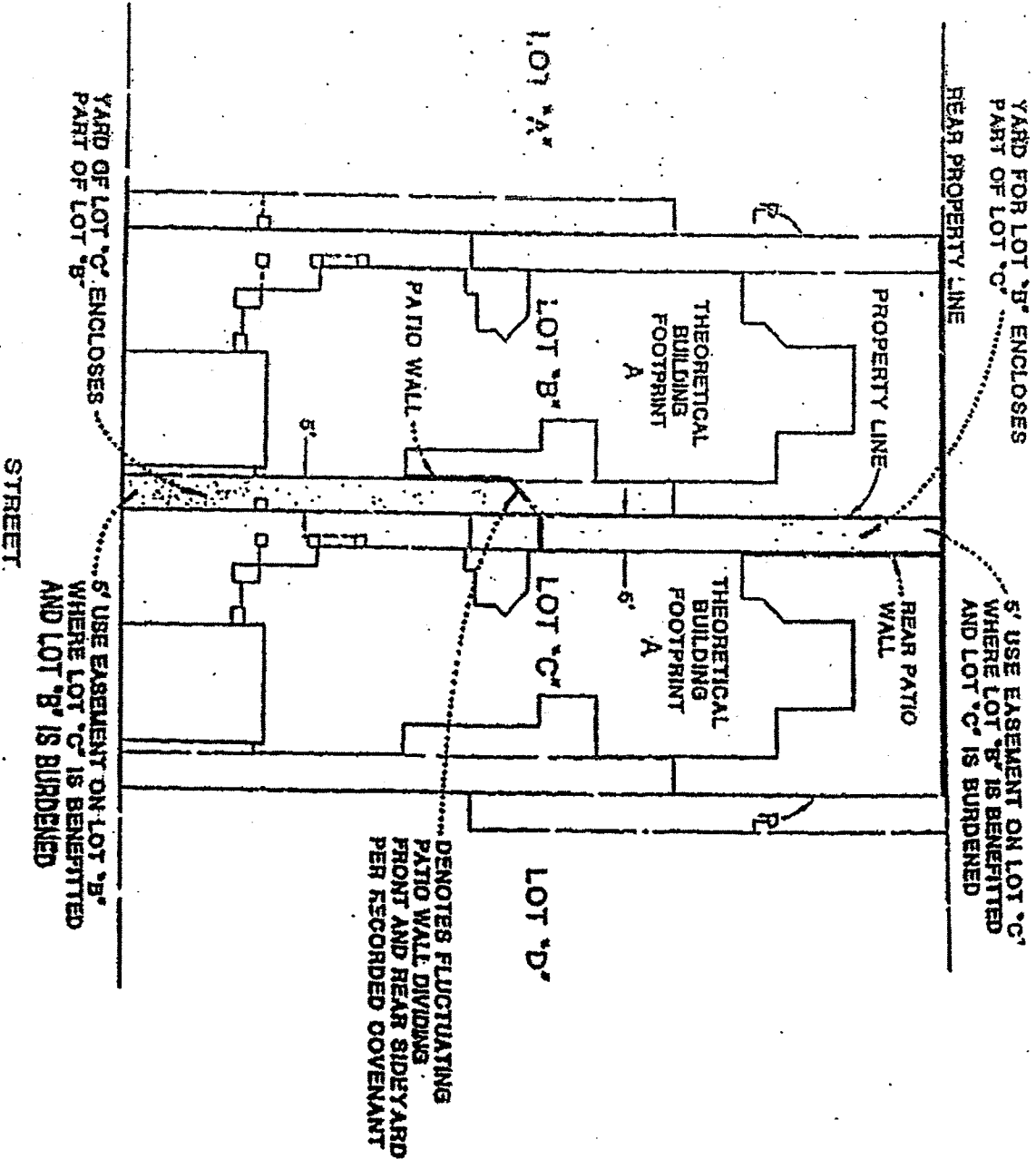


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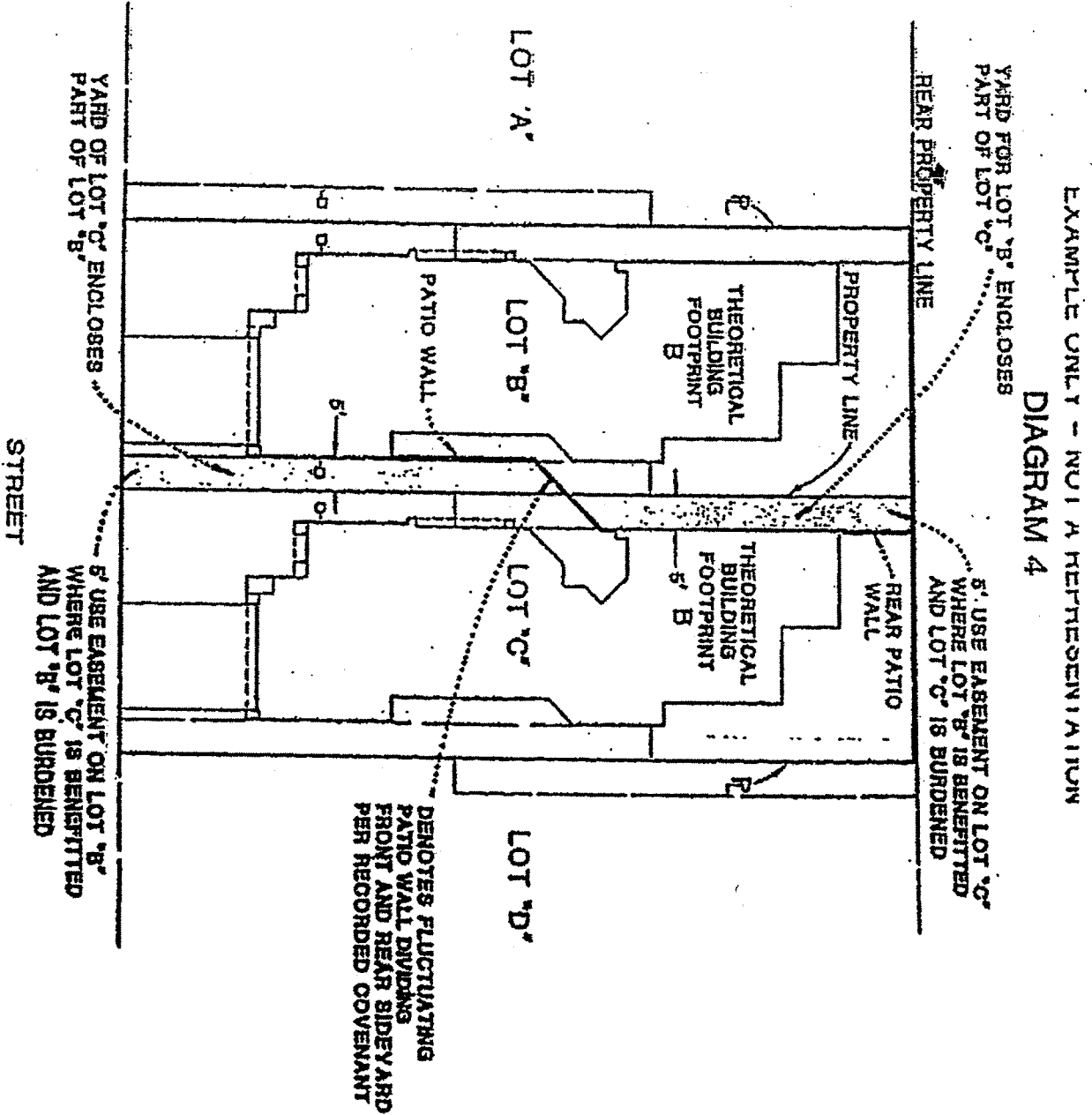
Appendix C Exhibit A  
Diagram 3

EXAMPLE UNLIT - NOT A REPRESENTATION  
DIAGRAM 3



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Appendix C Exhibit A  
Diagram 4

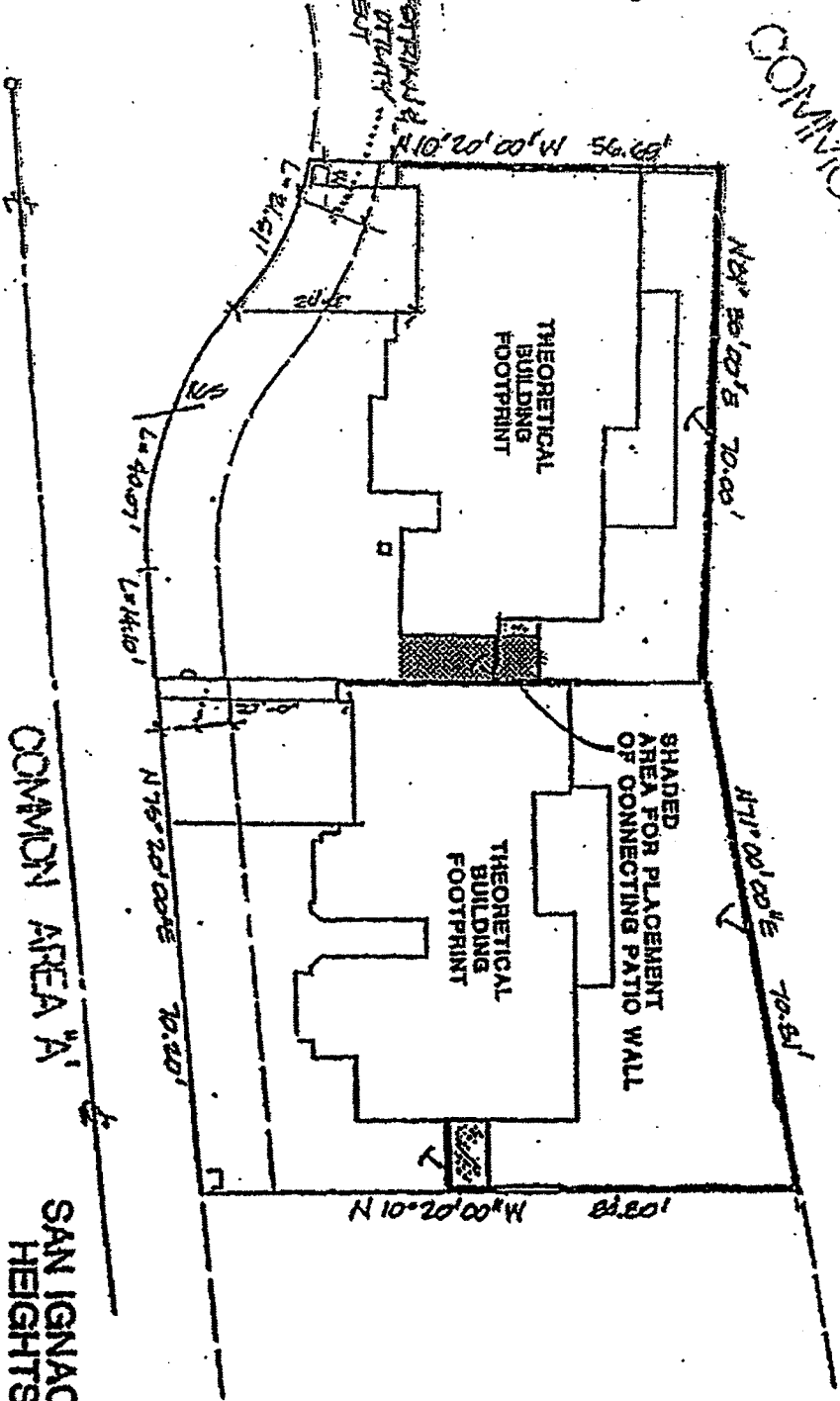


Appendix C Exhibit A  
Diagram 5

SCALE: 1/4" = 1'-0"

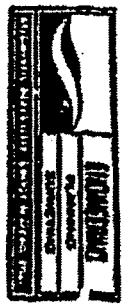
COMMON AREA 'B'

DIAGRAM 5

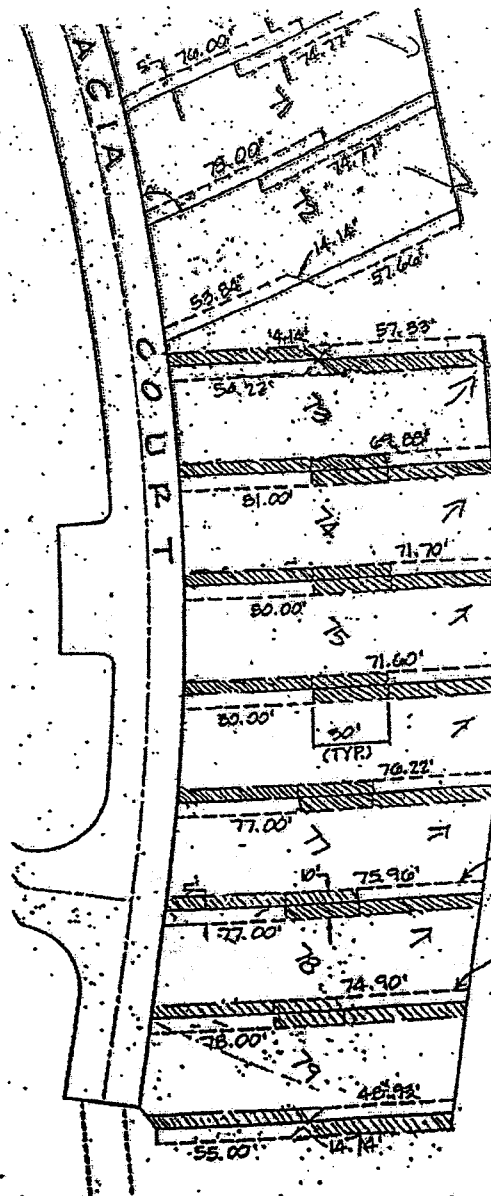


COMMON AREA 'A'

SAN IGNACIO HEIGHTS



9330 1091



SAN IGNACIO  
HEIGHTS  
LOTS 73-79

Appendix C Exhibit B

October 25, 1990  
MMLD 86002-83-75

Appendix C Exhibit C

DESCRIPTION OF A PORTION OF FAIRFIELD'S PROPERTY  
IN GREEN VALLEY

That portion of the San, Ignacio de la Canoa Land Grant, Pima County, Arizona, described as follows:

COMMENCING at the intersection of the northerly line of the parcel described in Docket 3279 at Page 509, Records of Pima County, Arizona, with the westerly right-of-way line of INTERSTATE 19;

THENCE S 54° 12' 05" W along said westerly right-of-way line of INTERSTATE-19 a distance of 500.00 feet to the POINT OF BEGINNING;

THENCE N 87° 00' 00" W 3,350.00 feet;

THENCE S 05° 00' 00" W 2,350.00 feet;

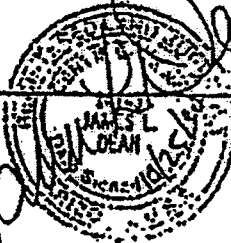
THENCE S 85° 00' 00" E to said westerly right-of-way line of INTERSTATE-19;

THENCE northeasterly along said right-of-way line to the POINT OF BEGINNING;

PREPARED BY:

McGOVERN, MacVITTIE, LODGE & DEAN, INC.

James L. Dean, R.L.S.



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