

NOTICE REGARDING DISCRIMINATORY RESTRICTIONS

(California Government Code §12956.1)

In accordance with California Government Code §12956.1, enacted effective January 1, 2000 by Senate Bill 1148, the Association includes with this governing document the following information:

"If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code."



ATTORNEYS

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FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
REGARDING A PLAN OF CONDOMINIUM OWNERSHIP FOR

**EMERY BAY VILLAGE
HOMEOWNERS ASSOCIATION**

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FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
REGARDING A PLAN OF CONDOMINIUM OWNERSHIP FOR

**EMERY BAY VILLAGE
HOMEOWNERS ASSOCIATION**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
RECORDED AUGUST 7, 1980, OFFICIAL RECORDS OF ALAMEDA COUNTY

DOCUMENT NUMBER 80-133466

Emery Bay Village Homeowners' Association, a California Non-profit Mutual Benefit Corporation (hereinafter referred to as "Association"), hereby adopts, pursuant to Section 1355 of the Civil Code, the following amended and restated Covenants, Conditions and Restrictions relating to the Project known as the Emery Bay Village Homeowners Association.

W I T N E S S E T H:

WHEREAS, Association is a membership organization comprised of all of the Owners of the Condominium Units located in or on that property in the City of Emeryville, County of Alameda, State of California, known as the Emery Bay Village Condominiums which is more particularly described in Exhibit A and Exhibit B hereto, which property is a "Project" within the meaning of California Civil Code Sec. 1351(f) and is subject to the provisions of the Davis-Stirling Common Interest Development Act; and

WHEREAS, the members of the Association desire to amend and restate the Restrictions heretofore adopted under a general plan of improvement for the benefit of all of said condominiums and the Owners thereof;

NOW, THEREFORE, Association hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of providing a means of managing the Project and of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof:

ARTICLE 1: DEFINITIONS

Additional Charges shall mean costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

Annexed Parcel shall mean all that real property described in Exhibit "B" hereto.

Articles shall mean the Articles of Incorporation of the Association which are or shall be filed in the Office of the Secretary of State of the State of California.

Association shall mean and refer to Emery Bay Village Homeowners' Association, a California Non-profit Mutual Benefit Corporation, its successors and assigns, which shall be governed by these Covenants, Conditions and Restrictions and by the Association's By-Laws.

Association Assets shall mean all property and assets owned by the Association or the Owners as tenants in common.

Balcony shall mean and refer to those portions of the Common Area adjacent to a Unit and separately designated on the Plan as individual parcels identified by the letter "B". An exclusive appurtenant easement for the use and possession of each Balcony shall be granted to the adjoining Unit. The boundary lines of each Balcony are to the dimensions shown on the Plan and to the airspace encompassed within said boundaries.

Board shall mean the Board of Directors of the Association.

Building Common Area shall mean all of the Project described on the Plan which is not expressly made a part of a Unit.

Bylaws shall mean the Bylaws of the Association and any amendments thereto.

Carport shall mean and refer to that portion of the Common Area shown on the Plan as individual numbered parcels preceded by the letter "C". An exclusive appurtenant easement for the use and possession of each Carport shall be granted to the Unit bearing a corresponding Unit number. The boundary lines for each Carport shall be as set forth on the Plan and to the airspace encompassed within said boundaries.

City shall mean the City of Emeryville, County of Alameda, State of California.

Common Area shall mean and refer to all of the Project described on the Plan which is not included within any Unit. Common Area shall include, but not be limited to, roofs, foundations, pipes, ducts, flues, chutes, floors, bearing walls, columns and girders to their unfinished surfaces, all regardless of location, carports, parking spaces,

patio gardens, storage spaces, service and equipment areas, driveways, open spaces, planted and landscaped areas, balconies and all other improvements which may be placed upon or located in the Common Area.

Common Area Personal Property shall mean all personal property and equipment purchased by the Association for the operation and maintenance of Common Areas.

Condominium shall mean an estate in real property consisting of an undivided interest in common in a portion of the Building Common Area, and the Annexed Parcel, a separate fee interest in space herein defined as a Unit and easements in portions of the Project as provided in this Declaration.

Condominium Plan shall mean and refer to the recorded diagrammatic floor plan of the Units built on the property which identifies each Unit and shows its dimensions pursuant to Civil Code Section 1351, entitled "EMERY BAY VILLAGE", attached hereto as Exhibit "D".

County shall mean the County of Alameda, State of California.

Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of Emery Bay Village Homeowners Association, and any amendments hereto.

Eligible Holder shall mean any institutional Mortgagee who has delivered a written notice to the Association containing its name, address and the number or address of the Condominium encumbered by the Mortgage and requesting that the Association deliver written notice to it of any or all of the events specified in Article 11 herein.

Exclusive Use Common Area shall mean those portions of the Common Area which are shown on the Plan and defined in this Declaration as Balconies, Decks, Patios, Storage Spaces, Garages, and Carports. The term "Exclusive Use Common Area" shall also mean those portions of the Common Area, such as Parking Spaces, to which rights of exclusive use have been conveyed to an Owner pursuant to the terms of the grant deed to such Owner's condominium. The term "Exclusive Use Common Area" shall also mean those portions of the Common Area assigned by the Association to and for the exclusive use of a particular Owner.

First Mortgage shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium. For purposes of this document, a "mortgage" shall include a deed of trust or a contract of sale.

First Mortgagee shall mean the Mortgagee of a First Mortgage.

Governing Documents is a collective term that means and refers to this Declaration and to the Articles of Incorporation, the By-Laws and the Association Rules and Regulations.

Improvements shall mean buildings, facilities, streets, driveways, fences, walls and other structures and all landscaping constructed or to be constructed upon the property subject to this Declaration.

Institutional Mortgagee shall mean a First Mortgagee which is (1) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law; (2) an insurer or governmental guarantor of a First Mortgage, including, without limitation, the Federal Housing Authority and the Veteran's Administration; or (3) the State of California.

Invitee shall mean any person whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

Manager shall mean the person or entity appointed or hired to manage and operate the Project.

Map shall mean that certain Subdivision Map entitled "TRACT 4356", filed in Book 120 of Maps at Page 28 and 29, Alameda County Records on August 4, 1980.

Member means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article 8 below.

Mortgage shall mean any duly recorded mortgage or deed of trust encumbering a Condominium.

Mortgagee shall mean a Mortgagee under a Mortgage as well as beneficiary under a deed of trust.

Owner shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Project, including a contract seller, but excluding a person or entity having such interest merely as security for the performance of an obligation.

Parking Space shall mean and refer to those portions of the Common Area which have been designated for use as automobile parking areas by the Unit Owners, their guests, tenants and invitees. The use of all Parking Spaces shall be subject to the Rules and the provisions of this Declaration.

Patio Garden shall mean and refer to those portions of the Common Area adjacent to a Unit and separately designated on the Plan as individual parcels identified by the letter "P". An exclusive appurtenant easement for the use and possession of

each Patio Garden shall be granted to the adjacent Unit along with and as part of said Unit. The boundary lines for each Patio Garden shall be as set forth on the Plan and the airspace encompassed therein.

Project shall mean and refer to the real property described on the Map which is divided into Condominiums, including all structures thereon, as shown on the Plan.

Project Common Area shall mean all of the Project described on the Plan which is not expressly made a part of a Unit and all Improvements thereon.

Quorum shall mean 51% of the voting power of the Association unless otherwise provided in the Articles of Incorporation, this Declaration or the By-Laws.

Rules shall mean the Association's Rules and Regulations as published after adoption by the Board in accordance with the provisions of Article 5 of the By-Laws.

Single Family Residential Use shall mean occupation and use of a Unit for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings. Nothing herein contained shall preclude the use of any Unit by unrelated persons, nor preclude the use of the Unit for family daycare homes or group facilities allowed by the California Health and Safety Code.

Storage Easement shall mean and refer to those portions of the Common Area adjacent to a Unit and separately designated on the Plan as individual parcels identified by the letters "SE". An exclusive appurtenant easement for the use and possession of each Storage Easement shall be granted to the adjacent Unit along with and as part of said Unit. The boundary lines for each Storage Easement shall be as set forth on the Plan and the airspace encompassed therein.

Unit shall mean the elements of a Condominium not owned in common with the Owners of other Condominiums in the Project. Each Unit is an individual residence which is shown, defined and delineated on the Plan as a numbered parcel containing a one or two digit Building number followed by one letter indicating the Unit type followed by the Unit number, i.e., ID-1, 1D-2, 2D-3, 2D-4, etc.

The Boundaries of each Unit shall be the following: the interior unfinished surfaces (exclusive of paint, shingles, siding or their finishes) of the floors, ceilings, interior beams and columns, perimeter walls, bearing walls, doors, doorframes and trim, if any, of said Unit. The Unit shall include the airspace so encompassed by said boundaries, excluding all load bearing walls and all walls containing any utility conduit to the unfinished surfaces of any such walls.

Each Unit specifically includes the oven, garbage disposal unit, dishwasher, heating conduits, range and fans, interior partitions, fireplaces and plumbing fixtures

installed therein. In interpreting Deeds, Declarations and Plans, the existing physical boundaries of the Unit, or of the Unit as may be reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds (or other description) expressed in the Deed, Plan or Declaration, regardless of settling or lateral movement of the buildings and regardless of variants between boundaries shown on the Plan or the Deed and the Declaration and those of the buildings.

Variable Expenses shall be expenses that benefit larger Units more than small Units or which are allocated based upon square footage under Article 4.5(d). These include expenses for insurance premiums, painting and roofing reserves, and replacement or repair of common area building components. Expenses for landscape improvements are not "variable expenses."

ARTICLE 2: PROPERTY RIGHTS

2.1 Exclusive Ownership and Possession of Unit

Each Owner shall be entitled to the exclusive ownership and possession of his or her Unit. An Owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors bounding his or her Unit.

The percentage of the undivided interest of each Owner in the Common Area, including the Annexed Parcel, shall have a permanent character and shall not be altered without the consent of all Owners expressed in an amended Declaration duly recorded. The percentage of the undivided interest in the Common Area shall not be separated from the Unit to which it pertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. All interior electrical and plumbing installations and wiring including wiring from exterior walls into the Unit, shall be the financial responsibility of the Owner of the Unit to which they are appurtenant.

2.2 Easements

The ownership interests in the Building Common Area, Common Area and Units described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be a covenant running with the land for the use and benefit of the Owners and their Condominiums

superior to all other encumbrances applied against or in favor of any portion of the Project.

a. Easements on Map: The Common Area and Units are subject to the easements and rights of way shown on the Map.

b. Easements for Project Common Area: Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Project Common Area which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

(1) The right of the Association, after giving the affected Member notice and opportunity to be heard by the Board in accordance with Article 8 below, to suspend the voting rights and right to use the Common Area by an Owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed thirty (30) days for violation of any of the Governing Documents, including the Rules;

(2) The right of the Association to enforce the Governing Documents including without limitation its Rules, and to issue monetary fines, after notice and an opportunity to be heard by the Board in accordance with Article 8 below.

(3) The right of the Board to adopt reasonable rules and regulations (the "Rules") for the benefit of all Members regarding the use and enjoyment of the Project;

(4) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, no such dedication or transfer shall be effective unless an instrument signed by the holders of two-thirds (2/3) of the voting power of the Members agreeing to such dedication or transfer has been recorded;

(5) The right of the Association to sell any Unit owned by the Association and apply the proceeds of any such sale first to the outstanding liens and charges against the sold Unit, if any, and then transfer the remainder of the proceeds of the sale to the reserve fund; and

c. Easements For Building Common Area: There is reserved and granted to each Unit, as dominant tenement, over and across the Building Common Area lot in which the Unit is situated (excluding Exclusive Use Common Area), as servient tenement, a non-exclusive appurtenant easement for ingress, egress, use and enjoyment of the Building Common Area.

d. Exclusive Use Common Area: There are reserved and granted to each Unit and each Owner of a Unit exclusive appurtenant easements for the use,

possession and enjoyment of those Exclusive Use Common Areas designated on the Plan which bear numbers that correspond to that of the Unit and for those Exclusive Use Common Areas specifically designated in the individual Condominium grant deed. All easements to Exclusive Use Common Area are subject, however, to the right of the Association to enter in and upon Exclusive Use Common Area for the purpose of maintaining and repairing Exclusive Use Common Area and for enforcing the terms of this Declaration. The grant of any easement for a Patio shall include the area beneath the surface of the earth that is necessary for the cultivation, landscaping and drainage of the Patio.

e. Utilities: There are reserved and granted for the benefit of each Unit, as dominant tenement, over, under, across and through the Project (including the Common Area and each other Unit, jointly), as the servient tenement, non-exclusive easements for utility services.

f. Encroachment: There are reserved and granted for the benefit of each Unit, as dominant tenement, over, under and across each other Unit and the Common Area, as servient tenements, for the benefit of the Building Common Area, as dominant tenement, over, under and across the Project Common Area and each Unit, as servient tenements, and for the benefit of the Project Common Area, as dominant tenement, over, under and across the Building Common Area and each Unit, as servient tenements, non-exclusive easements for encroachment, support, occupancy and use of such portions of Units and/or Common Area as shall be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, intentional or unintentional deviations from the Plan during construction, accretion, erosion, addition, deterioration, decay, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for maintenance of the encroaching Improvement shall exist for as long as the encroachment exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement for encroachment may but need not be cured by repair or restoration of the structure.

g. Emergency Exits: There is reserved for the benefit of each Unit, as dominant tenement, an easement for ingress and egress from and to the fire escapes and other emergency exits over, across and through the other Units and the Common Area, jointly, as the servient tenement, to be used only on an emergency basis.

2.3 Entry for Repairs

The Association or its agents may enter any Unit, and any portion of the Common Area to which an Owner has been granted an exclusive easement or license, whenever such entry is reasonably necessary in connection with the performance of any maintenance or repair for which the Association is responsible. The Association's right of entry under this Declaration shall be immediate in case of an emergency originating in or threatening the Unit or other Units or Common Area or any person, and the Association's work may be performed under such circumstances whether or not the Owner or his or her Lessee is present.

In all non-emergency situations, the Association or its agents shall furnish to the Owner, and his or her Lessee, if applicable, two (2) days written notice of its intent to enter the Unit, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing therein.

2.4 Lease or Rental of Units

An Owner shall be entitled to lease or rent his Unit, provided that:

a. The number of tenants or lessees in any particular Unit is limited to no more than two (2) per bedroom;

b. Such rental or lease is for a period of not less than sixty (60) days;

c. Any lease or rental of a Unit shall be subject to the Governing Documents including the Rules. Each lease or rental shall be by written agreement specifying that the Lessee and other occupants shall be subject to all provisions of the Governing Documents including the Rules. The Owner shall provide each Lessee with a copy of the By-Laws, the Rules, and this Declaration. The Owner shall be responsible for his Lessee's and other occupants' compliance with the provisions of this Declaration, the By-Laws and the Rules with respect to the use and occupancy of the Unit and the use of the Common Area. The Owner shall provide the Secretary or the Manager of the Association with the name(s) and telephone number(s) of the person(s) to whom he has leased his Unit.

d. If an Owner has leased his Unit, the Owner, members of his family, his guests and invitees shall not be entitled to use and enjoy the recreational facilities of the project so long as the Unit is occupied by a tenant. Instead, the tenant, members of his family, his guests and invitees while occupying the Unit shall be entitled to use and enjoy the recreational facilities of the project.

e. If an Owner has sold his Unit to a contract purchaser, the provisions of this Article with respect to tenants shall also apply to the contract purchaser of the Unit.

2.5 Judicial Partition

a. **Waiver of Partition.** Except as provided in California Civil Code Section 1359, there shall be no judicial partition of the Project or of any part thereof. Each Owner, and each successor of each Owner, specifically waives and abandons all rights, interests and causes of action for judicial partition of the tenancy-in-common ownership of the building Common Area. Each Owner agrees that no action for judicial partition of the Project shall be instituted, prosecuted or reduced to judgment, except in compliance with California Civil Code Section 1359. If a Condominium is owned by two or more Owners as tenants-in-common, as joint tenants or as community property, nothing contained in this Section shall be deemed to prevent a judicial partition between the co-Owners of a single condominium.

b. **Power of Attorney.** If there is judicial partition of the Project pursuant to California Civil Code Section 1359 or this Declaration, each Owner, for himself and his successors and assigns, hereby grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of all of the Owners.

ARTICLE 3: HOMEOWNERS' ASSOCIATION

3.1 Membership

Every person or entity who is a record Owner of a fee or undivided fee interest in any Unit which is subject to assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association.

The Association shall have one class of voting membership consisting of all Owners. Each Owner shall have one vote per Unit owned. When more than one person holds an interest in any Unit, all such persons shall be Members, but the vote for such Unit shall be exercised as set forth in the By-Laws.

3.2 General Powers, Duties and Authority of the Association

The Association shall have all the powers set forth in the Articles, together with the general power to do any and all things that a mutual benefit corporation organized under the laws of the State of California may lawfully do in operating for the benefit of its members, subject only to the limitations upon the exercise of such powers as are

expressly set forth in the Articles, the By-Laws and this Declaration. The Association shall have the power to do any and all lawful things which may be organized, required or permitted to be done by the Association under and by virtue of this Declaration and to do and perform any and all acts which may be necessary or proper for and/or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort and/or general welfare of the Owners and guests of the Owners. The Board may delegate the management of the activities of the Association to any person, persons, management company or committee however composed, provided that the activities and affairs of the Association shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Without limiting the generality of the foregoing paragraph, the Association, for the benefit of all Units and all Owners, shall have the power, obligation and duty to enforce the provisions of this Declaration. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the Project and for the improvement and maintenance of the Common Area, parking spaces and the Units including, but not limited to, payment for the following:

a. Water, sewer, garbage, electrical, telephone, gas, landscaping and other necessary utility services for the Common Areas and (if not separately metered or charged) for the Units;

b. The services of a person or firm to manage the Project (herein called the "Manager"), to the extent deemed advisable by the Board, as well as such other personnel as the Board may determine shall be necessary or proper for the operation of the Project, whether such personnel are employed directly by the Board or are furnished by the Manager;

c. Legal and accounting services necessary or proper in the operation of the Association or the enforcement of the Governing Documents;

d. Painting, cleaning, maintenance, landscaping and repair of the Project and such furnishings and equipment for the Common Areas as the Board shall deem necessary or proper. All property that may be acquired by the Association will be maintained in accordance with these rules. It is the Owner's responsibility to maintain the non-structural portion of the Exclusive Use Common Area which has been set aside for the exclusive use of his Unit.

e. Any other materials, supplies, equipment, furniture, labor, services, maintenance, repairs, structural alterations, insurance, licenses, taxes, assessments or other expenses which the Board is required or permitted to secure or pay for pursuant to the terms of the Governing Documents or which, in the exercise of sound business judgment, it deems to be necessary or proper for the operation of the

Project or in order to carry out or enforce the terms of the Governing Documents; provided that if any of the foregoing are provided for a single Unit, the cost thereof may be specially assessed to the Owner of such Unit in accordance with Article 4.7 below; and

f. Any amount necessary to discharge any lien or encumbrance levied against the Project or any part thereof which may, in the opinion of the Board, constitute a lien against the Project or against the Common Areas, rather than merely against the interest therein of particular Owners; provided that if one or more Owners are responsible for the existence of such lien, such Owner or Owners shall be jointly and severally liable for the cost of discharging such lien and the cost thereof may, if applicable, be specially assessed to the Owner or Owners in accordance with Article 4.7 below.

3.3 Maintenance of Common Area

The Association shall be responsible for maintenance, repair, replacement, painting and upkeep of Common Area, including the Annexed Parcel, (excluding non-structural portions of the Exclusive Use Common Area). The Association shall keep the Common Area and Improvements thereon in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Common Area in good condition.

3.4 Alterations to Common Area (Excluding Exclusive Use Common Area)

Only the Board shall construct, reconstruct, refinish or alter any improvement situated upon the Common Area (excluding Exclusive Use Common Area). A proposal for any construction of or alteration, maintenance or repair to an Improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws. All construction must have appropriate permits to meet required codes. Neither the Association nor any Owner shall undertake plumbing or sanitary sewer improvements without first obtaining any and all approvals and permits as may be required by the North Alameda County Sanitation District.

3.5 Maintenance and Repair of Exclusive Use Common Area

The Association shall paint and provide structural repair and replacement of the interior and exterior surfaces of any fences and/or railings enclosing Balconies and Patios and the exterior surfaces of Carports. The Association shall paint, repair and provide general cleaning and maintenance of Parking Areas.

3.6 Landscaping

The Association shall be responsible for all landscaping located in the Common Area, excluding Exclusive Use Common Area. All landscaping shall be maintained and cared for in accordance with the Landscaping Rules set forth by the Board.

3.7 Manager of Project

Except as provided in Article 8 below, the Board may delegate any of its duties or functions, except those which are not delegated as a matter of law, to any person or firm appointed by the Board to serve as Manager of the Project, provided that any such delegation shall be revocable, without cause, upon no more than thirty (30) days' written notice by the Board. The Board is authorized to lease, rent or otherwise provide appropriate living quarters to a Resident Manager and other employees, with or without charge, provided that any such agreement shall be in writing and subject to termination without cause upon thirty (30) days' written notice by the Board.

3.8 Acquisition of Property

The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

3.9 Loans

The Association shall have the power to borrow money and, only with the assent (by vote or written consent) of a majority of the voting power of the Association, to mortgage, pledge, deed in trust or hypothecate any or all of its personal property or income stream as security for money borrowed or debts incurred.

3.10 Insurance

a. The Association shall obtain and continue in effect the following insurance policies:

(1) A master policy of insurance covering all of the real property and improvements of the Project that are defined in Article 1 herein as Common Area, Annexed Parcel and Exclusive Use Common Area and protecting the interests of the Association and its members, including without limitation fire, extended coverage, and special form, and insuring the full replacement value of all improvements in the Common Interest Development. (IT IS THE RESPONSIBILITY OF THE UNIT OWNER/TENANT TO PROVIDE ADDITIONAL LIVING EXPENSE COVERAGE AND PUBLIC LIABILITY INSURANCE FOR THE INTERIOR OF THE UNIT AS DEFINED IN ARTICLE 1 HEREOF, AND FOR ANY IMPROVEMENTS TO THE UNIT, AS THESE ARE NOT COVERED BY THE MASTER POLICY NOR ARE THE PERSONAL PROPERTY OF THE UNIT OWNER/TENANT.) The policy or policies shall provide for

a separate "loss payable" endorsement in favor of the Mortgagee(s) of each Unit, and shall further provide that the policy cannot be canceled or modified without at least thirty (30) days prior written notice to the Association. Such insurance will be payable to the Board and Mortgagee(s) as their interests appear. The policies shall be reviewed at least annually by the Board.

(2) A policy or policies insuring the Association against any liability to the public or to other Owners, their invitees and tenants, incident to the ownership and/or use of the Common Areas, the liability limits under which insurance shall be not less than \$3,000,000 per occurrence (such limits to be reviewed at least annually by the Board and modified in its discretion); the policy may not be canceled or modified without at least thirty (30) days prior written notice.

(3) Worker's compensation insurance, to the extent necessary to comply with any applicable laws;

(4) Directors' and Officers' Liability Insurance, to the extent it is available, in an amount in a minimum of \$3,000,000 on any director, officer or member of a committee of the Association (collectively the "Agents") against any liability asserted against or incurred against the agent in such capacity or arising out of the Agent's status as such, regardless of whether the Association would have the power to indemnify the Agent against such liability under applicable law; said insurance shall contain prior acts coverage; such policy shall be reviewed at least annually by the Board; the policy may not be canceled or modified without at least thirty (30) days prior written notice to the Unit Owners.

(5) A fidelity bond or insurance for Board members, Officers, Trustees, employees and volunteers responsible for handling funds collected and held for the Association or Owners, naming as insured the Association for an amount sufficient to cover at least one and one-half times the Association's total annual budgeted regular assessments; provided, however, that the aggregate amount of such bond shall not be less than a sum equal to three months' aggregate assessments on all Units plus reserve funds. The bond or insurance shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The bond or insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Association;

(6) Any other type of insurance or insurance in excess of the above limits if the Board shall determine the same to be necessary in its sole discretion to fully protect the interests of the Owners.

ARTICLE 4: ASSESSMENTS

4.1 Covenant To Pay Assessments

Each Owner of one or more Units, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance) covenants and agrees to pay to the Association (a) Regular Assessments, (b) Special Assessments, and (c) Special Individual Assessments. Each such assessment shall be established and collected as hereinafter provided. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such assessments and charges and for the enforcement of the liens hereinafter provided for.

4.2 Extent of Owners' Personal Obligation for Assessments

All assessments, together with late charges, interest and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person or entity who was the Owner of the Unit at the time the assessment was levied and shall bind his or her heirs, devisees, personal representatives, successors and assigns. Except as otherwise provided by law, each Owner who acquires title to a Unit (whether at judicial sale, Trustee's sale, or otherwise) shall be personally liable only for assessments attributable to the Unit so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed. A contract seller of any Unit shall be liable for all such charges until a conveyance by him or her of the Unit subject to the assessment is recorded in the Office of the County Recorder of Alameda County, California.

4.3 Creation of Lien

All assessments, together with late charges, interest and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Unit and shall be secured by a continuing lien upon the Unit against which such assessment is levied. Any lien for unpaid assessments created pursuant to the provisions of this Article 4 may be subject to foreclosure as provided in Section 4.11 below. The lien provided for herein shall continue to secure all assessments and Additional Charges levied upon any Unit notwithstanding the transfer of record title to such Unit, and any such transfer shall be subject to the Association's lien, as long as prior to such transfer a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law. The priority of all such assessment liens on

each Unit shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Unit, any sale of such Unit, pursuant to foreclosure of the lien, will be made subject to all liens securing the respective monthly assessments and charges on such Unit for succeeding months.

4.4 No Avoidance of Assessment Obligations

No Owner or entity may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Unit or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Unit or any other portion of the properties.

4.5 Regular Assessments

a. Preparation of Annual Budget; Establishment of Regular Assessments. Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated common expenses for the next succeeding fiscal year (which shall be the calendar year), including additions to the Reserve Account established to defray the costs of future repairs, replacements, betterments, or additions to the Common Areas, by preparing and distributing to all Members a budget satisfying the requirements of the By-Laws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in said section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the vote or written assent of Members, constituting a Quorum, casting, in person or by proxy, a majority of the votes at a meeting or election of the Association. For purposes of this Section, a Quorum means more than 50 percent (50%) of the Owners of the Association.

b. Establishment of Regular Assessments by Board; Membership Approval Requirements. The total annual expenses and contributions to reserve accounts estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in Section 4.5.c. below, the Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a Quorum, casting, in person or by proxy, a majority of the votes of the Association at a meeting or election of the Association. For purposes of this Section, a Quorum means more than 50 percent (50%) of the Owners of the Association.

c. Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to assessment increases necessary to address Emergency Situations. For purposes of this Section 4.5.c., an Emergency Situation is any one of the following:

- (1) An extraordinary expense required by an order of court;
- (2) An extraordinary expense necessary to repair or maintain the Common Areas or any portion of the separate interest which the Association is obligated to maintain where a threat to personal safety is discovered;
- (3) An extraordinary expense necessary to repair or maintain the Common Areas, including fixtures and personal property or any portion of the separate interest which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 4.5.a. above, provided that, prior to the imposition or collection of an assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budget process. The Board's resolution shall be distributed to the Members together with the notice of assessment. Notwithstanding any contrary provision contained herein, the Board shall have no authority to acquire and pay for, out of any funds whatsoever, capital additions and improvements other than for purposes of repairing, maintaining or replacing portions of the Common Area, in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of (51%) of the voting power of the Association.

d. Regular Assessments. The Board shall establish regular monthly assessments for operation and maintenance of the Project by the procedures established in this Section. The Assessments shall be due and payable in monthly installments on the first day of each month during the continuance of this Declaration commencing on the first day of the first month following close of escrow of the sale of the first Condominium.

The Board shall assess the total of said charges to all Unit Owners. Those items in the Project budget designated as insurance premiums, painting and roof reserves and any other Variable Expenses shall be allocated to and assessed among Unit Owners in proportion to each Unit Owner's ownership interest in the Common Area as set forth in Exhibit "C" attached hereto. All other expenses that are not Variable Expenses as defined in Article 1 hereof are allocated equally among the Units.

Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of each fiscal year, the Board shall estimate the total charges to be paid out of the maintenance fund during such year (including a reasonable reserve for contingencies and less any expected surplus from the prior year) and distribute a copy of a pro forma operating statement (budget) to each member; provided, however, that the Board may not, without the prior vote or written consent of a majority of each class of members of the Association, impose a Regular Assessment per Condominium which is more than twenty percent (20%) greater than the Regular Assessment per Condominium for the immediately preceding fiscal year. All funds budgeted, allocated, assessed and collected for contingencies, deferred maintenance and replacement of capital improvements shall be designated for those specific purposes.

Within one hundred twenty (120) days after the end of each fiscal year, the Board shall distribute an accounting of assessment receipts and disbursements for that fiscal year. If such accounting shows that a surplus of cash results, the Unit Owners shall vote as to whether to refund all or part of such surplus or as to whether such surplus shall be carried over to future assessment periods and applied to reduce future assessments. If the Owners vote for a refund the total budget surplus shall be traced back to the specific budget items which created the surplus and the Association shall distribute or allocate such surplus to each Unit Owner in the same proportion as their respective assessment for those budget items bears to the total assessment for those items.

e. Assessment Roll. That portion of the estimated common expenses assessed against and charged to each Owner shall be set forth and recorded in an assessment roll and shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as an Owner or as a Member of the Association. The assessment roll (which may be maintained in the form of a computer printout) shall show for each Unit the name and address of the Owner of record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Unit, and the amount of such assessments which have been paid or remain unpaid.

f. Statement of Assessment. The Board shall mail to each Owner at the street address of the Owner's Unit, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of Regular Assessments for the next succeeding fiscal year no less than forty-five (45) days prior to the beginning of the next fiscal year.

g. Failure to Make Estimate. If, for any reason, the Board fails to make an estimate of the common expenses for any fiscal year, then the Regular Assessment for the preceding fiscal year, together with any Special Assessment made pursuant to this Article for that year, shall be assessed against each Owner and his or her Unit on account of the then current fiscal year. Such automatic assessment shall be payable in installment payments (as hereinafter provided) on the regular payment dates established by the Association.

h. Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Unit shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Board. Installments of Regular Assessments shall be delinquent if not paid by the fifteenth (15th) day after the due date established by the Board.

4.6 Special Assessments

a. Purposes for Which Special Assessments May Be Levied. Subject to the membership's approval requirements set forth in Section 4.6.b. below, the Board shall have the authority to levy Special Assessments ("Special Assessments") on Owners and their respective Units for the following purposes:

(1) Regular Assessments Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Section 4.6.b. below, the Board shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations thereunder. The Board's assessment authority pursuant to this subparagraph shall be subject to membership approval requirements under the circumstances described in Section 4.6.b. below.

(2) Capital Improvements. The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Areas), if a majority of the voting power of the Association so authorizes. The Special Assessment power conferred herein is not intended to diminish the Board's obligation to plan and budget for normal maintenance and replacement and repair of the Common Area through Regular Assessments (including the funding of reasonable reserves) or to maintain adequate insurance on the Common Area in accordance with this Declaration.

(3) Restoration of Reserve Funds. The Board may also levy Special Assessments to restore reserve account expenditures in accordance with California Civil Code Section 1365.5(c) or any superseding statute.

b. Special Assessments Requiring Membership Approval. No Special Assessment described in this section, which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied, shall be made without the vote or written assent of Members constituting a Quorum, casting, in person or by proxy, a majority of votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address Emergency Situations as defined in Section 4.5.c. above.

Special Assessments for purposes described in Section 4.6.a.(1) above shall be due as a separate debt of each Owner and a lien against his or her Unit, and shall be payable to the Association in equal installments as determined by the Board. Special Assessments for purposes described in Sections 4.6.a.(2) and 4.6.a.(3) above shall be due as a separate debt of each Owner and a lien against his or her Unit, and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

4.7 Special Individual Assessments

a. Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Article 4.6 above, the Board may impose Special Individual Assessments ("Special Individual Assessments") against an Owner in any of the circumstances described hereafter, provided that no Special Individual Assessment may be imposed against an Owner pursuant to this section until the Owner has been afforded the notice and opportunity for hearing rights to which the Owner is entitled pursuant to Article 8 below. Subject to the foregoing, the facts and circumstances giving rise to liability for Special Individual Assessments include the following:

(1) Damage to Common Area or Other Property. In the event that any damage to, or destruction of, any portion of the Common Area or any portion of a Unit which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, agents, employees, licensees, contract purchasers or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(2) Expenses Incurred in Gaining Membership

Compliance. In the event that the Association incurs any cost or expenses to accomplish (1) the payment of delinquent assessments, (2) any repair, maintenance or replacement to any portion of the Project that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (3) to otherwise bring the Owner, any member of his or her family, or any of his or her tenants, guests, agents, employees, licensees, contract purchasers or invitees, and/or his or her Unit into compliance with any provision of the Governing Documents, including the Rules, the amounts incurred by the Association (including title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment. Such Special Individual Assessment may be enforced by an assessment lien and, if appropriate, by non-judicial foreclosure.

(3) Required Maintenance on Units. As more particularly provided herein, if any Unit is maintained so as to become a nuisance, health hazard, fire or safety hazard for any reason, including without limitation, the accumulation of trash or junk, the Association shall have the right to enter said Unit, correct the offensive or hazardous condition, and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

b. Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described above, and subject to the conditions imposed in this section, such Special Individual Assessment shall be recorded on the Association's assessment roll, notice thereof shall be mailed to the affected Owner, and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the assessment.

4.8 Purpose and Reasonableness of Assessments

Each assessment made in accordance with the provisions of this Declaration, and in particular, Section 3.2 above, is hereby declared and agreed to be for use exclusively (1) to promote the recreation, health, safety and welfare of the individuals residing within the Project; (2) to promote the enjoyment and use of the property by the Owners and their families, tenants, invitees, licensees, guests and employees; (3) to provide for the repair, maintenance, replacement and protection of the Common Area and maintenance of Units for which the Association is responsible as provided herein; (4) for payment of taxes on the Common Area; and (5) for payment of insurance as may be carried by the Association. Each and every assessment levied hereunder is further declared and agreed to be a reasonable assessment, and to constitute a

separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Unit against which the assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

4.9 Notice For Member Approval

In the event that Member approval is required in connection with any increase or imposition of assessments as required in this Article 4, approval of the requisite percentage of the Members shall be solicited either by written ballot or at a meeting of the Members called for that purpose, duly noticed in accordance with the terms of the By-Laws.

4.10 Quorum Requirement For Member Approval

In the event that any Member approval is required in connection with any increase or imposition of assessments pursuant to this Article 4, the Quorum required for such membership action shall be more than fifty percent of the voting power of the Association.

4.11 Collection of Assessments; Enforcement of Liens.

a. Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner(s) is not paid in full within fifteen (15) days after the same becomes due, late charges shall accrue. The late charges shall be the greater of ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater. The late charge shall constitute full compensation to the Association for additional bookkeeping, billing and administrative costs incurred as a result of the late payment of an assessment, but shall not represent compensation for lost interest, attorneys' fees or other costs of collection, which are provided for below.

The Association may, in addition to said late charges, recover all reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees. If an assessment is not paid within thirty (30) days after the due date, the Association may, in addition to said late charges, assess interest on the unpaid delinquent assessments, commencing thirty (30) days after the assessment becomes due and continuing until paid, at a rate of twelve percent (12%) per annum, or the highest rate permitted by law, whichever is less. No Owner may exempt himself or herself from liability for his or her share of assessments, late charges, interest and costs by waiving the use or enjoyment of the Common Area or by abandoning his or her Unit.

b. Effect of Nonpayment of Assessments.

(1) "Pre-lien" Letter. A pre-lien letter must be sent to the delinquent Member by certified mail, including (1) an itemized statement of the assessments, late charges and collection costs charged to the Member's account and (2) a copy of the Delinquent Assessment Policy of the Association.

(2) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided in California Civil Code Section 1367 or comparable superseding statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and collection costs (including reasonable attorneys' fees) attributable thereto or incurred in collection thereof, shall be a lien upon the Unit of the Owner so assessed. The Association may record in the Office of the County Recorder of the County of Alameda a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (1) the amount of the delinquent assessments(s) and any other sums duly imposed pursuant to this Article 4 and California Civil Code Section 1366; (2) the legal description of the Owner's Unit against which the assessment and other sums are levied; (3) the name of the Owner of record of such Unit; (4) the name and address of the Association; and (5) the name and address of the Trustee authorized by the Association to enforce the lien by sale. The Owner must be sent a copy of the lien no later than 10 (ten) calendar days after its recording. The lien must be sent by certified mail and a declaration of mailing, documenting such mailing, must be executed and maintained in file. Within a reasonable time following payment in full of the sum then due and payable by the delinquent Owner, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

(3) Remedies Available to the Association to Collect Assessments. The Association may initiate a legal action against the Owner personally obligated to pay the delinquent assessment, foreclose its lien against the Owner's Unit or accept a deed in lieu of foreclosure. Foreclosure by the Association of a lien may be by judicial foreclosure or by nonjudicial foreclosure by the Trustee designated in the Notice of Delinquent Assessment or by a Trustee substituted pursuant to California Civil Code Section 2934(a). Any sale of a Unit by a Trustee acting pursuant to this Section 4.11 shall be conducted in accordance with California Civil Code Sections 2924, 2924(b) and 2924(c) applicable to the exercise of powers of sale in mortgages or deeds of trust.

(4) Nonjudicial Foreclosure. Nonjudicial foreclosure may be commenced by the Association by recording in the Office of the County Recorder a Notice of Default, which notice shall state all amounts which have become delinquent

with respect to the Owner's Unit, and the collection costs (including attorneys' fees), penalties and interest that have accrued thereon, the amount of any assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent assessment is owed, and the name of the Owner of record or reputed Owner thereof. The Notice of Default shall state the election of the Association to sell the Unit or other property to which the amounts relate and shall otherwise conform with the requirements for a Notice of Default under California Civil Code Section 2924(c), or comparable superseding statute. The Notice of Default may not be recorded until thirty (30) days have elapsed since the recording of the lien. During this thirty (30) day period, an Owner may "pay under protest" as outlined in California Civil Code Section 1366.3 or any superseding statute. In those instances, the Association must inform the Owner of his (or her) right to attempt to resolve the dispute through Alternative Dispute Resolution as described in Article 8 below, civil action, and other procedures to resolve the dispute that may be available through the Association. The Association shall have the rights conferred by California Civil Code Section 2934(a) to assign its rights and obligations as Trustee in any nonjudicial foreclosure proceedings to the same extent as a Trustee designated under a deed of trust, and for purposes of said Section 2934(a), the Association shall be deemed to be the sole beneficiary of the delinquent assessment obligation. Furthermore, in lieu of an assignment of Trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a Trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(5) Actions for Money Judgment. In the event of a default in payment of assessments, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing the same.

4.12 Transfer of Unit by Sale or Foreclosure

Except as otherwise provided by law, the sale or transfer of any Unit shall not affect any assessment lien duly recorded with respect to such Unit prior to the sale or transfer. However, the sale or transfer of any Unit pursuant to the foreclosure of any first mortgage shall extinguish the lien and such assessments as to payments which became due prior to such sale or transfer, unless provided otherwise by law. No sale or transfer of a Unit as a result of foreclosure, exercise of a power of sale or otherwise, shall relieve the new Owner of such Unit, whether it be the former beneficiary of the first

mortgage or other prior encumbrance, or a third party from liability for any assessments thereafter becoming due or from the lien thereof.

Unless otherwise provided by law, when the first mortgagee or other purchaser of a Unit obtains title to the same as a result of foreclosure of any such first mortgage or other prior encumbrance or exercise of a power of sale contained therein, the person acquiring title, and his or her successors and assigns, shall not be solely liable for the assessments chargeable to such Unit which became due prior to the acquisition of title. Instead, such unpaid assessments shall be deemed to be common expenses collectible from the Owners of all the Units, including such acquirer, and his or her successors and assigns. Furthermore, foreclosure shall not affect the Association's right to maintain an action for the collection of delinquent assessments against the foreclosed party personally.

4.13 Priorities

Except as otherwise expressly provided by law, the lien securing each of the assessments provided for under this Article 4 shall have priority over all other liens and encumbrances applicable to the Units, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of the power of sale or a judicial foreclosure involving a default under such first mortgage or deed of trust, or other prior encumbrance, unless otherwise provided by law.

4.14 Unallocated Taxes

In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Unit, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.5 above, and if necessary, a Special Assessment may be levied against the Units in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

4.15 Waiver of Exemptions

Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article 4, the benefits of any homestead or exemption law of California in effect at the time any assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Unit.

4.16 Notice of Default

The beneficiaries and/or their successors and assigns, upon written request for such notification, shall be entitled to written notification from the Association of default by the mortgagor of any Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles, or the By-Laws, which is not cured within sixty (60) days.

ARTICLE 5: USE RESTRICTIONS

The Units and Common Area shall be occupied and used as follows:

5.1 Residential Use

The use of the Units within the Properties is hereby restricted to Single Family Residential Use, as defined in Article 1 hereof. In no event shall a Unit be occupied by more individuals than permitted by applicable zoning laws or governmental regulations. An Owner is permitted to lease or rent his Unit, subject to the provisions of Section 2.4 of this Declaration. No business or commercial activities of any kind whatsoever shall be conducted in any Unit or Exclusive Use Common Area that impose a greater burden on the Common Area or on other homeowners than residential use would impose, provided that the foregoing restriction shall not apply to the activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this Section 5.1 shall be construed in such a manner so as to prohibit any Owner from (1) maintaining his personal library in his Unit; (2) keeping his personal business records or accounts therein; (3) handling his personal or professional telephone calls or correspondence therefrom; (4) leasing or renting his Unit in accordance with Section 2.4 herein; or (5) conducting any other activities within the Owner's Unit otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described above are expressly declared to be customarily incidental to the principal residential use of the Unit and not in violation of this Section 5.1.

5.2 Parking

Vehicles shall not be parked anywhere in the Project except wholly within Carports and Parking Areas. All Parking Areas shall be used solely for the parking and storage of motor vehicles used for personal transportation. No boat, mobile home, recreational vehicle, motor home, trailer of any kind, truck camper other than a bed-mounted camper mounted on a one-half ($\frac{1}{2}$) or three-quarter ($\frac{3}{4}$) ton pickup truck, truck larger than a three-quarter ($\frac{3}{4}$) ton pickup truck, commercial vehicle, mobile home, other recreational vehicle or any dilapidated vehicle shall be parked or stored in any Parking Area. No part of the Common Area shall be used for repair, construction or

reconstruction of any vehicle, boat or any other item or thing except in an emergency. As long as applicable ordinances and laws are observed, the Board may cause the removal of any vehicle which is in violation of this Declaration.

There shall be no parking on the private streets or driveways of the Project by Unit Owners, their guests or tenants except in spaces particularly designated for such parking, if any, and only in compliance with the Rules.

The provisions of this Article are in addition to and shall not limit the effect of zoning, building code or other land use and other ordinances, regulations and rules of the City with respect to parking, and no alteration or amendments to parking shall occur without the consent of the City.

5.3 No Effect on Insurance

Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Project without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on the Project, or which would be in violation of any law; and no waste shall be committed in the Common Areas.

5.4 Animals

Pursuant to Civil Code 1360.5 an Owner may keep at least one pet within the development. A "pet" is defined as a domesticated bird, cat, dog, aquatic animal kept in an aquarium or other animal as agreed to between the Association and the Owner. The Association may draft and enforce reasonable rules and regulations pertaining to pet behavior. The keeping of animals shall be subject to the ordinances of the City of Emeryville.

5.5 No Nuisances

No noxious or offensive or illegal activity shall be carried on in any Unit or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other residents. Without limiting any of the foregoing, no Owner shall permit noise, including, but not limited to the unreasonable noise of pets or playing of musical instruments or playing of sound reproduction equipment, which would unreasonably disturb another resident's quiet enjoyment of his or her Unit or of the Common Area. All floor surfaces where noise may disturb another resident shall have rugs or carpeting installed and maintained at the sole expense of the Owner in whose Unit the noise originates. The Board, in its discretion, may impose appropriate disciplinary action on an Owner if the Owner or his or her tenant, family member or room-mate is found by the Board to have violated any local ordinance or State or Federal law involving residents, employees or invitees at the Property.

5.6 Structural Integrity

Nothing shall be done in any Unit or in, on, or to the Common Area, which will impair the structural integrity of the Project.

5.7 Alterations

Nothing shall be altered or constructed in or removed from the Common Area, except with the written consent of the Board.

5.8 Common Areas

The Board shall have the exclusive right to furnish, equip and maintain the Common Area. Nothing shall be stored or kept in the Common Area (excluding Exclusive Use Common Area) without the prior consent of the Board.

5.9 Antennas and Related Equipment

Installation of a radio, video, or television antenna, including a satellite dish, designed to receive television signals that is or will be located on property within the exclusive use or control of the antenna user, and that is not otherwise prohibited by law, must be within applicable requirements of California Civil Code Section 1376 and the Code of Federal Regulations, 47 CFR Section 1.4000, or comparable superseding statutes or regulations. As allowed by applicable law, the Board may request notification prior to installation of such radio, video, or television antenna, including a satellite dish. The Board may disallow installation of antennas or satellite dishes with a diameter or diagonal measurement exceeding one meter, or with a height more than 12 feet above the roof line and/or require that installation be to a height that the antenna, if it topples, will be wholly contained within the owner's property. As allowed by applicable law, the Board may prohibit installations of individual antennas or satellite dishes when the Association has installed a central system. As allowed by applicable law, the Board may disallow installation of antennas or other devices that are not designed to receive television signals. As allowed by applicable law, the Board may enforce reasonable painting or other camouflage requirements provided such requirements do not impair reception or place an unreasonable financial burden on the Owner. As allowed by applicable law, the Board may establish and enforce collection powers that allow the Association to recover for any resulting Association property damage and other costs arising from harm caused by an Owner's installation of such installed antennas or satellite dishes. Such powers of the Board to levy a Special Individual Assessment are pursuant to Section 4.7 above. As allowed by applicable law, the Board may establish and impose penalties on Owners who violate this section and applicable Rules. The Board has the authority to require that any contractor installing any antenna or satellite dish provide appropriate proof of liability and workers' compensation insurance prior to

commencing work, and require that such contractor agree in writing to indemnify and defend the Association from any claims arising out of or in connection with his work.

5.10 Garbage; Storage

All rubbish, trash, garbage and accumulated waste plant material shall be placed and kept in covered containers maintained in an enclosure. In no event shall such containers be maintained so as to be visible from neighboring property, nor within view from any street or other area used by the public or in common with other Unit Owners. No portion of any Unit shall be used for the storage of building materials or other materials other than in connection with approved construction. Garbage shall be handled according to Rules which may be promulgated by the Board from time to time.

5.11 Advertising

All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all applicable local ordinances. The only signs of any kind which may be displayed to the public view on or from any Unit or the Common Area in the Project shall be as follows:

- a. One (1) sign of reasonable dimensions may be placed within the window of a Unit advertising the Condominium for sale or rent;
- b. Appropriate signs may be displayed by the Association to identify the Project;
- c. Other signs, posters and notices approved by the Board or specified in the Rules or in this Declaration may be posted in locations designated by the Board; and
- d. Signs required by legal proceedings may be displayed.

5.12 Clothes Lines

Outside laundering or drying of clothes is prohibited.

5.13 Rules and Regulations

Each Owner shall comply with such additional reasonable Rules governing the use and occupancy of the Units and Common Areas as may be adopted and published by the Board.

The Board will give notice to a resident tenant, if any, and to an Owner, of any violation of these limitations or of the Rules governing the use and occupancy of the Units and the Common Areas, and shall have the right to enforce compliance therewith in accordance with this Declaration.

5.14 Indemnification: Owner

Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, tenants, guests or invitees, to the

extent that such damage is not covered by insurance. Each Owner shall indemnify and defend the Association and all other Owners from any claim, liability, or expense arising out of or in connection with such damage.

ARTICLE 6: DAMAGE OR DESTRUCTION OF PROPERTY

6.1 Single Unit Involved

In the event of damage by fire or other casualty limited to a Common Area adjacent to a single Unit, the proceeds from the Association's insurance policy shall be paid to the Association. The Association shall use the proceeds to rebuild or repair the Common Area adjacent to the Unit. In the event the proceeds are insufficient to complete the work, the Association shall pay and advance any additional necessary sums to complete the rebuilding and repair. Damage to personal property and interior improvements shall be the sole responsibility of the individual Owner.

6.2 More than One Unit or Affected Building

If damage by fire or other casualty extends to Common Area adjacent to two or more Units, or extends to any part of the Common Areas of the building containing those Units then, and in that event:

a. **Minor Casualty.** If the insurer initially offers or pays proceeds from the Association's insurance policy which do not exceed Fifty Thousand Dollars (\$50,000), those proceeds shall be paid to the Association or to the insurance trustee hereinafter designated. The Board shall then contract to repair or rebuild the Affected Units (those sustaining the damage) and Building Common Areas so damaged to the same standard existing prior to the damage, and the funds held in the insurance trust fund shall be used for that purpose.

If the insurance proceeds are insufficient to pay for all of the related repairing or rebuilding costs, the Association shall pay for those portions of the insufficiency attributed to their specific Units as determined by the Board.

In the event the insurance proceeds are insufficient to pay the repair, the Association may impose a Special Assessment on all Owners to make up for the shortfall, as permitted by Civil Code 1366(b) or comparable superseding statute.

b. **Major Casualty.** If Section 6.2.a. is inapplicable, then:

(1) All insurance proceeds shall be paid to the Association or to a Board-designated bank or trust company to be held for the benefit of the Affected Owners and their Mortgagees as their respective interests may appear. The Board, on behalf of the Affected Owners, is authorized to enter into an agreement with an insurance trustee, relating to the trustee's powers, duties and compensation, as the Board may approve.

(2) The Board shall obtain firm bids from two or more responsible contractors to rebuild the damaged portion of the Common Interest Development to the same condition it was in prior to the damage or destruction, modified at the direction of the Board to comply with the building codes and construction standards in effect at the time of the rebuilding, and shall, as soon as reasonably possible thereafter, call a Special Meeting of all Affected Owners to consider such bids. The Board may also obtain an estimate from the insurance carrier of the work it will perform for the amount of the insurance coverage. To be considered, any contractor's bid shall include the premium payable for a performance, labor and material payment bond from a reputable bonding company.

If the Board fails, within sixty (60) days after the casualty occurs, to obtain bids or to call the special meeting, any Affected Owner may obtain the contractors' bids or insurance estimate and call and conduct the special meeting as herein provided. At the meeting, the Affected Owners may elect to reject all bids or estimates and thus not to rebuild. A vote in excess of sixty-six and two-thirds per cent (66 2/3%) of the total vote of Affected Owners shall be required to reject all bids or estimates; provided, however, that a vote in excess of fifty percent (50%) shall be sufficient to elect or to reject any bid or estimate requiring more than Fifteen Thousand Dollars (\$15,000) in excess of available insurance proceeds to pay for completion of reconstruction over and above insurance proceeds. Failure to reject all bids and estimates shall authorize the board, upon the proper vote, to accept the unrejected bid it considers most favorable.

Failure by the Board or the Owners to call a Special Meeting or to repair, or to begin a repair to, the casualty damage within twelve (12) months from the date of the damage occurring, shall be deemed, for all purposes, a decision not to rebuild the damaged building(s).

(3) If a bid or estimate is accepted, the Board shall levy a Special Assessment to make up any deficiency between the total insurance proceeds or insurance work and the cost for the repair or rebuilding. The Special Assessment and all insurance proceeds, whether or not subject to liens or Mortgages, shall be paid to the Board or to the insurance trustee to be used for the rebuilding. Upon payment, the Board shall let the contract to the successful bidder or accept the applicable insurance estimate.

6.3 Full Insurance Settlement

Notwithstanding any provision of Section 6.2 herein to the contrary, if the insurance carrier offers the full amount required to repay and restore all of the damage, then the Board shall contract to repair or rebuild the damaged portions in the manner provided in Section 6.2.a for a minor casualty.

6.4 Emergency Repairs

In the event of a casualty, there is a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with insurance claims requirements prior to procuring bids for performance of restoration work. In that event, and without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as may be deemed necessary or desirable, and the Board may charge the Operating Accounts for the cost thereof.

6.5 Notice

Within sixty (60) days after any damage or destruction occurs which invokes the provisions of this Article 6, the Manager or the Board, or if they do not, any Unit Owner, Mortgagee of such Owner, the insurer or the insurance trustee, shall record a sworn declaration which shall provide the following information: a description of the damage, the name of any insurer against whom claim is or may be made and the name of any insurance trustee. The declaration shall be sent to all Owners by First Class Mail at the Association's expense. The declaration shall recite that the declaration is recorded pursuant to this paragraph of this Declaration, and that a copy of the declaration has been served on the Owners pursuant to the provisions of Section 6.5 herein.

6.6 Failure to Rebuild

If, by operation of Section 6.2. herein, the Owners either vote not to rebuild or are deemed to have elected not to rebuild, the Association shall, as agent for all Affected Owners, sell the damaged portion of the Development, including all Units and any damaged building housing them in its then-present condition, on terms satisfactory to the Board. The net proceeds of the sale, together with the insurance proceeds, shall then be distributed to the Affected Owners whose Units have been sold and to the Mortgagees of, or holders of deeds of trust upon, the interests of such Owners, all as such Owners' and Mortgagees' interests may appear in proportion to each Owner's undivided interest in the relevant Building Common Area.

6.7 Affected Owners

For purposes of this Article 6, "Affected Owner(s)" means those persons or entities who hold record title to a Unit as to which the adjacent Common Area has either suffered a casualty as described above, or is in a building which has suffered such casualty.

6.8 Duty to Rebuild or Repair Damage to or Destruction of Project Common Area

In the event of a partial or total destruction of improvements to the Project Common Area, the Association shall have the duty to restore and repair them to their former condition as promptly as practical, as hereinafter set forth:

a. Cost of Repair No More than 10% Above Insurance Proceeds. If the cost of repairing or rebuilding the Project Common Area improvements does not exceed the amount of insurance proceeds initially offered or paid by the insurance carrier by more than ten percent (10%) of the cost of reconstruction, then:

(1) All insurance proceeds shall be paid to a commercial bank or trust company designated by the Board to be held for the benefit of the Members and their respective Mortgagees, as their interests shall appear.

(2) The Board shall levy a Special Assessment against the Association Members, in the same manner as provided in Article 4, equal to the difference between the cost of repairing or rebuilding and the amount of available insurance proceeds, which sums shall be payable into the fund held by the insurance trustee. The Board may advance the amount of the Special Assessment to the insurance trustee from the Association general funds or reserves.

(3) When the amount held by the insurance trustee is sufficient to pay the costs of repair and reconstruction, the Board shall then contract for the repair or reconstruction of the improvements, paying the cost of such work from the amount held by the insurance trustee, the repair or reconstruction to be for the purpose of returning the improvements substantially to their appearance and condition immediately prior to the casualty.

(4) The Association may rebuild the damaged or destroyed Project Common Area improvements in a different manner, or in different locations in the Common Area, provided that the Board action requires and obtains an eighty percent (80%) majority consent of all Board members. If the Board cannot reach an eighty percent (80%) decision, any such change shall require a majority vote of the voting power of the Association and the assent of a majority of First Mortgagees. In any event, if such changed plans require additional capital requiring a Special Assessment of more than 5% of the budgeted gross expenses of the Association for that fiscal year the vote or written assent of a majority of the voting power of the Association must be obtained.

b. Cost of Repair More than 10% Above Insurance Proceeds. If the cost of repairing or rebuilding exceeds the amount of available insurance by more than ten percent of the cost of reconstruction, then all insurance proceeds shall be

deposited as provided in Section 6.8 herein and the Board shall require a determination by written assent or vote of sixty percent (60%) of Association Members as to whether a Special Assessment equal to the difference between available insurance proceeds and the cost of repairing or rebuilding shall be levied. If the Association Members determine not to levy the assessment, then the Board shall use the insurance proceeds available to make as much of the restoration or repair as reasonably possible or to clear the site of the damaged premises and render them safe and attractive.

6.9 Appraisals

Where the provisions of this Article require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser with an M.A.I. certificate or the equivalent, which appraiser shall be selected by the Board.

ARTICLE 7: OBLIGATIONS OF OWNERS

7.1 Maintenance of Units

Each Owner shall have the exclusive right and duty to keep the interior of his Unit, including all fixtures, appliances, appurtenances and fireplaces, if any, in good repair and condition. Each Owner shall have the exclusive right, at his or her sole cost and expense to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors and the perimeter walls of his or her Unit, the surfaces of the bearing walls located within said Unit and the surfaces of any other finishes owned by the Unit Owner as herein defined. Said Owner shall have the exclusive right to substitute new finished surfaces for the finished surfaces then existing on said ceilings, floors and walls, including, without limiting the generality of the foregoing, the following: substitution of paint for paper or paper for paint, substitution of any type of paneling for plaster or plaster for paneling, substitution of tile for paneling or paneling for tile or substitution of wood for linoleum or tile or of linoleum or tile for wood. Said Owners and their agents shall have the exclusive right to maintain, repair, paint, finish, alter, substitute, add or remove any fixtures attached to said ceilings, floors or walls. The Unit Owner shall be responsible for and liable for the maintenance and replacement of the finishes of the interior walls, floors and ceilings. The maintenance and repair of internal installations to the Unit, such as toilets, showers, bathtubs, sinks, kitchen appliances, telephone facilities, the connections thereto, doors, windows and all other accessories within the boundaries of the Unit shall be the responsibility and liability of the Unit Owner. Each Owner shall clean and maintain all items on the Balcony or Patio adjacent to his or her Unit; provided however, that all treatment (painting, sealing, pest control, structural repair, etc.) of the exterior surfaces of such Balconies and Patios

shall be the responsibility of the Association. This paragraph shall not be construed to permit any interference with or damage to the structural integrity of the building.

7.2 Maintenance and Repair of Exclusive Use Common Area

Each Owner shall maintain, repair, and otherwise care for all Improvements located within a Balcony, Patio, Carport and/or Storage Area at the Owner's sole expense, except for pest control and structural repair, which shall be performed at the expense of the Association. Each Owner shall be responsible for all landscaping within his or her patio and/or balcony in conformity with approved guidelines and shall maintain and otherwise care for all landscaping and other improvements located within such Balcony or Patio at said Owner's sole expense.

7.3 Documents to Be Provided to Prospective Purchaser

As more particularly provided in California Civil Code Section 1368, or any superseding statute, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Unit, the Owner thereof must give the prospective purchaser:

- a. A copy of the Governing Documents;
- b. If there is a restriction in the Governing Documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in California Civil Code Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3;
- c. A copy of the most recent documents distributed pursuant to the terms of the By-Laws and California Civil Code Section 1365 or any superseding statute;
- d. A true statement in writing from an authorized representative of the Association as to the amount of any delinquent assessments ("Delinquency Statement"), together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Unit being sold;
- e. Any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board, but have not become due and payable as of the date disclosure is provided herein.

The Association shall provide the Owner with a copy of all of the information set forth in this Section within ten (10) days of the mailing or delivery of a written request therefor by an Owner to the Manager or Secretary of the Association, if there is no Manager. The Association shall be entitled to impose a fee for providing the

information which shall not exceed the reasonable cost to prepare and reproduce the requested materials.

7.4 Payment of Assessments and Compliance With Rules.

Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Unit and shall observe, comply with and abide by the Rules set forth in or promulgated by the Association pursuant to any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area.

ARTICLE 8: ENFORCEMENT OF GOVERNING DOCUMENTS

8.1 Right of Action

Except for the nonpayment of any assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights of way, liens, charges, or equitable servitudes contained in the Governing Documents is inadequate, and that the failure of any Owner, tenant, occupant or user of any Unit, or any portion of the Common Area, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers, or Board of Directors, or by the respective successors in interest. The Association may waive this provision in a case where the Board determines that money damages will provide an adequate remedy for such breach or violation.

8.2 Violation of Law

The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, which violation creates a nuisance to the other Owners in the Project or to the Association, in the same manner as a violation by an Owner of the Governing Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, provided that the Association complies with the Notice and Hearing requirements herein.

8.3 Costs and Attorneys' Fees

Subject to Section 8.6 below, in any action brought because of any alleged breach or default of any Owner or other party hereto under the Governing Documents, the court may award to the prevailing party in any such action such attorneys' fees and other costs as the court deems just and reasonable.

8.4 Cumulative Remedies

The respective rights and remedies provided by the Governing Documents or by law shall be cumulative, and the exercise of any one or more of such rights or

remedies shall not preclude or affect the exercise, at the same or at a different time, of any other rights or remedies for the same or any different breach or for the same or any different failure of any Owner or others to perform or observe any provision of the Governing Documents.

8.5 Failure Not a Waiver

The failure of any Owner, the Board, the Association, or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights of way, liens, charges or equitable servitudes contained in the Governing Documents shall not constitute a waiver of the right to enforce the same thereafter.

8.6 Rights and Remedies of the Association

a. Generally. In the event of a breach or violation of any of the Rules or any of the provisions contained in the other Governing Documents by an Owner, his or her family, or guests, agents, employees, invitees, licensees, contract purchasers, lessees or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Governing Documents through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use Common Area or suspension of the Owner's voting rights as a member of the Association for a period not to exceed thirty (30) days; provided that the Association's right to undertake disciplinary action against its members shall be subject to the conditions set forth in this section.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be at the sole discretion of the Board.

If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of California Civil Code Section 1354 or superseding statute or otherwise by law.

b. Schedule of Fines. The Board shall implement and distribute annually a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for breaking a provision of the Rules). Fines and penalties may not be treated as assessments which can be liened or foreclosed.

c. Definition of "Violation". A Violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of the Violation continues for additional days, discipline imposed

by the Board may include one component for the Violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar Violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a Violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

d. Limitation of Disciplinary Rights; Loss of Rights-Forfeitures.

The Association shall have no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his or her Unit due to the failure by the Owner (or his or her family members, lessees, tenants, guests or invitees) to comply with any provision of the Governing Documents including any duly enacted Rules, except where the loss or forfeiture is the result of a judgment of a court of competent jurisdiction, a decision arising out of arbitration, foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association, or the imposition of monetary penalties for failure to pay assessments or otherwise comply with any Governing Documents, so long as the Association's actions satisfy the due process requirements of this section.

e. Hearings. No penalty or temporary suspension of voting rights

shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least ten (10) days prior written notice of the proposed penalty, temporary suspension, or other proposed disciplinary action, and is given an opportunity to be heard before the Board with respect to the alleged violation (as at a hearing conducted at least fifteen (15) days before the effective date of the proposed disciplinary action). The Notice shall specify the date, time and location of the hearing and the nature of the alleged violation. The Owner shall have the right to present evidence and testimony on his own behalf and the right to examine all evidence and testimony presented at the hearing. If the Board imposes discipline on a Member, the Board shall provide the Member with written notice of the disciplinary action by either personal delivery or first-class mail within fifteen (15) days following the action. The Member's discipline shall not be effective unless the Board complies with the requirements of this Section.

f. Notwithstanding the foregoing, under circumstances involving

conduct that constitutes (1) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of any Owners, (2) a traffic or fire hazard, (3) a threat of material damage to, or destruction of, the Common Area or other Unit, or (4) a Violation that is of such a nature that there is no material question regarding identity of the violator or whether a Violation has occurred (such as late payment of assessments or parking violations), the Board or its duly authorized agents may undertake immediate

corrective or disciplinary action, and, upon request of the offending party (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

g. If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five (5) days following receipt of notice of the disciplinary action or, in the case of disciplinary action pursuant to Section 8.5.f., above, within five (5) days following the date when the disciplinary action is taken, whichever is earlier. The hearing shall be held no more than fifteen (15) days following the date of the disciplinary action or fifteen (15) days following receipt of the accused Owner's request for a hearing, whichever is later, unless the parties mutually agree on a later date. Except as to action taken under Section 8.5.f. above, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

h. Any notice required by this Article 8 shall, at a minimum, set forth the date and time of hearing if one is scheduled, a brief description of the action or inaction constituting the alleged Violation, a reference to the specific Governing Document provision alleged to have been violated, a statement of the Association's intended action, and the effective date of the proposed action. The notice shall be delivered in accordance with the provisions of Section 10.11 below.

8.7 Alternative Dispute Resolution

a. Before the Association or Owner brings an action solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages other than Association assessments (except as noted in Section 4.11 above), not to exceed Five Thousand Dollars (\$5,000.00), relating to the enforcement of the Governing Documents, the parties shall endeavor to submit the matter to a form of alternative dispute resolution such as mediation or arbitration as provided in Section 1354 of the California Civil Code or comparable superseding statute. The form of alternative dispute resolution may be binding or non-binding at the option of the parties. Any party to such dispute may initiate this process by serving on another party to the dispute a Request for Resolution ("Request"). The Request shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected. Service of the Request shall be made in the same

manner as prescribed for service in a small claims court as provided in Section 116.340 of the Code of Civil Procedure as follows:

- (1) Delivery of the Request to the party in person; OR
- (2) Use of substituted service as provided by California

Code of Civil Procedure 415.20(a) and (b).

b. Parties receiving a Request shall have 30 days following service of the Request to accept or reject alternative dispute resolution and, if not accepted within the thirty (30) day period by a party, alternative dispute resolution shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request is served, the alternative dispute resolution shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the Request, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by both parties. A party's refusal to participate in alternative dispute resolution prior to the filing of a complaint in any action specified in this Section 8.7 may be considered by a court in determining the amount of attorney's fees and costs to be awarded to the prevailing party. Further, a filing party's failure to request alternative dispute resolution may result in the loss of important legal rights. The alternative dispute resolution procedure does not apply if the applicable time limitation for commencing the civil action would run within one-hundred twenty (120) days.

c. Members of the Association shall annually be provided a summary of the provisions of this Section, specifically referencing California Civil Code Section 1354, as provided in the By-Laws.

ARTICLE 9: ARCHITECTURAL CONTROL

9.1 Organization

There shall be an Architectural Committee consisting of a minimum of three (3) persons and a maximum of five (5) voting members.

9.2 Voting Members

The Board shall appoint all voting members. Such designation shall be reflected in the Minutes of the Association. The terms of all Architectural Committee members appointed shall be three (3) years. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed; provided, however, that no person shall serve as a member of the Architectural Committee, either regular or alternate, for a period in excess of six (6) years in any ten (10) year period.

9.3 Appointment and Removal

The Board shall appoint all replacements to the Architectural Committee. Appointment rights shall be vested solely in the Board. All members appointed by the Board shall be Unit Owners. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the specification in the Minutes of the Association of each new Committee member appointed, replaced or removed from the Architectural Committee.

9.4 Resignations

Any member of the Architectural Committee may at any time resign from the Committee upon written notice delivered to the Board.

9.5 Vacancies

Vacancies on the Architectural Committee, however caused, shall be filled by the Board.

9.6 Duties

It shall be the duty of the Architectural Committee to consider such proposals or plans submitted to it pursuant to the terms approved by the Board, and to recommend action to the Board. However, the Board shall have sole discretion to accept, reject or accept with conditions any such proposal and to perform other duties delegated to it by the Board and to carry out all other duties imposed upon it by this Declaration.

9.7 Meetings

The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The committee shall keep and maintain a record of all actions taken by it at such meeting or otherwise. The Architectural Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred in the performance of any Architectural Committee function.

9.8 Architectural Committee Rules

The Architectural Committee may, from time to time and in its sole discretion, adopt, amend and repeal, by majority vote, rules and regulations to be known as "Architectural Committee Rules." Said Rules shall interpret and implement the provisions hereof by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said Rules shall not be in derogation of the minimum standards required by this Declaration.

9.9 Application For Approval of Improvements

Any Unit Owner proposing to perform any work of any kind whatever which requires the prior approval of the Board and the Architectural Committee pursuant to Article 3.4, or any other Article of this Declaration, shall apply to such Committee for approval by notifying the Architectural Committee of the nature of the proposed work in writing and furnishing such information as the Committee may require.

9.10 Basis for Approval of Improvements

The Architectural Committee shall present a proposal for approval of the improvement to the Board for requested approval only if:

- a. The Unit Owner shall have complied with the provisions of Section 9.9 above;
- b. The Architectural Committee shall find that the plans and specifications conform to this Declaration, the Architectural Committee Rules and the regulations of the City of Emeryville in effect at the time such plans were submitted to such Committee; and
- c. The members of the Architectural Control Committee, in their sole discretion, shall determine that the proposed improvements would be compatible with the standards of the Project and the purposes of this Declaration as to quality of workmanship and materials, as to harmony of external design with the existing structures and as to location with respect to topography and finished grade elevations.

9.11 Form of Approval

All approvals given under Article 9.10 shall be in writing; provided, however, that any request for approval which has not been rejected within forty-five (45) days from the date of submission thereof to the Architectural Committee shall be deemed approved.

9.12 Proceeding With Work

Upon receipt of approval from the Board and the Architectural Committee pursuant to Article 9.11 above, the Unit Owner shall, as soon as practicable, satisfy all conditions hereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval, said commencement to be, in all cases, within one year from the date of such approval. If the Unit Owner shall fail to comply with this section, any approval given pursuant to Section 9.11 above shall be deemed revoked unless the Architectural Committee, upon written request of the Unit Owner made prior to the expiration of said one-year period, extends the time for such commencement. No such extension shall be granted except upon finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted.

9.13 Failure to Complete Work

The Unit Owner shall in any event complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Unit Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Unit Owner or his agents. If the Unit Owner fails to comply with the Section, the Architectural Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 9.14 below as though the failure to complete the improvement were a non-compliance with approved plans.

9.14 Inspection of Work

Inspection of work and correction of defects therein shall proceed as follows:

a. Upon the completion of any construction, reconstruction, alteration or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article, the Unit Owner shall give written notice thereof to the Architectural Committee.

b. Within sixty (60) days thereafter, the Architectural Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If the Architectural Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Unit Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance, and shall require the Unit Owner to remedy such non-compliance.

c. If the Unit Owner shall have failed to remedy such non-compliance upon the expiration of sixty (60) days from the date of such notification, the Architectural Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than sixty (60) days nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Architectural Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Unit Owner, to the Architectural Committee and, in the discretion of the Board, to any other interested party.

d. At the hearing, the Unit Owner, the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance and, if so, the

nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Unit Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board ruling. If the Unit Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and the Unit Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Unit Owner to the Association, the Board shall levy a Special Individual Assessment against such Owner.

e. If for any reason the Architectural Committee fails to notify the Unit Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Unit Owner, the improvement shall be deemed to be in accordance with said approved plans.

9.15 Application for Preliminary Approval

Any Unit Owner proposing to construct improvements requiring the prior approval of the Architectural Committee may apply to the Committee for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Architectural Committee Rules. The purpose of the preliminary approval procedure is to allow a Unit Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as follows:

a. Within forty five (45) days after proper application for preliminary approval, the Architectural Committee shall consider and act upon such request. The Architectural Committee shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. Failure of the Architectural Committee to act within said forty-five (45) day period shall constitute an approval. In granting or denying approval, the Architectural Committee may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.

b. Any preliminary approval granted by the Architectural Committee shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists

of proposed improvements in accordance with the provisions of the preliminary approval, and which is otherwise acceptable under the terms of this Declaration, shall be approved by the Architectural Committee.

c. In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

9.16 Waiver

The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

9.17 Estoppel Certificate

Within thirty (30) days after written demand is delivered to the Architectural Committee by any Unit Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Unit of said Owner) that, as of the date thereof, either: (a) all improvements made and other work done upon or within said Unit comply with these Restrictions, or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvement or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Unit Owner, or from anyone deriving any interest in said Unit through the Unit Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Unit Owners and such persons deriving any interest through them.

9.18 Liability

Neither the Board, the Architectural Committee nor any member thereof shall be liable to the Association or to any Unit Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any property within the Project, or (d) the execution of and filing of an estoppel certificate pursuant to Section 9.17, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the

Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural Committee.

ARTICLE 10: MISCELLANEOUS PROVISIONS

10.1 Severability

Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration, and all of the terms hereof are hereby declared severable.

10.2 Term of Declaration

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, or until more than seventy-five percent (75%) of the total voting power of the Association determines that this Declaration shall terminate.

10.3 Condemnation

If all or any portion of the Project is taken for any public or quasi-public use under any statutes, by right of eminent domain or by purchase in lieu of eminent domain, the following procedures shall be used for distribution of any condemnation awards:

a. Project Common Area. If the portion of the Project condemned is Project Common Area, the entire award shall be paid to the Association. The award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds proportionately to all Owners and their respective Mortgagees as their interests appear according to the respective fair market values of their Condominiums immediately prior to the time of condemnation, as determined by an independent appraisal made by a qualified real estate appraiser who is a Member of the Appraisal Institute or the equivalent, as selected by the Board. The Association shall represent the interests of all Owners in any proceeding relating to condemnation of Project Common Area.

b. Building Common Area. If the portion of the Project condemned is Building Common Area, the entire award shall be paid either (1) as apportioned by court judgment, (2) as apportioned among the Owners of the condemned Building Common Area by agreement between the condemning authority and each of the Owners of such Building Common Area Lot or (3) to such Owners and their respective Mortgagees as their interests appear, according to the respective fair market values of their Condominiums immediately prior to the time of condemnation,

as determined by an independent appraisal made by a qualified real estate appraiser who is Member of the Appraisal Institute or the equivalent, as selected by the Board. The Association shall represent the interest of the affected Owners; however, each Owner shall be entitled to obtain and be represented by legal counsel if the Owner desires.

10.4 Amendment

Amendment of this Declaration shall require the assent (by vote or written consent) of members representing more than sixty-seven percent (67%) of the voting power of the members. Any amendment shall be effective upon the recordation in the Official Records of the County of an instrument setting forth the terms of the amendment, duly certified and executed by the President and Secretary of the Association.

With the approval of a quorum of the Board, the Association may amend, add or delete any provision(s) of this Declaration, the By-Laws or Articles, without the approval of the Owners, solely for the purpose of conforming the provision(s) to meet the requirements of the law in effect at the time of the amendment governing the Project, the Owners, the Association or the common interest development in general. The Association shall first obtain the opinion of legal counsel regarding the proposed amendment(s). At least fifteen (15) days prior to taking action pursuant to this paragraph, the Board shall mail to all Owners by first class mail (1) a copy of all amendments to the Governing Documents proposed to be adopted under this paragraph and a copy of the legal opinion and (2) a notice of the time, date and place the Board will consider adoption of the amendments. The Board may consider adoption of amendments to the Governing Documents pursuant to this paragraph only at a meeting which is open to all Owners who shall be given opportunity to make comments on the proposed amendments. All deliberations of the Board on any action proposed under this paragraph shall only be conducted in such an open meeting.

With respect to any action to be taken under this Section 10.4 which is also governed by provisions of Article 11 that require a specified vote of Owners and/or Mortgagees, the requirements of Article 11 must be satisfied before action may be taken under this Section 10.4. After the requirements of Article 11 have been satisfied, a vote to amend this Declaration in compliance with this Section 10.4 may then be taken.

10.5 Indemnification

The Association shall and does hereby indemnify the Board (and each member thereof) and the officers of the Association and any committee members (and each of them) against all expenses and liabilities, including attorneys' fees reasonably incurred

by such person or persons in connection with any proceeding to which he may be a party by reason of being or having been a Board member or officer of the Association, or duly appointed committee member, except in such cases where said person has committed a willful malfeasance in the performances of his or her duties.

10.6 Interpretation

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the maintenance and operation of a condominium project.

10.7 Subdivision and Combination of Units and Common Areas and Facilities

No subdivision shall be allowed which would result in the creation of any additional dwelling Unit beyond one-hundred twelve (112).

10.8 Gender, Number and Captions

As used herein, the singular shall include the plural, and masculine pronouns shall include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

10.9 Exhibits

All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

10.10 Mechanics' Liens

If a notice of mechanic's lien is recorded against the Project for, or purporting to be for, labor or material alleged to have been furnished to or delivered for any Owner within the Project or at his Unit, the Owner shall immediately cause the lien to be discharged by payment bond, or otherwise. If the Owner fails to discharge the lien, the Board may provide Notice and Hearing to the Owner to determine the effect of the lien and any offsets or defenses thereto. At the hearing, if the Board determines that the lien adversely and improperly affects and encumbers the ownership interests of other Owners and that no adequate protection of the interests of other Owners has been provided, the Board may cause the lien to be discharged by payment bond, or otherwise. The Board shall then levy a Special Individual Assessment against the Owner responsible for the existence of the lien together with any Additional Charges incurred. If the Board determines that the lien does not adversely affect the interests of other Owners, it may take whatever other action may be necessary to properly protect the interests of the Owners.

10.11 Notices

Except as may be specifically provided otherwise herein, all notices, requests, demands, statements, advice, assessments, notifications and other communications contemplated hereunder or given pursuant hereto shall be in writing and shall be deemed given and effective when delivered personally, or when deposited in the mails, postage prepaid, or given to an overnight delivery service for transmittal, cost of sending prepaid, addressed as follows:

To Association: To the address of the building.

To Owners: To the address specified by such Owner in writing to the Board, or, if no such address has been so specified, to the address of the Unit owned by such Owner.

To President, Vice Presidents, Secretary, Treasurer, and Directors: To such person or entity at the address of the building.

10.12 Annexation

All that real property more particularly described in Exhibit "B" hereto shall be annexed to the Association and encumbered by this Declaration. The Annexed Parcel shall be held by the Association Members as tenants in common. The interests of the members in the Annexed Parcel shall be as shown in Exhibit "C" hereto.

ARTICLE 11: RIGHTS OF INSTITUTIONAL LENDERS

11.1 Limitations

Unless the prior written approval of seventy-five percent (75%) of the Eligible Holders is first obtained, the Association shall not be entitled to:

a. Abandon or terminate the project, except for abandonment or termination as provided by statute in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or "eminent domain";

b. Amend any provision of this Declaration or the By-Laws of the Association governing the following subjects:

(1) Percentage interest of the Unit Owners in the Common Areas of the Project or the relative interest or obligations of the Unit Owners for the purpose of levying assessments or charges;

(2) The fundamental purpose for which the Project was created;

(3) Voting procedures or rights;

(4) Assessments, assessment liens or subordination

thereof;

Area;

- (5) Reserves for repair and replacement of the Common

- (6) Property maintenance obligations;

- (7) Casualty and liability insurance;

- (8) Reconstruction in the event of damage or destruction;

- (9) Rights to use the Common Area;

- (10) Annexation;

- (11) The provisions of this Article 11 and Article 4.12.

- c. Effectuate a decision to terminate professional management and assume self-management of the Project;

- d. Change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each Unit in the Common Area;

- e. Partition or subdivide any Condominium;

- f. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for other public purpose consistent with the intended use of the Common Area by the Condominium Project shall not be deemed a transfer within the meaning of this clause);

- g. Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Area) for other than the repair, replacement or reconstruction of such Project property.

11.2 Partition of Unit

No Unit shall be partitioned or subdivided without the prior written approval of the Eligible Holders of any encumbrance on said Unit.

11.3 Books

Any Eligible Holder will, upon request, be entitled to:

- a. Inspect the books and records of the Project during normal business hours;

- b. Receive an annual audited financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project; and

- c. Receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

11.4 Damage or Destruction

In the event of substantial damage to or destruction of any Unit or any part of the Common Area, the Eligible Holder of a mortgage or deed of trust secured by the Unit will be entitled to timely written notice of any such damage or destruction and no provision of any document establishing the Project will entitle the Owner of a Unit or other party to priority over such Eligible Holder with respect to the distribution to such Unit of any insurance proceeds.

11.5 Condemnation

If any Unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Eligible Holder of a mortgage or deed of trust secured by such Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of any document establishing the Project will entitle the Owner of a Unit or other party to priority over such Eligible Holder with respect to the distribution to such Unit of the proceeds of any award or settlement.

11.6 Right of First Refusal

The right of an Owner to sell, transfer or otherwise convey the Owner's Unit will not be subject to any "right of first refusal" or any similar restriction in favor of the Association now or hereafter contained in this Declaration, the Articles, the By-Laws or the Association Rules.

11.7 Leases

No Owner shall be permitted to lease his Unit for transient or hotel purposes. All leases must be in writing and be expressly subject to this Declaration and to the By-Laws. The breach of any provision hereof or of the By-Laws shall be a default under the Lease.

11.8 Foreclosure

Any mortgagee who comes into possession of the Unit by virtue of a foreclosure of the mortgage or any purchaser at a foreclosure sale will take the Unit free of any claims for unpaid Assessments and charges against the Unit which accrue prior to the time such mortgagee comes into possession of the Unit, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges to all Project units including the mortgagee's Unit.

11.9 Reserve Fund

Condominium dues or charges (Regular Assessments) shall be established by the Association and shall include an adequate reserve fund for repairs, replacement

and maintenance of those portions of the Common Area that must be maintained, repaired or replaced on a periodic basis; such charges shall be funded by Regular Assessments of Unit Owners rather than by Special Assessments, provided, however, this provision shall not in any way limit the Board's power to impose Special Assessments or any other Assessment as provided in this Declaration.

11.10 Notice of Default

The Eligible Holders and/or their successors and assigns, upon written request for such notification, shall be entitled to written notification from the Association of any default by the mortgagor of any Unit which secures the Eligible Holder's mortgage or deed of trust in the performance of such mortgagor's obligations under the Declaration, the Articles or By-laws which is not cured within sixty (60) days.


11.11 Management

Any agreement for professional management of the Condominium Project shall provide that the contract may be terminated without cause by either party on thirty (30) days written notice, without payment of a termination fee, and the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 26th day of April, 2002.



Michael Ball President
Emery Bay Village Homeowners'
Association



Sandra Norris Secretary
Emery Bay Village Homeowners'
Association

EXHIBIT "A"

[Legal description of property)

All of that certain real property as shown in that certain Subdivision Map entitled "Tract 4356", recorded in the Office of the Recorder of Alameda County, State of California, on the 4th day of August, 1980, in Book 120 of Maps at Pages 28 and 29.

EXHIBIT "B"

[Legal description of annexation parcel)

City of Emeryville

Parcel Three of Parcel Map No. 6887, filed November
17, 1997, in book 232 Parcel Maps at pages 76 and
77, Alameda County Records

Assessor's parcel numbers 049-1041-032-02 (portion)

EXHIBIT "C"

[Allocation of assessments]

<u>TYPE UNIT</u>	<u># OF UNITS</u>	<u>% INTEREST EACH</u>	<u>% TOTAL PER TYPE</u>
A & B	60	.74	44.4
C	28	1.03	28.84
D	20	1.08	21.60
E	4	1.29	<u>5.16</u>
		Total	100

A CONDOMINIUM PROJECT
"EMERY BAY VILLAGE"

86-133466

LOT "A"- TRACT 4356

EMERYVILLE, ALAMEDA COUNTY, CALIFORNIA

2002220120
5/16/2002 01:36 PM

KISTER, SAVIQ & REI-LAND SURVEYORS & CIVIL ENGINEERS
11818 SAN PABLO AVENUE EL CERRITO, CALIFORNIA
JUNE 1980

GENERAL NOTES

1. EACH CONDOMINIUM UNIT IS DESIGNATED ON THE PLOT PLAN (SHEETS 2 AND 3) BY BUILDING NUMBER, UNIT TYPE AND UNIT NUMBER (I.E.; 18 D-56 INDICATES BUILDING 18, UNIT TYPE D, UNIT NUMBER 56). BUILDINGS ARE NUMBERED CONSECUTIVELY FROM 1 THROUGH 41; UNITS ARE NUMBERED CONSECUTIVELY FROM 1 THROUGH 112.
2. EACH TYPE A AND B BUILDING CONSISTS OF FOUR (4) UNITS; TWO AT THE LOWER LEVEL, AND TWO AT THE UPPER LEVEL. HIGHER NUMBERS ARE UPPER LEVEL UNITS AT TYPE A AND B BUILDINGS.
3. EACH TYPE C, D AND E BUILDING CONSISTS OF TWO ADJACENT UNITS, EACH WITH UPPER AND LOWER LEVELS.
4. BENCH MARK: TOP OF RETAINING WALL AT NORTHEAST PROPERTY CORNER. ELEVATION= 30.01, CITY OF EMERYVILLE DATUM.

LEGEND

- C-12 = INDIVIDUALLY NUMBERED PARCELS PRECEDED BY THE LETTER "C" ON THE PLOT PLAN (SHEETS 2 AND 3) ARE CARPORTS TO BE GRANTED AS EXCLUSIVE APPURTENANT EASEMENTS TO THE UNIT BEARING THE CORRESPONDING UNIT NUMBER.
- B = INDIVIDUAL PARCELS SHOWN ON UNIT FLOOR PLANS (SHEETS 6 THROUGH 9) WHICH ARE BALCONIES TO BE GRANTED AS EXCLUSIVE APPURTENANT EASEMENTS TO THE ADJOINING UNIT.
- P = INDIVIDUAL PARCELS SHOWN ON UNIT FLOOR PLANS (SHEETS 6 THROUGH 9) WHICH ARE PATIO GARDENS TO BE GRANTED AS EXCLUSIVE APPURTENANT EASEMENTS TO THE ADJOINING UNIT.
- SE = INDIVIDUAL PARCELS SHOWN ON UNIT FLOOR PLANS (SHEETS 6 THROUGH 9) WHICH ARE STORAGE EASEMENT TO BE GRANTED AS EXCLUSIVE APPURTENANT EASEMENTS TO THE ADJOINING UNIT.

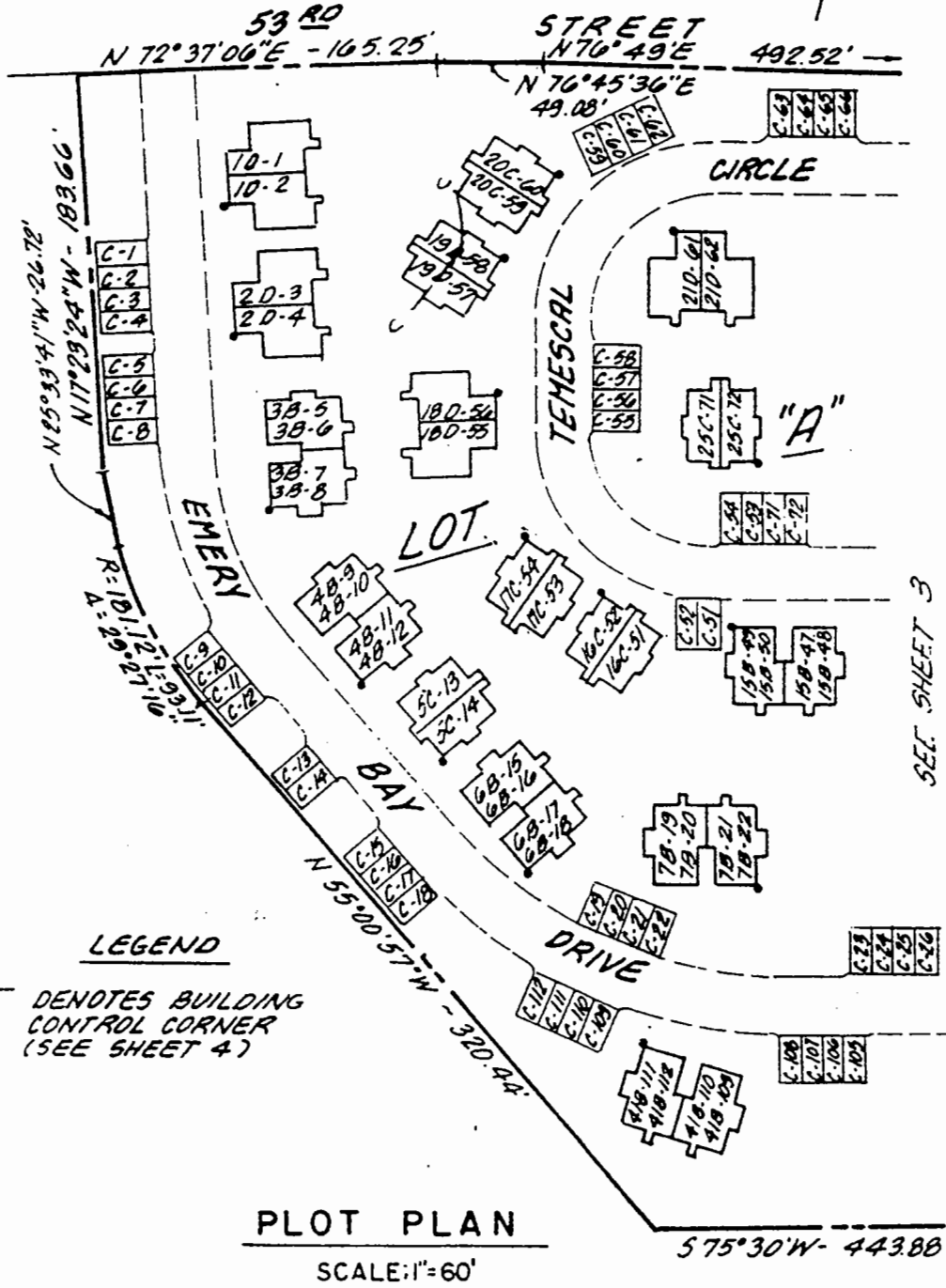
A CONDOMINIUM PROJECT
EMERY BAY VILLAGE

80-133456

LOT "A" - TRACT 4356

EMERYVILLE, ALAMEDA COUNTY, CALIFORNIA

KISTER, SAVIO & REI-LAND SURVEYORS & CIVIL ENGINEERS
11818 SAN PABLO AVENUE EL CERRITO, CALIFORNIA
JUNE 1980

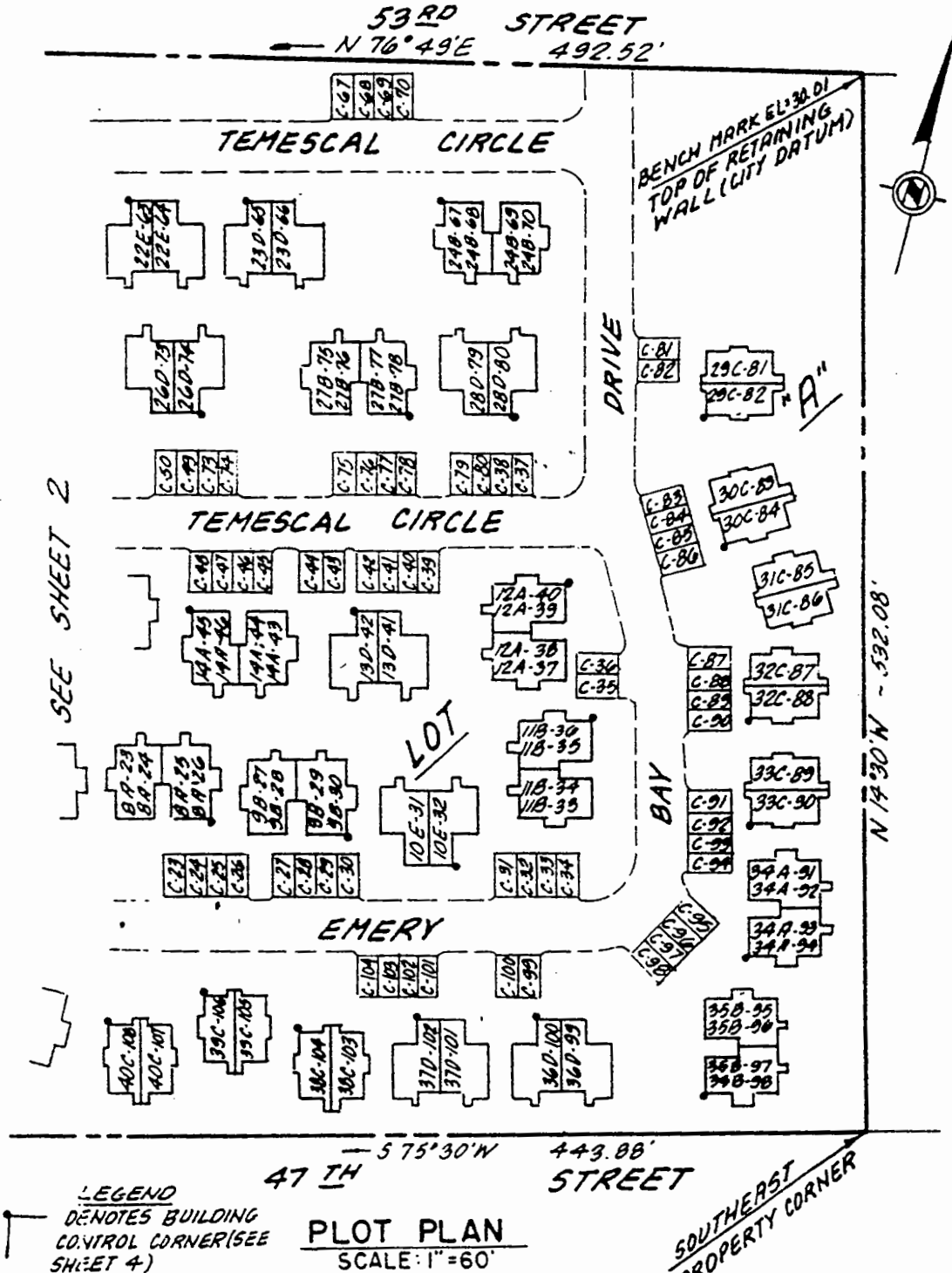


PLOT PLAN
SCALE: 1"=60'

A CONDOMINIUM PROJECT EMERY BAY VILLAGE LOT "A" TRACT 4356

EMERYVILLE, ALAMEDA COUNTY, CALIFORNIA

KISTER, SAYIO & REI-LAND SURVEYORS & CIVIL ENGINEERS
11818 SAN PABLO AVENUE EL CERRITO, CALIFORNIA
JUNE 1980



A CONDOMINIUM PROJECT EMERY BAY VILLAGE 80-133456

LOT "A" TRACT 4356

EMERYVILLE, ALAMEDA COUNTY, CALIFORNIA

KISTER, SAVIDO & REI-LAND SURVEYORS & CIVIL ENGINEERS
11818 SAN PABLO AVENUE EL CERRITO, CALIFORNIA
JUNE 1980

BLDG. NO.	RIGHT ANGLE TIE, IN FEET (1)		BEARING ALONG FACE OF BUILDING (2)
	NORTHERLY	WESTERLY	
1D	476.85	638.92	N 17° 23' 24" W
2D	416.60	635.88	N 17° 23' 24" W
3B	335.43	620.77	N 17° 23' 24" W
4B	253.08	578.57	N 55° 00' 57" W
5C	218.46	541.09	N 55° 00' 57" W
6B	166.43	501.90	N 55° 00' 57" W
7B	159.00	394.65	S 75° 30' 00" W
8A	157.00	326.65	S 75° 30' 00" W
9B	149.00	258.65	S 75° 30' 00" W
10E	134.00	205.65	S 75° 30' 00" W
11B	205.00	135.65	S 14° 30' 00" E
12A	274.00	149.65	S 14° 30' 00" E
13D	260.00	254.65	S 75° 30' 00" W
14A	260.00	335.65	S 75° 30' 00" W
15B	279.00	404.65	S 75° 30' 00" W
16C	293.38	465.06	S 69° 30' 00" E
17C	320.15	503.29	S 69° 30' 00" E
18D	385.00	510.65	S 14° 30' 00" E
19C	450.00	512.65	S 17° 30' 00" W
20C	489.58	487.92	S 17° 30' 00" W
21D	461.00	430.65	S 75° 30' 00" W
22E	467.00	363.65	S 75° 30' 00" W
23D	467.00	305.65	S 75° 30' 00" W
24B	467.00	208.65	S 75° 30' 00" W
25C	356.00	394.65	S 75° 30' 00" W
26D	359.00	330.65	S 75° 30' 00" W
27B	359.00	227.65	S 75° 30' 00" W
28D	359.00	176.65	S 75° 30' 00" W
29C	359.00	78.65	S 14° 30' 00" E
30C	295.45	69.89	N 29° 30' 00" W
31C	252.91	48.34	N 29° 30' 00" W
32C	207.00	56.65	S 14° 30' 00" E
33C	154.00	56.65	S 14° 30' 00" E
34A	88.00	58.65	S 14° 30' 00" E
35B	19.00	79.65	S 14° 30' 00" E
36D	57.00	163.65	S 75° 30' 00" W
37D	57.00	223.65	S 75° 30' 00" W
38D	54.00	282.65	S 75° 30' 00" W
39C	69.00	330.65	S 75° 30' 00" W
40C	54.00	378.65	S 75° 30' 00" W
41B	85.00	447.65	S 88° 30' 00" E

NOTES

1. TO LOCATE DEFINED AREA: FROM SOUTHEAST PROPERTY CORNER (SEE SHEET 3), RUN N 14° 30' W ALONG THE EASTERN BOUNDARY LINE OF LOT A, THE DISTANCE TABULATED IN "NORTHERLY" COLUMN; THENCE RUN AT RIGHT ANGLES S 75° 30' W THE DISTANCE TABULATED IN "WESTERLY" COLUMN, TO BUILDING CONTROL CORNER.
2. TO ORIENT DEFINED AREA: FROM BUILDING CONTROL CORNER, LAY OFF TABULATED BEARING TO ESTABLISH FACE OF BUILDING.
3. SEE UNIT FLOOR PLANS (SHEETS 6 THROUGH 9) FOR RELATIONSHIP OF BUILDING CONTROL CORNER TO UNITS WITHIN BUILDING.
4. SEE SHEET 5 FOR ELEVATIONS DEFINING UPPER AND LOWER LIMITS OF EACH UNIT.

BUILDING LOCATION DATA

EXHIBIT D

A CONDOMINIUM PROJECT 80-133466
EMERY BAY VILLAGE
LOT "A" TRACT 4356
EMERYVILLE, ALAMEDA COUNTY, CALIFORNIA

KISTER, SAVIO & REI-LAND SURVEYORS & CIVIL ENGINEERS
17818 SAN PABLO AVENUE EL CERRITO, CALIFORNIA
JUNE 1980

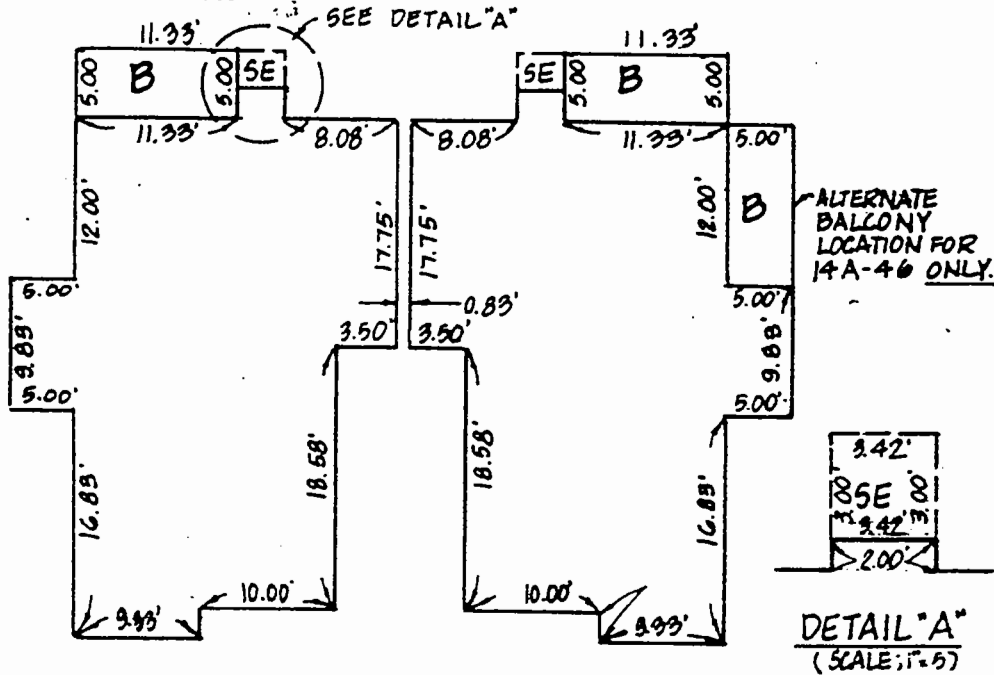
BLDG NO	FINISHED SURFACE ELEVATIONS			
	LOWER LEVEL		UPPER LEVEL	
	FLOOR	CEILING	FLOOR	CEILING
1 D	22.00	30.00	31.27	39.27
2 D	22.50	30.50	31.77	39.77
3 B	23.25	31.25	32.68	40.68
4 B	23.50	31.50	32.93	40.93
5 C	24.25	32.25	33.52	41.52
6 B	24.50	32.50	33.93	41.93
7 B	26.65	34.65	36.08	44.08
8 A	27.00	35.00	36.43	44.43
9 B	27.33	35.33	36.76	44.76
10 E	27.75	35.75	37.02	45.02
11 B	28.00	36.00	37.43	45.43
12 A	27.50	35.50	36.93	44.93
13 D	26.75	34.75	36.02	44.02
14 A	26.25	34.25	36.00	43.68
15 B	25.60	33.60	35.03	43.03
16 C	24.50	32.50	33.77	41.77
17 C	24.25	32.25	33.52	41.52
18 D	24.50	32.50	33.77	41.77
19 C	24.50	32.50	33.77	41.77
20 C	24.75	32.75	34.02	42.02
21 D	25.25	33.25	34.52	42.52
22 E	25.50	33.50	34.77	42.77
23 D	25.83	33.83	35.10	43.10
24 B	26.67	34.67	36.10	44.10
25 C	25.50	33.50	34.77	42.77
26 D	26.00	34.00	35.27	43.27
27 B	26.67	34.67	36.10	44.10
28 D	27.00	35.00	36.27	44.27
29 C	27.50	35.50	36.77	44.77
30 C	27.25	35.25	36.52	44.52
31 C	27.75	35.75	37.02	45.02
32 C	27.85	35.85	37.12	45.12
33 C	28.25	36.25	37.52	45.52
34 A	28.75	36.75	38.18	46.18
35 B	29.25	37.25	38.68	46.68
36 D	28.75	36.75	38.02	46.02
37 D	28.25	36.25	37.52	45.52
38 D	27.50	35.50	36.77	44.77
39 C	27.00	35.00	36.27	44.27
40 C	26.67	34.67	35.94	43.94
41 B	26.00	34.00	35.43	43.43

A CONDOMINIUM PROJECT 80-133466
 "EMERY BAY VILLAGE"
 LOT "A" - TRACT 4356

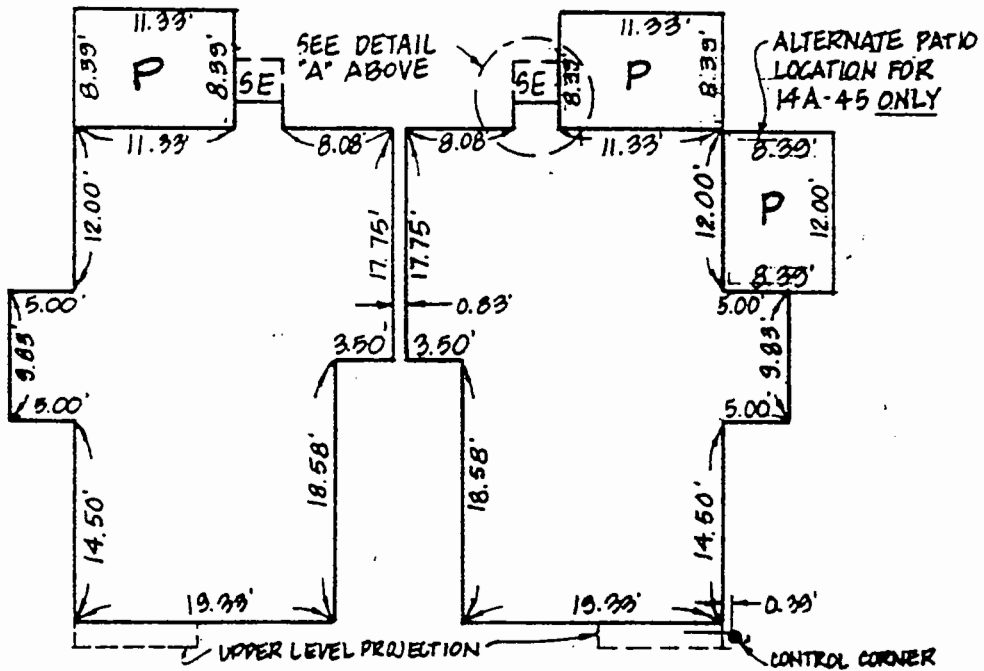
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EMERYVILLE, ALAMEDA COUNTY, CALIFORNIA

KISTER, SAVIO & REI-LAND SURVEYORS & CIVIL ENGINEERS
 11818 SAN PABLO AVENUE EL CERRITO, CALIFORNIA
 JUNE 1980



TYPICAL FLOOR PLAN-UPPER LEVEL - UNITS A & B
 (SCALE: 1"=10')



TYPICAL FLOOR PLAN-LOWER LEVEL - UNITS A & B
 (SCALE: 1"=10')

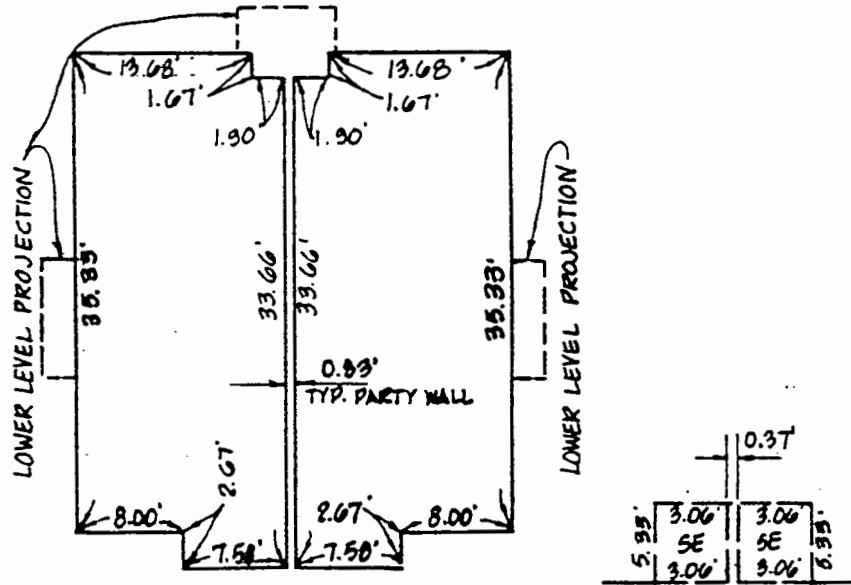
A CONDOMINIUM PROJECT
 "EMERY BAY VILLAGE"
 LOT "A" - TRACT 4356

80-133465

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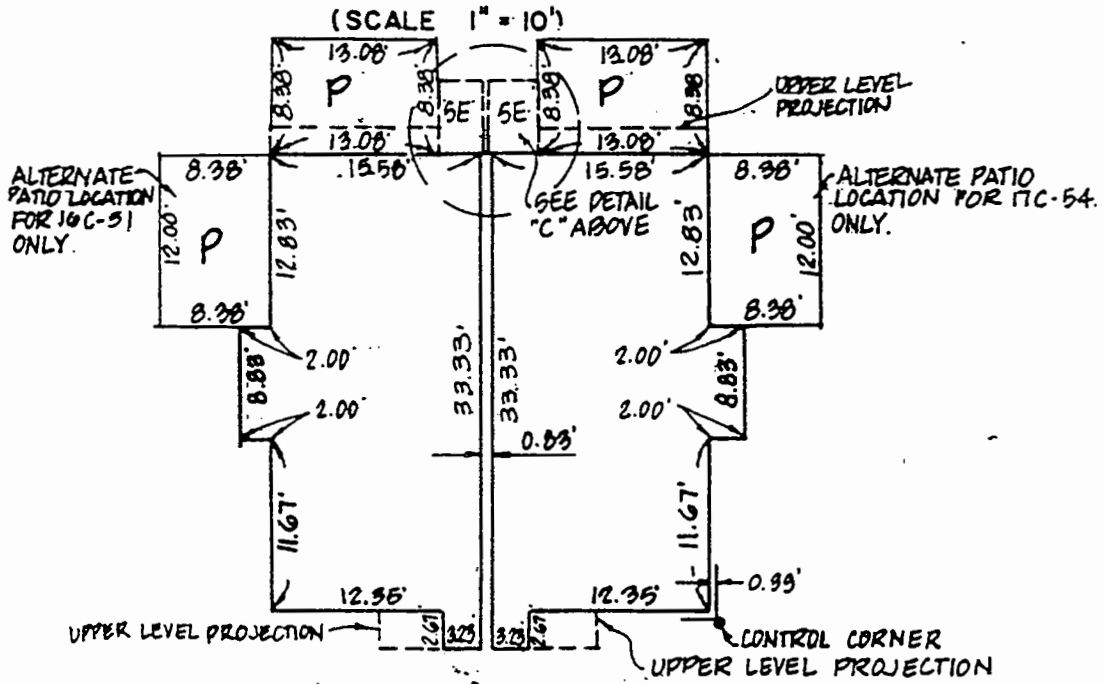
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KISTER, SAVIO & REI-LAND SURVEYORS & CIVIL ENGINEERS
 11818 SAN PABLO AVENUE EL CERRITO, CALIFORNIA
 JUNE 1980



TYPICAL UPPER FLOOR PLAN - UNIT C

DETAIL "C"
 SCALE: 1" = 6' ±



TYPICAL LOWER FLOOR PLAN - UNIT C

(SCALE 1" = 10')

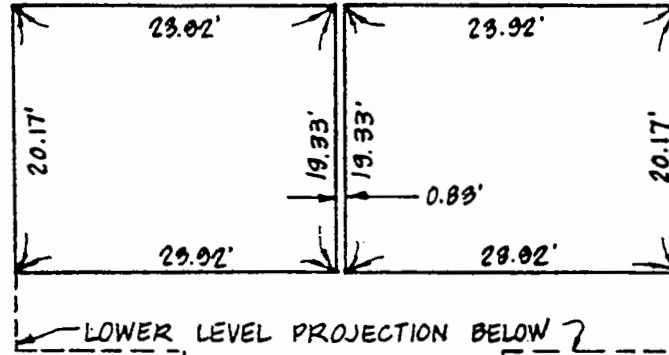
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 "EMERY BAY VILLAGE"
 LOT "A" - TRACT 4356

80-133466

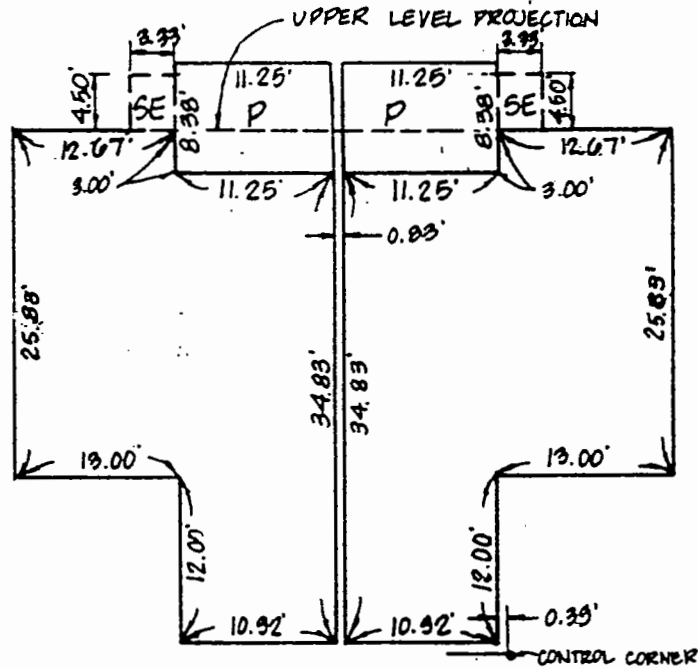
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EMERYVILLE, ALAMEDA COUNTY, CALIFORNIA

KISTER, SAVIO & REI-LAND SURVEYORS & CIVIL ENGINEERS
 17818 SAN PABLO AVENUE EL CERRITO, CALIFORNIA
 JUNE 1980



TYPICAL UPPER FLOOR PLAN - UNIT D
 (SCALE 1" = 10')



TYPICAL LOWER FLOOR PLAN UNIT D
 (SCALE 1" = 10')

When recorded return to:
Ann Rankin
Law Offices of Ann Rankin
3911 Harrison St.
Oakland, CA 94611
(510) 653-8886

AGJ
4
10



4 PGS

DECLARATION OF ANNEXATION

THIS DECLARATION OF ANNEXATION is made this 26th day of April, 2002, by the Emery Bay Village Homeowners' Association, a California non-profit mutual benefit corporation, hereinafter referred to as "Declarant" with reference to the following facts:

1. Declarant's predecessor in interest recorded a Declaration of Covenants, Conditions and Restrictions, establishing a plan for condominium ownership, which was recorded on August 7, 1980, in the Official Records of Alameda County as Document Number 80-133466. Said Declaration was amended by the Association's Members at a duly held election on April 25, 2002. A Condominium Plan was attached as an Exhibit to said Declaration, covering a portion of that real property in the City of Emeryville, County of Alameda, State of California, recorded as Lot A, Tract 4356, recorded in Alameda County in June, 1980, hereinafter referred to as the Condominium Plan.

2. On April 25, 2002, the Members of the Declarant Association, at a vote of the membership duly noticed and held in accordance with the Declaration of Covenants, Conditions and Restrictions and By Laws of the Declarant Association, and as allowed by the California Corporations Code, voted to annex that certain parcel of real property owned by the Emery Bay Village Homeowners' Association and more particularly described as follows:

City of Emeryville

Parcel Three of Parcel Map No. 6887, filed November 17, 1997, in book 232 Parcel Maps at pages 76 and 77, Alameda County Records

Assessor's parcel numbers 049-1041-032-02 (portion)

NOW THEREFORE, Declarant declares as follows:

The Annexed Parcel, described as follows:

City of Emeryville

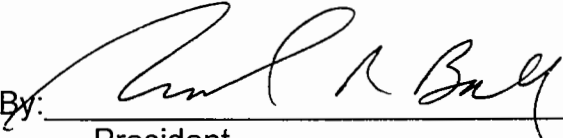
Parcel Three of Parcel Map No. 6887, filed November 17,
1997, in book 232 Parcel Maps at pages 76 and 77,
Alameda County Records

Assessor's parcel numbers 049-1041-032-02 (portion)

is hereby annexed to and is made a part of the project described in the Declaration. Said Annexed Parcel shall be owned by the Owners of the Condominiums in the Emery Bay Village project in the percentages set forth in Exhibit C to the Declaration. Said Annexed Parcel shall hereafter be held, transferred, occupied and conveyed subject to the terms, provisions, covenants, conditions and restrictions in the Declaration, including subsequent amendments thereto, which Declaration is by reference incorporated herein and made a part hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Annexation on the date set forth above.

Dated: April 26, 2002

By: 
President
Emery Bay Village Homeowners'
Association

add acknowledgment

2002220119
5/16/2002 01:36 PM

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5/16/2002 01:36 PM

CERTIFICATE OF SECRETARY

The undersigned, Secretary of the corporation known as Emery Bay Village Homeowners' Association, does hereby certify that the foregoing Declaration of Annexation consisting of 3 pages, including this page, were duly adopted by written ballot of the Members of said Association on the 25th day of April, 2002, and that they now constitute said Annexation.

Date: April 24, 2002

Sandra Norris

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

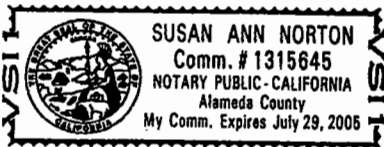
County of Alameda

On April 26, 2002 before me, Susan Ann Norton, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Michael R. Ball,
Name(s) of Signer(s)

personally known to me – **OR** – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Susan Ann Norton
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amendment to CC&R's for Emery Bay

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael R. Ball

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: President HOA

Signer Is Representing:
Emery Bay HOA



Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing:

