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April 10, 2012

\*DENOTES SHAREHOLDER

To: Niguel Shores Community Association Homeowners

From: John R. MacDowell  
Fiore Racobs & Powers, A Professional Law Corporation  
Association Corporate Counsel

Re: Proposed Amendment to CC&Rs

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As many of you know, Fiore, Racobs & Powers, A Professional Law Corporation, is corporate counsel to Niguel Shores Community Association ("Association"). The Association's Board has asked that we prepare this memorandum to Niguel Shores owners, explaining the purpose and effect of the proposed amendment to the CC&Rs, which is on the ballot for the upcoming Annual Meeting.

The amendment changes only one section of the CC&Rs, that is, Section 6 of Article VII, which is the Article dealing with architectural matters. This Section is on page 21 of the original CC&Rs, recorded December 3, 1969. It has not been changed since then.

The proposed change is as follows:

The ~~Architectural Committee~~ **Board of Directors** may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations, **on a tract by tract basis**, interpreting and implementing the provisions hereof.

The language which the amendment would delete is shown in strikeout. The new language is shown in bold and underlining.

The amendment makes only two changes to the CC&Rs. First, under the amendment, the Board, and not the Architectural Committee, may establish architectural standards. Second, it makes clear that the architectural standards may be different for different tracts in the community, just as they have been for many years.

The amendment does not expand the power of the Association in any way. It only shifts responsibility for establishing architectural standards from the Architectural Committee (which is appointed by the Board) to the Board of Directors, which is elected by Association members. Architectural standards have been in place at Niguel Shores since the early 1970s. They have

Niguel Shores Community Association  
April 10, 2012  
Page 2

helped to maintain and preserve the overall appearance of the Association, and they have provided guidance to homeowners and their architects regarding remodels and reconstruction. The California Civil Code requires that owners have an opportunity to review and comment on proposed architectural standards before they are adopted. The Association follows this procedure, and will continue to after the amendment is passed.

The Association has had different standards for different neighborhoods in the community, ever since Niguel Shores was developed. These tract by tract standards were first established by the developer, Avco. Section 2 of the Association's architectural standards, beginning with rule 3142, sets forth the tract by tract standards as they currently exist. The standards reflect the differing nature of the neighborhoods within the community.

For example, under current tract-specific standards, two story homes are sometimes allowed in the Berkus Homes, but only one story homes are allowed in the Custom Homes. Without tract by tract standards, the same rule would apply throughout Niguel Shores. Either two story homes would be prohibited everywhere (even in the Berkus Homes), or they would be allowed anywhere (even in the Custom Homes). Side yard setbacks must be five feet from the property line in the Custom and Berkus Homes, but other neighborhoods (including the Broadmoor Homes and the Garden Homes) have lots with no side yard setback at all. Homes are built up to the side property lines. These differences, which are inherent in the way the neighborhoods were designed, are all specified in the tract-by-tract standards. This will continue to be the case if the amendment is passed.

The Board has proposed the amendment to eliminate any argument that tract by tract standards are not allowed under the CC&Rs. This issue has been the subject of litigation and could be, again, without the amendment. Amending the CC&Rs as proposed would put this issue to rest.

My partner, Dick Fiore, will attend a town hall meeting at the community center on Saturday, April 14, 2012 at 10:00 a.m. to discuss the amendment and answer any questions which members might have. We encourage all members to attend the meeting.