

**RECORDING AND RETURN
REQUESTED BY:**

Dom Campaign LLC
350 River Oaks Parkway, #1165
San Jose, CA 95134

APN: 075-0155-013

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND
CONDOMINIUM PLAN FOR
875 ALVARADO STREET**

If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in Government Code §12955(p), or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Government Code §12956.2. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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CC&R RECITALS

THIS DECLARATION is made by the undersigned (the "Declarant").

- A. Declarant is the Owner of a tract of land located in the County of Alameda, California, commonly known as 875 ALVARADO STREET, SAN LEANDRO, CALIFORNIA and more particularly described in Exhibit B attached to this Declaration, (the "Property"). A parcel map subdividing the Property into four (4) condominium units was recorded on _____, in Book _____ at Pages ____ to ____, of the Official Records of the County of Alameda, California (the "Parcel Map").
- B. Declarant intends by this Declaration to establish a condominium project pursuant to California Civil Code §§4000 et seq., (the Davis-Stirling Common Interest Development Act), and to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the condominiums and their owners.
- C. Declarant establishes by this Declaration a plan for the individual ownership of real property estates, consisting of a separate interest in space, referred to as a Unit, and an undivided interest in common in a portion of real property referred to as the Common Area.
- D. Declarant declares that the Property shall be held, conveyed, leased and improved subject to the following covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property. All of the covenants, conditions, restrictions and easements constitute equitable servitudes and covenants which shall run with the land and be binding upon Declarant and Declarant's successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Property.

CC&R ARTICLE 1. DEFINITIONS

The following initially capitalized nouns have the meanings set forth below whenever used in the Governing Documents:

"Annual Budget Report" means the annual financial report required by Civil Code §5300.

"Annual Policy Statement" means annual statement explaining various Association policies and procedures required by Civil Code §5310.

"Assessment" means the proportionate costs of operating, Maintaining and managing the Property assessed against each Unit. There are three types of assessments: Regular Annual Assessments, Special Assessments and Personal Reimbursement Assessments. The characteristics of each are described in CC&R Article 3. All such Assessments shall be collectively referred to as "Assessments."

"Association" means the 875 ALVARADO STREET HOMEOWNERS ASSOCIATION, an unincorporated association.

"Association Notice" means a notice to the Association given as described in Section 8.3.

"Board" means the Board of Directors of the Association, which shall consist of one (1) person appointed by the Owner of each Unit.

"Common Area" means the entire Property except for the Units.

"Condominium" means a Unit and an undivided interest in the Common Area together with all associated rights and responsibilities.

"Condominium Plan" means the plan showing the physical boundaries of the Property and the individual ownership interests which is attached to this Declaration as Exhibit A. The approximate location and physical boundaries of Units, Exclusive Use Common Areas and Common Area are shown on the Condominium Plan. The actual, as-built dimensions of the structures, either as originally constructed, or as reconstructed in accordance with the Governing Documents, shall be presumed the true

boundaries and take priority over any legal description in a document, regardless of minor encroachments resulting from constructions, settlement, lateral movement or other causes.

“Emergency” means a condition within the Property that immediately endangers the integrity of the Property, or the safety or health of the Occupants, guests or public. **“Emergency Situation”** is defined in Civil Code §5610.

“Exclusive Use Common Area” means those portions of Common Area reserved for the exclusive use of one or more, but fewer than all, Owners on the Condominium Plan and in this Declaration.

“General Notice” means a notice to all Owners given as described in Section 8.3.

“Governing Documents” means this Declaration including its exhibits, the parcel map described in the Recitals, the Bylaws, and any Rules. There are no Articles of Incorporation (because the Association is not incorporated) and no Articles of Association.

“Governing Documents” means this Declaration, the Bylaws, and the Rules of the Association.

“Governmental Regulations” means all applicable laws, ordinances, resolutions, procedures, orders, standards, conditions, approvals, rules and regulations of any governmental entity with authority over the Property.

“Individual Notice” means a notice to one or more Owner given as described in Section 8.3.

“Maintain” and **“Maintenance”** shall mean, respectively, “maintain, repair and replace” or “maintenance, repair and replacement”, except where the context clearly intends just the term “maintain” or “maintenance” to apply.

“Maintenance Reserves” means funds collected for repair and replacement of the major components of the Property that the Association is obligated to Maintain.

“Majority Owner Approval” means the approval of a majority of the Owner votes represented and voting at a duly held Owner Meeting, or through a properly-conducted written ballot procedure, at which a quorum is represented, provided that in all cases Majority Owner Approval shall require at least two (2) affirmative votes.

“Mortgage” means the conveyance of any interest in a Condominium to secure the performance of an obligation. “Mortgage” is synonymous with “deed of trust” for the purposes of the Governing Documents.

“Mortgagee” means a person or entity who holds the beneficial interest in a Mortgage. “Mortgagee” is synonymous with “beneficiary” under a deed of trust.

“Occupant” means a person who sleeps in a Unit during more than fourteen (14) days within any thirty (30)-day period.

“Owner” means the record owner of a Condominium or a contract buyer under an installment land contract with equitable title. “Owner” shall not include those who hold an interest in a Condominium merely as security for the performance of an obligation.

“Percentage Interest” means the interest in the Common Area conveyed with each Unit as shown on the Condominium Plan. Except as specifically provided in the Condominium Plan or this Declaration, each Owner is equally entitled to use of all Common Area regardless of his/her Percentage Interest.

“Property” means the entirety of the common interest development described in the Recitals to this Declaration.

“Rules” means the rules adopted by the Board or the Association pursuant to this Declaration.

“Unit” means the areas so designated on the Condominium Plan. Except as otherwise provided on the Condominium Plan, each Unit consists of the area bounded by the interior unfinished surfaces of its perimeter walls, bearing walls, floors, ceilings, windows, doors, and includes both the portions of the building so described and the airspace so encompassed. A Unit includes: (i) the wallboard, plaster and paint on all interior surfaces located or exposed within the Unit; (ii) all elements of window and doors, and related frames and hardware, excluding only exterior paint; (iii) all fixtures, appliances, air and water heating equipment, and ventilating fans, and the outlets thereof, wherever located, which are part of a discrete and complete system intended to serve only such Unit; and (iv) the finished components of the Utilities serving the Unit, such as electrical outlets, switches and fixtures, and all plumbing fixtures and faucets. A Unit does not include any element that provides structural support to the Common Area or to another Unit, except for a finished surface thereof that is located within the Unit.

“Utilities” means services or systems related to electricity, water, sewer, HVAC, communications, scavenger, recycling, and fire

detection and suppression, and all incidental pipes, conduits, ducts, wiring, equipment and enclosures.

CC&R ARTICLE 2. USAGE RIGHTS AND RESTRICTIONS

2.1 EXCLUSIVE USE COMMON AREAS AND EASEMENTS.

- A. **Assignment Of Exclusive Use Common Areas.** On the Condominium Plan, the areas labeled with the letter "G" followed by a Unit designation are garages, the areas labeled with the letter-number combinations "D1" and "D2" followed by a Unit designation are decks, the areas labeled with the letter "E" followed by a Unit designation are private entry areas serving a particular Unit, and the areas labeled with the letters "EUCA" followed by Unit designations are private entry areas serving two (2) Units. An easement for the exclusive use of each such area is granted as an Exclusive Use Common Area appurtenant to the correspondingly numbered Unit or Units.
- B. **Owner's Easements.** The following are reserved for the benefit of each Owner and Unit: (i) a nonexclusive easement throughout the Common Area for ingress, egress and support; (ii) a nonexclusive easement for construction, operation, Maintenance, at reasonable locations within Common Area, of all pipes, conduits, ducts, wiring, equipment and enclosures related to electricity, gas, water, sewer, HVAC, communications, (including cable, television and telephone), and fire detection and suppression; (iii) a nonexclusive easement for operation, Maintenance of existing Utilities within the other Owners' Condominiums provided the activities do not unreasonably interfere with use and enjoyment of such Condominiums; (iv) a non-exclusive easement for access throughout the Property for the Maintenance of elements of the Owner's Condominium; and (v) an easement throughout the Property for minor encroachments resulting from construction, repair, shifting, settlement or movement upon any portion of the Property.
- C. **Association's Easements.** The Association shall have an easement for access throughout the Property, including the Units, to perform its duties under the Governing Documents.
- D. **Use of Easements.** Whenever the Association or an Owner temporarily enters another Owner's Unit or Exclusive Use Common Area based upon easement rights described in this Declaration, the entry shall be made with as little inconvenience as possible to the Occupants, following seventy-two (72) hours prior Notice; however, no Notice is required for entry in the case of an Emergency. Any damage caused by the entry shall be promptly repaired at the expense of the Association or the Owner, whichever of them authorized the entry.

2.2 **NON-RESIDENTIAL USE.** The Property shall be solely for residential use except that an Occupant may engage in a professional or administrative occupation within the Property if, (i) there is no external evidence of business activity, (ii) it conforms to all applicable Governmental Regulations, and (iii) it is merely incidental to the use of the Unit as a residence.

2.3 **NUISANCE.** No person shall use any part of the Property in a way that unreasonably interferes with the quiet enjoyment of an Occupant, or which is noxious, illegal, seriously annoying or offensive to a person of reasonable and normal sensitivity. There shall be no exterior fires except in barbecue receptacles designed for that purpose. No activity may be carried on that adversely affects insurance coverage or rates on the Property. No one shall do or permit anything to be done which is in violation of a Governmental Regulation or which will or may significantly diminish the attractiveness, desirability or value of another Unit or the Property as a whole.

2.4 **ANIMALS.** Only the following animals are permitted to be kept in a Unit: domestic dogs and cats, fish, and provided they are inside cages: birds, rodents and reptiles. The Occupants of a particular Unit may collectively keep not more than two (2) non-caged four-legged pets. Permitted animals shall not be kept, bred, or raised for commercial purposes. All Occupants who keep pets on the Property (i) shall keep such pet under reasonable control at all times, (ii) shall keep any dog on a hand-held leash when outside a Unit, (iii) shall immediately clean up after such pet, (iv) shall be liable for any damage to persons or property proximately caused by such pet, and (v) shall indemnify and hold harmless the Association and all Owners against any and all loss, cost or liability, including attorneys fees, arising out of claims related to such pet.

2.5 PARKING AND USE OF MOTOR VEHICLES.

- A. No trailer, motor home, recreational vehicle, camper, boat, or related accessory shall be parked, kept or permitted to remain within the Property. No unreasonably noisy vehicles and no vehicles (including, without limitation, scooters, motorcycles or other motorized devices) emitting foul smelling or" offensive exhaust fumes shall be operated within the Property. No inoperable or abandoned vehicle shall be parked, kept or permitted to remain upon any area within the Property.

- B. Subject to the limitations in the preceding Subsection, an Owner may park or store motor vehicles within his/her garage area provided that every part of such vehicles is contained entirely within the boundaries of such garage. No one shall park a motor vehicle of any kind anywhere on the Property other than within an enclosed garage; driveway parking is not permitted. Strict compliance with these provisions shall be required at all times; "temporary" or "very short term" violations shall be deemed no different from long-term parking or storage. Any motor vehicle not located entirely within an enclosed garage shall be deemed "Improperly Parked". The fact that a motor vehicle has been allowed to be Improperly Parked previously shall not diminish or otherwise affect the application of the provisions of this Section, or impose additional duties or responsibilities on the Association or on any Owner with regard to the removal of such item. Each Owner shall be responsible for violations of this Section by his/her invitees, each Occupant of such Owner's Condominium, and each invitee of any such Occupant. Any Owner may remove any motor vehicle that is Improperly Parked on the Property at the vehicle owner's expense provided such removal complies with all aspects of Governmental Regulations. Each Owner shall be deemed to have the authority of the Association to do so. Neither the Association nor the removing Owner shall be liable for any damages or loss suffered by the vehicle owner as a consequence of removal unless such damage or loss resulted from negligence of the Association or the removing Owner.
- C. The door of each garage shall be kept closed at all times except when a car is entering or exiting. Garage areas may not be used for living, recreational or business purposes.
- D. Each Owner shall indemnify, defend and hold harmless the Association, and every other Owner, and Occupant, against any and all loss, cost or liability including attorney's fees, arising out of claims related to the ownership, maintenance or use of motor vehicles on the Property by such Owner's invitees, the Occupants of such Owner's Unit, and the invitees of any such Occupant.

2.6 STORAGE.

- A. Within garage areas, the Owner assigned the area may store any non-hazardous material provided it is organized in a manner which does not create a fire hazard or significantly diminish the value or desirability of the Property. Within decks, the Owner assigned the deck may place or store plants and patio furniture maintained in a manner that does not appear cluttered or unkempt; no personal property shall be stored or permitted to accumulate within the private deck areas. Within private entry areas serving a particular Unit and, upon mutual agreement of both Owners served, private entry areas serving two (2) Units, the Owner(s) assigned the area may place plants, decorations or furnishings provided they do not interfere with ingress or egress.
- B. Except as provided in the preceding Subsection, no one may store any item in Exclusive Use Common Area, or in other Common Area, without prior written approval of the Association. Without limiting the generality of the preceding sentence, it is expressly provided that no sports apparatus, whether portable or fixed, including basketball standards, shall be erected, placed or stored in any Common Area or Exclusive Use Common Area, except that bicycles, roller skates, roller blades or any other similar unpowered wheeled equipment may be kept within assigned garage areas in accordance with Subsection A. Any item stored in violation of the preceding sentences may be removed without prior Notice or hearing of any kind, and disposed of, and the reasonable cost of such removal and disposal shall be levied by the Association against the Owner who stored such items as a Personal Reimbursement Assessment. Neither the Association, nor any Owner, nor anyone acting on behalf of the Association or any Owner, shall have any liability as a result of exercising the rights provided under this Section. The fact that items have been allowed to be improperly stored in a particular location for an extended period shall not diminish or otherwise affect the application of the provisions of this Section, or impose additional duties or responsibilities on the Association or on any Owner with regard to the removal of such items.

2.7 **WINDOW COVERINGS.** Unless otherwise approved by the Association, all window coverings visible from the street or Common Area shall be of a material and type commonly used for window coverings.

2.8 **SIGNS.** Notwithstanding anything to the contrary in this Declaration, except as specifically provided in this Section, no one may place any sign, banner or similar item on any part of the Property (including within a Unit) in a manner that would allow it to be seen from the exterior. The following signs are permitted on or from portions of the Property designated by the Association: (i) non-commercial signs, posters, flags or banners which the Association is required by law to permit, and (ii) "For Sale" or "For Rent" signs that do not exceed nine (9) square feet in size.

2.9 RENTAL USE.

- A. Any Owner may rent out all or any portion of his/her Condominium and keep any income generated from such rental. Before beginning a pattern of repeated usage of any portion of the Property, each non-Owner (except those who will use or share a space with an Owner) must sign a written agreement describing the terms of usage and incorporating all of the usage and alteration restrictions in this Declaration.
- B. When an Owner allows a non-Owner to use all or any portion of his/her Condominium, such Owner (the "Responsible Owner") becomes responsible for violations of this Declaration by the non-Owner and any invitee of the non-Owner. The consequence of such responsibility is that if the non-Owner or invitee violates this Declaration, the Responsible Owner is deemed to have committed the violation and is subject to the same procedures and consequences applicable as if he/she committed the violation. No one other than the Responsible Owner (including another Owner or the Occupant of another Owner's Condominium) shall be required to seek compliance by, attempt to work things out with, or otherwise interact with, the violating non-Owner or invitee.

2.10 ALTERATION OF THE PROPERTY.

- A. **Alterations Of Units.** An Owner may make alterations within the interior boundaries of his/her Unit that do not alter the exterior appearance of the Property, or impair the structural integrity, mechanical systems, value or desirability of the Property, without approval of the Association or of any other Owner. All other alterations require prior, written Association approval.
- B. **Alterations Of Common Area.** Except as specifically provided in this Subsection, no one may alter Common Area, or Exclusive Use Common Area, without prior, written Association approval. The following alterations are permitted without approval:
 - (1) An Owner may alter his/her assigned garage area provided the alteration will not impair the structural integrity or mechanical systems of the Property, diminish the utility of any other area of the Property, or change the usage of the area from parking/storage to something else (such as a habitation, workshop, office, recreation room, etc.).
 - (2) An Owner may alter his/her assigned deck, provided the alteration will not impair the structural integrity, mechanical systems, value or desirability of the Property, or involve the installation or attachment of anything to the Property (such as a screen, cover, awning, etc.).
 - (3) An Owner may alter his/her private entry area provided the alteration will not impair the structural integrity, mechanical systems, value or desirability of the Property. With regard to entry areas assigned to two (2) Owners, such alterations shall require the express approval of both Owners.
- C. **Procedure For Alteration Approval.**
 - (1) Owners wishing to make alterations requiring Association approval shall submit "Plans and Specifications" to the Association. "Plans and Specifications," as used in this Article, shall include the following: (i) A description of the proposed alteration, including, as appropriate, its shape, height, width, elevation, materials, color, location and such further information as may be necessary to allow the Association to evaluate it fully; (ii) Upon request of the Association, a certificate by an architect or engineer licensed by the State of California stating that the alteration will not impair the structural integrity of any part of the Property, and will not interfere with any Utility; and (iii) Upon request of the Association, a set of construction drawings prepared by an architect and/or engineer licensed by the State of California. The Association may require as much detail in the Plans and Specifications as it deems appropriate, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and samples of exterior material and colors. The Association may postpone review of any application until receipt of all required information and materials. Upon submittal of all required information and documentation, the Association shall give the Owner a written, dated receipt. The date of the receipt shall be the commencement date for computing the time within which the Association must approve or disapprove the application. The Association may charge a reasonable fee for reviewing an application.
 - (2) The Association shall act upon each alteration approval application within forty-five (45) days after receipt of all materials required or requested by the Association or, failing that, at the first Board Meeting thereafter before any other business is undertaken at such Meeting. As soon as reasonably possible thereafter, the Association shall provide Individual Notice to the applicant of its decision. If a proposed change is disapproved, the written decision

shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration by the Board.

- (3) The Association decision must be made in good faith and may not be unreasonable, arbitrary, or capricious. The Association shall approve an alteration only if it makes an affirmative finding that the alteration (i) will not impair the structural integrity of any part of the Property, (ii) will not interfere with any Utility, (iii) is consistent with the Governing Documents and all Governmental Regulations, (iv) will not detract from the appearance, harmony, attractiveness and enjoyability of the Property, and (v) will not impose an unreasonable Maintenance burden on the Association. The approval or disapproval of an alteration shall not be deemed a waiver of the Association's subsequent right to approve or disapprove a similar alteration or any other matter.

D. Responsibility, Compliance and Inspection. The following provisions shall apply regardless of whether Association approval is required or obtained.

- (1) Unless otherwise approved by the Board in a written resolution, when the Alteration work requires a building permit, the Owner shall: (i) obtain all required permits and approvals; (ii) hire a contractor with a currently-valid contractor's license, and who will maintain a liability insurance policy, with policy limits of at least two million dollars (\$2,000,000) per incident, naming all Owners as insureds, covering damage to persons and property (including the personal property of all Occupants) that occurs as a result of the work either during or after performance; (iii) provide Notice with a copy of such permits and approvals to the other Owner at least ten (10) calendar days before commencing the work; and (iv) obtain final governmental inspection and sign-off.
- (2) All alteration work must be diligently and consistently pursued through completion, and must be completed within a reasonable time. Alterations that have been approved by the Association must be commenced within one (1) year from the date of the approval, or the approval given shall be deemed revoked unless the Board extends the time for commencement. Any request for an extension shall be in writing.
- (3) Any Owner, following reasonable advance written notice, may inspect any work performed on the Property to ensure it is done in accordance with the Governing Documents. If, as a result of an inspection, an Owner finds a violation of the Governing Documents, he/she may provide Notice to the violating Owner of the violation. The Notice shall specify the particulars of non-compliance and shall require the Owner to remedy it. If the Owner fails to remedy the non-compliance in accordance with the provisions of the notice, then, after the expiration of thirty (30) days from the date of the notice, the Board shall provide Individual Notice to the Owner of a hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall require the Owner to remedy it within a period of not more than forty-five (45) days from the date of the Board's ruling. At any time within such period, or within any extension of such period as the Board, in its discretion, may grant, the Board may choose not to wait for the Owner to act, and instead the Board may act to remedy the non-compliance, and assess any associated costs against the Owner as a Personal Reimbursement Assessment. The Association may also cause a notice of nonresponsibility for mechanics' liens to be recorded and posted as specified in Civil Code §8444.

2.11 SEVERANCE AND SUBDIVISION OF CONDOMINIUMS. There shall be no further spatial subdivision of a Condominium into different interests than provided in this Declaration. No Owner shall transfer an ownership interest in a Condominium that does not include all associated rights, title and interests described in the Governing Documents. Any transfer in violation of this Section is void.

2.12 REFUSE. Each Occupant shall deposit his/her trash, garbage, compostable material and all other waste and refuse in covered sanitary or recycling containers located inside his/her assigned parking area, such that it is screened or otherwise concealed from view from the Units, Common Area, streets or any other residences. No Owner or Occupant shall permit or cause any garbage, trash or other waste or refuse to be kept in any other manner or upon any other portion of the Property. On service days, the containers shall be placed on the driveway or along Alvarado Street in a manner such that service trucks do not have to obstruct the driving aisle of Alvarado Street. The containers may be placed for pickup at a reasonable time prior to trash collection and shall be promptly stored as in accordance with this Section after collection.

CC&R ARTICLE 3. EXPENSES, ASSESSMENTS AND REPORTING

3.1 ALLOCATION OF EXPENSES. All Regular Annual Assessments, and all Special Assessments, shall be divided equally among the four (4).

3.2 ANNUAL BUDGET.

- A. Creation of Operating Budget.** Thirty (30) to ninety (90) days before the conclusion of each fiscal year, the Treasurer shall prepare, and provide in a Notice to each Owner, a proposed Association operating budget for the next fiscal year showing estimated revenue and expenses on an accrual basis, and including the amount of Maintenance Reserves scheduled to be collected during the upcoming fiscal year based on the most recent Maintenance Reserves funding plan prepared under Section 3.3. The Treasurer's proposed operating budget shall automatically become the Association's operating budget for the next fiscal year unless either: (i) the Board adopts an alternative operating budget that satisfies all requirements imposed by California law, including those relating to collection of Maintenance Reserves, at least forty-five (45) days before the conclusion of the fiscal year; or (ii) the Treasurer's proposed operating budget would cause a large enough increase in Regular Annual Assessments that an Owner vote would be required under Section 6.2, in which case the then-current operating budget shall be deemed to be re-adopted for the new fiscal year pending a decision by the Owners.
- B. Revision of Operating Budget.** When there is a demonstrable increase or decrease in the cost of an item included in the operating budget during the course of a fiscal year, the Treasurer shall prepare, and provide in a Notice to each Owner, a proposed revised Association operating budget that satisfies the requirements imposed by the preceding Subsection. The Notice shall include verifiable documentation showing the cost increase or decrease. The Treasurer's proposed revised operating budget shall automatically become the Association's operating budget effective sixty (60) days after the Notice unless either: (i) the Board adopts an alternative operating budget that satisfies all requirements imposed by California law, including those relating to collection of Maintenance Reserves, prior to such effective date, in which case the revised operating budget adopted by the Association shall become effective thirty (30) days after it is adopted; or (ii) the Treasurer's proposed revised operating budget would cause a large enough increase in Regular Annual Assessments that an Owner vote would be required under Section 6.2, in which case the then-current operating budget shall remain in effect pending a decision by the Owners.
- C. Approval of Operating Budget.** By virtue of acquiring a Condominium subject to this Declaration, each Owner agrees that the Treasurer's proposed operating budget, and the resulting Regular Annual Assessments to be imposed on each Owner pursuant to Section 3.4, shall be deemed approved by him/her each year, without additional vote, except where overruled by Board or Owner vote. The intention of an Owner or director to challenge the validity of an operating budget or revision proposed by the Treasurer for any reason, either through Board vote or through other means, shall not provide a legitimate basis for not paying any installment of a Regular Annual Assessment based upon the budget to be challenged Assessment; rather, if the due date of an installment arrives before the Treasurer's decision is overruled, the installment is payable in full and on time, and the failure to pay shall have exactly the same legal consequences as the failure to pay any other Regular Annual Assessment installment under this Declaration and applicable law. If the operating budget and resulting Regular Annual Assessment is retroactively modified as a result of Association vote or legal process, the Association shall refund any overpayment.

3.3 MAINTENANCE RESERVES. The Association shall regularly undertake a Maintenance Reserves Study and prepare a Maintenance Reserves Funding Plan, and a schedule of Assessments required to fund the Maintenance Reserves, all in accordance with Civil Code §§5550 and 5560. The Association shall keep Maintenance Reserves in a deposit account (the "Maintenance Reserve Account") that is segregated from those accounts holding its other funds. Withdrawal from the Maintenance Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and one (1) Officer. The Association shall not expend Maintenance Reserves, or borrow such funds, except in compliance with Civil Code §§5510, 5515 and 5520.

3.4 REGULAR ANNUAL ASSESSMENTS. The Association shall levy "Regular Annual Assessments" against all Owners in the exact amount required to satisfy the funding Association's requirements under the operating budget established pursuant to Section 3.2. Except when an Owner vote is required under Section 6.2 due to an unusually large increase in the Regular Annual Assessments, the amount of the Regular Annual Assessments shall not require Association approval (apart from Operating Budget approval process described in Section 3.2). Regular Annual Assessments shall be assessed against each Owner on the first day of the first month of the fiscal year, and shall be due and payable in equal monthly installments on the first day of each month of the fiscal year unless the Association adopts some other basis for collection. The Treasurer, acting on behalf of the Association, shall provide Notice to each Owner of (i) the amount of the Regular Annual Assessment for the upcoming year at the same time he/she distributes the Annual Budget Report (as described in Section 3.12), and (ii) any change in the Regular Annual Assessments not less than thirty (30) calendar days before the due date of such changed Assessment.

3.5 SPECIAL ASSESSMENTS. A Special Assessment is an Assessment to defray (i) the cost to Maintain portions of the Property which the Association is obligated to Maintain, (ii) extraordinary expenses of the Association that were not anticipated in the operating budget, or (iii) any other purpose permitted by law. There are two kinds of Special Assessments: Mandatory and

Discretionary.

A. Mandatory Special Assessments. A Mandatory Special Assessment is an assessment for expenses that the Association is obligated to pay, such as Association insurance premiums, property taxes paid under Subsection 3.1, charges for utility services paid by the Association, management expenses, the anticipated costs of Association Maintenance, or replenishment of the minimum balance in the Operating Account.

(1) Except when an Owner vote is required under Section 6.2, the Treasurer may impose a Mandatory Special Assessment at any time, without Association approval, by providing a Notice to all Owners, at least thirty (30) days before the due date of the Special Assessment. The Notice shall show the amount due, the due date and shall include verifiable supporting documentation establishing the need for the Mandatory Special Assessment.

(2) An Owner or director may challenge the need for a Mandatory Special Assessment by convening a Board or Owner Meeting where the Board or Owners may overrule the Treasurer's decision to impose the Special Assessment. Each Owner shall continue to be responsible for paying the Assessment until the Treasurer's decision is overruled, and the failure to pay shall have exactly the same legal consequences as the failure to pay any other Assessment under this Declaration and applicable law. If the Special Assessment is retroactively modified as a result of Association vote or legal process, the Association shall refund any overpayment.

B. Discretionary Special Assessments. Discretionary Special Assessments are those Special Assessments that do not fall within the definition of Mandatory Special Assessments, such as those levied for alterations approved by the Association. The Treasurer or any Owner may propose a Discretionary Special Assessment at a Board or Owner Meeting. Notice of the meeting shall include an agenda item describing the proposed Assessment. If the Discretionary Special Assessment is approved, the Treasurer shall prepare a Notice for each Owner stating the amount and due date, which shall be at least thirty (30) calendar days from the date of the Notice.

3.6 PERSONAL REIMBURSEMENT ASSESSMENTS. A Personal Reimbursement Assessment may be levied against any Owner to enforce the Owner's obligations and responsibilities under the Governing Documents as described in Subsection 5.3.

3.7 OBLIGATION TO PAY ASSESSMENTS. Each Owner agrees to pay the Regular Annual Assessment, any Special Assessment and any Personal Reimbursement Assessment assessed against him/her, established in accordance with this Declaration and without deduction or offset for any claim an Owner may have against the Association. Each Assessment, together with any late charge, interest, collection costs and reasonable attorneys' fees shall be the personal obligation of the Owner of the Condominium at the time the Assessment was due. **An Owner is permitted to pay any amount owed to the Association under protest to the extent allowed by applicable law.**

3.8 DELINQUENT ASSESSMENTS.

A. Delinquency Timing and Charges. Assessments are due and payable on their due dates without deduction or offset for any claim an Owner may have against the Association. Each Assessment, together with authorized charges, is the joint and several personal obligation of all Owners of the Condominium against which it is levied. No Owner may exempt him/herself from liability for payment of Assessments. An Owner is permitted to pay any amount owed to the Association under protest to the extent allowed by applicable law. An Assessment becomes delinquent if payment is not received by the Association within fifteen (15) days after its due date. The Association may impose a late charge in the maximum amount permitted by applicable law on delinquent payments as compensation for additional administrative costs, charge, recover reasonable costs incurred in collecting delinquent Assessments including reasonable attorney fees, and charge interest on delinquent payments, late charges, collection costs, and attorney fees, at the maximum amount permitted by applicable law, beginning thirty (30) days after the due date and continuing until the date payment is received.

B. Repeated Delinquency. If a Regular Annual Assessment installment is not paid within fifteen (15) days of the due date more than three (3) times during a fiscal year, the Association may declare the entire remaining unpaid balance of the Regular Annual Assessment for that fiscal year immediately due and payable in full by providing Individual Notice to the Owner.

C. Assessment Liens. A delinquent Assessment, regardless of type, plus any late charges, interest, costs of collection or related charges, shall become a lien on the delinquent Owner's Condominium beginning on the date the Association records a notice of delinquent Assessment with the County Recorder. The Association shall comply with all

requirements of applicable law, including those described in Civil Code §§5660, 5670, 5673, 5675 and 5685, when recording such a notice. Such a lien may be enforced in any manner permitted by law.

- D. **Non-judicial Foreclosure.** Provided it complies with all requirements of applicable law, including Civil Code §§5705, 5710, 5715 and 5720, the Association may undertake a nonjudicial foreclosure in accordance with Civil Code §§2924, 2924(b) and 2924(c) to enforce a lien for delinquent Regular Annual Assessments and Special Assessments, and a lien for delinquent Personal Reimbursement Assessments levied against an Owner to reimburse the Association for Maintenance costs for which such Owner is responsible. A penalty, fine, charge or other financial obligation, including costs and expenses of collection, levied by the Association against an Owner as a Personal Reimbursement Assessment for a violation of the Governing Documents, may be made a lien against the Condominium of such Owner, but may not be enforced by nonjudicial foreclosure except as allowed by law.
- E. **Payment of Delinquent Assessments.** Payment toward a delinquent Assessment shall be credited first to satisfying the Assessment, and then to late charges, collection costs, attorney fees and interest. Upon payment of delinquent sums, the Association shall promptly record a notice acknowledging satisfaction and releasing the lien. The lien shall not be affected by the sale or transfer (other than through foreclosure) of the affected Owner's Condominium.
- F. **Homestead Waiver.** Each Owner waives the benefit of statutory debtor protection, including homestead and exemption rights, to the full extent permitted by California and Federal law with respect to enforcement of Assessment liens.

3.9 USE OF REGULAR AND SPECIAL ASSESSMENTS. Revenue raised by Assessments must be used to Maintain, preserve and enhance the Property, or to promote the health, safety and general welfare of the Owners.

3.10 ACCOUNT ADMINISTRATION.

- A. **Operating Account.** The "Operating Account" shall be the initial depository for all Association funds and the source of payment for all Association expenses, and shall be maintained at a federally insured banking institution. A minimum balance of one thousand dollars (\$1,000) shall be maintained in the Operating Account at all times, and any shortfall in the minimum balance shall be recouped by Special Assessment. The Treasurer may make "Mandatory Disbursements" from the Operating Account without Association approval. Mandatory Disbursements shall be defined as payments for: (i) the minimum expense necessary to end an Emergency; (ii) any expense included as a specific line item in the operating budget adopted under Section 3.2; (iii) any expenses for which a Special Assessment has been made; and (iv) the costs of Association Maintenance required by this Declaration, provided the President has complied with each of the requirements imposed by the Bylaws. Any disbursement which is not defined as a Mandatory Disbursement must be approved in accordance with the Governing Documents. An Owner shall not be entitled to withdraw any funds from the Operating Account in connection with a transfer of his/her Condominium.
- B. **Maintenance Reserves Account.** The "Maintenance Reserves Account" shall be the segregated depository for Maintenance Reserves, and shall be maintained at a federally insured banking institution. A minimum balance of one thousand dollars (\$1,000) shall be maintained in the Maintenance Reserves Account at all times, and any shortfall in the minimum balance shall be recouped by Special Assessment. Although withdrawal from the Maintenance Reserve Account shall require the signatures of two (2) directors, use of funds in the Maintenance Reserve Account to pay the costs of Association Maintenance required by this Declaration is mandatory, and it shall be a violation for any Owner or group of Owners to act in any manner, including refuse to sign a check, that would effectively prevent, or interfere with, such use. The Association shall not expend Maintenance Reserves, or borrow such funds, except in compliance with Civil Code §§5510, 5515 and 5520.

3.11 FINANCIAL REVIEW. On a quarterly basis, the Association shall reconcile each of its accounts, and compare the current year's actual Maintenance Reserves revenues and expenses to the budget, as required by Civil Code §5500.

3.12 ANNUAL REPORTING. Each year, the Association shall provide an Individual Notice to all Owners that includes an Annual Budget Report in compliance with Civil Code §5300, and an Annual Policy Statement in compliance with Civil Code §5310. In lieu of providing either or both of these, the Association may provide a summary satisfying the requirements of Civil Code §5320; however, the Association shall always provide the full reports to any Owner who has so requested in an Association Notice.

3.13 REVIEW OF FINANCIAL STATEMENTS. When required by Civil Code §5305, the Association shall provide a review of its financial statements prepared in accordance with that Section as an Individual Notice to all Owners.

3.14 ACCESS TO ASSOCIATION RECORDS. The Association shall at all time maintain all "Association Records" required under Civil Code §5300. The Association Records shall be available for inspection by an Owner or his/her representative as provided in, and subject to the restrictions and requirements of, Civil Code §§5205, 5210, 5215, and 5225. The Association may charge fees and expenses to the maximum extent permitted by applicable law.

CC&R ARTICLE 4. MAINTENANCE AND INSURANCE

4.1 INDIVIDUAL MAINTENANCE.

- A. Units.** Each Owner shall Maintain all elements of his/her Unit in a condition that does not significantly diminish the value or desirability of other Condominiums or the Property as a whole.
- B. Exclusive Use Common Area.** Each Owner shall Maintain the following elements of his/her assigned Exclusive Use Common Area in a condition that does not significantly diminish the value or desirability of other Condominiums and the Property as a whole:
- (1) With regard to garage and entry areas, (i) any finished wall, floor, or ceiling surfaces which serve only such assigned area, (ii) all elements of window and doors (including garage doors), and related frames, hardware and opening mechanisms, excluding only exterior paint, and (iii) portions of the electrical, plumbing, HVAC, and other systems serving only the assigned area; where an entry area is assigned to two (2) Owners, such Owners shall equally share these responsibilities and all associated costs; and
 - (2) With regard to decks, surface coating of the deck floor, and any drain(s).
- C. Failure To Maintain.** If an Owner fails to satisfy his/her Maintenance requirements in a manner which the Association deems necessary or appropriate to preserve the value and desirability of the Property, the Association may provide a Notice to the Owner of the work required and request the Owner to complete the work within thirty (30) days from the Effective Date of the Notice. If the Owner fails to complete the work within that period, the Association has the right, but not the obligation to do the Maintenance work, and assess any associated expense as a Personal Reimbursement Assessment. The failure of the Association to do the work shall not shift to it the responsibility for any loss or damage resulting from the Owner's failure to fulfill his/her obligations.
- D. Building Permit and Contractor Requirements.** Unless otherwise approved by the Board in a written resolution, when the Maintenance work requires a building permit, the Owner shall: (i) obtain all required permits and approvals; (ii) hire a contractor with a currently-valid contractor's license, and who will maintain a liability insurance policy, with policy limits of at least two million dollars (\$2,000,000) per incident, naming all Owners as insureds, covering damage to persons and property (including the personal property of all Occupants) that occurs as a result of the work either during or after performance; (iii) provide Notice with a copy of such permits and approvals to the other Owner at least ten (10) calendar days before commencing the work; and (iv) obtain final governmental inspection and sign-off.
- E. Timing of Work Completion.** All work performed by or on behalf of an Owner must be diligently and consistently pursued through completion, and must be completed within a reasonable time.

4.2 ASSOCIATION MAINTENANCE. The Association shall Maintain in good condition all Common Area, including all Exclusive Use Common Area, except those elements required to be Maintained by an Owner under Section 4.1B. Without limiting the generality of the preceding sentence, it is expressly provided that the Association shall Maintain all elements of decks and the rails and walls and ceilings (if any) surrounding them, including the paint on such surfaces.

4.3 CONSEQUENTIAL DAMAGE AND LOSS. The following provisions shall supersede the general rules described in Sections 4.1 and 4.2.

A. Damage Due To Conduct.

- (1) **Owner Responsibility.** Each Owner is responsible for the costs of Maintenance of all areas of the Property necessitated by the acts or omissions of him/herself, his/her guests, invitees (including independent contractors and employees), any Occupants or user of his/her Condominium, and of the guests and invitees of such Occupants and users. The Association shall perform the work, and shall assess the cost as a Personal Reimbursement Assessment.

- (2) **Association Responsibility.** The Association is responsible for the costs of Maintenance of all areas of the Property necessitated by the conduct and behavior of its invitees (including independent contractors and employees).

B. Damage Due To Malfunction.

- (1) **Covered Loss/Point of Origin.** In instances where the damage is not the result of conduct as described in Section 4.3A, the Association shall determine:
- (a) Whether the loss would be covered by a typical policy of fire and casualty insurance required to be maintained either by the Association, or by an Owner, under the insurance provisions of this Declaration (a "Covered Loss"); and
 - (b) Whether it is the Association, or a particular Owner, that is responsible for Maintenance of the specific element that is the "Point of Origin". The Point of Origin is the element of the Property that malfunctioned first and began the chain of events that led to the loss or damage.
- (2) **Covered Loss/Association Policy.** If the loss is a Covered Loss under a policy the Association is required by this Declaration to carry, the Association shall submit a claim for such loss. To the extent the restoration cost exceeds policy limits or is within a policy deductible, or if coverage is denied despite reasonable efforts by the Association, such unreimbursed cost shall be allocated based on Point of Origin as provided in Subsection (4) below. However, if there is no coverage as a result of the failure of the Association to maintain coverage required by this Declaration, the Association shall pay the entire cost.
- (3) **Covered Loss/Owner Policy.** If the loss is a Covered Loss under a policy an Owner is required by this Declaration to carry, the Owner shall submit a claim for such loss. Since each Owner determines the policy limits and deductibles associated with the fire and casualty coverage he/she obtains, each Owner shall be responsible for all cost exceeding policy limits or within a policy deductible. If coverage is denied despite reasonable efforts by the Owner, the cost shall be allocated based on Point of Origin as provided in Subsection (4) below. If there is no coverage as a result of the failure of the Owner to maintain coverage required by this Declaration, such Owner shall pay the entire cost.
- (4) **Non-Covered Loss/Denial of Coverage.** If the loss is not a Covered Loss (as defined above), or where the preceding Subsections provide that the restoration cost shall be allocated based on Point of Origin, the following provisions shall apply:
- (a) If the Association is responsible for the element at the Point of Origin, it shall be responsible for the cost. For example, if the Association is responsible for Maintaining exterior painting and siding, and water intrudes into the building from the side, damaging the interior of a Unit, the Association would be responsible for the cost of all restoration to, or within, the Unit.
 - (b) If an Owner is responsible for Maintaining the element at the Point of Origin, he/she shall be responsible for the cost. For example, if an Owner is responsible to Maintain a plumbing pipe, and the pipe bursts resulting in damage to the Common Area and to another Unit, the Owner would be responsible for the cost of all restoration to, or within, the Common Area and the other Unit. In such an instance, the Association shall perform the work in the Common Area and the other Unit, and shall assess the cost as a Reimbursement Assessment.

4.4 INSURANCE COVERAGE.

A. Association Insurance.

- (1) **General Liability.** The Association shall maintain commercial general liability insurance insuring the Association, its officers and directors, its manager, and the Owners, against any liability incident to ownership or use of the Common Area, but excluding the liability of an Owner incident to personal bodily injury and property damage occurring within that Owner's Unit or in any other Unit or upon the Common Area resulting from the negligence of that Owner, with limits of liability to be set by the Board but in no event less than those described in Civil Code §5805. Such liability insurance policy shall: (i) insure against bodily injury, death, or property damage occurring in, on or about any portion of the Common Area; (ii) and include water damage liability, liability for property of others, and such other risks as are customarily covered in condominium projects; (iii) contain a waiver of subrogation as to

claims against the Association, its Board, the Owners and members of any Owner's family who reside with such Owner, except in cases of arson or fraud; (iv) contain a waiver of the defense of invalidity on account of the conduct of any Owner over which the Board has "no control;" (v) provide that it shall not be cancelled or substantially modified without at least thirty (30) days' written notice to all the insureds and Mortgagees; (vi) provide that in no event shall the insurance be brought into contribution with insurance purchased individually by Owners or their Mortgagees, and exclude policies obtained by the individual Owners from consideration under any "no other insurance" clause; and (vii) contain a provision requiring the insurer to defend any suit against any insured, even if the allegations are fraudulent, but authorizing the insurer to make such investigation and settlement of any claim or suit within the policy limit as it deems expedient.

- (2) **Director's and Officer's Liability.** The Association shall maintain directors' and officers' liability insurance with limits to be set by the Board but in no event less than those set forth in Civil Code §5800, and containing a cross-liability endorsement and waiver of subrogation as to the Association, the officers, and the directors, and the agents of any of them. To the extent obtainable, coverage for prior acts shall be included.
- (3) **Fidelity Bond.** The Association shall maintain a standard fidelity bond covering dishonest acts on the part of its officers and directors, manager, and any employees or volunteers who are responsible to handle funds of the Association. Such bond shall name the Association as obligee, shall be written in an amount that shall be determined by the Board, and shall contain a waiver of any defense based on the exclusion of persons serving without compensation.
- (4) **Property Damage.** The Association shall maintain an all-risk blanket policy of property insurance covering: (i) the building structure, including any additions or extensions; (ii) and all utility fixtures and equipment (for example, water heaters and furnaces, and all systems, such as hook-ups, ducts, wiring, and pipes, servicing such fixtures and equipment) that are not visible within the interior of a Unit; (iii) all furnishings, equipment and personal property owned by the Association or owned in common by all of the Owners; (iv) all Common Area, excluding all fixtures, furnishings, decorations, and personal property within any Exclusive Use Common Area; and (v) all elements of each Unit that are not visible from within the Unit excluding improvements or betterments made by an Owner. The Policy limits shall be equal to one hundred percent (100%) of the full insurable replacement costs including required building code upgrades, exclusive of land, foundation, excavations, and other items normally excluded from coverage. The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals the replacement cost. To the extent available, the blanket policy shall: (i) provide coverage for glass, breakdown of any equipment required to run and operate the Property, sprinkler leakage, windstorm, water damage, and loss or damage as a result of theft, vandalism, malicious mischief; (ii) provide coverage for costs of demolition in the event of total or partial destruction and a decision not to rebuild, and maintenance fees receivable coverage in case of damage to a Unit by a covered peril where the Board is unable, after reasonable effort, to collect assessments from the Owner of the affected Unit; (iii) contain an agreed amount endorsement or its equivalent, a guaranteed replacement cost or replacement cost endorsement, an inflation guard endorsement, and an increased cost of construction endorsement; (iv) contain a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild; (v) name the Association as the first-named insured and the Owners as insured with policy benefits payable to the Association as trustee for each Owner; (vi) contain a standard Mortgagee clause; and (vii) provide a waiver of subrogation as to any and all claims against the Association, its officers and directors, the manager, and the Owners, and a waiver of all defenses based upon acts of the insureds or the existence of co-insurance.

- B. Owner Insurance.** Each Owner shall carry an "HO6 Condominium Owner's Policy" or the equivalent and a policy or policies of public liability insurance covering: (i) the Owner's individual liability for damage to property or injury to person of others occurring within the Owner's Unit or the appurtenant Exclusive Use Common Area, in an amount not less than Three Hundred Thousand Dollars (\$300,000) for each occurrence or in such other amount as the Board may establish from time to time by Rule; (ii) property damage to all elements of his/her Unit that are not covered by the Association property insurance, including all elements of walls (including drywall or lathe/plaster), floors, cabinetry, counters, built-in appliances, other fixtures, elements of the plumbing, electrical and HVAC systems that are visible within the interior of the Unit, and Unit improvements or betterments made by the Owner or any previous Owner of the same Unit, in an amount not less than the reasonably estimated value of such items; (iii) loss assessment in an amount not less than Fifty Thousand Dollars (\$50,000); and (iv) the deductible under the hazard insurance policy carried by the Association. No Owner shall obtain or maintain any policy of insurance that reduces the amount of coverage under any policy obtained or maintained by the Association. If any Owner violates this provision, such Owner will be liable to the Association to the extent of any diminution and the Association shall levy a Reimbursement Assessment

against such Owner in such amount. Each such policy shall contain a waiver of subrogation as to any and all claims against the Association, its officers and directors, the manager, and the Owners and a waiver of all defenses based upon acts of the insureds or the existence of coinsurance.

- C. Renters Insurance.** Each Owner who rents or leases a Unit shall require the tenant to purchase and maintain in force during the tenancy an "HO4 Renter's Policy" or the equivalent with a minimum personal liability limit of Three Hundred Thousand Dollars (\$300,000).
- D. FNMA, FHLMC and VA Insurance Requirements.** When FNMA, FHLMC or VA is the Mortgagee, an insurer or guarantor of a Mortgage, or an Owner of a Condominium within the Property, a policy required under this Declaration must satisfy the minimum requirements imposed for this type of Property by FNMA, FHLMC or VA with respect to amount, term coverage, deductible, named insureds, loss payees, standard mortgage clauses, notices of change and cancellation, and insurance company rating. However, to the extent that coverage is not available upon reasonable terms and at reasonable cost, or has been modified or waived in writing by FNMA, FHLMC or VA, it need not be obtained.
- E. Inability To Obtain Insurance.** In the event any Association insurance policy or any is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after good faith effort, it is unable to obtain or maintain insurance because the insurance is no longer available or, if available, can be obtained or maintained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Owners fail to approve any Assessment increase needed to fund the insurance premiums.
- F. Claims Against Association Insurance.** A decision not to submit a particular claim to an Association insurance carrier must be approved by any Owner who will be forced to pay additional costs as a result of the decision. The Board is appointed attorney-in-fact by each Owner to file all claims and to negotiate and agree on the value and extent of any loss under any Association insurance policy, and is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.
- G. Casualty Insurance Proceeds.**
- (1) When a particular Owner is responsible for Maintaining an item under this Declaration (as opposed to where he/she is responsible only to pay the cost of Maintenance), and the Association receives insurance proceeds for repair or replacement of the item, the proceeds shall be distributed to such Owner, subject to the limitations in Subsection (2) below.
 - (2) When Subsection (1) entitles one or more Owners to receive proceeds from Association insurance, but such proceeds must be allocated between Owners or between the Association and one or more Owners, the Association shall use information provided by the insurance carrier relating to how the amount of proceeds was calculated, to the extent such information is available. When such information is not available, or when such information is incomplete, the proceeds shall be allocated in proportion to the cost of Maintenance of the damaged or lost items. Under no circumstances shall the proceeds be allocated based upon Percentage Interest.
 - (3) If Association insurance proceeds allocated to a particular Owner are insufficient to pay the Maintenance costs for which such Owner is responsible, the Owner shall pay the additional amounts. Similarly, where an Owner is responsible for the Maintenance cost (as opposed to where he/she is responsible to Maintain the item), and the Association insurance proceeds allocated to such Maintenance do not cover the full cost, the Owner shall pay the additional amounts.
- H. Other Insurance Requirements.**
- (1) If the Association has employees, it shall maintain workers' compensation insurance as required by law.
 - (2) The Association's insurance shall be written by an insurance company qualified to do business in California with a rating of at least an "A" by Best's Insurance Reports or equivalent.
 - (3) All policies of insurance shall be reviewed at least annually and adjusted, if necessary, to provide such coverage and protection as the Association may deem prudent or as reasonably required by any lender.

- (4) The Association shall provide Notice to all Owners as soon as reasonably practical if any of its insurance policies: (i) lapses or is canceled and is not immediately renewed, restored or replaced; (ii) will undergo significant change such as a reduction in coverage or limits, or an increase in the deductible; or (iii) is subject to a notice of nonrenewal and replacement coverage will not be in effect at the time the existing coverage will lapse.
- (5) Within five (5) days of a Notice so requesting, each Owner shall provide to the Association written evidence that he/she is in compliance with the insurance requirements of this Declaration, including those relating to any contractor hired by him/her, and any tenant using in such Owner's Unit. However, the right of the Board to request evidence of insurance that an Owner is obligated to carry pursuant to this Declaration shall not be deemed to impose a duty on the Board or the Association to request such evidence of insurance or impose on the Association any liability to any person arising or claimed to arise out of any action or inaction by the Board, the Association or anyone acting on the Association's or the Board's behalf with respect to verifying any Owner's compliance with the Owner's obligation to carry insurance.

4.5 CATASTROPHIC DAMAGE. As used in this Section, "Catastrophic Damage" means sudden and unexpected physical damage to portions of the Property which the Association is obligated to Maintain for which the cost will exceed fifty percent (50%) of the full replacement cost of all portions of the Property which the Association is obligated to Maintain.

- A. Determining Extent Of Damage.** Immediately after the occurrence of Catastrophic Damage, the Association shall obtain two (2) or more written bids from separate licensed contractors to restore the damaged elements to substantially the same condition as existed before the damage occurred. Bids shall include at a minimum a detailed scope of work, fixed or not-to-exceed contract price, completion date and provision for adequate insurance coverage by the contractor.
- B. Determining Availability Of Repair Funds.** After obtaining repair bids, the Association shall promptly determine the amount of funds available for, from insurance, Maintenance Reserves, loans, and any other source. In making this determination, the Association shall consider as available any insurance proceeds payable to any Owner for repair or replacement of any of the damaged elements.
- C. Decision To Rebuild.** Provided that restoring the damaged areas of the Property would not necessitate a Special Assessment of more than one hundred thousand dollars (\$100,000) on any Unit, the Association shall perform the work, and any difference between the total funds available and the actual cost shall be imposed as a Special Assessment. Any Owner who receives insurance proceeds for repair or replacement of any of the damaged elements that the Association is required to restore shall provide such proceeds to the Association in addition to his/her portion of the Special Assessment. If restoration would necessitate a Special Assessment of more than one hundred thousand dollars (\$100,000) on any Unit, the Association shall not restore unless seventy five percent (75%) of all Units vote to do so. If the Association does not restore, it shall sell the entire Property in its then existing condition on the best available terms. Each Owner hereby grants the Association an irrevocable power of attorney to represent the Owner in any negotiations or agreements related to sale or other liquidation following Catastrophic Damage. The sale proceeds together with any insurance proceeds, net of any expenses associated with necessary stabilization of the Property and fees associated with disposition of the Property, shall then be distributed as provided in this Declaration. The Association shall then be dissolved and the entire common interest development terminated as provided by law. If the Association fails to sell the Property within a reasonable period of time, it may bring an action for judicial partition.
- D. Repair Work.** All individuals or entities performing work for the Association shall (i) hold all licenses legally required for such work and (ii) enter into a written contract with the Association which satisfies all of the requirements for bids specified in Subsection A. Payment and performance bonds shall be required in contracts exceeding one hundred thousand dollars (\$100,000). The Association shall ensure that all work is diligently pursued to completion in accordance with best construction practices prevailing in the locale at the time the work is done.
- E. Emergency Repair.** If the Association or its representative reasonably believes there is an imminent threat of harm to a person, animal or property, the Association may make repairs or take any other necessary action without first complying with the provisions of this Section.
- F. Certification Of Intention.** If the Association decides, by affirmative act or failure to act, to sell the Property rather than restore Catastrophic Damage, it shall promptly provide Individual Notice to all Owners of the decision and record a certificate reciting that fact with the County Recorder.
- G. Revision Of Documents.** If the Association decides, by affirmative act or failure to act, not to restore Catastrophic Damage, the Association shall have the power and authority to execute and record, on behalf of itself and the individual

Owners, all necessary documents to show the altered status of the Property, including but not limited to a revised Condominium Plan.

CC&R ARTICLE 5. OTHER ASSOCIATION POWERS AND DUTIES

5.1 GENERAL POWERS OF ASSOCIATION. The Association shall have the power to do any lawful thing required or permitted to be done under the Governing Documents and necessary, appropriate or incidental to the exercise of the express powers or duties of the Association for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limitations on those powers set forth in the Governing Documents. The duties and powers of the Association shall include, but are not limited to, those specifically enumerated in this Declaration. The activities of the Association shall be conducted, and all powers exercised, by and under the direction of the Board.

5.2 MANAGER. The Association may employ, or retain as independent contractor, a manager to perform all or any part of the Association's delegable duties. Any management contract shall be in writing and provide for the right of termination without a termination fee by either party with immediate notice if for cause, or with contract-specified advance notice if without cause. The Association shall not delegate the following powers: (i) to borrow money; (ii) to use Association property as security for a debt; (iii) to levy Assessments; (iv) to begin litigation; (v) to make capital expenditures in excess of budgeted amounts; (vi) to impose discipline for violation of the Governing Documents; or (vii) to hold disciplinary hearings.

5.3 ENFORCEMENT. The Association shall exercise prudent business judgment in determining whether, when and how to enforce the Governing Documents. The Board shall be permitted to create and change Rules, including those imposing fines and penalties, provided it complies with the requirements of Civil Code §§4340, 4350, 4355, and 4360. The Board shall comply with the requirements of Civil Code §5850 when it levies a Personal Reimbursement Assessment and/or imposes monetary penalties on any Owner, and with the requirements of Civil Code §5855 when it imposes discipline of any kind on an Owner. The Association may not impair an Owner's right to use and enjoy his/her Condominium as part of any disciplinary action. Each Owner shall have a right of action against another Owner or the Association for failure to comply with the Governing Documents or with a decision of the Association. A failure by the Association to enforce any provision of the Governing Documents on one or more occasions shall not be deemed a waiver or estoppel of the Association's right to enforce a similar or other violation of the Governing Documents.

5.4 LEGAL ACTIONS. The Association may institute, defend, settle or intervene in litigation, mediation, arbitration or administrative proceedings in any matter relating to the Property including but not limited to (i) enforcement of the Governing Documents, (ii) damage to the Common Area, (iii) damage to other parts of the Property which the Association is obligated to Maintain, or (iv) damage to Units or Exclusive Use Common Areas which arises out of, or is integrally related to, damage to the Common Areas or other parts of the Property which the Association is obligated to Maintain. The Association shall not be required to conduct inspections, maintain inspection records, exhaust any applicable casualty insurance coverage, or provide an opportunity to cure prior to initiating a civil action.

5.5 MECHANICS LIENS. When a mechanics lien against the Common Area arises from work for which an Owner has contracted, the Association may discharge it and charge any associated cost to the responsible Owner as a Personal Reimbursement Assessment. When a mechanics lien against the Common Area arises from work for which the Association has contracted and there is no dispute with the entity that filed the lien, the Association shall promptly discharge the lien. When a mechanics lien against a Unit arises from work for which the Association has contracted and the Unit Owner so requests, the Association shall promptly discharge it.

5.6 UTILITY SERVICE. The Association shall obtain Utility service for the Common Area. In addition, when a particular Utility cannot reasonably be obtained by a Unit independently, the Association shall obtain it and, to the extent possible, allocate any associated cost according to usage.

CC&R ARTICLE 6. ASSOCIATION DECISIONMAKING

6.1 AUTHORITY OF BOARD. In general, all of the activities of the Association shall be conducted, and all powers exercised, by and under the direction of the Board. Whenever the Governing Documents state that the "Association" may or must make a decision, including the enactment, alteration, or repeal of any Rule, the decision is to be made by a vote of the Board rather than by the vote of the Owners. The only exception to these general rules is when the Governing Documents specifically state that a particular decision or action requires the approval of Owners.

6.2 ACTIONS REQUIRING OWNER APPROVAL.

- A. Notwithstanding anything to the contrary in Sections 3.2 and 3.5, except in an Emergency Situation as defined in Civil Code §5610, Majority Owner Approval shall be required for: (i) an increase in the Regular Annual Assessments for a particular fiscal year that would become effective before compliance with the Annual Budget Report requirements (described in Section 3.12) for that fiscal year; (ii) a Regular Annual Assessment increase of more than twenty percent (20%); and (iii) a Special Assessment which, when added to all other Special Assessments levied during the same fiscal year, exceeds five percent (5%) of the budgeted gross expenses for that fiscal year.
- B. The following actions require Majority Owner Approval and the affirmative vote of each Owner both directly and detrimentally affected by the action: (i) changing the method of allocating Assessments, voting rights, or responsibility for Maintenance; and (ii) altering, or redefining the boundaries of a Unit or Exclusive Use Common Area.
- C. The following acts require an affirmative vote on behalf of all Owners entitled to vote:
- (1) Approval of any Special Assessment, other than a Mandatory Special Assessment under Subsection 3.5A, if the amount, when added to all other non-Mandatory Special Assessments made within the preceding three (3) month period is more than one thousand five hundred dollars (\$1,500);
 - (2) Approval of a disbursement which does not fall within any of the following categories: (i) it is a Mandatory Disbursement under Subsection 3.10A; (ii) it is required to respond to an Emergency; or (iii) the amount, when added to all other disbursements made within the preceding three (3) month period for items not falling within category (i) or (ii) would be less than one thousand five hundred dollars (\$1,500);
 - (3) Except as otherwise provided in this Declaration, abandon the Property or terminate Association activities prior to the expiration of the term provided in the Governing Documents;
 - (4) Use the proceeds from an insurance claim or from a settlement or judgment of a legal dispute for any purpose other than to restore the loss or damage for which the recovery was obtained;
 - (5) Alter or amend the provisions of this Declaration regarding assessment liens, assessment lien priority, insurance, leasing of Units, Catastrophic Damage, or condemnation;
 - (6) Except as specifically provided in this Declaration, alter, reconfigure or redefine the boundaries of a Unit, Exclusive Use Common Area, or Common Area, or approve a substantial alteration to the exterior appearance of the Property; and
 - (7) Impose any restriction on the free alienation or transferability of a Condominium.

CC&R ARTICLE 7. MORTGAGE PROTECTION

7.1 SUBORDINATION. Any lien created or claimed under this Declaration is subject and subordinate to the rights of any previously recorded Mortgage secured by the same Property made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. On foreclosure of a previously recorded Mortgage, the foreclosure-purchaser shall take title free of any Assessment liens and shall be obligated to pay only assessments or other charges levied or assessed by the Association that became due or payable on or after the date the foreclosure-purchaser acquired title. The subsequently levied assessments or other charges may include previously unpaid assessments, provided all Owners including the foreclosure-purchaser and his successors and assigns are required to pay their proportionate share.

7.2 FIRST REFUSAL INAPPLICABLE TO MORTGAGEE. Any right of first refusal or option shall bind a Mortgagee and shall not impair the rights of a Mortgagee (i) to foreclose or take title pursuant to the remedies provided in the Mortgage, (ii) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage, or (iii) to sell or lease a separate interest acquired by the Mortgagee following a Mortgage default.

7.3 FORMER OWNER IN POSSESSION FOLLOWING FORECLOSURE. A former Owner who loses title by foreclosure but remains in possession shall be bound by the Governing Documents as long as he/she remains in possession, but shall have no obligation to pay Assessments accruing after the date title is transferred.

7.4 MORTGAGEE PRIORITY IN DISTRIBUTION OF PROCEEDS. Each Mortgagee shall have priority over the rights of the Owner of the mortgaged property in case of a distribution to the respective Owner of insurance proceeds or condemnation awards for losses to or a taking of such Owner's interest in the Property. Any provision to the contrary in the Governing Documents is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees, naming such Mortgagees as their interests may appear.

7.5 MORTGAGEE APPROVAL REQUIREMENTS. The prior written consent (or deemed consent as provided below) of Mortgagees holding mortgages on at least fifty-one percent (51%) of all separate interests encumbered by Mortgages shall be required to take any of the following actions:

- A. Except as otherwise provide in this Declaration for cases of Catastrophic Damage, to use hazard insurance proceeds for a purpose other than Maintenance, to abandon the Property, or to terminate the Association;
- B. Change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner, or to change the pro rata interest or obligations of any Owner for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or for determining the pro rata share of ownership of each Owner in the Common Area;
- C. Abandon, partition, subdivide, encumber, sell or transfer the Common Area (but the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed to be a transfer within the meaning of this clause);
- D. Fail to maintain fire and extended coverage insurance on insurable property owned by the Association, including any Common Area improvements, in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and
- E. Amend any provision of the Governing Documents that are for the express benefit of Mortgagees.

Any Mortgagee that does not respond within sixty (60) days to a written consent request shall be deemed to have consented, provided that the written consent request was delivered to the Mortgagee by certified or registered mail, with a "return receipt" requested. If the Association amends or replaces a Governing Document without obtaining Mortgagee approval, the changed or new Governing Document shall be binding upon every individual or entity except: (i) an individual or entity that is a Mortgagee at the time the amendment or replacement document takes effect and that did not consent to the amendment/replacement either explicitly or through failure to respond (a "Non-Consenting Mortgagee"); or (ii) a person or entity that acquires an interest in the Property from a Non-Consenting Mortgagee following a foreclosure or deed in lieu of foreclosure or a successor in interest to such a person or entity.

7.6 MORTGAGEE RIGHTS. Each Mortgagee shall be entitled to written notice of the following:

- A. The right to furnish information to any Owner concerning the status of any Mortgage;
- B. The right to obtain the same information as an Owner from the Association upon written request and payment of required fees;
- C. The right to appear at Owner meetings to draw attention to violations of the Governing Documents that have not been corrected or that have been made the subject of remedial proceedings or Assessments; and
- D. The right to receive notice of the following from the Association:
 - (1) The occurrence of loss, casualty, condemnation or eminent domain that affects either a material portion of the Property or the Condominium secured by the Mortgage;
 - (2) Any 60-day delinquency in the payment of Assessments by, or Association commencement of judicial or nonjudicial foreclosure proceedings to enforce payment of delinquent obligations owed under the Governing Documents against, the Owner of its encumbered property;
 - (3) Any lapse, cancellation or material modification of any Association insurance policy; and
 - (4) Any proposed action that requires the consent of a specified percentage of Mortgagees.

Failure of a Mortgagee to receive the notice required by this Section shall not be construed to benefit an Owner or to impede the

CC&R ARTICLE 8. GENERAL PROVISIONS OF DECLARATION

8.1 AMENDMENT OF DECLARATION. This Declaration may be amended with the affirmative vote of a majority of the Owner votes entitled to be cast, provided that the amendment would not effectively circumvent more specific voting requirements within the document. Notwithstanding the preceding sentence, however, the Declaration may be amended by the Board, without an Owner vote, if such action is specifically permitted by applicable law and the Board complies with all Owner notification requirements imposed by such law. In addition, notwithstanding anything to the contrary in this Section, the Board may, without Association vote, as the attorney-in-fact for each Owner, record an amendment or appropriate instrument to add or modify provisions to the Governing Documents to bring them into compliance with FNMA, FHLMC, VA, or HUD guidelines.

8.2 CERTIFICATION OF APPROVAL AND RECORDATION. An amendment of this Declaration shall become effective when an authorized officer of the Association has executed and recorded with the County Recorder both (i) the amendment and (ii) a notarized certificate stating that the required number of Units have approved the amendment. The Association shall distribute a copy of the amendment to each Owner as soon as it becomes effective.

8.3 MANNER OF PROVIDING NOTICES, DOCUMENTS AND REPORTS.

- A. Association Notice.** The term "Association Notice" shall include any notice to be given to the Association, including those notifications required by the Governing Documents. Each Association Notice shall be incorporated in a writing given to the person specified to receive Association Notice in the most recent Annual Policy Statement or, if no such person has been designated, to the Association president or secretary. The Association hereby consents to Association Notice being given to such person by email at the email address last provided by the Association in an Annual Policy Statement or other General Notice. Association Notice may also be given by first class mail, postage prepaid, to the postal address last provided by the Association in an Annual Policy Statement or other General Notice. Association Notice shall be deemed delivered on the date it is transmitted by email or on the date it is deposited in the U.S. mail. Association Notice given in any manner other than by properly addressed email or first class mail shall not be deemed valid.
- B. General Notice.** When the Governing Documents provide for a "General Notice" to be given, it shall be in writing, and may be distributed to all Owners in the same manner as an Individual Notice. Alternatively, a General Notice may be given: (i) by inclusion in a billing statement, newsletter, or other document that is delivered to all Owners in a manner approved for an Individual Notice; or (ii) posted in a prominent location that has been designated for the posting of General Notices in an Annual Policy Statement, and is accessible to all Owners. Notwithstanding anything to the contrary in this Subsection, if an Owner has requested, in an Association Notice, that he/she receive all General Notices in the same manner as Individual Notices, that Owner shall thereafter receive all General Notices in such manner.
- C. Individual Notice.** When the Governing Documents provide for an "Individual Notice" to be given, it shall be in a writing transmitted in the following manner. When Co-Owners own a Unit, a transmittal to any of them shall be deemed a transmittal to all of them.
- (1) **Email Method.** Each Owner hereby consents to receive Individual Notice by email at the email address he/she most recently provided to any officer, director, manager, or other representative of the Association. Any Owner who wishes to change the email address used by the Association for delivery of Individual Notice may do so at any time by providing an Association Notice. Similarly, any Owner may revoke his/her consent to receive Individual Notice by email at any time by providing Association Notice of such revocation, after which Individual Notice shall be given to such Owner only as provided in Subsection (2). Individual Notice by email shall be deemed delivered on the date it is transmitted.
- (2) **Postal Method.** Individual Notice may also be transmitted by first-class mail postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, addressed to the recipient at the address last shown on the books of the Association. Individual Notice sent via any method described in this Subsection shall be deemed delivered on the date it is deposited with the U.S. Postal Service or express service carrier.

8.4 DISPUTE RESOLUTION.

- A. Inapplicability to Assessment Disputes and Collections.** None of the provisions below shall apply to any dispute or procedure (of any kind) relating to an attempt to collect a Regular Annual Assessment, Special Assessment, or Personal

Reimbursement Assessment, provided that the Association has complied with all other requirements imposed in the Governing Documents.

- B. Internal Procedure.** In any dispute between the Association and an Owner that is not subject to either the procedures in this Declaration for approval of alterations or the requirements of Civil Code §5855, the parties shall participate in the internal dispute resolution procedure described in Civil Code §5915.
- C. Mediation.** Mediation is an informal and voluntary attempt to resolve a dispute with the help of a neutral individual who has no decision-making authority. Any dispute related to the Association or to the Property that is not resolved through a meet and confer procedure, shall be submitted to mediation. Any Owner desiring mediation shall provide a "Notice of Mediation" to all Owners which shall include (i) the name and address of the mediator, and (ii) a date and time for mediation, which date must be at least ten (10) calendar days before the date set for the mediation. Each Owner shall attend and participate in the mediation. If any Owner is unable to attend the mediation at the proposed date, time and place, he/she may arrange an alternative acceptable to all other Owners provided the alternative date is within seven (7) days of the original proposed date. The costs of mediation shall be shared equally by all Owners and shall be paid at the time of the mediation. Any Owner may petition a court of competent jurisdiction for an order compelling appearance at mediation, and the court shall award all expenses, including reasonable attorney fees, incurred by an Owner so petitioning unless it finds that the Owner against whom the petition is filed acted with substantial justification or that other circumstances make the imposition of such expenses unjust.
- D. Arbitration.** Arbitration is a voluntary or mandatory method of resolving a dispute by delegating decision-making authority to a neutral individual or panel. Except as otherwise provided in this Declaration or required by law, any dispute relating to the Governing Documents that has not been resolved through the meet and confer or mediation procedures described in this Declaration shall be resolved through mandatory binding arbitration by the Judicial Arbitration and Mediation Service ("JAMS") or another private arbitration service or individual acceptable to all parties. Any party affected by a dispute may initiate arbitration by written demand. All parties shall pursue arbitration to a conclusion as quickly as possible and conclude every case within six (6) months from the date of the initial written demand for arbitration. Arbitrators shall have discretion to allow the parties reasonable and necessary discovery in accordance with Code of Civil Procedure §1283.05, but shall exercise that discretion mindful of the need to promptly and inexpensively resolve the dispute. If a party subject to the Governing Documents refuses to proceed with or unduly delays the arbitration process, any other party may petition a court for an order compelling arbitration or other related act, and shall recover all related expenses, including attorney fees, unless the court finds that the party against whom the petition is filed acted with substantial justification or that other circumstances make the recovery of such expenses unjust. An arbitration award may be entered as a court judgment and enforced accordingly.
- E. Other Exempt Disputes.** The following matters are not subject to the mandatory binding arbitration provisions of this Declaration; however, litigation relating to these matters may be subject to the alternative dispute resolution requirements of Civil Code §5930, as applicable: (i) an attempt to recover possession of real property through an unlawful detainer; (ii) a Partition pursuant to Civil Code §4610; (iii) a claim for bodily injury or wrongful death; and (iv) recordation of a notice of pending action, or an order of attachment, receivership, injunction or other provisional remedy which may provide interim protection during the pendency of an arbitration proceeding.

8.5 DISPUTES WITH DECLARANT.

- A.** Declarant elects to use the alternative non-adversarial procedures established in this Section instead of those provided in the right to repair law beginning at Civil Code §914. For the purposes of this Section, a "Declarant Party" is Declarant or any member, employee, representative, contractor, subcontractor, design professional or agent of Declarant. A "Declarant Dispute" is a dispute between the Association and/or one (1) or more Owners, and a Declarant Party, arising under this Declaration or relating to the Property, including disputes regarding latent or patent construction defects, but excluding: (i) any dispute arising out of or related to this Fit and Finish Warranty that is part of the purchase contract for a Condominium; and (ii) actions taken by the Association against Declarant to collect delinquent Assessments, involving any Common Area completion bond, or where the amount in controversy is equal to or less than Five Thousand Dollars (\$5,000). This Section governs only the resolution of Declarant Disputes and shall not affect the subject matter of such Declarant Disputes. Unless the subject matter of a Declarant Dispute expressly involves enforcement of the Governing Documents, such Declarant Dispute shall not be governed by the provisions of Civil Code §5975 or of any successor statute.
- B.** Declarant Parties shall not have the right to vote on any decision of the Association to initiate a construction defect claim pursuant to Civil Code §895.

- C. Any party with a Declarant Dispute shall give written notice of the Declarant Dispute by personal or mail service as authorized by Code of Civil Procedure §§415.10 et seq. to the Declarant Parties with whom the Declarant Dispute exists (each a "Respondent"), describing the nature of the Declarant Dispute and any proposed remedy (the "Dispute Notice"). Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Declarant Dispute is resolved, the Respondent and its representatives have the right to (i) meet with the party alleging the Declarant Dispute at a reasonable time and place to discuss the Declarant Dispute, (ii) enter the Property to inspect any area that is subject to the Declarant Dispute and (iii) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If the Respondent elects to take any corrective action, the Respondent and its representatives shall be provided full access to the Property to take and complete such corrective action. The Respondent is not obligated to take any corrective action. The Respondent, with the consent of Declarant, has the right to select the corrective action that the Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in Civil Code §6000 (the "Calderon Act"). The procedures established in the Calderon Act may be implemented before, during or after the procedure in this Section is implemented.
- D. If the Declarant Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Declarant Dispute to mediation by delivering a request for mediation (the "Mediation Notice") in the same manner as allowed for delivery of the Dispute Notice. The Declarant Dispute shall be mediated pursuant to the mediation procedures of Judicial Arbitration & Mediation Services, Inc. ("JAMS") in existence when the Dispute Notice is delivered, as modified by this Subsection. Persons other than the parties, their liability insurers, Declarant, attorneys for the parties, their liability insurers, the Declarant Parties and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the parties. There shall be no stenographic, video or audio record of the mediation process. Each party shall bear such party's own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation, including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator, shall be borne equally by each of Declarant and the Declarant Parties to whom the Declarant Dispute is directed, unless the parties agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between Declarant and such Declarant Party.
- E. If a Declarant Dispute remains unresolved after the mediation required by the preceding Subsection is completed, any of the parties may file a lawsuit, provided that the Association must obtain the vote or written consent of both Owners (unless Declarant is one of the Owners) before filing a lawsuit. All lawsuits regarding Declarant Disputes must be resolved by general judicial reference pursuant to Code of Civil Procedure §§638 and 641 through 645.1, as modified by the following provisions.
- (1) The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No party shall be required to participate in the judicial reference proceeding if any individual or entity against whom such party would have necessary or permissive cross-claims or counterclaims will not or cannot be joined in the judicial reference proceeding.
 - (2) The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding and shall have no authority to further refer any issue of fact or law to any other person unless (i) all parties to the judicial reference proceeding consent, or (ii) the referee determines that a conflict of interest or similar situation has arisen that would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected in accordance with Subsection (4) below solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.
 - (3) The proceedings shall be heard in the county where the Property is located (the "County").
 - (4) The referee shall be a retired judge who served on the Superior Court of the State of California in the County with substantial experience in the type of matter in dispute and without any relationship to the parties to the judicial reference proceeding or any interest in the Property. The parties to the judicial reference proceeding shall meet to select the referee no later than thirty (30) days after service of the initial complaint on all defendants named in the complaint. Any dispute regarding selecting the referee shall be resolved by the court in which the complaint is filed.
 - (5) The referee shall commence the proceeding at the earliest convenient date and shall conduct the proceeding without undue delay. The referee may require pre-hearing conferences. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness

designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections and (vi) briefs. Any other discovery authorized in the Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of all parties to the judicial reference proceeding. The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee also shall have the power to adjudicate summarily issues of fact or law, including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. A stenographic record of the hearing shall be made, which shall remain confidential except as may be necessary for post-hearing motions and appeals.

- (6) The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to of the Code of Civil Procedure §532. The decision of the referee shall stand as the decision of the court, and, upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Declarant Dispute had been tried by the court. The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding. The referee may rule on all post-hearing motions in the same manner as a trial judge. The decision of the referee shall be subject to appeal in the same manner as if the Declarant Dispute had been tried by the court.
- (7) Each party to the judicial reference proceeding shall bear such party's own attorney fees and costs incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of the stenographic record, shall be advanced equally by each of Declarant and the Declarant Parties to whom the Declarant Dispute is directed. However, the referee shall have the power to reallocate such fees and costs among the parties to the judicial reference proceeding in the referee's final ruling. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between Declarant and such Declarant Party.

- F. Nothing in this Section shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant, the Declarant parties, the Association and any Owner may commence a legal action that, in the good faith determination of such party, is necessary to preserve such party's rights under any applicable statute of limitations so long as no further steps in processing such legal action are taken except those authorized in this Section.
- G. DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE SUCH DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION AND EACH OWNER ACKNOWLEDGE THAT, BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT. THIS SECTION MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.
- H. Enforcement of this Section shall not entitle the prevailing party in any Declarant Dispute to recover attorney fees or costs.

8.6 OWNER'S ACCOUNTABILITY. Each Owner is responsible to the Association for the conduct and behavior of his/her guests, invitees (including independent contractors and employees), any Occupants or user of his/her Condominium, and of the guests and invitees of such Occupants and users.

8.7 INDEMNIFICATION. Absent gross negligence, intentional misconduct or fraud, the Association shall indemnify its directors, officers and committee members to the fullest extent permitted by law against all liability and expenses, including reasonable attorney fees, arising out of a claim based upon a wrongful act or omission in the scope of their duties on behalf of the Association. The Association shall approve or disapprove the indemnity, and may advance expenses, in accordance with Corporations Code §7237.

8.8 NOTICE OF TRANSFER.

- A. **Disclosures Required for Transfers.** Within ten (10) days from an Association Notice from an Owner with regard to the proposed sale or transfer of a Condominium, the Association shall provide the Owner with the documents listed in §4525. The Owner shall provided such documents to any prospective purchaser as soon as practicable before the transfer of title or the acceptance of a purchase contract.

- B. Notice of Transfers.** An Owner who transfers any ownership interest in a Condominium, whether by sale, lease, gift, exchange or otherwise, shall promptly provide Association Notice of the name and address of the transferee, the type of transfer, the date of transfer and any other information about the transfer that the Association may reasonably request.

8.9 CONDEMNATION. Each Owner hereby grants the Association an irrevocable power of attorney to represent the Owner in any condemnation or eminent domain negotiation or proceeding, whether or not a civil action has been started. The proceeds from a taking of two or more Condominiums or of the Common Area by eminent domain shall be distributed as provided in Section 8.9 of this Declaration.

8.10 DISTRIBUTIONS. All net proceeds from insurance, liquidation, or condemnation relating to two or more Condominiums or the Common Area shall be paid to the Association for the benefit of the Owners and their mortgagees. To the extent proceeds from insurance or condemnation have been allocated among affected Units and Common Area by the paying entity, the Association shall distribute such funds in accordance with that allocation. Otherwise, the Association shall distribute these funds to the affected Owners based upon the relative value of the affected Owners' Condominiums. Relative value shall be determined through an appraisal process as follows:

- A. The Association shall retain three (3) appraisers meeting the following requirements: (i) having at least two (2) years experience appraising real estate similar to the Property in the area where the Property is located, (ii) holding a valid real estate sales, brokerage or appraisal license, (iii) having no prior business or personal relationship with any Owner, and (iv) agreeing in writing to complete his/her appraisal within fourteen (14) calendar days of retention.
- B. The Association shall instruct each appraiser to determine the fair market value of each Condominium involved in the relative valuation. The appraisers shall base their valuations on the physical conditions which existed on the date immediately preceding the destruction or other event triggering the need for valuation.
- C. Upon receiving the valuations of all appraisers, the Association shall disregard the lowest and highest appraisal for each Condominium. The Association shall then use the remaining appraisal for each Condominium to determine the relative values.

If any Owner owes money to the Association at the date of the disbursement, the amount owed shall be subtracted from the amount to be disbursed to that Owner.

8.11 ADDITIONAL GENERAL PROVISIONS. This Declaration shall continue for a term of fifty (50) years from the date it is recorded unless superseded or terminated sooner. The term shall be automatically extended for successive periods of ten (10) years, unless the Association is terminated, and it records with the County Recorder a notice of termination prior to the commencement of the next period. Any uncertainty or ambiguity in the Governing Documents shall be resolved by reference to the following rules of interpretation: (i) the provisions of the Governing Documents shall be liberally interpreted to facilitate the operation of a common interest development and liberally interpreted to preserve and protect the general plan established for mutual and common benefit of all Owners, and (ii) a more specific provision shall prevail over a more general one. In the event of an inconsistency between this Declaration and the Condominium Plan, or between this Declaration and the Bylaws, this Declaration shall control. Both this Declaration and the Bylaws shall control over an inconsistent provision in the Rules. Each provision of the Governing Documents is independent and severable, and may be enforced even though another provision may be unenforceable. Each Owner grants an irrevocable power of attorney to the Association to carry out the provisions of this Declaration. References to particular statutes of the State of California shall include any amendment of the statute. If a particular statute is repealed, reference to the statute shall include another statute which thereafter governs the same subject. The party who prevails in an arbitration, civil action or other proceeding to enforce or interpret the Governing Documents shall be entitled to recover all costs and expenses, including reasonable attorney's fees, but the arbitrator, judge or other decision maker shall have final discretion to allocate such costs and expenses between the parties in a manner that will accomplish substantial justice.

THE UNDERSIGNED PARTY HEREBY STATES THAT: (I) IT IS THE ONLY OWNER OF THE REAL PROPERTY DESCRIBED IN THIS DECLARATION, AND (II) IT CONSENTS TO THE RECORDING OF THIS DECLARATION AND THE CONDOMINIUM PLAN ATTACHED AS EXHIBIT A TO THIS DECLARATION.

DOM CAMPAIGN, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, by:

Alexander Lazarev, Manager

DATE

NOTARY ACKNOWLEDGEMENT ON FOLLOWING PAGE

EXHIBIT "A"

NOTES AND DEFINITIONS:

1. THIS PROJECT IS LOCATED IN LOT 1 OF PARCEL MAP NO. 10493 IN THE CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AS PER MAP FILED IN BOOK , PAGE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER. THIS PROJECT IS COMPOSED OF A COMMON AREA AND 4 UNITS.
2. THE CONDOMINIUM DELINEATED HEREIN IS SUBJECT TO THE PROVISIONS OF THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT, TITLE 6 PART 4, DIVISION SECOND OF THE CIVIL CODE.
3. THE BOUNDARIES OF THE CONDOMINIUM UNITS, AS SEPARATELY SHOWN, NUMBERED AND DESIGNATED HEREIN, ARE THE INTERIOR UNFINISHED SURFACES OF THE WALLS, THE INTERIOR UNFINISHED SURFACES OF THE CEILINGS, THE INTERIOR UNFINISHED SURFACES OF THE FLOORS, AND THE WINDOWS AND DOORS THEREOF, INCLUDING THE PORTIONS OF THE BUILDING SO DESCRIBED AND THE AIR SPACE SO ENCOMPASSED. EACH UNIT ALSO INCLUDES: (I) ALL FIXTURES, APPLIANCES, AIR HEATING, WATER HEATING EQUIPMENT, AND VENTILATING FANS, AND THE OUTLETS THEREOF, WHEREVER LOCATED, WHICH ARE PART OF A DISCRETE AND COMPLETE SYSTEM INTENDED TO SERVE ONLY THE UNIT; AND (II) THE FINISHED COMPONENTS OF THE UTILITIES SERVING THAT UNIT, SUCH AS THE ELECTRICAL OUTLETS, SWITCHES AND FIXTURES, AND ALL THE PLUMBING FIXTURES AND FAUCETS. THE UNIT DOES NOT INCLUDE ANY POST, COLUMN, GIRDER, BEARING WALL, ROOF SUPPORT, ROOF, TRUSSES, FLOOR JOISTS, OTHER STRUCTURAL PORTIONS OF THE FLOORS, OR OTHER STRUCTURAL MEMBER WHICH IS LOCATED WITHIN THE AIRSPACE OF THE UNIT AND WHICH PROVIDES STRUCTURAL SUPPORT TO THE COMMON AREA OR ANOTHER UNIT, EXCEPT FOR THE FINISHED SURFACE OF SUCH STRUCTURAL SUPPORT, WHICH FINISHED SURFACE SHALL BE IN PART OF THE UNIT WHICH IT FACES.
4. THIS PLAN AND THE DIMENSIONS SHOWN HEREIN ARE TO COMFORM TO CIVIL CODE 4285, WHICH REQUIRES A THREE DIMENSIONAL DESCRIPTION OF THE PROJECT IN SUFFICIENT DETAIL TO IDENTIFY THE COMMON AREAS AND EACH SEPARATE INTEREST. THE DIMENSIONS SHOWN HEREIN ARE NOT INTENDED TO BE SUFFICIENTLY ACCURATE TO USE FOR THE COMPUTATION OF FLOOR AREA OR AIR SPACE VOLUME IN ANY OR ALL OF THE UNITS.
5. THE DIAGRAMMATIC PLANS INTENTIONALLY OMIT DETAILED INFORMATION OF INTERNAL PARTITIONING WITHIN INDIVIDUAL UNITS. LIKEWISE, SUCH DETAILS AS PROTRUSIONS OF VENTS, BEAMS, COLUMNS, WINDOW CASINGS, AND OTHER SUCH FEATURES ARE NOT INTENDED TO BE REFLECTED ON THIS PLAN.
6. THE COMMON AREA IS ALL OF THE LAND AND REAL PROPERTY INCLUDED WITHIN THE BOUNDARY LINES OF SAID LOT 1, EXCEPT THOSE PORTIONS SHOWN AND DEFINED HEREIN AS CONDOMINIUM UNITS.
7. FOR ALL OTHER DEFINITIONS REFER TO THE "DECLARATIONS OF THE COVENANTS, CONDITIONS AND RESTRICTIONS OF THE 875 ALVARADO STREET CONDOMINIUMS".
8. IF THERE ARE ANY MATTERS OF CONFLICT OR INCONSISTENCIES BETWEEN THIS CONDOMINIUM PLAN AND THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, THEN THE PROVISIONS OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS SHALL PREVAIL.

SURVEYOR'S STATEMENT:

I HEREBY STATE THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR OF THE STATE OF CALIFORNIA; THAT THIS CONDOMINIUM PLAN, CONSISTING OF SIX (6) SHEETS, CORRECTLY REPRESENTS A TRUE AND COMPLETE DEPICTION OF THE PROJECT MADE FROM PLANS IN FEBRUARY OF 2016 AND THE PLAN REFERS TO OR SHOWS MONUMENTATION ON THE GROUND AND A THREE DIMENSIONAL DESCRIPTION OF A CONDOMINIUM PROJECT IN SUFFICIENT DETAIL TO IDENTIFY THE COMMON AREA AND EACH SEPARATE INTEREST PURSUANT TO THE REQUIREMENTS OF CALIFORNIA CIVIL CODE, SUBSECTION 4285.

MICHAEL J. FOSTER, L.S. 7170
DATE: MAY 20, 2016

CONDOMINIUM PLANS FOR THE 875 ALVARADO STREET CONDOMINIUMS

A PORTION OF BLOCK 56, MAP OF
THE TOWN OF SAN LEANDRO, (2 M 43)
SAN LEANDRO, COUNTY OF ALAMEDA,
STATE OF CALIFORNIA
MAY, 2016

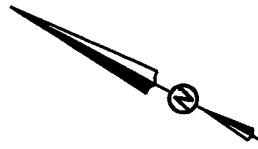
OWNER/SUBDIVIDER:
DOM CAMPAIGN, LLC
350 RIVER OAKS
PARKWAY, #1165
SAN JOSE, CA 95134

SURVEYOR:
BAY AREA LAND
SURVEYING INC.
961 MITCHELL WAY
EL SOBRANTE, CA 94803



BENCHMARK:

SAN LEANDRO BENCHMARK NAMED "ALVARADO-DAVIS", DESCRIBED AS A CINCH NAIL IN THE TOP OF THE CATCHBASIN AT THE W'RLY RETURN OF THE SW CORNER OF ALVARADO & DAVIS STREETS. ELEVATION = 43.71' NGVD 29 DATUM



GRAPHIC SCALE



(IN FEET)

1 inch = 20 ft.

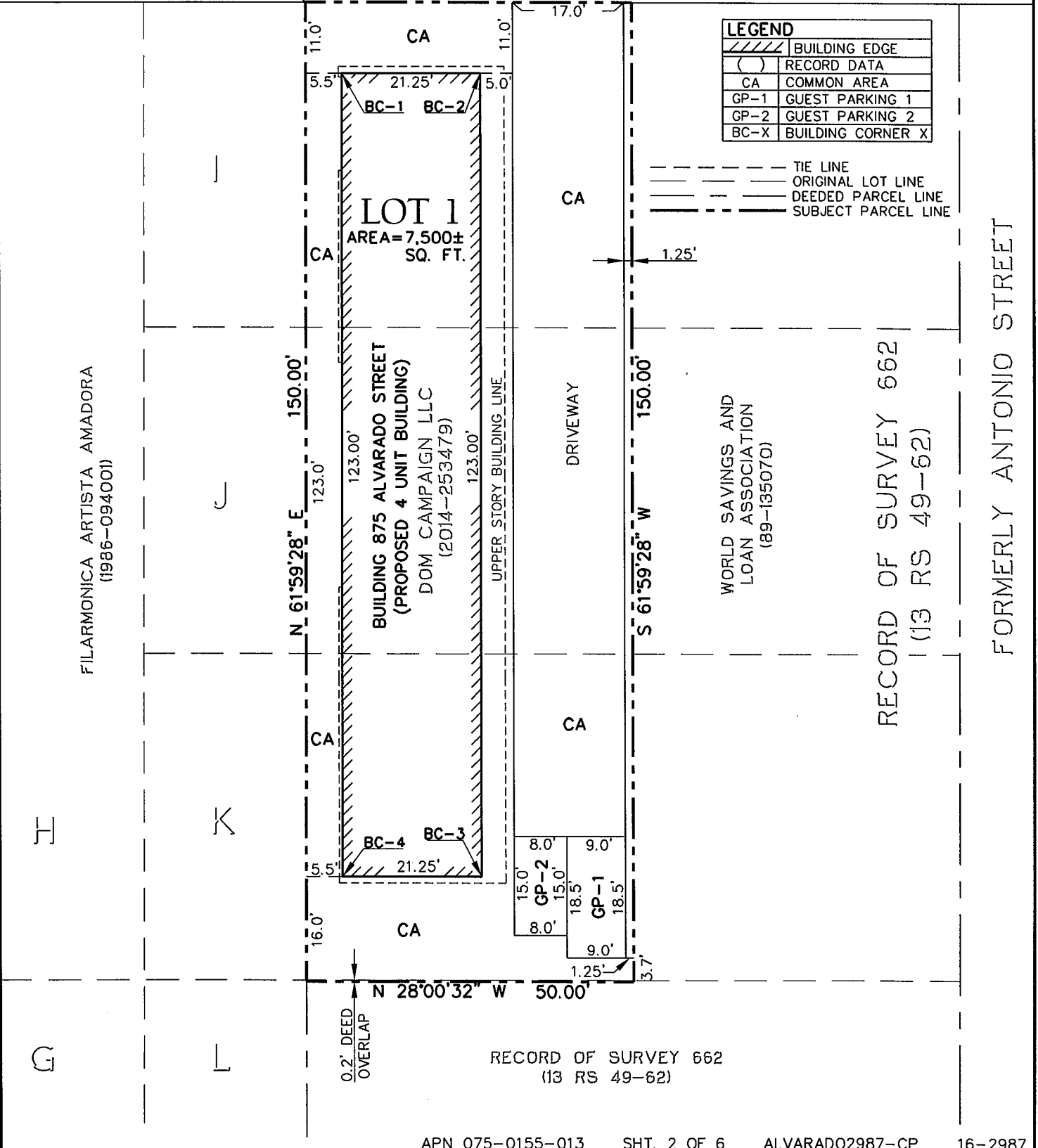
ALVARADO STREET (60.60' WIDE)

199.70' TO LOLA ST.

S 28°00'32" E 50.00'

LEGEND	
	BUILDING EDGE
	RECORD DATA
CA	COMMON AREA
GP-1	GUEST PARKING 1
GP-2	GUEST PARKING 2
BC-X	BUILDING CORNER X

- TIE LINE
- ORIGINAL LOT LINE
- DEEDED PARCEL LINE
- SUBJECT PARCEL LINE



FILARMONICA ARTISTA AMADORA (1986-094001)

H

K

G

L

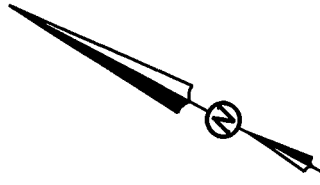
0.2' DEED OVERLAP

RECORD OF SURVEY 662 (13 RS 49-62)

LEGEND

INTERIOR BUILDING WALL	
BC-X	BUILDING CORNER X
F.C.	FINISHED CEILING
F.F.	FINISHED FLOOR
E-A	ENTRY, UNIT A
E-B1	ENTRY, UNIT B1
E-B2	ENTRY, UNIT B2
E-B3	ENTRY, UNIT B3
G-A	GARAGE, UNIT A
G-B1	GARAGE, UNIT B1
G-B2	GARAGE, UNIT B2
G-B3	GARAGE, UNIT B3
EUCA-A/B1	EXCLUSIVE USE COMMON AREA, UNIT A & B1
EUCA-B2/B3	EXCLUSIVE USE COMMON AREA, UNIT B2 & B3

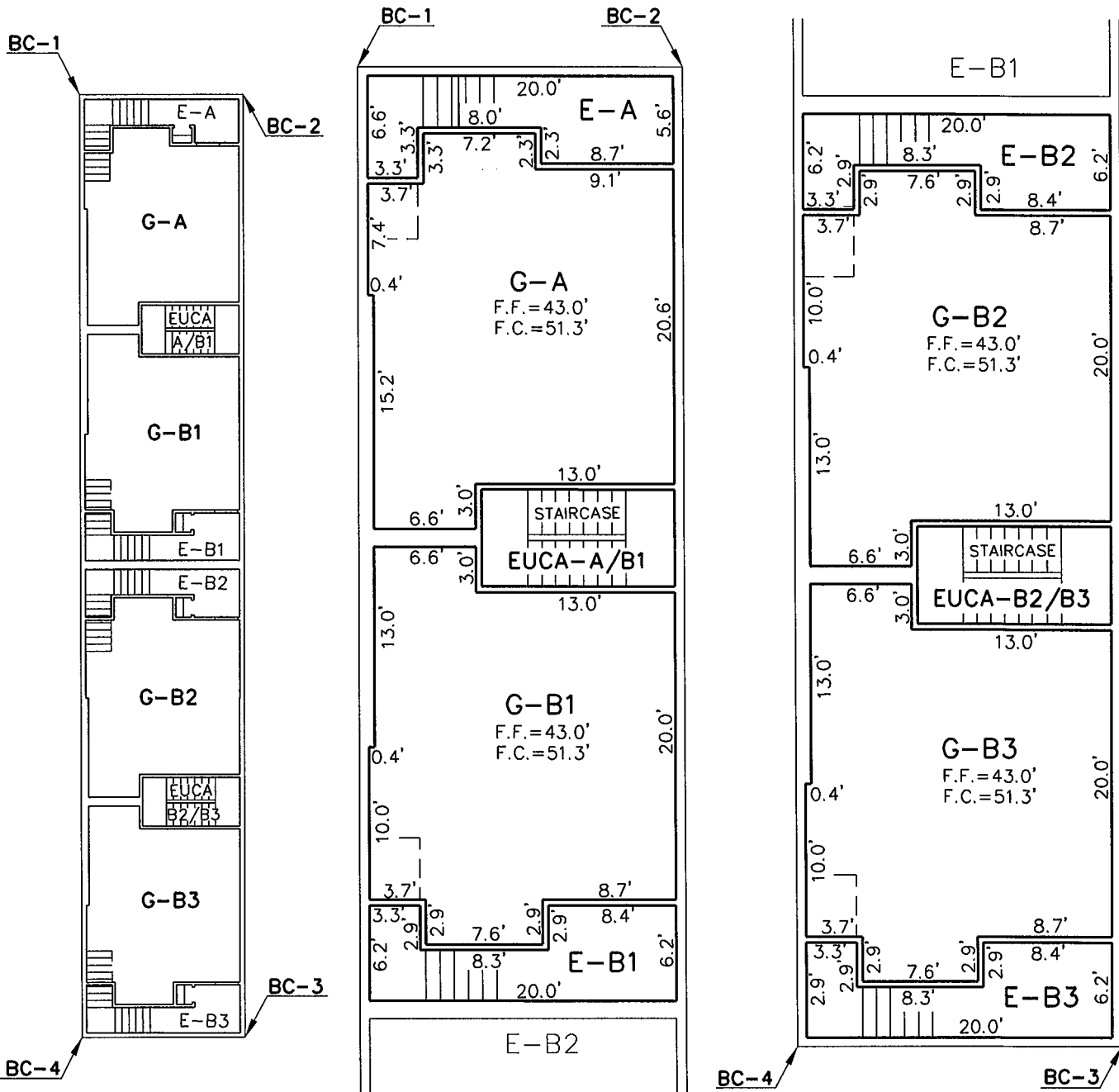
**BUILDING 875
1ST. FLOOR LEVEL**



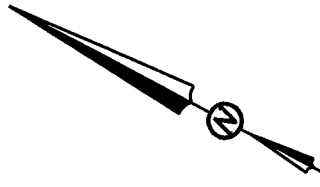
GRAPHIC SCALE



(IN FEET)
1 inch = 10 ft.

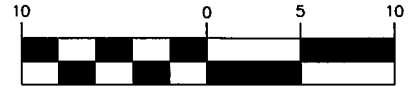


LEGEND	
INTERIOR BUILDING WALL	
BC-X	BUILDING CORNER X
F.C.	FINISHED CEILING
F.F.	FINISHED FLOOR
D1-A	DECK, UNIT A
D1-B1	DECK, UNIT B1
D1-B2	DECK, UNIT B2
D1-B3	DECK, UNIT B3
EUCA-A/B1	EXCLUSIVE USE COMMON AREA, UNIT A & B1
EUCA-B2/B3	EXCLUSIVE USE COMMON AREA, UNIT B2 & B3



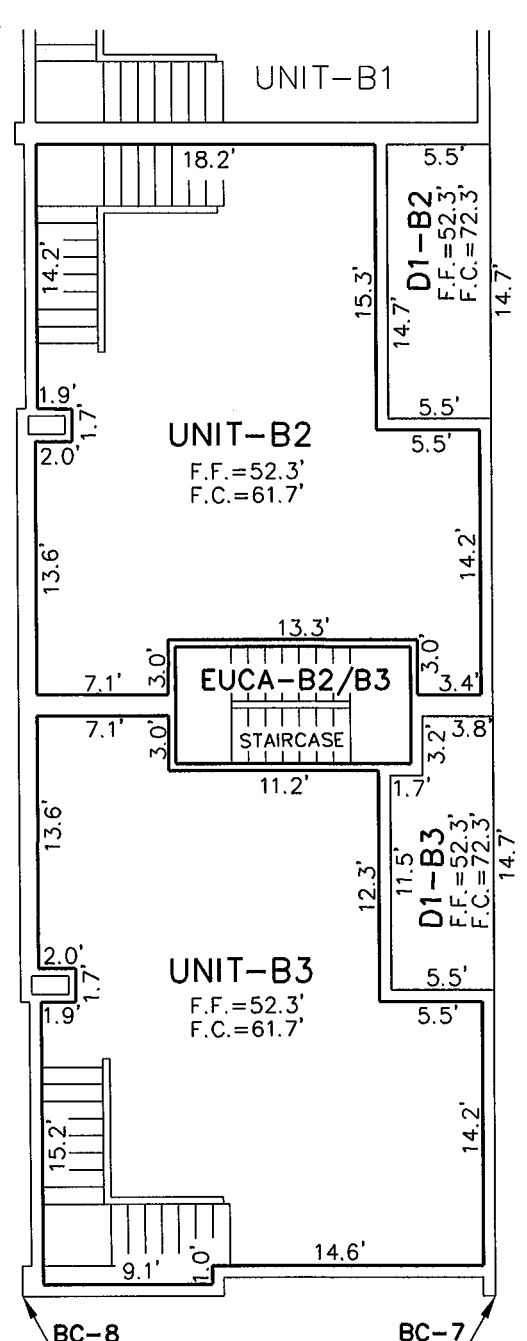
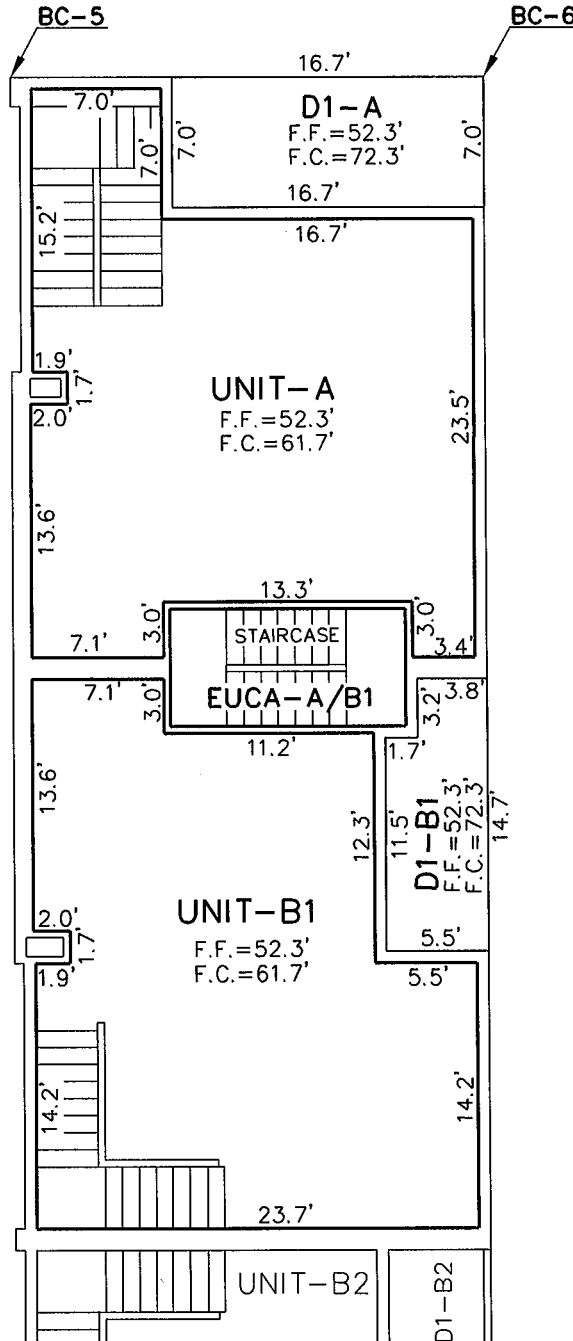
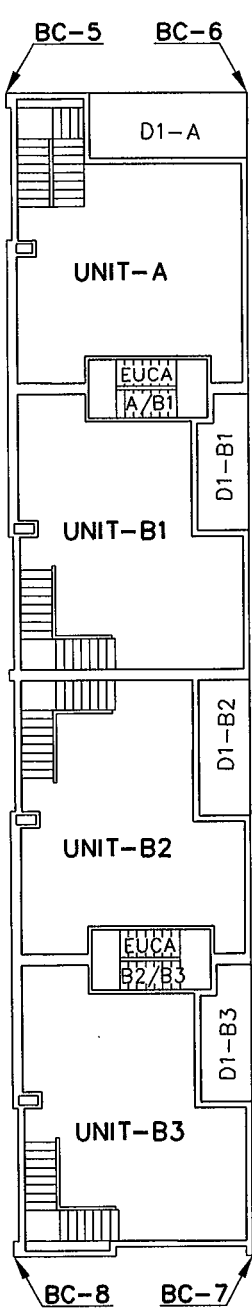
BUILDING 875 2ND. FLOOR LEVEL

GRAPHIC SCALE

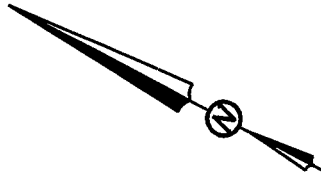


(IN FEET)

1 inch = 10 ft.



LEGEND	
INTERIOR BUILDING WALL	
BC-X	BUILDING CORNER X
F.C.	FINISHED CEILING
F.F.	FINISHED FLOOR
EUCA-A/B1	EXCLUSIVE USE COMMON AREA, UNIT A & B1
EUCA-B2/B3	EXCLUSIVE USE COMMON AREA, UNIT B2 & B3



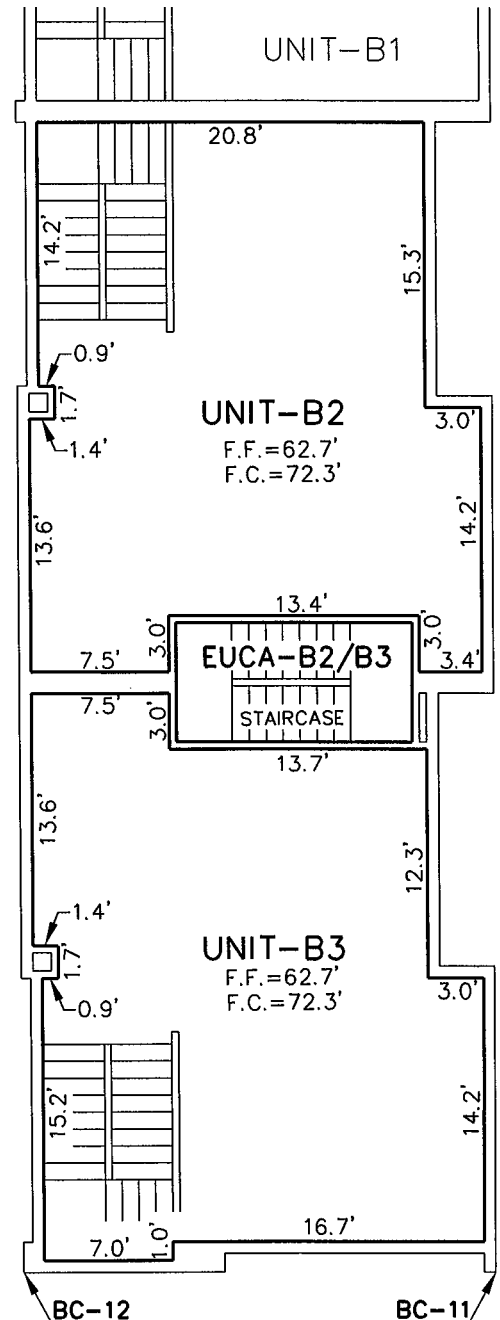
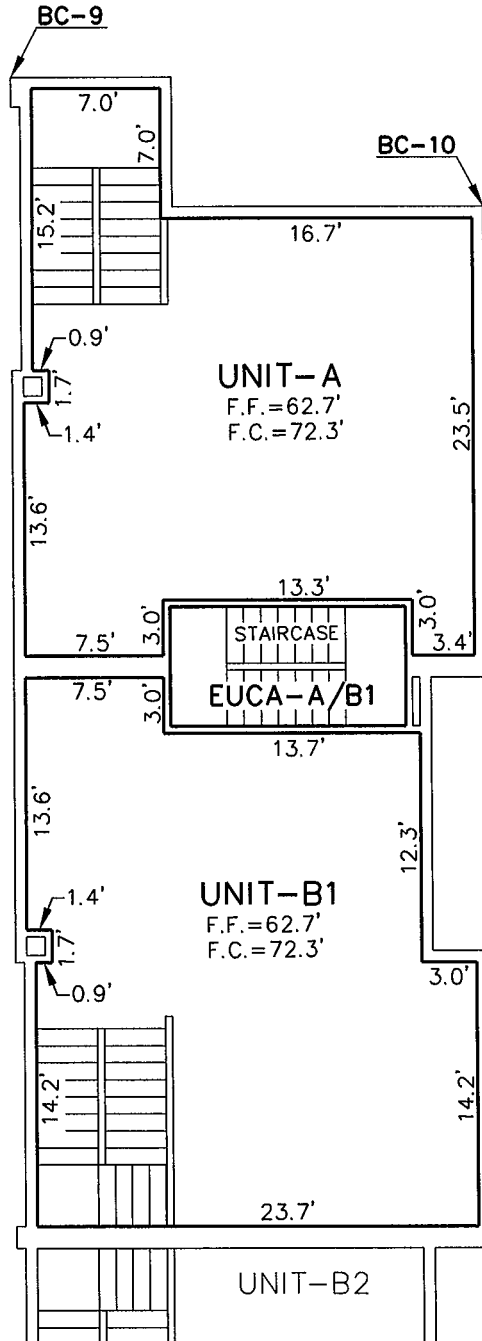
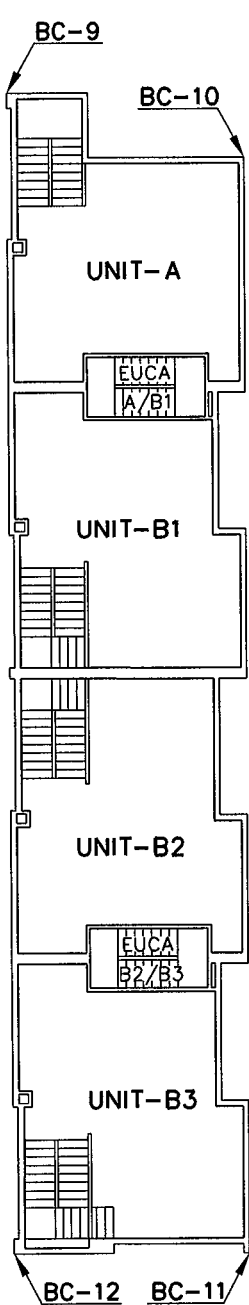
BUILDING 875 3RD. FLOOR LEVEL

GRAPHIC SCALE



(IN FEET)

1 inch = 10 ft.



LEGEND	
INTERIOR BUILDING WALL	
BC-X	BUILDING CORNER X
F.C.	FINISHED CEILING
F.F.	FINISHED FLOOR
D2-A	DECK, UNIT A
D2-B1	DECK, UNIT B1
D2-B2	DECK, UNIT B2
D2-B3	DECK, UNIT B3
EUCA-A/B1	EXCLUSIVE USE COMMON AREA, UNIT A & B1
EUCA-B2/B3	EXCLUSIVE USE COMMON AREA, UNIT B2 & B3

BUILDING 875 4TH. FLOOR LEVEL

