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Andalusia  
Amended and Restated Enabling Declaration

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ANDALUSIA

AMENDED AND RESTATED

ENABLING DECLARATION

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**ANDALUSIA**

**AMENDED AND RESTATED**

**ENABLING DECLARATION**

**ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP**

The "Andalusia Enabling Declaration Establishing a Plan for Condominium Ownership," recorded January 25, 1990, Instrument No. 90020455, Official Records of Alameda County ("Original Declaration"), as modified by the First Amendment recorded March 25, 1999, Instrument No. 99128684, Alameda County Official Records, imposing restrictions on that certain real property first described on the Map of Tract 5996, recorded July 31, 1989, in Book 186 of Maps, pages 14 through 16, Alameda County Records, and now described as Resultant Lot 1 Lot Line Adjustment (see Exhibit "B" attached hereto) Alameda County Records ("Project"), is amended pursuant to the written consent of Members representing two-thirds (2/3rds) of the total voting power of the Andalusia Homeowners Association, pursuant to Article V, section 5.2, and Article VIII, section 8.4 of said Original Declaration.

By this Amendment, the Members of the Association intend to, and do supersede the Original Declaration in its entirety. Upon execution and recordation of this Amended and Restated Enabling Declaration in the Office of the Recorder of the County of Alameda, State of California, this Amended and Restated Enabling Declaration shall be in full force and effect and the Original Declaration shall cease to be of any force or effect (except for the Condominium Plan which remains in effect, except as amended by this Amended and Restated Enabling Declaration and the Amended Condominium Plan attached as Exhibit "A").

The effective date of this Amended Declaration shall be the date of its recordation, or the date of recordation of the deed by which WIIBA transfers title to the New Condominium Buildings and the New Units to A-F, L.P., as provided in clause E, whichever occurs later.

**THIS AMENDED AND RESTATED ENABLING DECLARATION**, made on the date hereinafter set forth, pursuant to the written consent of a majority of the total voting power of the Association, is made with reference to the following facts:

A. This Amended and Restated Enabling Declaration shall bind and benefit the "Project" as defined in section 1.35.

B. The Members of the Association intend by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums and the Owners thereof.

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C. The Owner of a Condominium shall own a separate interest in an individual Condominium Unit and an undivided percentage interest in common in the Condominium Common Area of the Condominium Building in which the Unit is located. Each Condominium shall have appurtenant to it a membership in the ANDALUSIA HOMEOWNERS ASSOCIATION, a nonprofit mutual benefit corporation, which shall own the Association Common Area.

D. The Project, as originally conceived (as provided in the Original Declaration), included an initial phase of eighty (80) units, to be contained in ten (10) Condominium Buildings. Subsequent phases, if and when annexed, would have included up to a total of four hundred and thirty two (432) Units in fifty-four (54) Condominium Buildings. Most of the Project was sold for other use. Seven (7) Condominium Buildings ("Existing Condominium Buildings") containing a total of fifty-six (56) units ("Existing Units") were built, all of which have been sold, and are owned by "Existing Members." WHBA Real Estate Limited Partnership, a Delaware limited partnership ("WHBA"), owns three (3) of the as-yet-unbuilt Condominium Buildings (Condominium Buildings 5, 6, and 10), in Tract 5996, and Phase II of the Annexation Property referred to in section 2.6.

E. WHBA has agreed to sell its interest in the Project, and in Phase II of the Annexation Property, to Andalusia-Fremont, L.P. ("A-F, L.P."), which sale shall be consummated concurrently with recordation of this Amended and Restated Enabling Declaration. A-F, L.P. intends to construct Condominium Buildings 5, 6 and 10 ("New Condominium Buildings") containing twenty-four (24) Units ("New Units") and to construct the two new Condominium Buildings ("New Condominium Buildings") in Phase II of the Annexation Property, containing sixteen (16) additional Units ("New Units"). Upon completion of such construction, and the annexation of Phase II of the Annexation Property, the Project shall include twelve (12) Condominium Buildings, and a total of ninety-six (96) Units, fifty-six (56) of which are Existing Units, owned by Existing Members, and forty (40) of which will be New Units, owned by New Members, following completion of construction and sale of the New Units.

F. Andalusia LLC (Tong) owns a parcel contiguous to the Project, described in section 2.6, which it has agreed to annex to the Project. Said parcel contains an existing building containing eight (8) units which were the models in the originally developed Andalusia project. Upon annexation of Phase III, the Project will include a total of 104 Units. The parcel is part of the Annexation Property described in section 2.6 and in Exhibit "B" as Phase III.

G. The Existing Condominium Buildings, and the Existing Units, have experienced some construction and/or design problems, and a construction defect lawsuit ("Suit") has been filed and settled. It is the intent of the Association and its Existing Members (56 in number) and the New Members (40 in number) that the New Members shall in no material way be affected by the Suit or the settlement, and that the alleged design and construction defects in the Existing Condominium Buildings and Existing Units be the responsibility of only the Existing Members, including all expenses of litigation, all costs of repair, and all settlement proceeds. It is likewise the intent of the Existing Members and the New Members that the Existing Members shall in no material way be affected by alleged design or construction defects (if any) in the New Condominium Buildings or New Units, and the New Members shall have sole responsibility for any future alleged design or construction defects (if any) in the New Condominium Buildings, and/or the New Units. In order to accomplish the desired result, separate "Cost Centers" shall be established for the Existing Condominium Buildings, and for the New Condominium Buildings, as provided in this Amended and Restated Enabling Declaration.

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H. A-F, L.P. has agreed to design and construct within the Association Common Area, Common Area Recreational Facilities ("Common Area Improvements") at a cost (to A-F, L.P.) of not to exceed \$350,000 under any circumstances.

**NOW, THEREFORE**, the Members hereby declare that the Project shall continue to be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part thereof, in accordance with the plan for the improvements of the Project and the division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in or to any part of the Project or the property therein.

#### **ARTICLE I DEFINITIONS**

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.2 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association, and shall include regular and special Assessments.

1.3 "Association" shall mean and refer to the ANDALUSIA HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Condominiums in the Project.

1.4 "Association Common Area" shall mean and refer to Lot 1 of Tract 5996, as modified by Lot Line Adjustment 96-20, and all improvements thereon and to subsequently annexed Association Common Areas. The Condominium Buildings and the Units are not included in the Association Common Area. Portions (if any) of patios located outside of the perimeter of a Condominium Building as shown on the Condominium Plan are included within the Association Common Area.

1.5 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.6 "Bylaws" shall mean and refer to the bylaws of the Association, as amended from time to time.

1.7 "Common Area(s)" shall mean and refer to Condominium Common Area and Association Common Area.

1.8 "Common Expenses" means and includes the actual and estimated expenses of operating the Common Area and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Condominium Documents.

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1.9 "Common Interest" means the proportionate undivided interest in the Condominium Common Area that is a part of each Condominium as set forth in this Amended and Restated Enabling Declaration.

1.10 "Condominium" shall mean an estate in real property as defined in California Civil Code §§ 783 and 1351(f), consisting of an undivided interest in common in a portion of the Project and a separate interest in space called a Unit.

1.11 "Condominium Building" shall mean a residential structure containing Units, designated "Building" (followed by its respective number) on the Condominium Plan. The land beneath and the airspace surrounding the building are not included in the parcel designated as a "Building" on the Condominium Plan. The Condominium Buildings include the Units and Condominium Common Area.

1.12 "Condominium Common Area" shall mean and refer to all of that portion of the Project (excepting the individual Units) within the outside perimeter of each Condominium Building as each building is described on a Condominium Plan, and including balconies, staircases and other items permanently affixed to the Condominium Building and patios to the extent the patios are within the outside perimeter of the Condominium Building as described on the Condominium Plan. The Condominium Common Area includes, without limitation: outside perimeter walls, balconies, bearing walls, columns, girders, ceiling joists, beams in cathedral ceilings, sub-floors, unfinished floors, roofs, and foundation; chimneys and flues; central hot water heaters, smoke and heat detectors (including those located within the Units), fire sprinklers and extinguishers; reservoirs, tanks, pumps, motors, ducts, and chutes; conduits, pipes, plumbing, wires, utility meters and other utility installations (except the outlets thereof when located within the Unit, and except as provided in section 2.2.A), required to provide power, light, telephone, gas, water, sewerage, and drainage; exterior sprinklers and sprinkler pipes.

1.13 "Condominium Documents" shall mean the same as "Project Documents."

1.14 "Condominium Plan" shall mean and refer to the (i) three-dimensional plan of the Existing Condominium Buildings and the Existing Units, which Plan was attached as Exhibit "A" to the original Declaration, and is now attached to this Amended and Restated Declaration as Exhibit A-1, and shall also mean and refer to the (ii) Amended Condominium Plan which describes Condominium Building 5, 6 and 10 (and the New Units within those buildings), a copy of which is attached hereto as Exhibit "A-2" and incorporated by reference herein, and in addition, (iii) the Condominium Plan which also describes the two (2) New Condominium Buildings in the Annexation Property and the sixteen (16) New Units contained within those New Condominium Buildings, which Plan identifies the Common Area, and each separate interest pursuant to California Civil Code § 1351, a copy of which shall be attached to the Declaration of Annexation to be recorded for Phase II, and (iv) the Condominium Plan which describes the eight (8) Units and the Condominium Building that constitute Phase III as described in section 2.6.A and in Exhibit "B," as provided in section 2.6.A.

1.15 "Cost Center" shall mean and refer to the areas, improvements, or facilities, the maintenance of which is restricted to Owners of certain Units.

1.16 "Cost Center Assessment Component" shall mean the portion of common expenses including operating and reserve funds, budgeted or allocated to any particular Cost Center.

1.17 "Declaration" shall mean and refer to this Amended and Restated Enabling Declaration, as further amended or supplemented from time to time.

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- 1.18 "Eligible Holder Mortgages" shall mean mortgages held by "Eligible Mortgage Holders."
- 1.19 "Eligible Mortgage Holder" shall mean a First Lender who has requested notice of certain matters from the Association in accordance with section 9.6.C.
- 1.20 "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with section 9.6.C.
- 1.21 "Existing Condominium Buildings" shall mean and refer to Condominium Buildings 1, 2, 3, 4, 7, 8 and 9, in Lot 1 of Tract 5996, and Condominium Building 14 located in Resultant Lot 2 of Lot Line Adjustment 99-9, and described as Phase III in Exhibit "B," upon recordation of a Declaration of Annexation for Phase III.
- 1.22 "Existing Units" shall mean the Condominium Units located within the Existing Condominium Buildings.
- 1.23 "First Lender" shall mean any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded First Mortgage on any Condominium.
- 1.24 "First Mortgage" shall mean and refer to any recorded mortgage made in good faith and for value on a Condominium with first priority over other mortgages thereon.
- 1.25 "Foreclosure" shall mean and refer to the legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in such property is sold, pursuant to California Civil Code § 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable law.
- 1.26 "Map" shall mean and refer to that Subdivision Map entitled "Tract No. 5996," filed for record the 31st day of July, 1989, in Book 186 of Maps at page(s) 14 through 16, in the records of Alameda County, and that Subdivision Map entitled "Tract No. 7097" to be filed for record in the records of the Alameda County, and shall include Maps describing Subsequent Phases of the Project upon annexation thereof as provided in section 2.6.
- 1.27 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.
- 1.28 "Mortgage" shall include a deed of trust as well as a mortgage.
- 1.29 "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.
- 1.30 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.
- 1.31 "New Condominium Buildings" shall mean Condominium Buildings 5, 6, and 10, located in Lot 1 of Tract 5996, and described on the Condominium Plan attached as Exhibit "A" to the Declaration, and Condominium Buildings 11 and 12, to be annexed as provided in section 2.6 and in Exhibit "B."

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1.32 "New Units" shall mean the Condominium Units located within the New Condominium Buildings.

1.33 "Owner" or "Owners" shall mean and refer to the record holder or holders of title to a Condominium in the Project. This shall include any person having fee simple title to any Condominium, but shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a Condominium is sold under a contract of sale and the contract of sale is recorded, the purchaser, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.34 "Person" means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.35 "Project" shall mean and refer to all of the real property described on the Map and all improvements on that real property subject to this Declaration and any subsequent phase which may become annexed into the Project in accordance with section 2.6, and thereby become subject to this Declaration.

1.36 "Project Documents" shall mean this Declaration, as amended from time to time, the exhibits, if any, that are attached, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, and the Condominium Plan (but excluding unrecorded Rules adopted by the Board or the Association).

1.37 "Restricted Common Area" shall mean and refer to those portions of the Common Area set aside for exclusive use of a Unit Owner or Owners, pursuant to section 2.2.C, and shall constitute "exclusive use common area" within the meaning of California Civil Code § 1351(i).

1.38 "Rules" shall mean and refer to the rules adopted from time to time by the Association pursuant to section 5.2.D.

1.39 "Unit" shall mean and refer to the elements of the Condominium, as defined in section 2.2.A, which are not owned in common with the Owners of other Condominiums in the Project. Each Unit is identified by separate number and letter on the Condominium Plan.

## ARTICLE II DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1 **Description of Project.** The Project is a Condominium Project consisting of the land, the Condominiums and all other improvements located thereon. Reference is made to the Condominium Plan for further details. Additional property may be annexed to and become part of the Project pursuant to section 2.6.

2.2 **Division of Property.** The Project is divided as follows:

A. **Units.** Each of the Units as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each Unit, each of such spaces being defined and referred to herein as a "Unit." Bearing walls located within the interior of a Unit are Common Area, not part of the Unit, except for the finished surfaces thereof.

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Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of, including, without limitation; space heaters, lighting fixtures, and cabinetry which are located entirely within the Unit they serve. Each Unit includes both the portions of the Condominium Building so described and the airspace so encompassed. The Unit does not include those areas and those things which are defined as "Condominium Common Area" in section 1.12. Each Unit is subject to such encroachments as are contained in the Condominium Building, whether the same now exist or may be later caused or created in any manner referred to in section 9.5. In interpreting deeds and plans, the then-existing physical boundaries of a Unit, when the boundaries of the Unit are contained within a Condominium Building, or of a Unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the Condominium Building and regardless of minor variance between boundaries shown on the plan or deed, and those of the Condominium Building. Each Unit shall have appurtenant to it nonexclusive rights for ingress, egress and support through the Common Area subject to the rights of each Owner in the Restricted Common Area appurtenant to that Owner's Condominium.

**B. Condominium Common Areas.** The Condominium Common Area consists of that portion of the Project defined in section 1.12. Each Owner shall have, as appurtenant to the Owner's Unit, an undivided interest in the Condominium Common Area of the Condominium Building in which the Unit is located as set forth in Exhibit "C" attached hereto. Each Condominium includes a Unit and such undivided interest in the Condominium Common Area. The Common Interest appurtenant to each Unit is permanent in character and cannot be altered without the consent of all of the Owners affected, as expressed in an amended Declaration. Such undivided Common Interest cannot be separated from the Unit to which it is appurtenant, and any conveyance or transfer of the Unit includes the undivided Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium. Each Owner may use the Condominium Common Area and Association Common Area in accordance with the purposes for which they are intended subject to this Declaration and the Association's Rules, without hindering the exercise of or encroaching upon the rights of any other Condominium Owners, subject to the rights of each Owner in any Restricted Common Area appurtenant to that Owner's Condominium.

**C. Restricted Common Areas.** The following described portions of the Common Area, referred to as "Restricted Common Areas," are set aside and allocated for the exclusive use of the Owner of the Condominium to which they are attached or assigned as shown on the Condominium Plan, and are appurtenant to that Condominium:

(1) Garage space designated "G," followed by the number of the Condominium Building and the letter of the Unit;

(2) Patio designated "PT," followed by the number of the Condominium Building and the letter of the Unit;

(3) Parking space designated with the number of the Condominium Building and the letter of the Unit;

(4) Balcony designated "B," followed by the number of the Condominium Building and the letter of the Unit;

(5) Storage space designated "S," followed by the number of the Condominium Building and the letter of the Unit.

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In addition, the following areas or items are "Restricted Common Areas" appurtenant to the Condominiums in which they are located or attached:

- (1) That portion of any Common Area floor or ceiling that is pierced by interior stairs;
- (2) The space between the exterior boundary of any Unit and the interior surface of any greenhouse window;
- (3) Exterior stairs serving the Unit.

The air conditioning equipment (if any) serving a Unit is part of the Unit, belongs to the Owner of that Unit, and shall be maintained by the Unit Owner. The space occupied by the air conditioning, heat pump equipment, or forced air unit (FAU), wherever located, shall be restricted to the exclusive use of the Unit Owner whose air conditioner occupies such space.

Except as described herein, no other portion of the Common Areas shall be Restricted Common Area.

**D. Association Common Area.** The Association owns Resultant Lot 1 of Lot Line Adjustment 96-20, which Lot is Association Common Area. Additional Association Common Area Lots shall each be conveyed to the Association upon annexation of each additional phase. Conveyance of Association Common Area in Phase II shall occur prior to the close of escrow on the sale of the first Condominium in Phase II. In the event that said remaining Phases, or any of them, are not annexed as provided above, should any of the properties described in Exhibit "B" require access for ingress and egress over private streets located within the Project, said easements shall exist for reasonable vehicular and pedestrian traffic, provided however, that the properties (and the owner(s) thereof) shall be obligated to pay their equitable share of the cost of maintenance and repair of said private streets, and shall be subject to a lien or liens for said maintenance and repair costs, as provided in section 4.13 hereof.

**2.3 Parking.** All Common Area parking spaces (other than Restricted Common Area spaces) shall remain permanently available for guest parking.

**2.4 Rights of Entry and Use.** The Units and Common Area (including Restricted Common Area) shall be subject to the following rights of entry and use:

**A.** The right of the Association's agents or employees to enter any Unit to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association.

**B.** The access rights of the Association to maintain, repair or replace improvements or property located in the Common Area as described in section 5.2.F.

**C.** The rights of the Owners and the Association to install, maintain, repair or replace utilities as described in Article VI.

**D.** The encroachment easements described in section 9.5.

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E. The rights of Owners to make improvements or alterations authorized by California Civil Code § 1360(a)(2), subject to the provisions of section 7.9 to the extent applicable.

**2.5 Partition Prohibited.** The Common Areas shall remain undivided as set forth above. Except as provided by California Civil Code § 1359 or authorized under sections 8.2.B or 8.3, no Owner shall bring any action for partition of the Common Areas, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited by this paragraph but partition of title to a single Condominium is prohibited.

**2.6 Annexation of Additional Property.** Additional property may be annexed to and become subject to this Declaration as provided in this section. Upon annexation, the additional property shall become a portion of the Project, and be subject to this Declaration without the necessity of amending any of its individual sections.

**A. Annexation Pursuant to Plan.** The property described in Exhibits "B-2" and "B-3" ("Annexation Property") shall be annexed to and become a part of the Project, subject to this Declaration, and subject to the jurisdiction of the Association, upon recordation of a Declaration or Declarations of Annexation covering the applicable portions of the property to be annexed.

Andalusia LLC (Tong) owns property containing the former models contiguous to the Project, which property, more particularly described as part of the Annexation Property on Exhibit "B" attached hereto, shall be annexed to the Project by a "Declaration of Annexation, Andalusia, Phase III."

**B. Effect of Annexation.** All Owners shall have ingress and egress to all portions of the Association Common Area throughout the Project, subject to the provisions of this Declaration, the Bylaws of the Association and to the Rules of the Association in effect from time to time.

**2.7 All Easements Part of Common Plan.** Whenever any easements are reserved or created or are to be reserved or created in this Declaration, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Units are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

**2.8 Cost Centers.** There shall be three (3) Cost Centers within the Project: (i) the Existing Condominium Buildings and Existing Units; (ii) the New Condominium Buildings and New Units; and (iii) the Association Common Area, including the new recreational facilities, the landscaping, private streets, parking areas, and all improvements in the Project that are not part of the Units or the Condominium Common Areas of the Condominium Buildings, liability insurance, management and administration, and hazard insurance on the improvements other than the Condominium Buildings. The cost of maintenance and reserves together with insurance described in section 8.1(1), (5), (7) and (9) as it applies to a particular Condominium Building or Buildings, shall be calculated separately for each Cost Center and shall be allocated equally among the Units in each Cost Center. In the event that Phase III of the Annexation Property is annexed, the eight Units in Phase III shall be included in the first Cost Center for the Existing Units. The second Cost Center shall include the New Units in Condominium Buildings 5, 6 and 10, together with the Units in the two New Condominium Buildings. All costs allocated among the Owners of Units within a particular Cost Center shall be allocated equally among all Units in that Cost Center. All Units in the Project shall be included in the third Cost Center. Starting

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on January 1, 2012, the three Cost Centers shall be automatically eliminated and from that date on all costs shall be allocated equally among all owners of Units in the Project, without the necessity of recording an Amendment to this Declaration.

### **ARTICLE III ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS**

**3.1 Association to Manage Common Areas.** The management of the Condominium Common Area and the Association Common Area shall be vested in the Association in accordance with its Bylaws. The Owners of all the Condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, and the Articles and Bylaws.

**3.2 Membership.** The Owner of a Condominium shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws.

**3.3 Transferred Membership.** Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such Condominium. On any transfer of title to an Owner's Condominium, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains title to the Condominium by Foreclosure or deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

**3.4 Membership and Voting Rights.** Membership and voting rights shall be as set forth in the Bylaws.

### **ARTICLE IV MAINTENANCE AND ASSESSMENTS**

**4.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Condominium by acceptance of a deed for that Condominium, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) To pay to the Association annual Assessments or charges, and special Assessments for purposes permitted in this Declaration, such Assessments to be established and collected as subsequently provided in this Declaration. and

(2) To allow the Association to enforce any assessment lien established under this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

The annual and special Assessments, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such Assessment is made, the lien to become effective upon recordation of a notice of delinquent Assessment. Each such Assessment, together with interest, late charges,

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collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his or her successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

**4.2 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Project and to enable the Association to perform its obligations hereunder.

**4.3 Assessments.**

**A. Annual Assessments.** The Board shall establish and levy annual Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year.

The annual Assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than repairing, replacing, or adding to the major improvements or fixtures that the Association is obligated to maintain without the vote or written consent of Owners holding a majority of the voting power of the Association, and, in the case of reserve funds allocated to a Cost Center, the vote or written consent of Owners holding a majority of the voting power of the Members of the Cost Center shall be required.

The Board of Directors shall use its best efforts to fix the amount of the annual Assessment against each Condominium based upon the Cost Centers in which such Condominium is included, and send written notice thereof to every Owner at least forty-five (45) days in advance of each annual Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Association stating that the Assessments on a specified Condominium have been paid. Such a certificate shall be conclusive evidence of such payment.

**B. Special Assessments.** The Board, at any time, may levy a special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Units in the same manner as annual Assessments (based upon the Cost Centers in which the Units are included, if appropriate), provided that the Board may levy a special Assessment against a Member to reimburse the Association for costs incurred in bringing the Member and his or her Unit into compliance with the provisions of the Project Documents.

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**4.4 Restrictions on Increases in Annual or Special Assessments.** The Board may not impose an annual Assessment on any Condominium which is more than twenty percent (20%) greater than the annual Assessment for the immediately preceding fiscal year or levy a special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, provided that voting with respect to such increases in Cost Center Assessment Components shall be restricted to the Owners of Units in the affected Cost Center. For purposes of this section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the voting power of the Association. Any meeting of the Association for purposes of complying with this section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The Board may increase annual Assessments by up to twenty percent (20%) over the annual Assessment for the immediately preceding fiscal year only if the Board has complied with the provisions of California Civil Code § 1365(a), which provisions are set forth in section 12.1(1) of the Bylaws or has obtained the approval of such increase by the Members in the manner set forth above in this section 4.4.

Notwithstanding the foregoing, the Board, without membership approval, may increase annual Assessments or levy special Assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one of the following:

- (1) An extraordinary expense required by an order of a court,
- (2) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered, or
- (3) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget; provided, however, that prior to the imposition or collection of the Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of the Assessment.

The Association shall provide to the Owners by first-class mail notice of any increase in the regular or special Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

This section 4.4 incorporates the statutory requirements of California Civil Code § 1366. If this section of the California Civil Code is amended in any manner, this section 4.4 automatically shall be amended in the same manner without the necessity of amending this Declaration.

**4.5 Notice and Quorum for Any Action Authorized Under Section 4.4.** Any action authorized under section 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code § 7513.

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**4.6 Division of Assessments.** All Assessments, annual and special, shall be levied equally among the Condominiums, except as provided in section 4.3, and with the exception of Cost Center Assessment Components, which shall be allocated equally among the Units composing the respective Cost Centers, as provided in section 2.8. Annual Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct. Any change in the allocation of Cost Center Assessment Components shall require the approval of a majority of the voting power of the Owners of Units in each affected Cost Center.

Nothing in this section shall be construed as to preclude the Association acting either through the Board or the affirmative vote or written consent of members representing a majority of the total voting power of the Association from granting an Owner or Owners of an Existing Unit in Phase I (56 Units) the right to receive or take a credit against monthly assessments based on the Association's receipt of settlement funds from any legal action stemming directly or indirectly from, or as a result of failure to complete the improvements specified in that subdivision common area completion bond numbered U1862543, which United Pacific Insurance Company issued in the original principal sum of \$526,536.00, as obligated thereunder. Any such credit shall be in a set amount and for a limited duration.

**4.7 Date of Commencement of Annual Assessment in Subsequently Annexed Phases.** The annual Assessments against all Condominiums in the Annexation Property shall commence on the earlier to occur of (i) the first day of the month following the closing of the first conveyance to the Owner in that phase, or (ii) upon the occupancy of a subdivision interest in the annexed phase.

**4.8 Effect of Nonpayment of Assessments.** Any Assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law. \* #

**4.9 Transfer of Condominium by Sale or Foreclosure.** Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale of any Condominium pursuant to Foreclosure of a First Mortgage shall extinguish the lien of any Assessments on that Condominium (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for assessment liens as to which a notice of delinquent assessments has been recorded prior to the mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the consent of the Eligible Mortgage Holders holding first mortgages on Condominiums comprising fifty-one percent (51%) of the Condominiums subject to First Mortgages. No sale or transfer shall relieve such Condominium from liability for any Assessments thereafter becoming due or from the lien thereof. The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all of the Condominium Owners including such acquirer, his or her successors or assigns.

If a Condominium is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Condominium through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Condominium to be transferred and the Condominium shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any Assessments that become due after the date of the

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transfer.

**4.10 Priorities; Enforcement; Remedies.** If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose a lien on the Unit owned by the Owner pursuant to the provisions of Civil Code § 1367, or both. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. Before the Association may place a lien upon a Unit, pursuant to Civil Code § 1367(a), the Association shall notify the Owner in writing by Certified Mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, and the method of collection, any attorneys' fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. After compliance with the provisions of Civil Code § 1367(a), the Association may record a notice of delinquent Assessment and establish a lien against the Condominium of the delinquent Owner prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record (meaning any recorded mortgage or deeds of trust with first priority over other mortgages or deeds of trust) made in good faith and for value. The notice of delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Condominium against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed in the manner set forth in Civil Code § 2924b to all record owners of the Unit no later than ten (10) days after recordation.

Thirty (30) days following the recordation of the assessment lien, it may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the Condominium. If the purchase of a Condominium would result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association. During the period a Condominium is owned by the Association, following Foreclosure:

- (1) No right to vote shall be exercised on behalf of the Condominium;
- (2) No Assessment shall be assessed or levied on the Condominium; and
- (3) Each other Condominium shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of Foreclosure.

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After acquiring title to the Condominium at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Condominium, which deed shall be binding upon the Owners, successors, and all other parties.

The Board may temporarily suspend the voting rights and right to use recreational facilities of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

In conformity to Civil Code § 1367(c), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules, except for late payments, are not "Assessments," and are not enforceable by assessment lien, but are enforceable by court proceedings; provided, however, pursuant to Civil Code § 1367(b), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible may become the subject of a lien; provided, however, that any such enforcement as a lien shall only be permitted if there are no Units in the Project that are subject to the jurisdiction of the Department of Real Estate under a Final Subdivision Public Report. In the event that Civil Code § 1367(c) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by assessment lien, then this provision shall be deemed amended to conform to any such amendment of Civil Code § 1367(c).

**4.11 Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, said taxes shall be included in the Assessments made under the provisions of section 4.1 and, if necessary, a special Assessment may be levied against the Units in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**4.12 Exemptions from Assessments.** Any Condominium which does not include a structural improvement for human occupancy shall be exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. The exemption may include:

- (1) Roof replacement;
- (2) Exterior maintenance;
- (3) Walkway and carport lighting;
- (4) Refuse disposal, if any;
- (5) Cable television;
- (6) Domestic water supplied to living Units, if any;
- (7) Insurance on uncompleted Units.

The foregoing exemption shall be in effect until the earliest of the following events:

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- (1) A notice of completion of the structural improvements has been recorded;
- (2) Occupation or use of the Condominium; or
- (3) Completion of all elements of the residential structure which the Association is obligated to maintain.

Any Owner of a Condominium is exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time Assessments commence. This exemption from the payment of Assessments shall be in effect until the earliest of the following events:

- (1) A notice of completion of the common facility has been recorded; or
- (2) The common facility has been placed into use.

**4.13 Assessments on Condominiums in Phases II and III.** If Phases II and III, or any of them, are not annexed to this Declaration pursuant to section 2.6, and the phases are developed and sold or leased to persons whose use and occupancy of those phases results in use of the private streets and/or utilities within the Common Area, the property in said phases and the Owner(s) of that property shall be subject to annual and special Assessments pursuant to section 4.1 levied by the Board for the costs of maintenance and repair of those streets and/or utilities. The cost of maintenance and repair under such circumstances shall be prorated equitably between the properties, and payment for that maintenance and repair shall be enforced pursuant to section 4.10. In the event of any disagreement as to the reasonableness of those annual and/or special Assessments or their division, the matter shall be submitted to arbitration under the rules of the American Arbitration Association, with the arbitrator to determine the amount of the annual and/or special Assessment against all properties. Notwithstanding the foregoing, none of the other sections of this Declaration shall apply to any such phase of the Annexation Property until and unless it is annexed in accordance with section 2.6.

## ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

**5.1 Duties.** In addition to the duties enumerated in the Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality of those duties, the Association shall perform the following duties:

**A. Maintenance.** The Association shall maintain, repair, replace (when necessary), restore, operate and manage all of the Common Area and all facilities (including utility facilities to the extent described in section 6.3), improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association, provided that each Owner shall maintain the Restricted Common Area appurtenant to that Owner's Condominium in a neat and clean condition. Maintenance shall include, without limitation, painting, maintaining, cleaning, repairing and replacing of all Common Areas, including exterior doors, interior stairs, garage doors, fire sprinklers, landscaping (except for private patio areas which are to be maintained by Owners as per section 9.7), exterior lighting, balconies, parking areas and recreational facilities. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his or her guests, tenants or invitees or the Owner's pets, except if the repair is covered by the insurance carried by the Association, the Association shall be

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responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. Any repairs arising out of or caused by the willful or negligent act of an Owner, or his or her guests, tenants or invitees, or the Owner's pets, the cost of which is not covered by insurance carried by the Association, shall be made by the responsible Owner, provided the Board approves the person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost thereof to the responsible Owner, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in the Bylaws before any charge may be imposed.

The Association shall maintain the landscaping along Gallaudet Drive contiguous to the Project. \*

The Association shall have the Common Area periodically inspected for wood-destroying pests and organisms and shall take appropriate corrective measures therefor. The Association shall have the authority to require the temporary removal of occupants of a Unit as may be necessary in connection with the treatment of wood-destroying pests or organisms, pursuant to the procedures described in Civil Code § 1364(d) or any successor statute thereto. The costs of any temporary relocation shall be borne by each Owner of a Unit who is required to temporarily relocate.

Landscaping shall include regular fertilization, irrigation, and other garden management practice necessary to promote a healthy weed-free environment for optimum plant growth.

The Association shall be responsible for the periodic maintenance and testing of all built-in fire detection and protection devices and equipment other than smoke detectors located in the Units.

**B. Insurance.** The Association shall maintain such policy or policies of insurance as are required by section 8.1 of this Declaration.

**C. Discharge of Liens.** The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member or Members responsible for the existence of the lien (after notice and a hearing, as provided in the Bylaws).

**D. Assessments.** The Association shall fix, levy, collect and enforce Assessments as set forth in Article IV hereof.

**E. Payment of Expenses and Taxes.** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

**F. Enforcement.** The Association shall be responsible for the enforcement of this Declaration.

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The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, ensure that third parties (including Owners and their guests) utilize the Common Area in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct such violations.

**G. Inspection and Maintenance Guidelines.** The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping, including, but not limited to, foundations, gutters, downspouts, siding, trim, roofs, balconies, window caulking, utility equipment and sanitary sewer and storm drainage facilities maintained by the Association, streets, parking areas, recreational facilities, and the irrigation system.

The Board periodically and at least once every three years shall review and update the inspection and maintenance guidelines.

The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

**5.2 Powers.** In addition to the powers enumerated in the Articles and Bylaws or elsewhere provided for in this Declaration, and without limiting their generality, the Association shall have the following powers:

**A. Utility Service.** The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Condominiums, all water, gas and electric service and refuse collection, and CATV.

**B. Easements; Common Area Interests.** The Association shall have authority, by document signed or approved by two-thirds (2/3rds) of the total voting power of the Association, to grant permits, licenses, and easements in addition to those shown on the Map or Condominium Plan and/or referred to in Article VI, where necessary for roads, utilities, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the Condominiums, and to construct recreational facilities, Condominium Buildings 5, 6 and 10, and other Condominium Buildings in the Annexation Property, and/or where necessary to satisfy or achieve appropriate governmental purpose or request, and/or to set aside and allocate for the exclusive use of the Owner(s) of the Condominium to which it is attached, a portion of the Common Area for a balcony, deck, patio, or storage space, which exclusive use area shall be designated on an amendment to the Condominium Plan, and shall constitute Restricted Common Area, as defined in sections 1.37 and 2.2.C. The Association may also, with approval of 2/3rds of the voting power of the Association, amend the Condominium Plan to convert Restricted Common Area space into Unit airspace, for the exclusive ownership of the Unit to which the Restricted Common Area was appurtenant at the time of the expansion, and by instrument signed by the President and Secretary of the Association convey title to the expanded Unit airspace to the Owner of the said Unit, and, may also, with the approval of the Unit Owner, reduce the size of or eliminate Restricted Common Area space appurtenant to that Unit by amending the Condominium Plan.

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C. **Manager.** The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same for cause on thirty (30) days' written notice, or without cause or payment of a termination fee on ninety (90) days' written notice.

D. **Adoption of Rules.** The Board or the Members of the Association by majority vote, may adopt reasonable rules that are not inconsistent with this Declaration relating to the use of the Common Area and all its facilities, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners.

E. **Access.** For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that a Unit Owner has failed to perform as provided in section 9.7, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner of the Unit in which maintenance work has not been performed, to enter any such Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused by such entry shall be repaired by the Board at the expense of the Association.

F. **Assessments, Liens, Penalties and Fines.** The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof. The Board may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Condominium Documents and the unrecorded Rules adopted by the Board or the Association. Penalties may include, but are not limited to, fines, temporary suspension of voting rights, rights to the use of recreational facilities or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to section 5.2.D. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend that period for an additional thirty (30) day period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such assessments as appropriate under applicable law. \*

G. **Enforcement.** The Board shall have the authority to enforce this Declaration as per Section 9.1 hereof.

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**H. Acquisition and Disposition of Property.** The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Except as otherwise provided herein with respect to easements over the Association Common Area, any transfer of real property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association.

**I. Loans.** The Board shall have the power to borrow money, and, only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

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**J. Dedication.** The Association shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed by two-thirds (2/3) of the total voting power of the Association agreeing to such dedication.

**K. Contracts.** The Board shall have the power to contract for goods and/or services for the Common Area(s), for the Condominiums, or for the Association, subject to limitations set forth in the Bylaws, or elsewhere in this Declaration. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of section 8.1(3) herein.

**L. Delegation.** The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) To make expenditures for capital additions or improvements chargeable against the reserve funds;

(2) To conduct hearings concerning compliance by an Owner or his or her tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board;

(3) To make a decision to levy monetary fines, impose special Assessments against individual Condominiums, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) To make a decision to levy annual or special Assessments; or

(5) To make a decision to bring suit, record a claim of lien or institute Foreclosure proceedings for default in payment of Assessments.

**M. Use of Recreational Facilities.** The Board shall have the power to limit the number of an Owner's tenants or guests who may use the recreational facilities, provided that all limitations apply equally to all Owners, unless imposed for disciplinary reasons, after notice and hearing, as provided in the Bylaws.

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**N. Custodian Unit.** Anything in this Declaration or the Bylaws or Articles to the contrary notwithstanding, the Association, upon appropriate resolution of the Board, shall have the power and authority, with the vote or written consent of a majority of Members, to purchase a Condominium to be occupied by the custodian of the Project (the "Custodian Unit"). In such case, during the period the Custodian Unit is owned by the Association:

(1) No right to vote shall be exercised on behalf of the Custodian Unit;

(2) No Assessment shall be assessed or levied on the Custodian Unit; and

(3) Each other Condominium shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to the Custodian Unit, but for the provisions of this section.

**O. Security.** The Association shall have the power (but not the obligation) to contract for security service for the Common Area.

**P. Appointment of Trustee.** The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in section 4.10 and California Civil Code § 1367(b).

**Q. Litigation/Arbitration.** The Association, subject to section 9.11 of this Declaration, shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association pursuant to Code of Civil Procedure § 383. The Board of Directors has authority to enter into a contingent fee contract with an attorney or to obligate the Association to incur attorneys' fees, and/or other costs of litigation in a matter involving alleged design or construction defects in the Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, and then only after getting the vote at a duly noticed and properly held membership meeting, of a majority of a quorum of the Members, and, in the case of alleged defects in the New Condominium Buildings and/or New Units, and/or in the Existing Condominium Buildings, the vote of a majority of a quorum of Owners of New Units shall be required. The costs and benefits of future litigation or settlement of claims based on alleged design or construction defects in Existing Condominium Buildings and/or Existing Units shall be borne and shared by the Owners of Existing Units, and the costs and benefits of litigation or settlement of claims based on alleged design or construction defects in New Condominium Buildings and/or New Units shall be borne and shared by the Owners of New Units. The Board shall, not later than thirty (30) days prior to the filing of any civil action by the Association for alleged design or construction defects in the areas of the Project which it is obligated to maintain, notify the Members in the manner required by California Civil Code § 1368.4. In the event the Board files an action in advance of such notice or a meeting of the Members, in order to avoid the running of a statute of limitations, the Board shall call a special meeting of the Members within thirty (30) days after filing the action, for the purpose of discussing the action taken by the Board.

Before commencing an action for damages against a builder of the project based upon a claim for defects in the design or construction of the Project, the Association shall comply with the requirements of Civil Code § 1375.

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If, and to the extent that, there is any inconsistency between this section 5.2.Q and applicable provisions of the California Civil Code and/or the California Code of Civil Procedure pertaining to the commencement of an action by the Association for construction defect litigation, the applicable provisions of the California statutes shall control.

**R. Other Powers.** In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code § 7140.

**S. Common Area Improvements.** The Association shall have the authority and power to demolish, remove and reconstruct any and all improvements on or over or under the Common Area in a manner not inconsistent with this Declaration, and to construct, improve and repair improvements that are appropriate for the use and benefit of the Members of the Association, and to charge for the use of such improvements, provided that the Association shall not include in any Assessment, annual or special, the cost of any new capital improvement which exceeds \$5,000 in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of the Association previously shall have approved said expenditure. \*

## ARTICLE VI UTILITIES

**6.1 Owners' Rights and Duties.** The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, exhaust flues and heating and air conditioning facilities (collectively, "utility facilities") shall be as follows:

**A.** Whenever utility facilities are installed within the Project, which utility facilities or any portion of those facilities lies in or upon Condominiums owned by other than the Owner of a Condominium served by those utility facilities, the Owners of any Condominium served by those utility facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain those utility facilities as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

**B.** Whenever utility facilities serving more than one (1) Condominium are installed within the Project, the Owner of each Condominium served by those utility facilities shall be entitled to the full use and enjoyment of such portions of those utility facilities as service his or her Condominium.

**C.** In the event of a dispute between Owners with respect to the repair or rebuilding of utility facilities, or with respect to the sharing of the cost of those facilities, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor rules, or to any other generally recognized system of alternative dispute resolution. The decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

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**6.2 Easements for Utilities and Maintenance.** Easements over, under and through the Project, including soffits and utility chases within Units, if any, for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Map, and as may be hereafter required or needed to service the Project, are reserved by A-F, L.P. and its successors and assigns, until the completion of construction of the Project and sale of the Condominiums, under authority of a public report, and thereafter are reserved by and for the benefit of the Association and its Members, together with the right to grant and transfer the same. The easements shall be for the benefit of all phases of the Project, and all Association Common Areas transferred to the Association.

The location of the facilities described in this section, and hence, the location of the easements to accommodate such facilities, shall be set forth in the final "as-built plans" for each Building. As used in this Declaration, the term "as-built plans" shall mean and refer to the drawings indicating the precise locations of utility runs, elevator shafts, etc., which drawings are prepared to show the final as-built locations thereof to the extent they deviate from or were not shown on prior plans.

In case of any variance between the Condominium Plan and the final "as-built plans" with respect to the locations of said facilities, the "as-built plans" shall be determinative as to the location of said facilities, and hence, the location of the easements to accommodate such facilities.

**6.3 Association's Duties.** The Association shall maintain all utility facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in section 9.7. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums.

## ARTICLE VII USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration, the use of the Project and each Condominium in the Project is subject to the following:

**7.1 Condominium Use.** No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted in any Condominium, except that residential Condominiums may be used as a combined residence and executive or professional office by the Owner thereof, so long as such use does not interfere with the quiet enjoyment by other Owners and does not include visiting clients and except that A-F, L.P., its successors or assigns, may use any Condominium or Condominiums in the Project owned by A-F, L.P. for a model home site or sites and display and sales/construction office during construction and until the last Condominium is sold by A-F, L.P., or until three (3) years from the date of closing of the first sale in Phase II of the Project (as described in Exhibit "B"), whichever occurs first. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

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No Condominium or any portion of any Condominium in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time-sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Condominiums or any portion of the Condominiums in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like/kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. This section shall not be construed to limit the personal use of any Condominium or any portion of the Condominium in the Project by any Owner or his or her social or familial guests.

The number of residents, unless applicable law provides otherwise, shall be limited as follows: No more than two (2) persons per bedroom in any Condominium shall be permitted as permanent residents. (A "permanent resident" means any person residing in a Condominium more than sixty (60) days out of any twelve (12) consecutive month period). One (1) child under three (3) years of age shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Condominium.

No health care facilities operating as a business or charity and serving the sick, elderly, disabled, handicapped or retarded shall be permitted in the Project, unless permitted by law or ordinance which preempts this restriction.

No family day care center for children shall be permitted within the Project except as specifically authorized by California Health and Safety Code § 1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care center and, in addition, shall:

- A. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;
- B. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care center;
- C. Abide by and comply with all of the Association's Rules;
- D. Supervise and be completely responsible for children at all times while they are within the project;
- E. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

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7.2 **Nuisances.** No noxious, illegal, or seriously offensive activities shall be carried on within any Condominium, or in any part of the Project, nor shall anything be done thereon that may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owners' Condominiums, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

7.3 **Vehicle Restrictions and Towing.** No trailer, camper, mobile home, commercial vehicle, recreational vehicle, truck having a carrying capacity of greater than 1/2 ton, or van having seating capacity in excess of eight (8) persons or vehicle which is too large to fit within the Owner's garage or parking space, boat, inoperable automobile, or similar equipment shall be permitted to be parked or remain upon any area within the Project. Permitted vehicles which are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Project. No unregistered or unlicensed motor vehicles shall be operated or parked upon the Project. The occupants of a Condominium shall not have or park more than two (2) permitted vehicles on the Project at any one time. The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the Owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height.

The Association may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an occupant. If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of the Association or his or her designee shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first-class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento, California and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the Project or any Condominium, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

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Garage space shall not be converted into any use (such as a recreational room or storage room) that would prevent its use as a parking space for the number of vehicles the space was designed to contain. Owners are to use their assigned parking spaces for parking of their vehicles so that unassigned Common Area parking will be available for guest parking. The Association may establish Rules from time to time for the parking of vehicles in the Common Areas.

The provisions of this section 7.3 are intended to comply with Vehicle Code section 22658.2 in effect as of January 1, 1999. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect. Vehicle Code section 22658.2 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

**7.4 Signs.** No signs shall be displayed to the public view on any Condominiums or any portion of the Project, except such signs as are approved by the Board or committee appointed by the Board. However, each Owner may display only one (1) "For Sale" or "For Rent" or "For Exchange" sign and may also display one (1) sign advertising directions to another Owners' Condominium which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable.

**7.5 Animals.** No animals of any kind shall be raised, bred, or kept in any Condominium, or on any portion of the Project, with the exception of trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons, except pets kept in cages or aquariums and one (1) usual and ordinary household pet such as a dog or cat, provided it is not kept, bred, or maintained for any commercial purposes, and is kept under control at all times. No Owner may keep a pet that behaves in a manner which is obnoxious, annoying, or threatening to other Owners or occupants. No pet shall be allowed in the Common Area except as may be permitted by Rules of the Board. No Owner shall allow his or her dog to enter the Common Area except on a leash. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any pet found within the Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City of Fremont, or the County of Alameda, by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pet from soiling all portions of the Common Area and shall promptly clean up any mess left by their pet. Owners shall be fully responsible for any damage caused by their pet.

**7.6 Garbage and Refuse Disposal.** All rubbish, trash recycling and materials, and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans or recycling containers, woodpiles, or storage piles shall be kept screened and concealed from view of other Condominiums, streets and Common Areas, except when placed out for pickup on the designated garbage pickup day. The Association shall be responsible for removal of garbage from the central pickup points. No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise.

**7.7 Radio and Television Antennae and Satellite Dishes.** Subject to applicable laws, no Owner may be permitted to construct and/or use and operate his or her own external radio and/or television antenna, satellite dish or related equipment without the consent of the Board. In considering whether to approve applications, the Board shall consider and give great weight to considerations of aesthetics and uniformity of appearance and potential structural damage and potential for water leaks in the Project and the requirements of any applicable laws. The Board shall, in acting upon requests for approval of a satellite dish, comply with California Civil Code § 1376 and FCC regulations. All fees for the use of any cable television system shall be borne by the respective Owners, and not by the Association. Satellite dishes may not be attached to the roof or to the exterior of any Condominium Building.

**7.8 Right to Lease.**

A. Any Owner who wishes to lease his or her Condominium must meet each of the following requirements, and the lease will be subject to these requirements whether they are included within the lease or not:

- (1) All leases must be in writing;
- (2) The lease must be for the entire Condominium and not merely parts of the Condominium, unless the Owner remains in occupancy;
- (3) All leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules adopted by the Board;
- (4) All Owners who lease their Condominiums shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Condominiums and shall provide the Secretary of the Association with a complete copy of the lease. All Owners leasing their Condominium shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached.

B. Any failure of a tenant to comply with the Declaration, Bylaws, and Association Rules, shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant.

C. If any tenant is in violation of the provisions of the Declaration, Bylaws, or Rules of the Association, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is violating, or has violated any of the provisions of the Declaration, the Bylaws of the Association, or the Rules of the Association, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease. For purposes of granting an unlawful detainer against the tenant, the court may assume that the Owner or person in whose name a contract (the lease or rental agreement) was made was acting for the benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association has. If permitted by present or future law, the Association may recover all its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action.

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D. The Association shall give the tenant and the Owner notice in writing of the nature of the violation of the Declaration and/or Rules, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

E. Each Owner shall provide a copy of the Declaration, Bylaws and all Rules of the Association to each tenant of his or her Unit. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws and the Rules of the Association, and recognizes and accepts the right and power of the Association to evict a tenant for any violation by the tenant of the Declaration, the Bylaws, and Rules of the Association.

**7.9 Architectural Control.** The purpose and intent of this Article is to empower the Association to preserve property values within the Project. The Board has the ultimate responsibility, but may delegate that authority to an Architectural Control Committee. The Board and the Architectural Control Committee shall operate pursuant to the following guidelines:

A. The emphasis of the Architectural Control Committee shall be upon keeping out of the Project what is considered bizarre, outlandish, or offensive to a reasonably prudent homeowner within the Project. The objective is to prevent additions, alterations or replacements which are reasonably likely to be detrimental to the overall ambiance of the Project, and reasonably likely to adversely affect property values throughout the Project. The restrictions are not intended to empower the Board or the Committee to act arbitrarily, capriciously, or whimsically in the process of reviewing plans. Standards should be established which are both reasonable and objective, and which are reasonably ascertainable, and are uniformly and fairly applied to all, and in all cases. The Board and the Committee shall base their decisions on what is in the best interests of the Project as a whole, and not upon what will appease a particular Member or group of Members.

B. No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Notwithstanding the foregoing, Owners may improve or alter any improvements within the interior boundaries of the Owner's Unit, provided such improvement or alteration does not impair the structural or acoustical integrity of any Common Area, the utilities or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including bearing walls).

C. Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with the original color scheme, or to rebuild in accordance with the original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Board or the Committee, or to rebuild in accordance with plans and specifications previously approved by the Board or by the Committee. Nothing contained in this paragraph shall be construed to limit the right of an Owner to paint the interior of his or her Unit any color desired.

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D. In order to maintain noise transference levels between Units, and to comply with applicable building standards, floor covering materials that are replaced shall be replaced only with materials of equal or better quality and noise transmission specifications.

E. No landscaping or other physical improvements or additions shall be made to any decks, balconies, patios or yards which are visible from the street or from the Common Area by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Board or by an Architectural Control Committee appointed by the Board. \*

F. The Architectural Control Committee shall consist of three (3) members. The Board shall have the power to appoint all of the members of the Architectural Control Committee. Members appointed to the Architectural Control Committee need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee the Board shall appoint a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration. In the event the Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee, the Board, and its members harmless from any and all liability arising out of such approval.

G. Before commencement of any alteration or improvements approved by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

**7.10 Structural Integrity.** Nothing shall be done in or on any Unit or in or on the Common Area which will impair the structural integrity of any building. Before making any modifications to any building slabs the Board shall retain a qualified consultant to determine if the slab is a post-tensioned slab, and take any necessary precautions prior to drilling, penetrating, or in any way modifying the slab.

**7.11 Drapes.** All drapes, curtains, window coverings, shutters, or blinds visible from the street or Common Areas shall be beige, white, or off-white in color or lined in beige, white, or off-white, or as the case may be, of colors, materials and patterns which are approved by the Board or its authorized committee.

**7.12 Clotheslines.** There shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over exterior railings shall be allowed. \*

**7.13 Power Equipment and Motor Vehicle Maintenance.** No power equipment, hobby shops, or motor vehicle maintenance (other than emergency work) shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld, and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner. No extended idling or revving of engines for tune-up or other

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purposes shall be permitted within the Project.

**7.14 Liability of Owners for Damage to Common Area.** The Owner of each Condominium shall be liable to the Association for all damage to the Common Area or improvements to the extent described in section 5.1.A.

**7.15 Basketball Standards and Sports Apparatus.** No basketball apparatus or fixed sport apparatus shall be attached to the exterior surface of any portion of the Common Area nor shall any portable apparatus be used for playing basketball in the Project.

**7.16 Commonly Metered Utilities.** The Board may establish restrictions regarding the individual use of any utility on a common meter, and may impose reasonable charges for the individual use thereof.

**7.17 Activities Causing Increase in Insurance Rates.** Nothing shall be done or kept in any Unit or in any improvements constructed in any Unit, or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Unit or any part of the Common Area, or which would be in violation of any law.

**7.18 Common Area Use.** Nothing shall be stored, grown, or displayed in the Common Area, including balconies and patios, that is not approved in advance by the Architectural Control Committee. This includes, without limitation, furniture, plants, art, and sculpture.

#### **ARTICLE VIII INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION**

**8.1 Insurance.** The Association shall obtain and maintain the following insurance:

(1) A master hazard policy insuring all improvements, equipment and fixtures in the Project (including the Units as originally constructed);

(2) If obtainable, an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association-owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code §§ 1365.7 and 1365.9;

(3) Workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) Fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) Flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area;

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(6) Officers and directors liability insurance in the minimum amounts required by California Civil Code § 1365.7;

(7) Insurance against water damage;

(8) Liability for non-owned and hired automobiles, and such other insurance as the Board in its discretion considers necessary or advisable; and

(9) Earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board.

(10) The following endorsements should be included, if applicable:

(a) Changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement");

(b) Inflation guard coverage;

(c) "Agreed-amount" endorsement (to eliminate a co-insurance problem);

(d) Replacement cost endorsement; and

(e) Primary coverage endorsement.

The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which is within the discretion of the Board, as provided in section 8.1(9) above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area.

Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

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All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

No Condominium Owner shall separately insure his or her Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. The insurance maintained by the Association does not cover the personal property in the residences and does not cover personal liability for damages or injuries occurring in the Units. Any Owner can insure his or her personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements made by an Owner within his or her Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance." The Owner shall not obtain such insurance if the policy referred to in section 8.1(1) will provide coverage for such improvements.

The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in section 8.1(1).

The Association, and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good-faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the insurance will not be obtained or renewed.

**8.2 Damage or Destruction.** If Project improvements which have been completed are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.4, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time. In the event of destruction of partially completed New Condominium Buildings, the decision of whether or not to rebuild shall be within the sole discretion of A-F, L.P., provided that the destroyed Building shall be reconstructed if sufficient insurance proceeds are available for the purpose.

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**A. Process For Repair or Reconstruction.** If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty thousand dollars (\$20,000), the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of those persons in respect of such services and stating the progress of the work up to the date of the certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials described in the foregoing paragraph 8.2(1) has been or is being made the basis for the disbursement of any funds in any previous or then-pending application; and

(5) That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is twenty thousand dollars (\$20,000) or less, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence as soon as reasonably practicable after the date of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

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**B. Process If Repair or Reconstruction Not Undertaken.** If the improvements are not required to be repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Project can be sold, and complying with all other applicable requirements of governmental agencies.

If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Project improvements), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their Mortgagees.

If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. For the purpose of effecting a sale under this section 8.2, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required under this Article within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Project under California Civil Code § 1359, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided in this Declaration.

Notwithstanding anything in this Declaration to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this section 8.2.B, provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

**8.3 Condemnation.** The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or part of the Common Area(s). In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear. In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking and, after acceptance of the award, he or she and his/her Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his or her Condominium as a

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result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in section 8.2.

If there is a substantial taking of the Project (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code § 1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Holder Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in section 8.2.

#### **ARTICLE IX GENERAL PROVISIONS**

**9.1 Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. The Association has the right to record a Notice of Violation against the Condominium of an Owner who is not in compliance with the provisions of the Project Documents. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**9.2 Invalidity of Any Provision.** Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**9.3 Term.** The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then-Owners of the Condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the covenants and restrictions in whole or in part, or to terminate the same.

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**9.4 Amendments.** This Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County of Alameda. Notwithstanding anything in this Declaration to the contrary, any amendment to the Condominium Plan shall satisfy the requirements of California Civil Code § 1351(e) or any successor statute.

**9.5 Encroachment Rights.** If any portion of the Common Area encroaches on any Unit or any part of a Unit, or any portion of a Unit encroaches on any Common Area due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by that encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if that encroachment occurred due to the intentional conduct of such Owner or Owners other than correcting adjustments in original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of those encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining lot, or into a required setback area, a correcting modification may be made in the subdivision map and/or Condominium Plan.

**9.6 Rights of First Lenders.** No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any First Mortgage (meaning a mortgage with first priority over any other mortgage) on any Condominium made in good faith and for value, but all of those covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Condominium Documents to the contrary, First Lenders shall have the following rights:

**A. Copies of Project Documents.** The Association shall make available to Condominium Owners and First Lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles or other Rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the requested documents which may not exceed the reasonable cost to prepare and reproduce them.

**B. Audited Statement.** Any holder, insurer or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

**C. Notice of Action.** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Condominium number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

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(1) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;

(2) Any default in performance of obligations under the Project Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;

(3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(4) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 9.6.D.

The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required by this Declaration to such parties, at the address given on the current request for notice, in the manner prescribed by section 9.11.

#### **D. Consent to Action.**

(1) Except as provided by statute or by other provision of the Project Documents in case of substantial destruction or condemnation of the Project, and further excepting the annexation rights under section 2.6 and any reallocation of interests in the Common Area(s) which might occur pursuant to any plan of expansion or phased development contained in the original Project Documents:

(a) The consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Holder Mortgages, shall be required to terminate the legal status of the Project as a Condominium Project; provided, however, that if termination is for reasons other than substantial destruction or condemnation, the agreement of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Units is required;

(b) The consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least fifty-one percent (51%) of the votes of the Condominiums subject to Eligible Holder Mortgages, shall be required to add or amend any material provisions of the Project Documents which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the general or Restricted Common Areas, or rights to their use; (vi) convertibility of Units into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (viii) hazard or fidelity insurance requirements; (ix) imposition of any restrictions on the leasing of Units; (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (xi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents;

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or (xii) any provisions that expressly benefit mortgage holders, insurers, or guarantors;

(c) An Eligible Mortgage Holder who receives a written request to approve additions or amendments without delivering or posting to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request, provided the notice has been delivered to the Eligible Mortgage Holder by certified or registered mail, return receipt requested.

(2) Except as provided by statute in case of condemnation or substantial loss to the Condominiums and/or common elements of the Project, unless the holder(s) of at least two-thirds (2/3) of the first mortgages (based upon one (1) vote for each First Mortgage owned), or Owners of the individual Condominiums have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the Project as a condominium project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

(b) Change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Condominium Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;

(c) Partition or subdivide any Condominium;

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

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

**E. Right of First Refusal.** The right of an Owner to sell, transfer, or otherwise convey his or her Condominium shall not be subject to any right of first refusal or similar restriction.

**F. Contracts.** Any agreement for professional management of the Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board of Directors of the Association to purchasers, must provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice.

**G. Reserves.** Condominium dues or charges shall include an adequate reserve fund for each Cost Center for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special Assessments.

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**H. Priority of Liens.** Any lien created under the provisions of this Declaration is expressly made subject and subordinate to the lien and encumbrance of any First Mortgage that encumbers all or any portion of the Project, or any Unit. Each holder of a First Mortgage lien on a Condominium who comes into possession of the Condominium by virtue of Foreclosure of the Mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Condominium which accrue prior to the time such holder takes title to the Condominium, except for claims for a pro rata share of such Assessments or charges to all Condominiums including the mortgaged Condominium, and except for assessment liens as to which a notice of delinquent assessment has been recorded prior to the Mortgage.

**L. Distribution of Insurance or Condemnation Proceeds.** No provision of the Condominium Documents gives an Owner, or any other party, priority over any rights of First Lenders in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Condominiums and/or Common Area.

**J. Status of Loan to Facilitate Resale.** Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by Foreclosure or by a deed in lieu of Foreclosure or by an assignment in lieu of Foreclosure, shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.

**K. Right to Appear at Meetings.** Any Eligible Mortgage Holder may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or Assessments.

**9.7 Owners' Right and Obligation to Maintain and Repair.** Except for those portions of the Project which the Association is required to maintain and repair, each Condominium Owner shall, at his or her sole cost and expense, maintain and repair the Unit, keeping the same in good condition. Each Owner shall be responsible for and bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wallpaper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke detectors, and any and all other appliances of any nature whatsoever; heating, ventilating and air conditioning equipment (if any) servicing such Unit (although such equipment may be located in part outside such Unit); interior doors, including all hardware on the doors; light bulbs; plumbing and other fixtures of any nature whatsoever, "built-in" features; and decorative features, fireplaces, if any, and any furniture and furnishings. In addition, each Owner shall be responsible for and bear the cost of maintenance, repair and replacement of the following items serving such Owner's Unit: garage, remote control garage opener, carport interior, entrance and stairway interior surfaces, windows, patio landscaping. All electric utilities serving individual Units shall be separately metered and shall be the expense of each individual Owner. Electric utilities serving the general common elements shall be a common expense of the Association. Each Owner shall keep the Restricted Common Area appurtenant to the Owner's Condominium in a clean and neat condition at all times and shall maintain the landscaping in any such areas. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his or her Unit. In the event an Owner fails to maintain the interior of his or her Unit or the landscaping within his or her private patio area in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify Owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event Owner fails to carry out such maintenance within said period, the Board may, following notice and hearing

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as provided in the Bylaws, cause such work to be done and the cost of the work shall immediately be paid by such Owner to the Association, and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

**9.8 Owners' Compliance.** Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles, and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, or (5) any combination of the foregoing.

In the event of a violation of the Project Documents, the Association may, if permitted by applicable law, record a Notice of Violation against the Condominium of the non-complying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a non-complying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Condominium with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Project Documents.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

**9.9 Notice.** Any notice permitted or required by the Declaration or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Condominium of such person if no address has been given to the Secretary.

**9.10 Fair Housing.** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his or her Condominium to any person of a specified race, sex, age, marital status, color, religion, ancestry, physical handicap, or national origin.

**9.11 Alternative Dispute Resolution.** The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

A. The Board may provide, or in good faith attempt to provide, one hundred twenty (120) days' advance notice of the Board's intent to initiate the prosecution of any civil action stating the nature and basis of the claim, to every member of the Association and every entity or person who is a prospective party to the civil action, provided that such notice can be given more than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations, and such notice can be given without prejudice to the Association's right to enforce the Project Documents, and further provided that no such notice need be given prior to the filing of an action in small claims court or an action solely to enforce Assessment obligations.

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B. Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents, or for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000), the Board shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1354(b) of the California Civil Code.

C. Immediately after initiating the prosecution or defense of any civil action, the Board shall make a reasonable effort, in good faith, to meet and confer with every person who is a party concerning appropriate processes for resolving the civil action, including available alternative dispute resolution proceedings; concerning appropriate processes for avoiding or reducing costs or losses by the parties associated with the action; providing an opportunity to cure any alleged defect in the Project or facilities which is the basis for the action; and providing for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. The Board is authorized to consider diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings such as mediation, non-binding arbitration, or binding arbitration and is authorized to agree to participate and to participate fully and in good faith in the resolution of any civil action through any alternative dispute resolution proceedings, including, but not limited to, mediation, non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings.

D. The Board shall comply with the requirements of California Civil Code § 1354(i) by providing Members of the Association annually with a summary of the provisions of California Civil Code § 1354, including the following language: "Failure by any Member of the Association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the governing documents."

E. If a dispute is the subject of arbitration under this section 9.11, the following shall apply:

(1) Costs and fees of the arbitration, including ongoing costs and fees of the arbitration, shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator(s), with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator(s);

(2) Neutral and impartial individual(s) shall be appointed to serve as arbitrator(s), with the arbitrator(s) to be appointed within a reasonable period of time, which in no event shall be more than 60 days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of § 1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in § 1297.121, or in § 1297.124 of the Code of Civil Procedure;

(3) Venue of the arbitration to be in the county where the subdivision is located, unless the parties agree to some other location;

(4) For the prompt and timely commencement of the arbitration in accordance with (i) the rules of the arbitration, or if the rules do not specify a date by which arbitration is to commence, then (ii) a date was agreed by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrators;

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(5) For the arbitration to be conducted in accordance with rules and procedures which are reasonable and fair to the parties;

(6) For the prompt and timely conclusion of the arbitration;

(7) The arbitrators shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration; provided, however, that there shall in no event be any award of punitive damages;

(8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

F. Judicial Reference for Certain Disputes. Any claim by the Association or any Owner of a New Unit in the Project against A-F, L.P. or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of A-F, L.P. for the design and/or construction of the New Condominium Buildings or New Units, or any element of the Project ("Developer Parties"), shall be submitted to Judicial Reference as provided by the following:

(1) Subject to compliance with the mandatory alternative dispute resolution ("ADR") requirements set forth in Section 1354 of the California Civil Code, as same may be amended from time to time, all other disputes between or among the Association, any Owner(s) and/or the Developer Parties (excepting disputes with A-F, L.P. for delinquent Assessments, and disputes with A-F, L.P. regarding the releases or exoneration of completion bonds for the Association Property) shall be resolved in accordance with the provisions of subsection (2) below.

(2) All unresolved disputes under subsections (1) above shall be submitted to general judicial reference pursuant to California Code of Civil Procedure §§ 638 through 645.1, or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. A-F, L.P. shall require all of its contractors, subcontractors, architects, engineers, and other consultants to agree to submit to and participate in the judicial reference process described herein, and to participate in the judicial reference proceedings. The parties shall share in the fees and costs as determined by the Referee.

(3) The general Referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) If A-F, L.P. is a party to the judicial reference, then any fee to initiate the judicial reference shall be paid by A-F, L.P.; provided, however, that the cost of the judicial reference shall ultimately be borne as determined by the Referee;

(b) The proceedings shall be heard in Alameda County;

(c) The Referee must be a neutral and disinterested party who is a retired judge or a licensed attorney with at least ten (10) years' experience in relevant real estate matters;

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(d) Any dispute regarding the selection of the Referee shall be resolved by the court with appropriate jurisdiction;

(e) The Referee may require one or more pre-hearing conferences;

(f) The parties shall be entitled to discovery, and the Referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(g) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(h) The Referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;

(i) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge; and

(j) The Referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the judicial reference; provided, however, that there shall in no event be any award of punitive damages.

(4) The statement of decision of the Referee upon all of the issues considered by the Referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered on the decision. The decision of the Referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and agree that they are waiving their right to a jury trial.

**9.12 Number; Gender.** The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

**9.13 Right of A-F, L.P. to Further Amend Amended Condominium Plan for New Units.** As of the date of the recordation of this Amended and Restated Declaration, the final review and approval for the design of the New Condominium Buildings 5, 6 and 10 has not been completed by the City of Fremont. Notwithstanding anything otherwise stated in this Amended and Restated Declaration, A-F, L.P. shall have the right to further amend the Amended Condominium Plan for the New Condominium Buildings 5, 6 and 10, by recordation of a subsequent amendment of the Amended Condominium Plan for New Condominium Buildings 5, 6 and 10 signed and acknowledged solely by A-F, L.P., provided that, and as long as, the modifications shown on such subsequent amendment of the Amended Condominium Plan for New Condominium Buildings 5, 6 and 10 are required to comply with City or other local agency requirements for such New Condominium Buildings or necessary to comply with the Americans With Disabilities Act, or similar legislative or administrative requirements, and are otherwise in compliance with the provisions of section 5.1 of the Construction Agreement for the Andalusia Condominium Project between the Association and A-F, L.P., a memorandum of which Construction Agreement shall be recorded simultaneously with this Amended and Restated Declaration.

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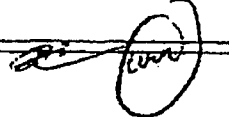
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9.14 Existing Members Responsibility for Settlement Proceeds. The Existing Members (as defined in introductory clause D, above, have settled a construction defect lawsuit (as provided in introductory clause G, above). The Existing Members are solely entitled to all proceeds of settlement from that suit, and are solely responsible for all income or other taxes related to the receipt of such proceeds, and for all costs and expenses associated with the settlement and the settlement proceeds, including, without limitation, IRS audit, CPA fees, interest, penalties, etc.

~~IN WITNESS WHEREOF, the undersigned executed this Amended and Restated Declaration and approved the Amended Condominium Plan attached as Exhibit "A 2," this \_\_\_\_\_ day of \_\_\_\_\_, 1999.~~

~~ANDALUSIA HOMEOWNERS ASSOCIATION  
a California nonprofit mutual benefit corporation~~

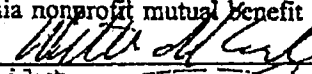
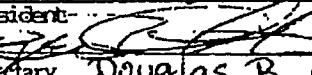
~~By: \_\_\_\_\_  
Its: President~~ 



I hereby certify and declare, under penalty of perjury, that the foregoing Amended and Restated Enabling Declaration and Amended Condominium Plan have been approved by the written consent of Members representing ~~two-thirds (2/3rds)~~ <sup>at least 67 percent</sup> of the total voting power of the Association.

Dated: December 7, 1999.

ANDALUSIA HOMEOWNERS ASSOCIATION  
a California nonprofit mutual benefit corporation

By:   
Its: President William M. Card  
By:   
Its: Secretary Douglas B. Christison

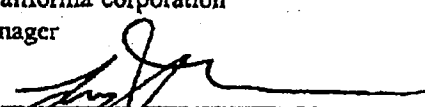
**APPROVAL BY A-F, L.P.**

Andalusia-Fremont, L.P., hereby approves, ratifies, and agrees to be bound by and to comply with the terms and conditions of this Declaration.

Andalusia-Fremont, L.P.,  
a California limited partnership

By: MSII/SEPII GP, LLC,  
a California limited liability company  
General Partner

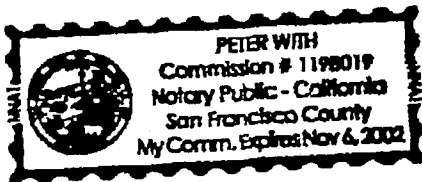
By: Hearthstone,  
a California corporation  
Manager

By:   
Tracy F. Carver  
Senior Vice President-General  
Counsel

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO ) ss.

On this 7 day of DECEMBER, 1999, before me, PETER WITH, a notary public for the state, personally appeared WILLIAM M. CARD, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

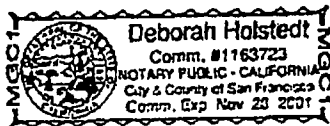


  
\_\_\_\_\_  
Notary Public, State of California

STATE OF CALIFORNIA )  
COUNTY OF ) ss.

On this 7th day of November, 1999, before me, Deborah Holstedt, a notary public for the state, personally appeared TRACY T. CARVER, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

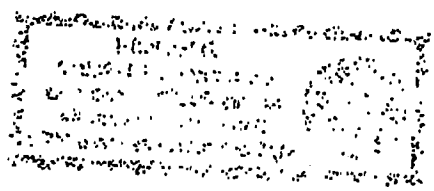


  
\_\_\_\_\_  
Notary Public, State of California

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STATE OF CALIFORNIA

COUNTY OF Alameda

)  
) SS.  
)

On December 7, 1999 before me, ~~Douglas Christison~~ Kimberly D. Browne Notary Public, personally appeared ~~Douglas Christison~~ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Kimberly D. Browne  
Notary Public



**ILLEGIBLE NOTARY SEAL DECLARATION (GOVERNMENT CODE 27361.7)**

**I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:**

**NAME OF NOTARY:** *Kimberly O. Browne*

**DATE COMMISSION EXPIRES:** *NOV. 15, 2001*

**STATE:** *Ca*

**COUNTY:** *Contra Costa*

**PLACE OF EXECUTION OF THIS DECLARATION: CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA**

**DATE:** *12-10-99*

**SIGNATURE** *Demetra Barnes*

**AGENT FOR FIRST AMERICAN TITLE GUARANTY COMPANY**

# CONTENTS

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## LEGEND & NOTES

PSE - PUBLIC SERVICE EASEMENT      LE - LOW ELEVATION REFERENCE  
 UL - UPPER LIMIT ELEVATION REFERENCE  
 G - GARAGE ( RESTRICTED COMMON AREA )      GP - GUEST PARKING  
 B - BALCONY ( RESTRICTED COMMON AREA )      H - HANDICAP PARKING  
 PT - PATIO ( RESTRICTED COMMON AREA )      ~~ESTERASE~~  
 S - STORAGE ( RESTRICTED COMMON AREA )

"23-N" ← UNIT DESIGNATION (Building Number & a Letter identifying unit location)

HTP - "HORIZONTAL TIE POINT" IS THE BUILDING TIE WHICH IS MEASURED TO THE BUILDING FOUNDATION.

ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMALS THEREOF.

ALL EXTERIOR BUILDING DIMENSIONS ARE MEASURED TO THE OUTSIDE FACE OF STUDS AND ARE HEREIN REFERENCED AS "BUILDING EXTERIOR"

ALL UNIT DIMENSIONS ARE MEASURED BETWEEN FACE OF UNFINISHED INNER SURFACES.

ALL DIMENSIONS ARE PARALLEL WITH, AT RIGHT ANGLES OR AT A 45° ANGLE TO THE GIVEN BEARINGS UNLESS OTHERWISE NOTED.

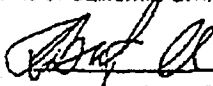
EACH BUILDING SLAB GRADE ELEVATION (B.S.) IS THE REFERENCE POINT OF THE VERTICAL LIMITS OF THE UNIT. THE LOW OR UPPER LIMIT DIMENSION (LE, UL) ADDED TO THE B.S. IS THE LOW OR HIGH, RESPECTIVE, VERTICAL LIMIT OF THE UNIT.

### SURVEYOR'S STATEMENT

*"I hereby state that I am a Licensed Land Surveyor of the State of California; that this Condominium Plan, consisting of ten (10) sheets, correctly represents a true and complete survey of the project made under my supervision in April, 1982 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 1351(e)."*

### BASIS OF ELEVATIONS

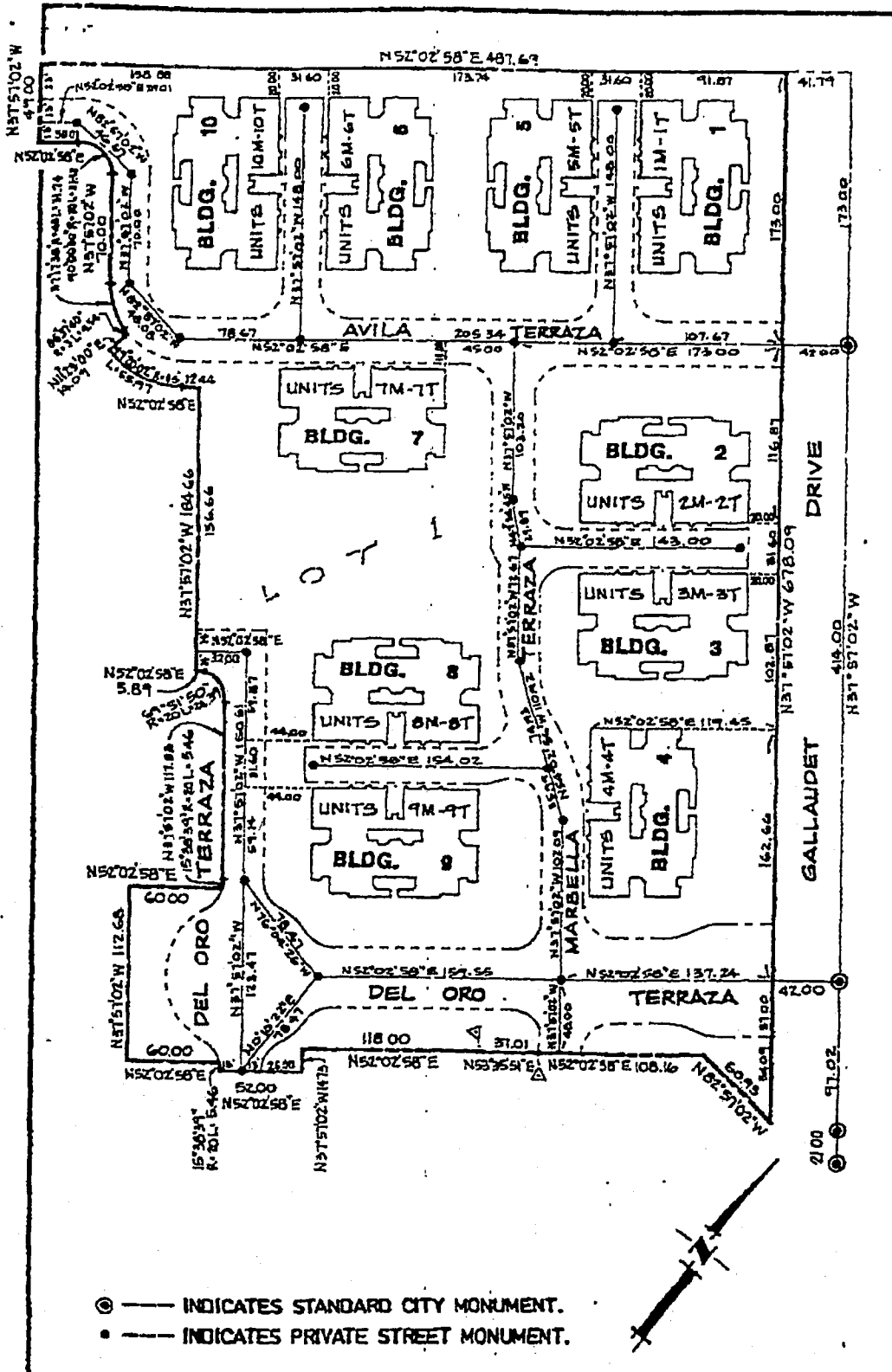
Brass disk stamped "F 122" set in top of curb on the northwesterly side of Gallaudet Drive, near the intersection with Stevenson Blvd. and 10.5 feet southeast of an electrolier.  
ELEVATION 59.87

  
 Robert Chan  
 L.S. No. 5412

No. 5412  
 EXP. 9-30-92  
 STATE OF CALIFORNIA

CONDOMINIUM PLAN FOR : PHASE I <b>ANDALUSIA</b> LOT 1 OF TRACT No. 5996 FREMONT BLDGS. 1-10 CALIFORNIA	<b>MACKAY &amp; SOOP</b> <small>CIVIL ENGINEERING - LAND PLANNING - LAND SURVEYING</small> 40515 ENCICLOPEDIA CIR. FREMONT, CALIFORNIA
SCALE: NONE      DATE: NOV. 1985      PROJ. NO: 10551-1	





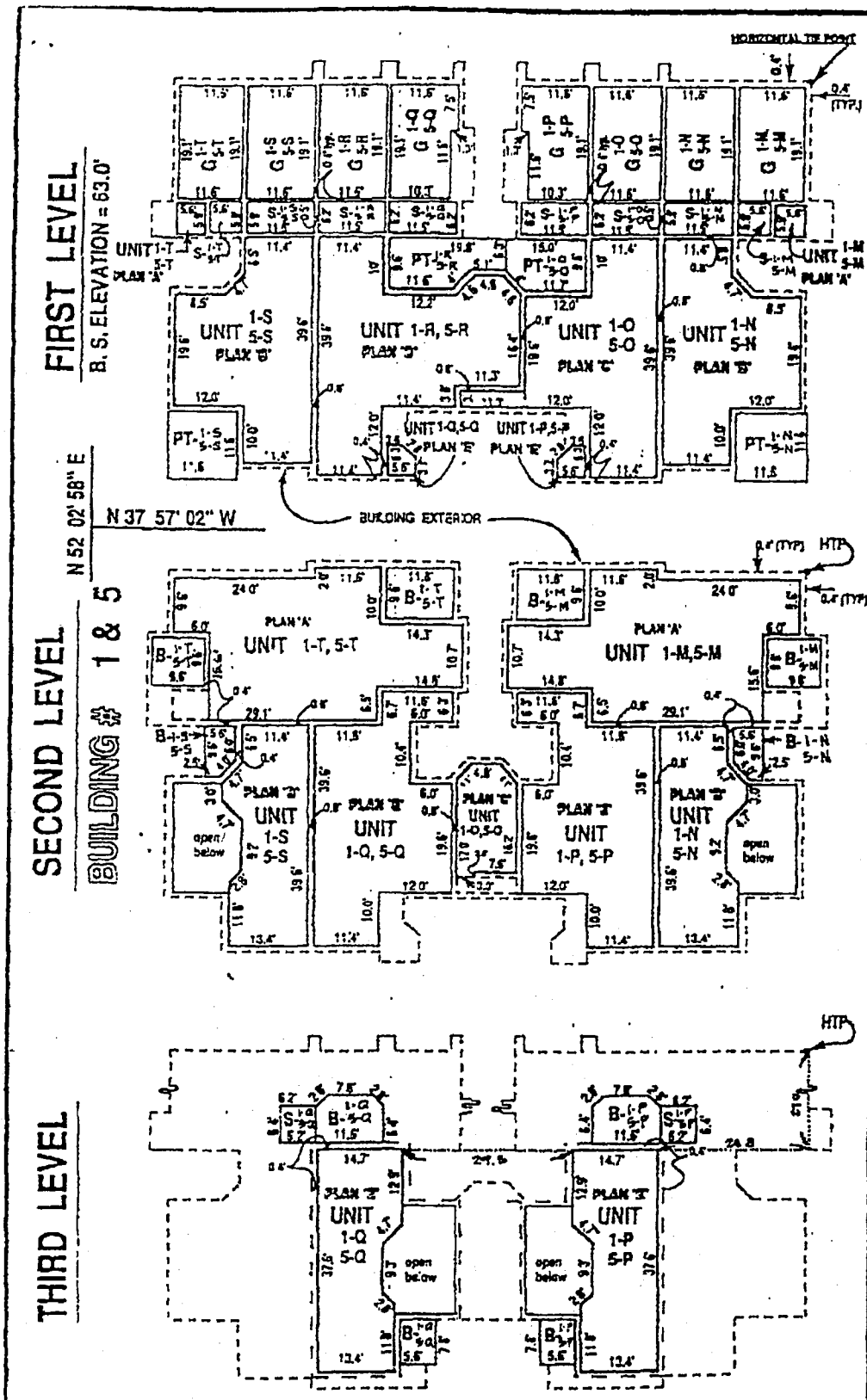
- ⊙ — INDICATES STANDARD CITY MONUMENT.
- — INDICATES PRIVATE STREET MONUMENT.

TRACT 5996 RECORDED IN BK. 186 MAPS, PGS. 14 - 16. ALAMEDA CO. RECORDS.

CONDOMINIUM PLAN FOR : PHASE 1  
**ANDALUSIA**  
 LOT I OF TRACT No. 5996  
 FREMONT BLDGS. 1 - 10 CALIFORNIA

**DACKAY & SOMPS**  
 CYLINDRICALS - LAND PLANNING - LAND SURVEYING  
 40515 ENCYCLOPEDIA CIR.  
 FREMONT, CALIFORNIA

SCALE: NONE      DATE: NOV. 1985      PROJ. NO: 10251-1  
 SHEET 2 OF 10      EXHIBIT A-1



**FIRST LEVEL**

B. S. ELEVATION = 63.0'

**SECOND LEVEL**

**BUILDING # 1 & 5**

**THIRD LEVEL**

CONDOMINIUM PLAN FOR : PHASE 1 <b>ANDALUSIA</b> LOT 1 OF TRACT No. 5996 FREMONT CALIFORNIA		<b>MACKAY &amp; SOMPS</b> <small>CIVIL ENGINEERING - LAND PLANNING - LAND BUYING</small> 40515 ENCYCLOPEDIA CIR. FREMONT, CALIFORNIA	
SCALE: 1" = 20' SHEET 3 OF 10	DATE: NOV. 1983	PROJ. NO.: 10531-1	EXHIBIT A-1



**FIRST LEVEL**

B.S. ELEVATION = 62.0'

N 52° 02' 58" E

N 37° 57' 02" W

**SECOND LEVEL**

**BUILDING # 4**

**THIRD LEVEL**

CONDOMINIUM PLAN FOR: PHASE 1

**ANDALUSIA**

LOT 1 OF TRACT No. 5996

FREMONT CALIFORNIA  
BLOGS. 1 - 10

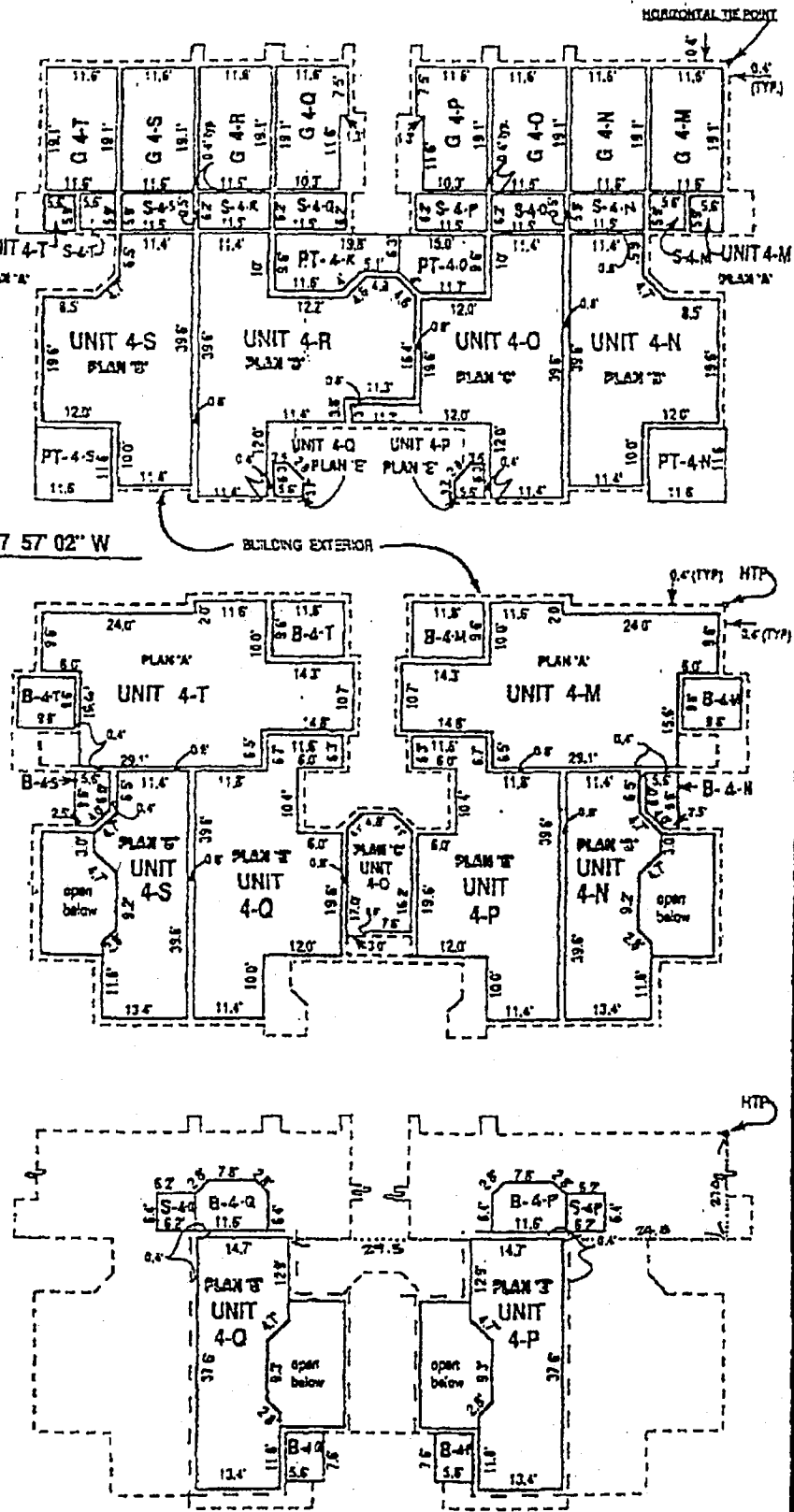
**Mackay & SompS**

CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING  
40515 ENCYCLOPEDIA CIR.  
FREMONT, CALIFORNIA

SCALE: 1" = 20'      DATE: NOV, 1989      PROJ. NO: 10551-1

SHEET 5 OF 10

EXHIBIT A-1



**FIRST LEVEL**

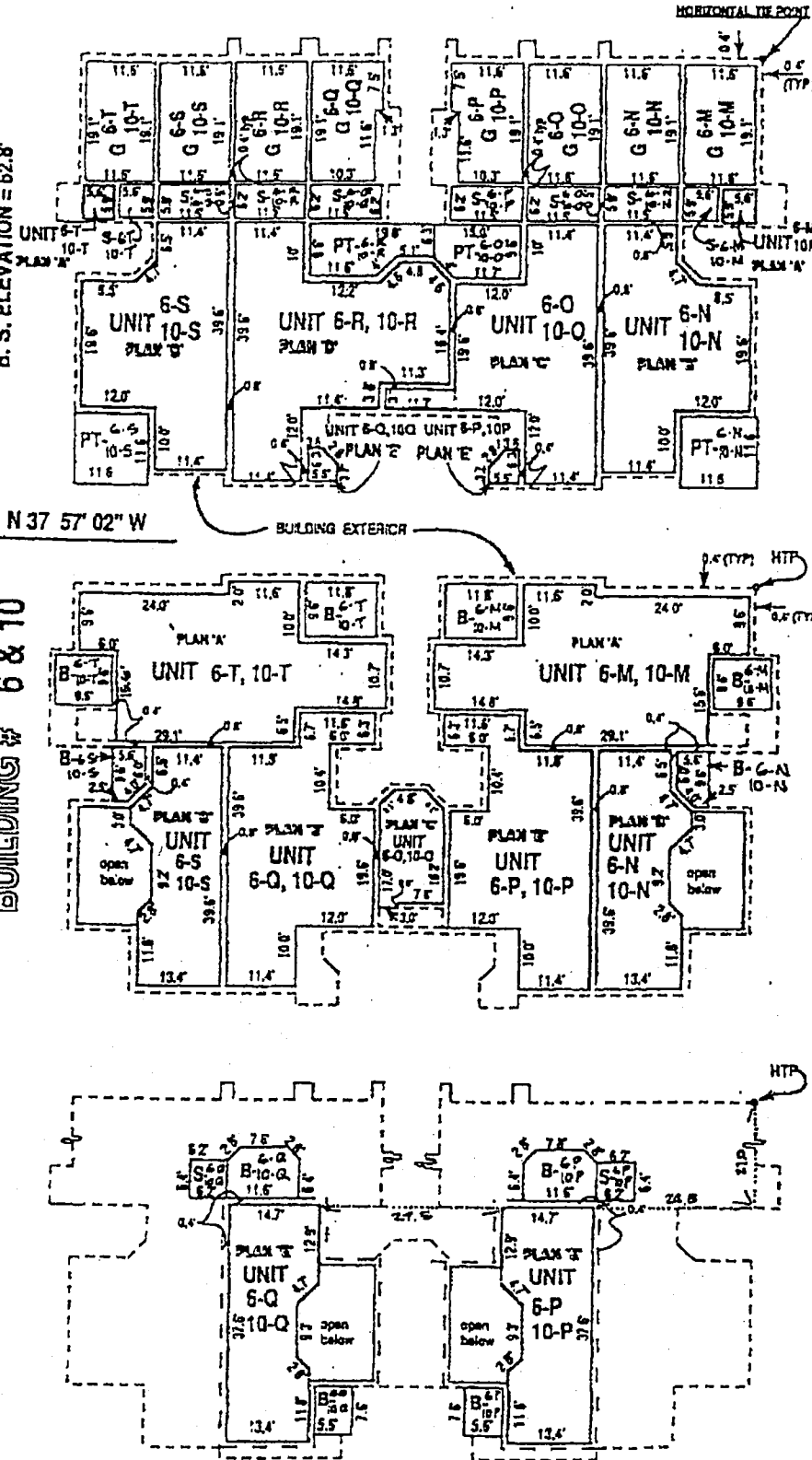
B. S. ELEVATION = 62.8'

N 52° 02' 58" E

**SECOND LEVEL**

**BUILDING # 6 & 10**

**THIRD LEVEL**



CONDOMINIUM PLAN FOR: PHASE 1  
**ANDALUSIA**

LOT 1 OF TRACT No. 5996

FREMONT BLDGS. 1 - 10 CALIFORNIA

**MACKAY & SOMPS**  
CIVIL ENGINEERS - LAND PLANNING - LAND SURVEYING  
40515 ENCYCLOPEDIA CIR.  
FREMONT, CALIFORNIA

SCALE 1" = 20' DATE NOV, 1989 PROJ. NO. 10551-1

SHEET 6 OF 10

EXHIBIT A-1

**FIRST LEVEL**

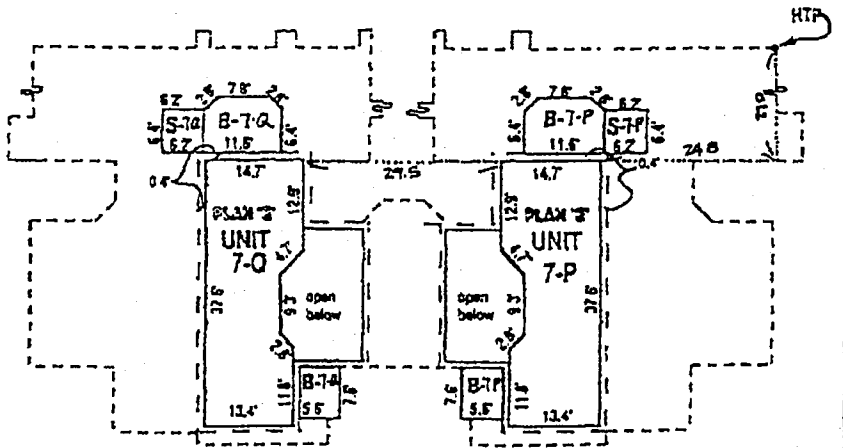
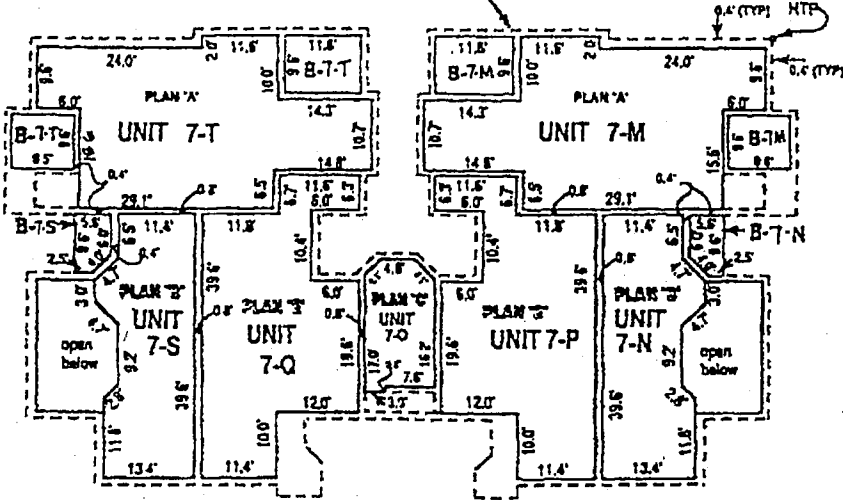
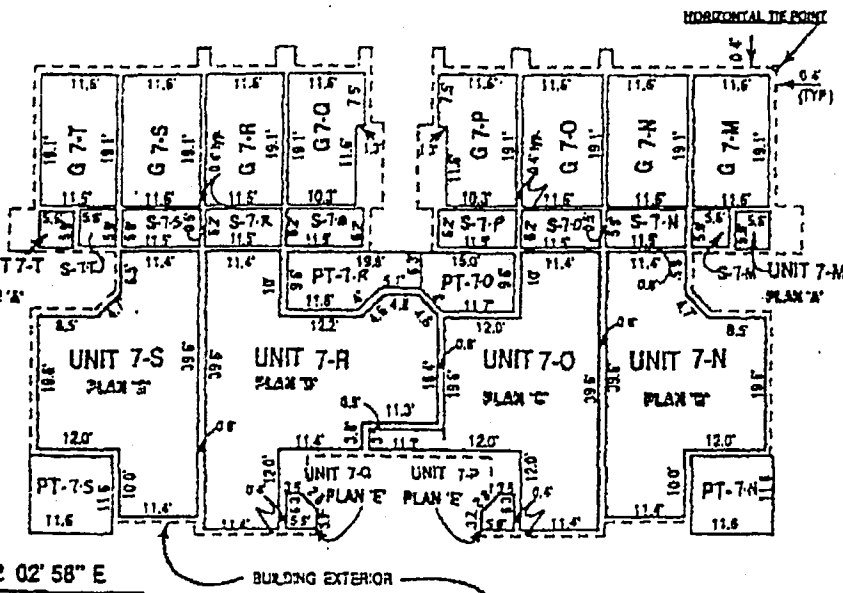
B. S. ELEVATION = 61.8'

N 37° 57' 02" W

BUILDING # 7

**SECOND LEVEL**

**THIRD LEVEL**



CONDOMINIUM PLAN FOR: PHASE 1  
**ANDALUSIA**

LOT 1 OF TRACT No. 5996

FREMONT BLDGS. 1 - 10 CALIFORNIA

**MACKAY & SOMPS**  
CIVIL ENGINEERING - LAND PLANNING - LAND SURVEYING  
40515 ENCYCLOPEDIA CIR.  
FREMONT, CALIFORNIA

SCALE: 1" = 20'

DATE: NOV. 1983

PROJ. NO: 10551-1

SHEET 7 OF 10

EXHIBIT A-1

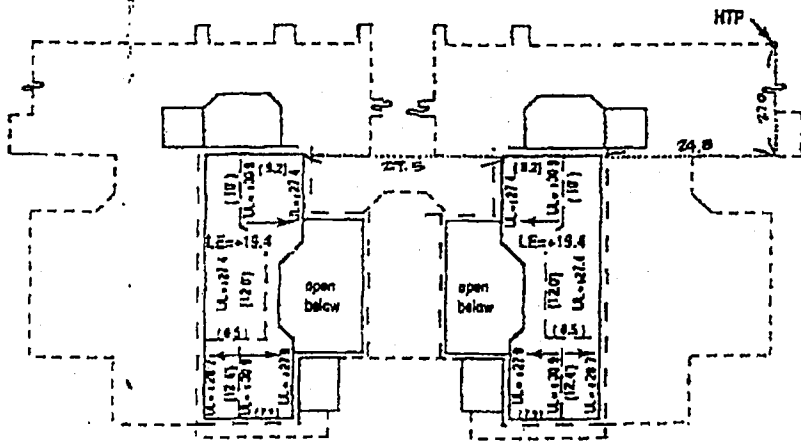
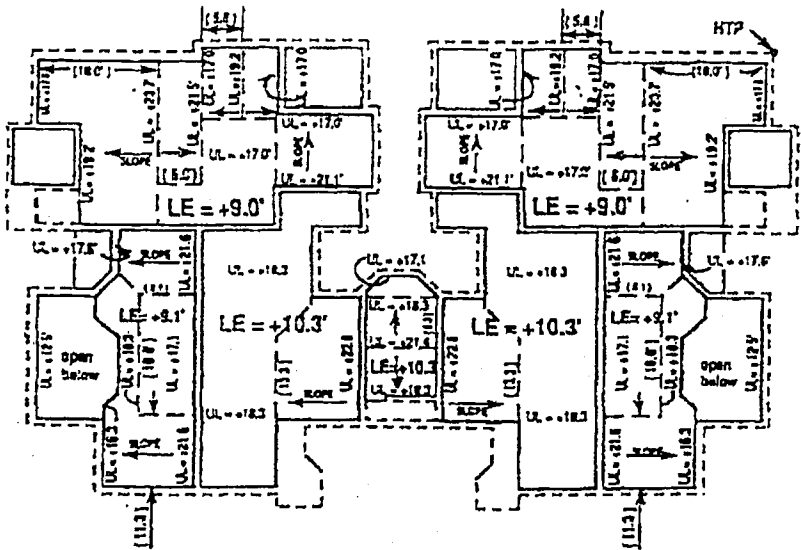
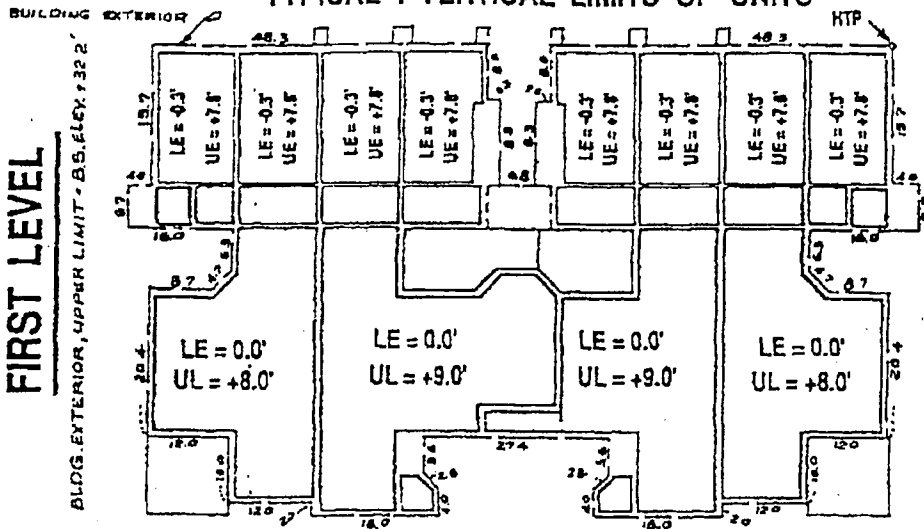


TYPICAL : VERTICAL LIMITS OF UNITS

FIRST LEVEL

SECOND LEVEL

THIRD LEVEL



CONDOMINIUM PLAN FOR : PHASE 1.  
**ANDALUSIA**

LOT 1 OF TRACT No. 5996

FREMONT BLDGS. 1 - 10 CALIFORNIA

**MACKAY & SOMPS**  
CIVIL ENGINEERING - LAND PLANNING - LAND SURVEYING  
40515 ENCYCLOPEDIA CIR.  
FREMONT, CALIFORNIA

SCALE 1" = 20'

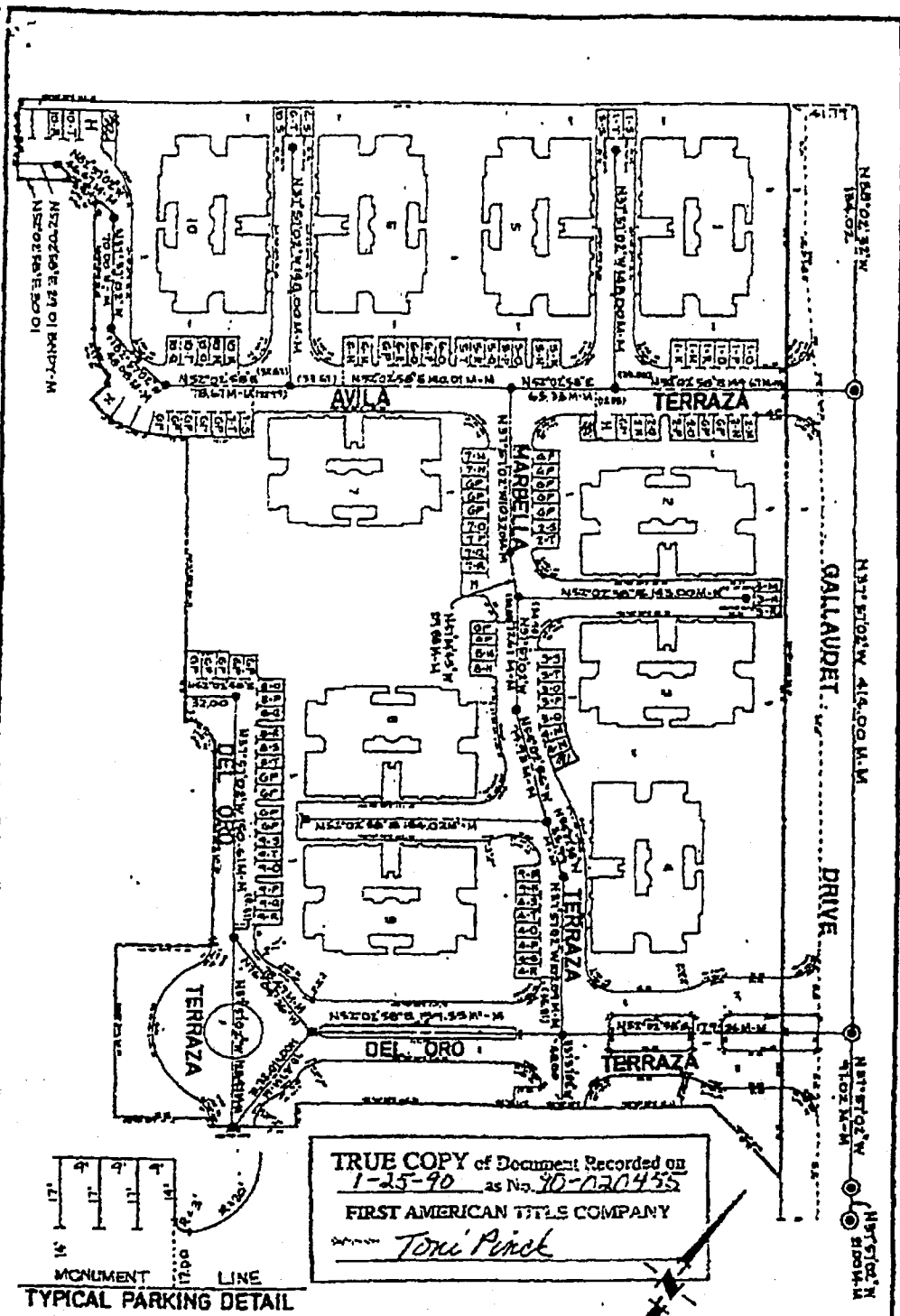
DATE: NOV, 1988

PROJ. NO: 10551-1

SHEET 9 OF 10

EXHIBIT A-1





TRUE COPY of Document Recorded on  
 1-25-90 as No. 90-020455  
 FIRST AMERICAN TITLE COMPANY  
*Toni Pirock*

TYPICAL PARKING DETAIL

- ⊙ — INDICATES STANDARD CITY MONUMENT.
- — INDICATES PRIVATE STREET MONUMENT.

TRACT 5996 RECORDED IN BK. 186 MAPS, PGS. 14 — 16, ALAMEDA CO. RECORDS.

CONDOMINIUM PLAN FOR : PHASE 1 <b>ANDALUSIA</b> LOT 1 OF TRACT No. 5996 FREMONT BLDGS. 1 - 10 CALIFORNIA		<b>MACKAY &amp; SOMPS</b> <small>CIVIL ENGINEERING - LAND PLANNING - LAND SURVEYING</small> 40518 ENCYCLOPEDIA CIR. FREMONT, CALIFORNIA	
SCALE: NONE	DATE: NOV. 1989	PROJ. NO: 10351-1	

SHEET 10 OF 10

EXHIBIT A-1

# CONTENTS

	SHEET NO.
CONTENTS, LEGEND AND NOTES	1
LOTS AND BUILDING TIES	2
HORIZONTAL LIMITS OF UNITS, PATIOS, STORAGE AND BALCONIES	3
TYPICAL VERTICAL LIMITS OF UNITS AND EXTERIOR DIMENSIONS OF BUILDING	4
OPEN PARKING ASSIGNMENT PLAN	5

## LEGEND AND NOTES

- |   |   |
|---|---|
| <p>B - BALCONY (RESTRICTED COMMON AREA)</p> <p>G - GARAGE (RESTRICTED COMMON AREA)</p> <p>GP - GUEST PARKING</p> <p>H - HANDICAP PARKING</p> <p>LE - LOW ELEVATION REFERENCE</p> <p> - NO PARKING</p> | <p>PSE - PUBLIC SERVICE EASEMENT</p> <p>PT - PATIO (RESTRICTED COMMON AREA)</p> <p>S - STORAGE (RESTRICTED COMMON AREA)</p> <p>UL - UPPER LIMIT ELEVATION REFERENCE</p> <p>L - REPRESENTS COMMON RESTRICTED AREA (STAIRS, STOOPS &amp; LANDINGS)</p> <p>U - UTILITY ROOM (COMMON AREA FOR BUILDINGS 5,6 &amp; 10)</p> |
|---|---|

**"23-N"** UNIT DESIGNATION (Building Number & a Letter identifying unit location)

HTP - "HORIZONTAL TIE POINT" IS THE BUILDING TIE WHICH IS MEASURED TO THE BUILDING FOUNDATION.

ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMALS THEREOF.

ALL EXTERIOR BUILDING DIMENSIONS ARE MEASURED TO THE OUTSIDE FACE OF STUDS AND ARE HEREIN REFERENCED AS "BUILDING EXTERIOR"

ALL UNIT DIMENSIONS ARE MEASURED BETWEEN FACE OF UNFINISHED INNER SURFACES.

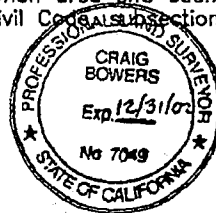
ALL DIMENSIONS ARE PARALLEL WITH, AT RIGHT ANGLES OR AT A 45° ANGLE TO THE GIVEN BEARINGS UNLESS OTHERWISE NOTED.

EACH BUILDING SLAB GRADE ELEVATION (B.S.) IS THE REFERENCE POINT OF THE VERTICAL LIMITS OF THE UNIT. THE LOW OR UPPER LIMIT DIMENSION (LE, UL) ADDED TO THE B.S. IS THE LOW OR HIGH, RESPECTIVE, VERTICAL LIMIT OF THE UNIT.

### SURVEYOR'S STATEMENT

"I hereby state I am a Licensed Land Surveyor of the State of California; that this Condominium Plan, consisting of five (5) sheets, correctly represents a true and complete survey of the project made under my supervision in April, 1982 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 Section 1351(e)."

CRAIG C. BOWERS, P.L.S. 7049



### BASIS OF ELEVATIONS

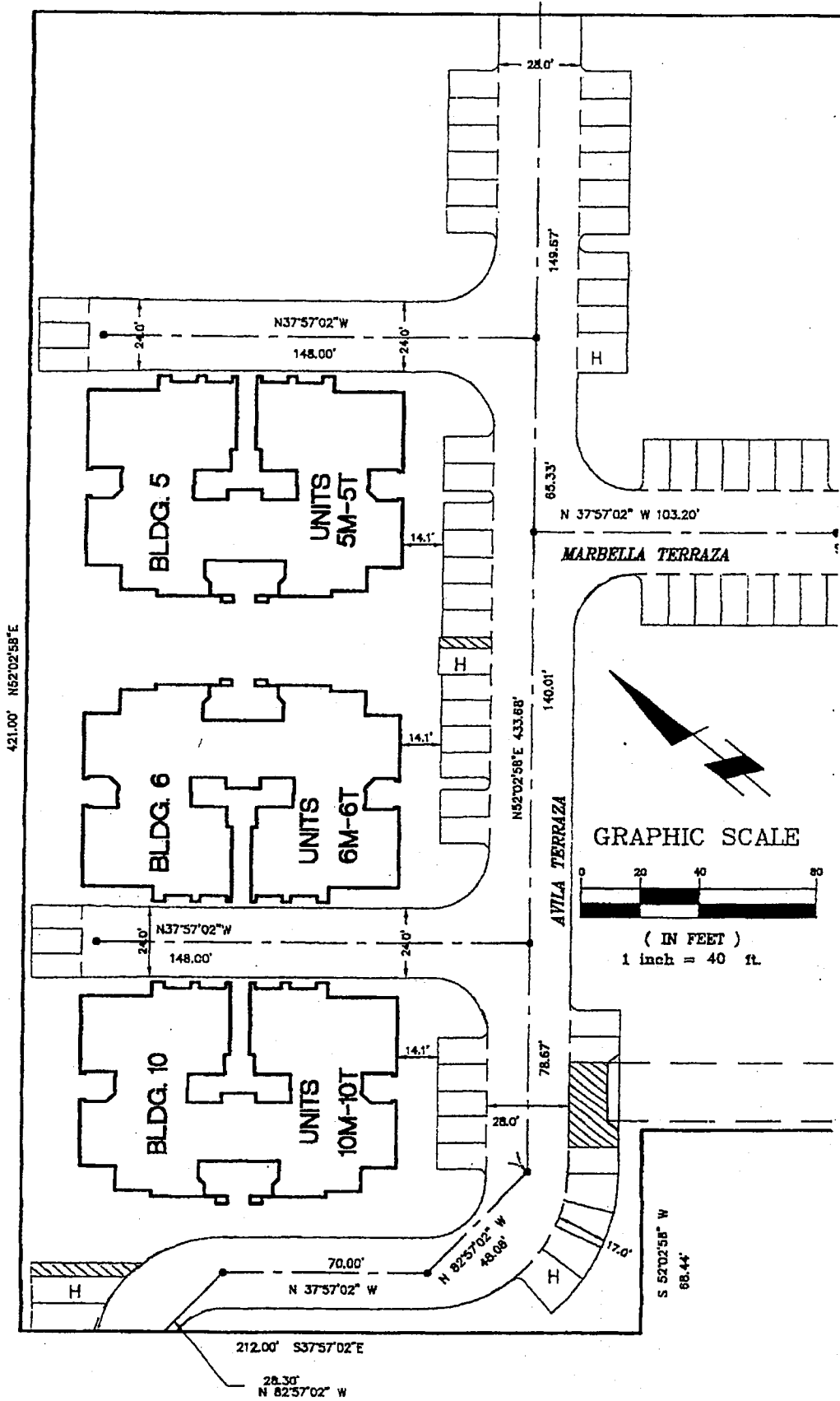
BRASS DISK STAMPED "F122" SET IN THE TOP OF CURB ON THE NORTHWESTERLY SIDE OF GALLAUDET DRIVE, NEAR THE INTERSECTION WITH STEVENSON BLVD. AND 10.5 FEET SOUTHEAST OF AN ELECTROLIER.  
 ELEVATION = 59.87

EXHIBIT A-2

**AMENDED CONDOMINIUM PLAN**  
 PORTION PHASE I OF ANDALUSIA BLVD. S.E. 100  
 PORTION LOT 1 OF TRACT 6886 (L.A. 94-20)

ALAMEDA - SAN FRANCISCO  
**THE CULVER GROUP, INC.**  
CONSULTING ENGINEERS & ARCHITECTS

# LOTS AND BUILDING TIES



TRACT 5996 RECORDED IN BK 186 MAPS  
 PAGES 14-16, ALAMEDA CO. RECORDS  
 (LOT LINE ADJUSTMENT 96-20)

● --- INDICATES PRIVATE STREET MONUMENT.

EXHIBIT A-2

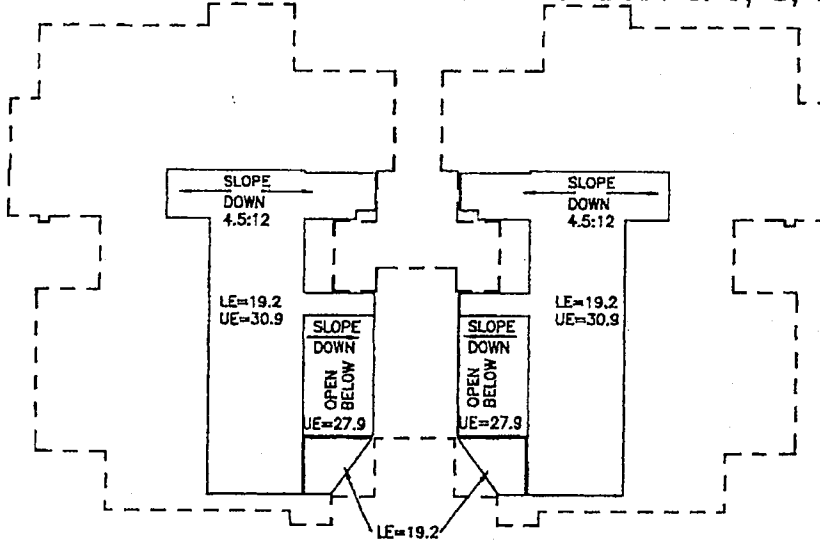
AMENDED CONDOMINIUM PLAN  
 PORTION PHASE 1 OF ANDALUZZA BLDG. 5, 6, 10  
 PORTION LOT 1 OF TRACT 5996 (L.A. 96-20)

ALAMEDA - SAN FRANCISCO  
**THE CULVER GROUP, INC.**  
CONTRACT DOCUMENTS - FORMS  
 679 South Line  
 Suite 2418  
 1000 10th Street  
 SAN FRANCISCO, CA 94104

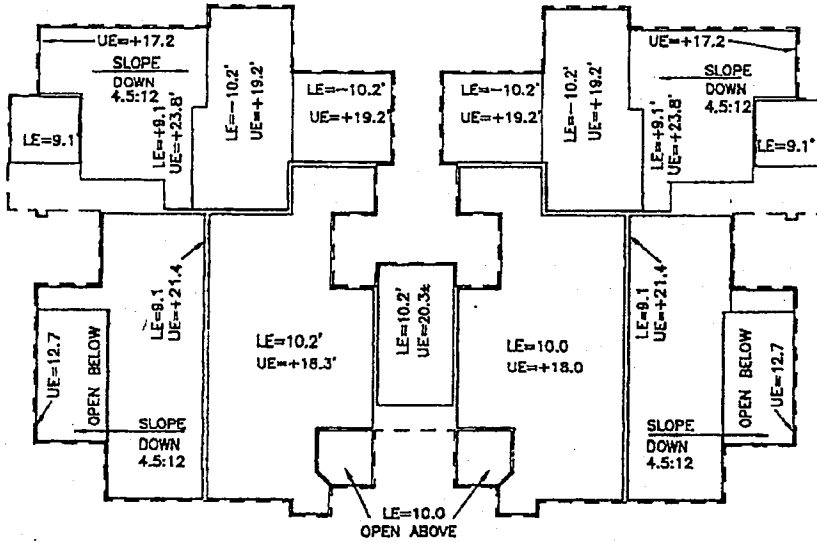


TYP. VERTICAL LIMITS OF UNITS OF BLDG 5, 6, 10

THIRD LEVEL



SECOND LEVEL



FIRST LEVEL

BLDG EXTERIOR, UPPER LIMIT - B.8. ELEV. + 32.0'

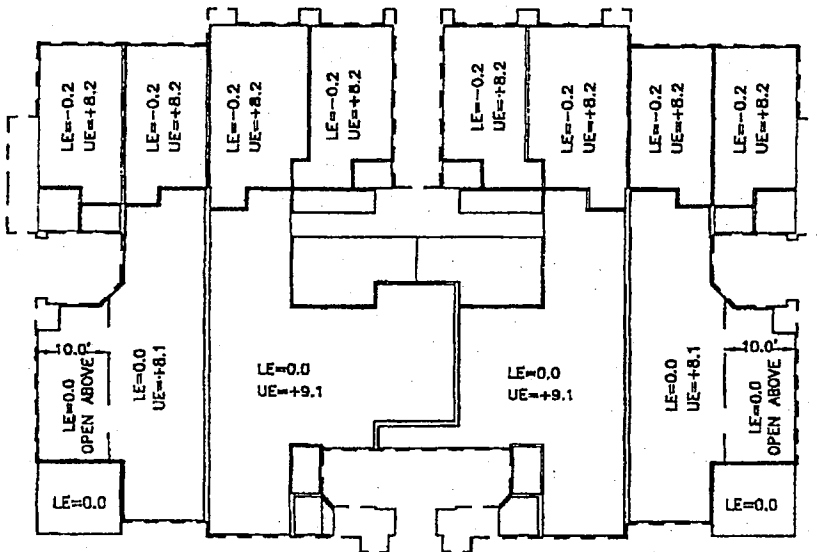


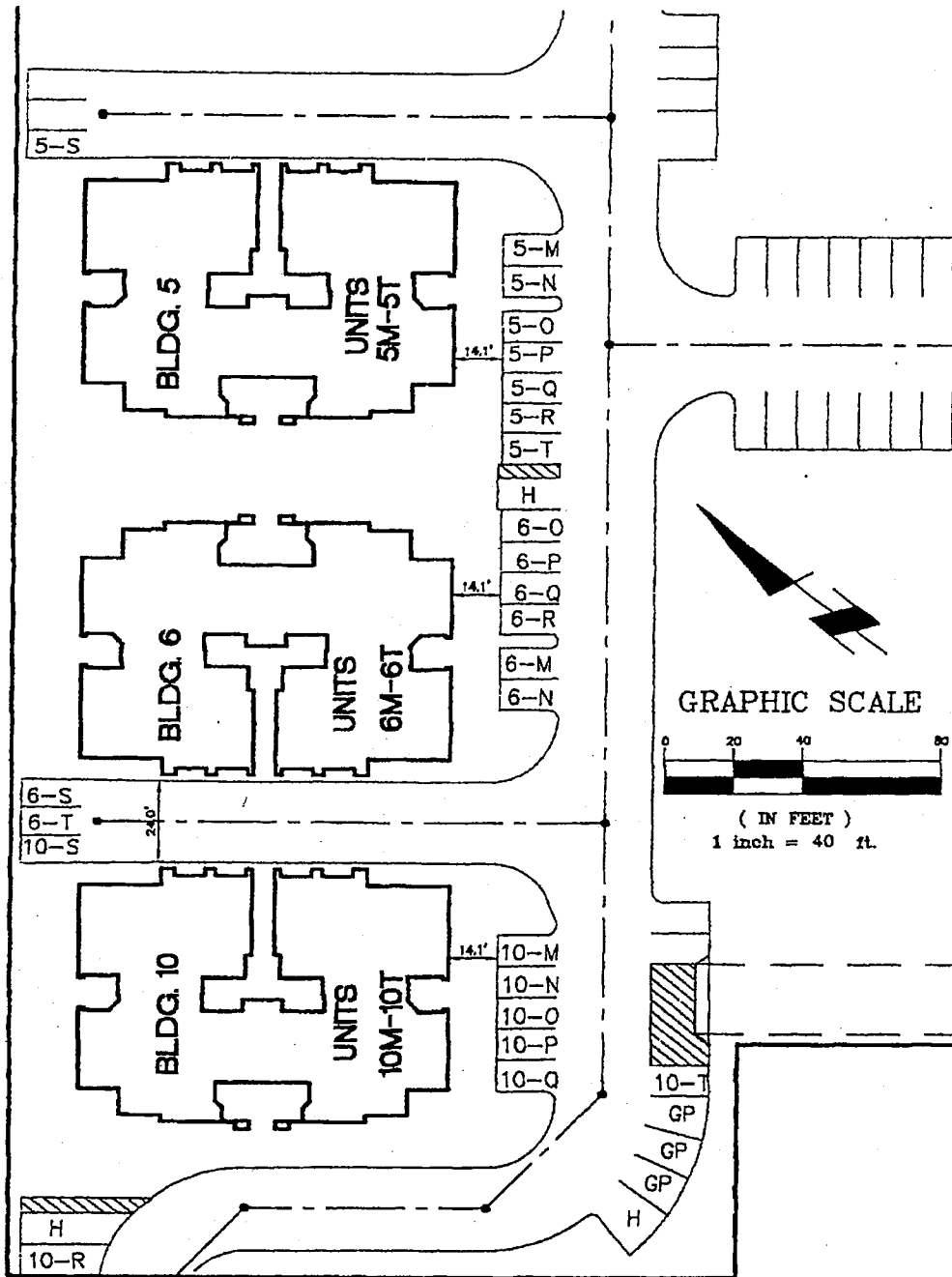
EXHIBIT A-2

AMENDED CONDOMINIUM PLAN  
 PORTION PHASE 1 OF ANCALISSA BLDG. 5, 6, 10  
 PORTION LOT 1 OF TRACT 8888 S.L.A. 66-202

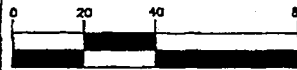
THE CULVER GROUP, INC.

# PARKING FOR BUILDINGS 5,6,10

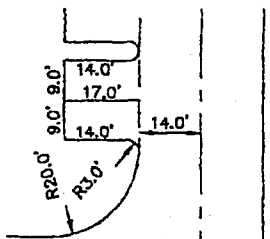
(THIS PARKING PLAN ONLY REFERENCES AMENDED PARKING FOR BUILDINGS 5,6&10 FROM THE ORIGINAL CONDOMINIUM PLAN)



GRAPHIC SCALE



( IN FEET )  
1 inch = 40 ft.



TYPICAL PARKING DETAIL

● --- INDICATES PRIVATE STREET MONUMENT.

PORTION PHASE 1 OF TRACT 5996 RECORDED IN BK 186 MAPS,  
PGS 14-16, ALAMEDA CO RECORDS (LLA 96-20)

EXHIBIT A-2

AMENDED CONDOMINIUM PLAN  
PORTION PHASE 1 OF ANDALUSIA (BLDG. 5&10)  
PORTION LOT 1 OF TRACT 8886 (LLA 88-20)

ARCHITECTS & LANDSCAPE ARCHITECTS  
**THE CULVER GROUP, INC.**  
CONTRACT DOCUMENTS • SPECIFICATIONS  
ARCHITECTS • LANDSCAPE ARCHITECTS  
4000 SAN FRANCISCO STREET, SUITE 200  
SAN FRANCISCO, CALIFORNIA 94118  
TELEPHONE (415) 774-2200

EXHIBIT "B"

<u>Phase</u>	<u>Property</u>	<u>Association Common Area Lot</u>	<u>Condominium Buildings</u>	<u>Units In Phase</u>	<u>Total Units In Project</u>
I	(See Exhibit "B-1")	Lot 1 of lot line adjustment 96-20, as shown on Exhibit "B-1"	1-10	80	80
II	(See Exhibit "B-2")	Lot 1 of lot line adjustment 99-9 as shown on Exhibit "B-2"	11, 12	16	96
III	(See Exhibit "B-3")	Lot 2 of lot line adjustment 99-9 as shown on Exhibit "B-3"	14	8	104

09/14/99

T:\WPWIN60\PROJECTS\ANDALUS\EXH.3

EXHIBIT "B-1"

LEGAL DESCRIPTION

EXISTING SUBJECT PROPERTY

REAL PROPERTY in the City of Fremont, County of Alameda, State of California, described as follows:

Resultant Lot 1, Lot Line Adjustment 96-20, described as follows:

PARCEL ONE:

Lot 1, Tract 5996, filed July 31, 1989, Map Book 186, Pages 14-16, Alameda County Records.

Excepting therefrom the land described in the Deed to Dividend Fremont Partners, a California limited partnership, recorded January 15, 1997, Series No. 97-12628, Official Records, described as follows:

Commencing at the most Westerly corner of Lot 3 as shown on said Map of Tract 5996, thence along the general Westerly line of said Lot 3, North 52°02'58" East, 161.00 feet to a common Westerly corner of Lots 1 and 3 as shown on said Map of Tract 5996, said point being the True Point of Beginning of the herein described parcel, thence from said Point of Beginning along the general Northeasterly line of said Lot 3, the following courses: South 37°57'02" East, 49.00 feet, North 52°02'58" East, 30.01 feet, along a curve to the right with a radius of 20.00 feet, through a central angle of 36°52'12" for an arc length of 12.87 feet, thence leaving said general Northeasterly line and entering said Lot 1, North 37°57'02" West, 53.00 feet to a point on the Northwest line of said Lot 1, thence along said Northwest line, South 52°02'58" West, 42.01 feet to the Point of Beginning.

PARCEL TWO:

Parcel B as described in the Deed to Andalusia Homeowners Association, a California non-profit corporation, recorded January 15, 1997, Series No. 97-12629, Official Records, described as follows:

Beginning at a point on the common line of Lots 1 and 3 as shown on said Map of Tract 5996, said point being the Northerly terminus of the course described as North 52°02'58" East with a length of 12.44 feet; thence from said point of beginning along said common line of Lots 1 and 3 the following courses: South 52°02'58" West, 12.44 feet, along a curve to the right with a radius of 65.00 feet, through a central angle of 49°20'02", for an arc distance of 55.97 feet, North 11°23'00" East, 14.09 feet, along a curve to the left with a radius of 3.00 feet, through a central angle of 86°37'40", for an arc distance of 4.54 feet, to a point of reverse curvature, thence along a curve to the right with a radius of 48.00 feet, through a central angle of 37°17'38", for an arc distance of 31.24 feet, North 37°57'02" West, 70.00 feet, along a curve to the left with a radius of 20.00 feet, through a central angle of 53°07'48", for an arc length of 18.55 feet, thence leaving said common line of Lots 1 and 3, and entering said Lot 3 the following courses: South 37°57'02" East, 159.00 feet, North 52°02'58" East, 68.44 feet to a point on said common line of Lots 1 and 3, thence along said common line, North 37°57'02" West, 8.00 feet to the Point of Beginning.



PARCEL THREE:

Parcel C as described in the Deed to Andalusia Homeowners Association, a California non-profit corporation, recorded January 15, 1997, Series No. 97-12629, Official Records, described as follows:

Beginning at a point on the common line of Lots 1 and 3 as shown on said Map of Tract 5996, said point being the Northwesterly terminus of the course described as North 37°57'02" West with a distance of 117.83 feet, thence from said Point of Beginning continuing on the common line of Lots 1 and 3, along a curve to the left with a radius of 20.00 feet, through a central angle of 69°51'50", for an arc distance of 24.39 feet, thence South 52°02'58" West 5.89 feet, thence leaving said common line and entering said Lot 3 the following courses: South 37°57'02" East 18.78 feet, North 52°02'58" East 11.00 feet, South 37°57'02" East 113.22 feet, South 52°02'58" West 43.80 feet, South 6°55'54" West 33.53 feet, South 36°12'38" East 84.97 feet, thence continuing within said Lot 3 and entering said Lot 4, the following courses: South 82°04'50" East 32.03 feet, North 52°02'58" East 47.74 feet, North 37°57'02" West 3.60 feet, thence along a tangent curve to the left with a radius of 12.00 feet, through a central angle of 26°42'28", for an arc distance of 5.59 feet to a point on the common line of said Lots 1 and 4, thence along said common line, South 52°02'58" West 51.46 feet to a point on the common line of said Lot 1 and 3, thence along said common line the following courses: North 37°57'02" West 112.68 feet, North 52°02'58" East 60.00 feet, thence from a tangent bearing of North 22°18'22" West, along a curve to the left with a radius of 20.00 feet, through a central angle of 15°38'39", for an arc distance of 5.46 feet, thence North 37°57'02" West 117.83 feet to the Point of Beginning.

A.P. No.: 507-0804-087-03

\*\*\*\*\*

*EXHIBIT A*

EXHIBIT "B-2"

"ANNEXABLE PROPERTY"

REAL PROPERTY in the City of Fremont, County of Alameda, State of California, described as follows:

PARCEL ONE:

Resultant Lot 1, Lot Line Adjustment 99-9, described as follows:

Resultant Lots 2 and 5 of Lot Line Adjustment No. 96-20, recorded as Instrument No. 97012633, in the Office of the County Recorder, City of Fremont, County of Alameda, State of California, being portions of Lots 2 and 5 of Tract 5996, recorded in Book 186, Page 14 of Maps, of said County Recorder.

Excepting therefrom those portions being Easterly of the following described lines:

Commencing at the most Easterly corner of Lot 2 of said Tract 5996, said point also being the common line of Lots 2 and 5 of said Tract 5996; thence along said common line, North  $37^{\circ}57'02''$  West, a distance of 84.67 feet; thence North  $24^{\circ}00'00''$  West, a distance of 35.14 feet; thence leaving said common line and entering Lot 5 of said Tract 5996 the following courses: South  $37^{\circ}57'02''$  East, a distance of 8.08 feet; thence North  $52^{\circ}02'58''$  East, a distance of 8.00 feet, to the intersection with the Easterly line of Resultant Lot 5, having a bearing of South  $52^{\circ}02'58''$  West, as shown on said Lot Line Adjustment 96-20, said point being the true point of beginning; thence along said Easterly line.

1. South  $52^{\circ}02'58''$  West, a distance of 42.28 feet, to the intersection with the centerline of Marbella Terraza, having a bearing of North  $22^{\circ}48'06''$  West, as shown on said Tract 5996; thence along said centerline,
2. North  $22^{\circ}48'06''$  West, a distance of 36.65 feet; thence leaving said centerline,
3. South  $67^{\circ}11'54''$  West, a distance of 36.36 feet, to the beginning of a tangent curve concave to the South, having a radius of 32.00 feet and a central angle of  $15^{\circ}08'56''$ , the Southwesterly end of said curve having a tangent bearing to said curve of North  $52^{\circ}02'58''$  East and being the center of a 24 foot easement as shown on said Tract 5996; thence Westerly along said curve,
4. Through said central angle of  $15^{\circ}08'56''$ , an arc distance of 8.46 feet, to the intersection with said centerline of said 24 foot easement; thence along said easement centerline and its Southerly extension,
5. South,  $52^{\circ}02'58''$  West, a distance of 174.84 feet, to the intersection with the Southerly line of said Resultant Lot 2, having a bearing of North  $37^{\circ}57'02''$  West.

A.P. No.: 507-804-2-3 portion  
507-804-4-3 portion

PARCEL TWO:

Resultant Lot 2, Lot Line Adjustment 99-9, described as follows:

Resultant Lots 2 and 5 of Lot Line Adjustment No. 96-20, recorded as Instrument No. 97012633, in the Office of the County Recorder, City of Fremont, County of Alameda, State of California, being portions of Lots 2 and 5 of Tract 5996, recorded in Book 186, Page 14 of Maps, of said County Recorder.

Excepting therefrom those portions being Westerly of the following described lines:

Commencing at the most Easterly corner of Lot 2 of said Tract 5996, said point also being the common line of Lots 2 and 5 of said Tract 5996; thence along said common line, North  $37^{\circ}57'02''$  West, a distance of 84.67 feet; thence North  $24^{\circ}00'00''$  West, a distance of 35.14 feet; thence leaving said common line and entering Lot 5 of said Tract 5996 the following courses: South  $37^{\circ}57'02''$  East, a distance of 8.08 feet; thence North  $52^{\circ}02'58''$  East, a distance of 8.00 feet, to the intersection with the Easterly line of Resultant Lot 5, having a bearing of South  $52^{\circ}02'58''$  West, as shown on said Lot Line Adjustment 96-20, said point being the true point of beginning; thence along said Easterly line.

1. South  $52^{\circ}02'58''$  West, a distance of 42.28 feet, to the intersection with the centerline of Marbella Terraza, having a bearing of North  $22^{\circ}48'06''$  West, as shown on said Tract 5996; thence along said centerline,
2. North  $22^{\circ}48'06''$  West, a distance of 36.65 feet; thence leaving said centerline,
3. South  $67^{\circ}11'54''$  West, a distance of 36.36 feet, to the beginning of a tangent curve concave to the South, having a radius of 32.00 feet and a central angle of  $15^{\circ}08'56''$ , the Southwesterly end of said curve having a tangent bearing to said curve of North  $52^{\circ}02'58''$  East and being the center of a 24 foot easement as shown on said Tract 5996; thence Westerly along said curve,
4. Through said central angle of  $15^{\circ}08'56''$ , an arc distance of 8.46 feet, to the intersection with said centerline of said 24 foot easement; thence along said easement centerline and its Southerly extension,
5. South,  $52^{\circ}02'58''$  West, a distance of 174.84 feet, to the intersection with the Southerly line of said Resultant Lot 2, having a bearing of North  $37^{\circ}57'02''$  West.

A.P. No.: 507-804-2-3 portion

\*\*\*\*\*

**EXHIBIT A**

**ANDALUSIA  
ENABLING DECLARATION  
EXHIBIT "C"**

**Owner's Undivided Percentage Interest in Condominium Common Areas**

<u>Buildings</u>	<u>Unit</u>	<u>Unit Type</u>	<u>Percentage Interest In Condominium Common Area of Building</u>
1,2,3,4,7,8,9 (buildings are alike)	M	A1	10.6%
	N	A2	10.6%
	O	B1	13.1%
	P	B2	13.1%
	Q	C	10.7%
	R	D	10.5%
	S	E1	15.7%
5,6,10 (buildings are alike)	T	E2	15.7%
	1	B	13.3%
	2	C	10.8%
	3	D	10.0%
	4	B	13.3%
	5	E	15.9%
	6	E	15.9%
	7	A	10.4%
8	A	10.4%	
11,12 (both buildings are alike)	1	B	13.3%
	2	C	10.8%
	3	D	10.0%
	4	B	13.3%
	5	E	15.9%
	6	E	15.9%
	7	A	10.4%
	8	A	10.4%
14	M	A1	10.6%
	N	A2	10.6%
	O	B1	13.1%
	P	B2	13.1%
	Q	C	10.7%
	R	D	10.5%
	S	E1	15.7%
T	E2	15.7%	

**Note:** Unit information for Buildings 5, 6 & 10, per amended condominium plan (for new units). Unit information for Buildings 11 & 12 per condominium plan for these new units, which will be attached to Declaration of Annexation for Phase II. Unit information for Building 14 subject to change, based on mapping of the units, and is presented here only for reference.

09/28/99

-3-

T:\WPWIN60\PROJECTS\ANDALUSI\DEC.EX

2000148459

05/18/2000 09 39 AM

OFFICIAL RECORDS OF  
ALAMEDA COUNTY  
PATRICK O'CONNELL

RECORDING FEE 25 00

RECORDING REQUESTED BY  
AND RETURN TO.



7 PGS

LYNNE M YERKES  
MILLER, STARR & REGALIA, P C  
1331 N California Blvd, Fifth Floor  
P O Box 8177  
Walnut Creek, CA 94596

823

7  
60

---

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**FIRST AMENDMENT TO ANDALUSIA AMENDED AND  
RESTATED DECLARATION ESTABLISHING A PLAN  
FOR CONDOMINIUM OWNERSHIP**

**FIRST AMENDMENT TO ANDALUSIA AMENDED AND RESTATED  
DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP**

THIS FIRST AMENDMENT, to the Amended and Restated Andalusia Enabling Declaration Establishing a Plan for Condominium Ownership ("Declaration") is made as of the 10<sup>th</sup> day of March, 2000, to amend the Declaration which was recorded in the Official Records of Alameda County on the 15<sup>th</sup> day of December, 1999, as Instrument No 1999445617 ✓

The Declaration is hereby amended to add a new section 7 19 as follows

"7 19 Lease Limitation Provisions: Notwithstanding anything to the contrary in section 7.8 of the Declaration, the following provisions shall control the leasing or rental of any Units in the Project

A Lease/Rental Units The purpose of this provision is to set forth the limitations and restrictions in regard to lease or rental of Units. The primary purpose of the limit and restrictions is to protect and preserve property values, the availability of preferred financing through compliance with secondary market standards for similar projects, the active participation and cooperation of the Members in the management of the Project by the Board of Directors, and the residential nature and quality of the development by limiting the number of Units that are leased or rented to Third Parties

**B Definitions**

(1) "Lease" or "Rental" means any agreement between an Owner and a Third Party whereby the Third Party receives the use and possession of the Owner's Unit (without the Owner in residence) and the Owner receives monetary or other compensation in return for those rights

(2) "Third Party" for the purposes of this section 7 19 means any party without an ownership interest in the Unit.

\* (3) "Quota" for purposes of this section 7 19 means the number of leased/rented Units at any point in time shall not be more than twenty percent (20%) of the number of Units for which a certificate of occupancy has been issued. The quota applies to the 56 Units in the Existing Condominium Buildings 1, 2, 3, 4, 7, 8 and 9, and shall apply to Phase III upon annexation. Upon completion of construction of the New Condominium Buildings 5, 6, 10, and 11 and 12, a separate quota of 20% of the 40 New Units shall apply for a period two years, commencing with the date of issuance of the first certificate of occupancy to any one of the 40 New Units. Upon expiration of the two year period, the 20% quota shall apply equally to all 96 Units, or all 104 Units, as the case may be. The Quota may be exceeded based on sections 7 19E(1)(b) or (c).

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(4) "Governing Documents" refers to the Declaration, as amended, the Association Bylaws, and any Association rules or policies currently in effect.

(5) "Owner" or "Owners" for purposes of this section 7.19 mean only the record holder(s) of fee simple legal title to a Unit in the Project, and shall not refer to any holder of a security or equitable interest in any Unit, including, without limitation, any purchaser under a contract of sale for any Unit

C Rights of Owners. Any Owner shall be entitled to rent/lease his/her Unit only where one or more of the following circumstances exist

(1) The Unit is leased to a tenant prior to the date of recordation of this Declaration (provided this exemption shall cease as to a particular Unit upon the expiration of the lease, including any extensions provided for therein, in place as of the date of recordation of this Declaration); or

(2) The Owner became Owner of the subject Unit prior to the effective date of this Declaration and the lease is executed thereafter and complies with the provisions of section 7.19D(2), below; or

(3) The Owner inherited the subject Unit as a bona fide heir to the estate of a deceased Owner described in subpart (2) above and the lease is executed thereafter and complies with the provisions of section 7.19D(2), below, or

(4) The Board of Directors has formally approved, in writing, the Owner's written request to lease/rent the subject Unit pursuant to section 7.19E(1)(a) or (c); or

(5) The Board of Directors has waived its right to deny an Owner's written request to rent/lease a Unit by failing to make a determination within the time periods provided for in 7.19D, below

D. Request for Approval of Board. All Owners leasing or renting at the time this provision becomes effective must "register" with the Board, by providing a copy of the existing lease. Existing lease agreements on the date of recordation of this Declaration shall be deemed approved, but not be extended beyond the term provided in such lease agreement, including any extensions provided for therein, without compliance with this section 7.19D. All other Owners must seek approval prior to entering into a lease or rental arrangement. Owners applying for approval of the leasing of a Unit have the right to request a hearing before the Board of Directors. The hearing shall be set before the Board of Directors within thirty (30) days after receipt of the request for hearing together with the application for approval, and the Board shall make its determination within five (5) days after the hearing. In cases where a hearing is not requested, the Board shall make its determination within thirty (30) days after receipt of the application for approval. If the Board fails to make a determination on any application within the foregoing time periods, its right to disapprove the request is waived. These time limits may be extended by the written agreement of both parties, i.e. the Owner(s) and Board of Directors. The Board

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of Directors has the power to approve or disapprove requests to rent/lease Units, in accordance with the standards set forth in section 7.19E, below. Before any Unit may be considered for approval to be leased/rented, and before any of the foregoing time periods begin to run, the Owner must provide the Board of Directors with all of the following documents for its consideration

(1) A written request to lease/rent the subject Unit, identifying the subject Unit and stating the proposed lease term and the tenant and other information required in section 7 8, and,

(2) A written lease (in the form to be used by the Owner) which specifies the following terms and conditions

(a) The tenant shall be subject to all of the same provisions of the Governing Documents as the Owner,

(b) Failure by the tenant to comply with the provisions of the Governing Documents will constitute a default under the rental/lease agreement, and

(c) The term shall not be less than thirty (30) days, and

(3) A "Statement of Hardship and Request for Board Hearing" setting forth the special circumstances for the request to lease the Unit, if the Owner wishes to qualify for approval under section 7 19E(3)

The foregoing written applications and supporting documents (the "Completed Application") must be hand-delivered personally to a Board member at a Board meeting or hand-delivered or mailed to the attention of the President of the Board of Directors of Andalusia at the project manager's office. Notwithstanding anything to the contrary in this section 7.19, the Board of Directors has discretion to deny consideration of a request where a Completed Application has not been received by the Board. The project manager's office, at the time this provision became effective, is:

Community Association Services  
5675 Sunol Boulevard, Suite 100  
Pleasanton, California 94566

E. Criteria for Approval. The Board of Directors shall follow the criteria set forth in this section 7 19E in considering applications for approval to lease/rent Units

(1) Required Approval of Lease Application The Board of Directors shall approve any requests to lease a Unit so long as the requirements of section 7 8 have been satisfied, and (a) the present number of leased/rented Units in the Project does not exceed the "Quota" set forth in section 7 19B(3) above; or (b) the Owner is an Owner qualified under sections 7.19C(1), 7.19C(2) or 7.19C(3) above, or (c) the Board finds that the criteria set forth in section 7.19E(3) have been met

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(2) Required Disapproval of Lease Application. The Board of Directors shall not approve any requests to lease/rent a Unit where the requirements of subpart (1), above, have not been met.

(3) Approval of Lease Application In Special Cases

(a) The Board shall approve the temporary leasing of a Unit for a one (1) year period WITHOUT regard to the Quota limitation in special circumstances which the Board finds meet the following criteria.

(i) non-permanent job transfer, where the Owner is moving out of the area because of the distance of the new work site from the Project and expects to occupy the Unit again at the end of the assignment,

(ii) serious illness in the family or a person with a close relationship to the Owner which requires the Owner to live elsewhere temporarily to provide care for the ill person;

(iii) substantial, adverse changes in the Owner's financial condition, due to job loss, emergency expenses or other sudden loss, which create a significant problem for the Owner in maintaining the expenses of ownership of the Unit without the benefit of rental income and threaten forfeiture of the Unit, and

(iv) the Owner has actively tried to sell the Unit by listing the Unit for sale on the local multiple listing at a reasonable price for three consecutive months without receiving an offer to buy the Unit at a price within five percent (5%) of the listing price (a reasonable price shall be a price within \$20,000 of the highest sales price of comparable Units within the Project within the six (6) month period preceding the listing of the Unit for sale, or if no such sales exist, the appraised value of the Unit based on a letter appraisal from a local realtor with at least five (5) years experience in residential sales in the local area, to be obtained by the Association),

(b) The Board may also approve the temporary leasing of a Unit for a one (1) year period WITHOUT regard to the Quota limitation in other special circumstances where the inability to lease the Unit will create a serious hardship on the Owner as a result of unexpected circumstances

The purpose of this section 7.19E(3) is to protect Owners from serious hardship, but it is not intended to permit owner-occupied Units to be converted to rental Units at a time that the Quota has been exceeded unless the Owner shows one or more of the special circumstances set forth in section 7.19E(3)(a), above, or other serious hardship due to unexpected circumstances. Any denial of a "Special Circumstances" request must be based on a finding by the Board of Directors that withholding its approval is reasonably related to the protection, preservation or proper operation of the Project and the purposes of the Association as set forth in section 7.19A, above, or otherwise in its Governing Documents, and that the Owner will not suffer serious hardship due to unexpected circumstances. For purposes of this section

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7 19E(3), not having read or known the content of this Declaration is not an "unexpected circumstance." An Owner may be considered for an extension to the one-year period referred to in this section 7 19E(3) by reapplying to the Board of Directors for approval to lease the Unit as provided in this section 7 19

G. Record Keeping/Waiting List

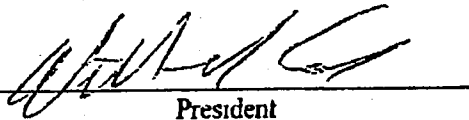
(1) Association's Obligations. The Secretary or other designated representative of the Association shall:

- (a) Keep records regarding the number of leased/rented Units;
- (b) Keep records regarding mailing address and telephone number of the Owner and telephone number of the tenant, as provided by the Owners,
- (c) Keep records of all requests to lease/rent Units and files containing the date of request and lease agreements provided by the Owners,
- (d) Keep a waiting list of all Owners desiring to lease/rent their Units when the Quota limitations are filled. Owners shall receive priority on the waiting list according to the order in which their requests to lease/rent their Units are received. Once a waiting list is formed, requests of Owner on that list will be considered before those requests of Owners not on the list, in order of priority, except as to section 7 19E(3)(a) and (b) special cases above."

IN WITNESS WHEREOF, the undersigned has executed this Amendment to the Declaration this 12<sup>th</sup> day of May, 2000.

ANDALUSIA HOMEOWNERS ASSOCIATION  
a California nonprofit mutual benefit corporation

By  
Its.

  
President

I hereby certify and declare, under the penalty of perjury, that the foregoing Amendment to the Amended and Restated Enabling Declaration has been approved by the written consent of members representing two-thirds (2/3rds) of the total voting power of the Association.

ANDALUSIA HOMEOWNERS ASSOCIATION  
a California nonprofit mutual benefit corporation

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By [Signature]  
Its Secretary

STATE OF CALIFORNIA )

COUNTY OF Alameda ) ss.  
)

On this 3 day of May, 192000, before me, Kimberly D. Browne a notary public for the state, personally appeared Douglas B. Christison known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal



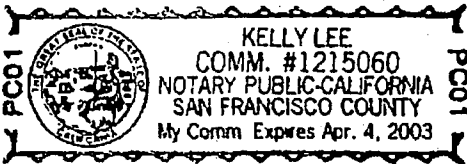
Kimberly D. Browne  
Notary Public, State of California

STATE OF CALIFORNIA )

COUNTY OF ) ss.  
)

On this 12<sup>th</sup> day of May, 192000, before me, Kelly Lee, a notary public for the state, personally appeared William M. Card known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Kelly Lee  
Notary Public, State of California