



**AGENDA
CAPITOLA PLANNING COMMISSION
THURSDAY, JANUARY 20, 2011
7:00 P.M. – COUNCIL CHAMBERS**

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Commissioners Graves, Ortiz, Routh, Smith and Chairperson Newman
Staff: Community Development Director Johnson
Senior Planner Bane
Minute Clerk Uharriet

2. NEW BUSINESS

- A. Oath of Office – Newly Appointed Commissioners
- B. Election of Chair and Vice-Chair
- C. Committee Appointments
 - a. General Plan Advisory Committee
 - b. Traffic and Parking Commission
 - c. Commission on the Environment
 - d. Arts and Cultural Commission

3. ORAL COMMUNICATIONS

- A. Additions and Deletions to Agenda
- B. Public Comments
Short communications from the public concerning matters not on the Agenda.
All speakers are requested to print their name on the sign-in sheet located at the podium so that their name may be accurately recorded in the Minutes.
- C. Commission Comments
- D. Staff Comments

4. APPROVAL OF MINUTES

- A. November 18, 2010 Regular Planning Commission Meeting

5. CONSENT CALENDAR

All matters listed under "Consent Calendar" are considered by the Planning Commission to be routine and will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Planning Commission votes on the action unless members of the public or the Planning Commission request specific items to be discussed for separate review. Items pulled for separate discussion will be considered in the order listed on the Agenda.

A. 1850 WHARF ROAD**#10-084****APN: 035-031-39**

Emergency Coastal Permit to install a slope stabilization system in response to a landslide at a single-family residence in the AR/R-1 (Automatic Review/Single-Family Residence) Zoning District.

This project requires a Coastal Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

Environmental Determination: Categorical Exemption

Property Owner: Ted and Marilee Werfhorst, filed: 12/21/10

Representative: Jeffrey Martin

B. 723 EL SALTO DRIVE**#10-082****APN: 036-143-35**

Minor land division to convert four apartment units to condominiums in the VS/R-1 (Visitor Serving/Single-Family Residence) Zoning District.

Environmental Determination: Categorical Exemption

Property Owner: Doug Dodds, filed: 10/5/10

6. PUBLIC HEARINGS

Public Hearings are intended to provide an opportunity for public discussion of each item listed as a Public Hearing. The following procedure is as follows: 1) Staff Presentation; 2) Public Discussion; 3) Planning Commission Comments; 4) Close public portion of the Hearing; 5) Planning Commission Discussion; and 6) Decision.

A. 100-200 KENNEDY DRIVE**#10-104****APN: 036-031-01**

Master Use Permit for an existing industrial property in the IP (Industrial Park) Zoning District.

Environmental Determination: Categorical Exemption

Property Owner: John McCoy, filed: 12/15/10

7. DIRECTOR'S REPORT**8. COMMISSION COMMUNICATIONS****9. ADJOURNMENT**

Adjourn to a Joint Meeting of the Planning Commission and the Traffic and Parking Commission to be held on Thursday, February 3, 2011 at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

APPEALS: The following decisions of the Planning Commission can be appealed to the City Council within the (10) calendar days following the date of the Commission action: Conditional Use Permit, Variance, and Coastal Permit. The decision of the Planning Commission pertaining to an Architectural and Site Review can be appealed to the City Council within the (10) working days following the date of the Commission action. If the tenth day falls on a weekend or holiday, the appeal period is extended to the next business day.

All appeals must be in writing, setting forth the nature of the action and the basis upon which the action is considered to be in error, and addressed to the City Council in care of the City Clerk. An appeal must be accompanied by a one hundred thirty six dollar (\$136.00) filing fee, unless the item involves a Coastal Permit that is appealable to the Coastal Commission, in which case there is no fee. If you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this agenda, or in written correspondence delivered to the City at, or prior to, the public hearing.

Notice regarding Planning Commission meetings: The Planning Commission meets regularly on the 1st Thursday of each month at 7:00 p.m. in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

Agenda and Agenda Packet Materials: The Planning Commission Agenda and complete Agenda Packet are available on the Internet at the City's website: www.ci.capitola.ca.us. Agendas are also available at the Capitola Branch Library, 2005 Wharf Road, Capitola, on the Monday prior to the Thursday meeting. Need more information? Contact the Community Development Department at (831) 475-7300.

Agenda Materials Distributed after Distribution of the Agenda Packet: Materials that are a public record under Government Code § 54957.5(A) and that relate to an agenda item of a regular meeting of the Planning Commission that are distributed to a majority of all the members of the Planning Commission more than 72 hours prior to that meeting shall be available for public inspection at City Hall located at 420 Capitola Avenue, Capitola, during normal business hours.

Americans with Disabilities Act: Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the Community Development Department at least 24 hours in advance of the meeting at (831) 475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

Televised Meetings: Planning Commission meetings are cablecast "Live" on Charter Communications Cable TV Channel 8 and are recorded to be replayed at 12:00 Noon on the Saturday following the meetings on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings can also be viewed from the City's website: www.ci.capitola.ca.us



**DRAFT MINUTES
SPECIAL MEETING
CAPITOLA PLANNING COMMISSION MEETING
THURSDAY, NOVEMBER 18, 2010
7:00 P.M. – COUNCIL CHAMBERS**

Chairperson Newman called the Regular Meeting of the Capitola Planning Commission to order at 7:00 p.m.

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Commissioners Burke, Harlan, Termini and Chairperson Newman

Absent: Commissioner Ortiz

Staff: Community Development Director Johnson
Senior Planner Bane
Minute Clerk Uharriet

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda

Item 5.B was withdrawn by the applicant.

B. Public Comments

NONE

C. Commission Comments

Commissioner Burke announced the formation of the Monterey Bay Electric Vehicle Alliance.

D. Staff Comments

Community Development Director Johnson announced the city is a participant in a Toyota Fleet Prius "Plug-In" Demonstrator Program and will be receiving a car tomorrow morning.

3. APPROVAL OF MINUTES

A. November 4, 2010 Regular Planning Commission Meeting

A MOTION WAS MADE BY COMMISSIONER TERMINI AND SECONDED BY COMMISSIONER HARLAN TO APPROVE THE MINUTES OF THE NOVEMBER 4, 2010 MEETING.

MOTION PASSED 4-0

4. CONSENT CALENDAR

A. 904 SIR FRANCIS AVENUE #06-061 Time Extension APN: 036-222-07

Request for a one-year extension to a previously approved Coastal Permit and Architectural and Site Review for the remodel of an existing single-family residence and construction of a new second story in the R-1 (Single-Family Residence) Zoning District.

Environmental Determination: Categorical Exemption
Property Owner: Justin and Lisa Maffia, filed: 11/3/10

A MOTION WAS MADE BY COMMISSIONER TERMINI AND SECONDED BY COMMISSIONER BURKE TO APPROVE PROJECT APPLICATION #06-061 TIME EXTENSION WITH THE FOLLOWING FINDINGS:

- A. **A substantial change of circumstances has not occurred since Planning Commission approval of the permit on December 7, 2006. An additional one-year extension of the permit to December 7, 2011, would not be detrimental to the purpose of the certified local coastal program and zoning ordinance.**

MOTION PASSED 4-0

B. 516 PARK AVENUE

#10-094

APN: 036-101-13, 45

Design Permit for the construction of an accessory garage appurtenant to an existing single-family residence in the R-1 (Single-Family Residence) Zoning District.

Environmental Determination: Categorical Exemption

Property Owner: Charlie and Terre Thomas, filed: 11/2/10

A MOTION WAS MADE BY COMMISSIONER TERMINI AND SECONDED BY COMMISSIONER BURKE TO APPROVE PROJECT APPLICATION #10-094 WITH THE FOLLOWING CONDITIONS AND FINDINGS:

CONDITIONS

1. The project approval consists of construction of a 676 square foot detached garage at 516 Park Avenue.
2. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission.
3. Hours of construction shall be Monday to Friday 7:30AM – 9:00PM, and Saturday 9:00AM – 4:00PM, per city ordinance.
4. Prior to granting of final occupancy, compliance with all conditions of approval shall be demonstrated to the satisfaction of the Zoning Administrator or Community Development Director.
5. Utilities shall be underground.

FINDINGS

- A. **The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.**

Community Development Department Staff and the Planning Commission have reviewed the project. The project conforms to the development standards of the R-1 (Single Family Residence) Zoning District. Conditions of approval have been included to carry out the objectives of the Zoning Ordinance, General Plan and Local Coastal Plan.

- B. **The application will maintain the character and integrity of the neighborhood.**

Community Development Department Staff and the Planning Commission have reviewed the project. The project conforms to the development standards of the R-1 (Single Family Residence) Zoning District and is consistent with development in that neighborhood. Conditions of approval have been included to ensure that the project maintains the character and integrity of the neighborhood.

- C. **This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California code of Regulations.**

Section 15301 of the CEQA Guidelines exempts construction of accessory structures that are less than 10,000 square feet. This project involves construction of a detached garage in an urban area and is considered infill development. No adverse environmental impacts were discovered during the review of the proposed project.

MOTION PASSED 4-0

5. PUBLIC HEARINGS

A. 4855 TOPAZ STREET

#10-055**APN: 034-131-25**

Appeal of a tree removal permit denial to remove a Japanese Maple tree on a property located in the R-1 (Single-Family Residence) Zoning District.

Environmental Determination: Categorical Exemption

Property Owner: Randall Epperson, filed: 8/18/10

Senior Planner Bane presented the staff report. He noted a second arborist report was submitted by Nigel Belton, Arbor Art Tree Service, after the packet was distributed. A copy is at their desk.

The public hearing was opened.

Randall Epperson, property owner, spoke in support of the removal permit. He's trying to improve the front yard area that has been neglected for several years, and the tree is overgrown, in wrong place and interferes with the utility lines. He would like to replace the tree with two red Japanese maple trees. All the arborist's reports stated the tree was healthy. Mr. Epperson is offering to double the number of healthy trees, improve the aesthetics of the neighborhood, and eliminate the hazard of the limbs in the utility lines.

Alison Epperson, property owner, spoke in support of the removal permit. She stated that the intent of the law is to prevent large trees from being cut down on Depot Hill. This is a small tree, barely over the 6" rule. She stated that the government should not regulate trees and the city should change the ordinance to address large trees, but not small trees. She fails to see how city can tell her not to cut down her tree on her private property.

The public hearing was closed.

Commissioner Burke stated that the current ordinance is punitive to a degree, but could not support the removal. The tree can be pruned and thinned.

Commissioner Harlan was sympathetic with the applicant, but stated that it is the city's job to protect trees. She could not make the findings for removal and therefore could not support the appeal. The tree can be maintained with a careful pruning and thinning under the direction of a good arborist.

Commissioner Termini stated that without any action P.G & E. will trim the tree without any aesthetic consideration. He was able to make finding 1C pertaining to utility line damage and could support the appeal for the tree removal.

Chairperson Newman stated that the current ordinance is too restrictive and had hopes that the ordinance revision will be less restrictive. He supported the new landscape plan and the tree removal.

Commissioner Harlan was not supportive of the utility line argument since many trees interfere with the utility lines throughout the city and this decision would set a poor precedent.

A MOTION WAS MADE BY COMMISSIONER HARLAN AND SECONDED BY COMMISSIONER BURKE TO DENY THE APPEAL AND DENY TREE REMOVAL PERMIT.

THE MOTION TIED ON THE FOLLOWING VOTE: AYES: COMMISSIONER HARLAN AND COMMISSIONER BURKE; NOES: COMMISSIONER TERMINI AND CHAIRPERSON NEWMAN; ABSENT: COMMISSIONER ORTIZ; ABSTAIN: NONE.

A MOTION WAS MADE BY COMMISSIONER TERMINI AND SECONDED BY CHAIRPERSON NEWMAN TO UPHOLD THE APPEAL AND APPROVE THE TREE REMOVAL PERMIT WITH A CONDITION THAT THERE BE TWO 24" BOX RED JAPANESE MAPLE REPLACEMENT TREES INSTALLED IMMEDIATELY FOLLOWING THE TREE REMOVAL.

THE MOTION TIED ON THE FOLLOWING VOTE: AYES: COMMISSIONER TERMINI AND CHAIRPERSON NEWMAN; NOES: COMMISSIONER HARLAN AND COMMISSIONER BURKE; ABSENT: COMMISSIONER ORTIZ; ABSTAIN: NONE.

DUE TO THE TIE VOTE, THE APPEAL WAS DENIED AND THE TREE REMOVAL PERMIT WAS DENIED.

B. 530 MCCORMICK COURT

#10-091

APN: 036-101-24

Conditional Use Permit and a Variance to parking to convert a single-family residence into a Bed and Breakfast use in the R-1 (Single-Family Residence) Zoning District.

Environmental Determination: Categorical Exemption

Property Owner: Marsha Taffett, filed: 10/26/10

THE APPLICATION WAS WITHDRAWN BY THE APPLICANT. NO ACTION REQUIRED.

6. DIRECTOR'S REPORT

Community Development Director Johnson reported that Glacier Ice will be turning off the refrigerator units at night and looking at relocating units away from the adjacent residences. He provided a brief update regarding the formation of the GPAC, the award of a contract for the general plan update to Design, Community & Environment; Nexcycle has been approved to locate behind CVS on Bay Street with strict conditions and will return to the City Council for a 6-month review. Finally, he announced the next meeting will be a joint meeting with the Traffic and Parking Commission for a presentation regarding the parking garage study and designs.

7. COMMISSION COMMUNICATIONS

Commissioner Harlan stated that the tree ordinance revisions should address issues where a tree is causing damage to personal property, i.e. tree sap has destroyed the paint on a car.

Commissioner Burke stated that the tree ordinance should be about education and awareness of property tree selection.

Commissioner Termini announced the mural dedication for Saturday, November 20, 2010 at 2:00 p.m. Rain will bring the dedication into the Community Room.

8. ADJOURNMENT

The Planning Commission adjourned the meeting at 7:40 p.m. Joint Meeting of the Planning Commission and the Traffic and Parking Commission to be held on Thursday, December 2, 2010 at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

Approved by the Planning Commission on January 20, 2011

Danielle Uharriet, Minute Clerk



STAFF REPORT

TO: PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

DATE: JANUARY 12, 2010 (AGENDA: JANUARY 20, 2011)

SUBJECT: **1850 WHARF ROAD** **#10-084** **APN: 035-031-39**
Emergency Coastal Permit to install a slope stabilization system in response to a landslide at a single-family residence in the AR/R-1 (Automatic Review/Single-Family Residence) Zoning District.
This project requires a Coastal Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.
Environmental Determination: Categorical Exemption
Property Owner: Ted and Marilee Werfhorst, filed 12/21/09
Representative: Jeffrey Martin

BACKGROUND

On March 17, 2010, a landslide occurred below the creek side single-family house at 1850 Wharf Road. The slide compromised the hill below the home by significantly reducing the lateral support for the existing piers that support the three levels of deck on the creek side of the house. A geotechnical report was prepared and a slope stabilization system designed in the months following the slide, but by the time the applicants were ready to move forward with the project, the rainy season was soon approaching. Community Development Department staff notified the applicants that a coastal permit would be required for the proposed work, but realized that the approval process would take them well into the rainy season. The site was inspected and it was verified that an emergency existed. An emergency coastal permit was issued on October 14, 2010, and per Zoning Code Section 17.46.130(G), the community development director reported the issuance of the permit to the planning commission at the November 4, 2010 public hearing. A building permit was issued and construction of the slope stabilization system proceeded soon after. At this point in time, the majority of the tiebacks have been installed, with the application of shotcrete planned in the coming days.

DISCUSSION

Coastal Permit

Capitola's Local Coastal Plan requires the issuance of a coastal permit for:

"Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area as defined by the Coastal Act, any sand area, within fifty feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within twenty feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of riprap, rocks, sand or other beach material or any other forms of solid materials,

(B) The presence, whether temporary or permanent, of mechanized equipment, or construction materials.

The proposed slope stabilization system is located in an environmentally sensitive habitat area, as well as within twenty feet of a stream, therefore a coastal permit is required.

Prior to issuance of the emergency coastal permit, the Community Development Director inspected the site and found that:

1. An emergency exists and requires action more quickly than permitted by the procedures for ordinary permits due to the oncoming rainy season;
2. The emergency action does not allow time for public comment; and
3. The work proposed is consistent with the requirements of the certified LCP.

In addition to the concern for the potential to lose the single-family house to further slides, staff also expressed concern with silt from a slide entering Soquel Creek and negatively impacting endangered fish populations. The emergency coastal permit was issued with conditions on October 14, 2010 (Attachment A). Construction of the slope stabilization system proceeded within a few days of issuance.

While Zoning Code Section 17.46.130 allows the Community Development Director to issue an emergency coastal permit, the code requires that the applicant apply for a standard coastal permit and obtain approvals from the Planning Commission.

Project Description

The geotechnical investigation indicates that the slide resulted from the mixed soil and fractured rock matrix which overlays the weathered bedrock that daylights at the pronounced crown in the slope above the creek. The strength of the bedrock, as compared to the matrix above, is evidenced by the dramatic change in slope that occurs at the vertical face of the bluff at an approximate elevation of 30' above sea level. The geotechnical report indicates that the material above this elevation remains vulnerable to future landslides and accelerated erosion due to the loss of vegetation that occurred during the slide. The area in danger is almost the entire width of the lot (44').

The slope stabilization system is a rigid concrete bulkhead secured to the slope with deep-seated anchors. The shotcrete bulkhead is 44' in width, with a slope height of approximately 14'. The system will be a permanent repair to the affected area, will restrain the existing deck piers and house from lateral movement toward the creek, and has been implemented with minimum disturbance to the existing slope and slide scarp. The plans were reviewed by the geotechnical engineer of record and are in accordance with his recommendations.

Drainage plans and erosion control measure have been conditioned and implemented, including a condition that all drainage from the house be directed away from the slope and toward Wharf Road. In addition, there is to be no work in Soquel Creek, nor any debris allowed in the creek.

Environmental Review

Section 15304 of the CEQA Guidelines exempts minor alterations to land. Specifically, 15304(c) exempts "Filling of earth into previously excavated land with material compatible with the natural features of the site." No adverse environmental impacts were discovered during review of the proposed project.

RECOMMENDATION

Staff recommends that the Planning Commission **approve** application #10-084 based on the following Conditions and Findings for Approval.

CONDITIONS

1. The project approval consists of an emergency coastal permit for a slope stabilization system at 1850 Wharf Road. A landslide has compromised the hill below the single-family house and has significantly reduced the lateral support for the existing piers that support the three levels of decks on the creek side of the house based on a technical report prepared by UPP Getechnology, Inc. dated July 15, 2010. The stabilization system will consist of a rigid concrete bulkhead secured to the slope with deep seated anchors (construction plans dated 9/21/10).
2. The applicant shall submit a completed coastal permit application, plans, and required technical reports within seven (7) days of the issuance of the emergency coastal permit. Plans shall include a drainage and erosion control plan. The drainage plan shall demonstrate drainage being directed away from the slope and toward Wharf Road.
3. All work shall be completed per submitted plan and the erosion control plan shall be strictly followed and amended to include the covering of all exposed soil with jute netting. Erosion control and sediment management devices shall be installed and inspected by City Public Works prior to initiating work.
4. There shall be no work in Soquel Creek, nor any debris allowed in the creek. If any work is necessary within the creek, contact California Department of Fish and Game for approvals.
5. There shall be no staging of construction materials in the road right-of-way.
6. Hours of construction shall be Monday to Friday 7:30AM – 9:00PM, and Saturday 9:00AM – 4:00PM, per city ordinance.
7. Any significant modifications to the size approved design must be approved by the Planning Commission.
8. The application shall be reviewed by the Planning Commission upon evidence of non-compliance with conditions of approval or applicable municipal code provisions.

FINDINGS

- A. **The application, subject to the conditions imposed, secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.**

Planning Department Staff and the Planning Commission have reviewed the project. The project conforms to the requirements of the Local Coastal Program and conditions of approval have been included to carry out the objectives of the Zoning Ordinance, General Plan and Local Coastal Plan.

- B. **This project is categorically exempt under Section 15304 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15304 of the CEQA Guidelines exempts minor alterations to land. No adverse environmental impacts were discovered during review of the proposed project.

Report Prepared By: Ryan Bane
Senior Planner

Attachment A – Emergency Coastal Permit dated October 14, 2010

Attachment B – Letter from the applicant, dated October 6, 2010

Attachment C – Project Plans

Attachment D – Coastal Findings



420 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (831) 475-7300
FAX (831) 479-8879

EMERGENCY COASTAL PERMIT

October 14, 2010

Ted and Marilee Werfhorst
1850 Wharf Road
Capitola, CA 95010

RE:

1850 Wharf Road

#10-084

APN: 035-031-39

Emergency Coastal Permit for a slope stabilization system to be installed due to a landslide in the R-1 (Single-Family Residence) Zoning District.

Property Owner: Ted and Marilee Werfhorst

Representative: Jeff Martin

The Community Development Department hereby issues an emergency coastal permit for a slope stabilization system at 1850 Wharf Road. A landslide has compromised the hill below the single-family house and has significantly reduced the lateral support for the existing piers that support the three levels of decks on the creek side of the house. The stabilization system will consist of a rigid concrete bulkhead secured to the slope with deep seated anchors (construction plans dated 9/21/10).

The Community Development Director has verified the facts and finds that:

1. An emergency exists and requires action more quickly than permitted by the procedures for ordinary permits due to the oncoming rainy season;
2. The emergency action does not allow time for public comment at this time; and
3. The work proposed is consistent with the requirements of the certified LCP.

The following conditions shall apply to the emergency coastal permit:

CONDITIONS

1. The project approval consists of an emergency coastal permit for a slope stabilization system at 1850 Wharf Road. A landslide has compromised the hill below the single-family house and has significantly reduced the lateral support for the existing piers that support the three levels of decks on the creek side of the house based on a technical report prepared by UPP Getechnology, Inc. dated July 15, 2010. The stabilization system will consist of a rigid concrete bulkhead secured to the slope with deep seated anchors (construction plans dated 9/21/10).
2. The applicant shall submit a completed coastal permit application, plans, and required technical reports within seven (7) days of the issuance of the emergency coastal permit. Plans shall include a drainage and erosion control plan. The drainage plan shall demonstrate drainage being directed away from the slope and toward Wharf Road.

3. All work shall be completed per submitted plan and the erosion control plan shall be strictly followed and amended to include the covering of all exposed soil with jute netting. Erosion control and sediment management devices shall be installed and inspected by City Public Works prior to initiating work.
4. The emergency approval shall be voided if the approved activity is not exercised within fifteen (15) days of issuance of the emergency permit.
5. The approval of the emergency permit shall expire sixty days after issuance (December 13, 2010). Any work completed outside of this time period shall require a regular coastal permit approval unless an extension is granted by the city.
6. There shall be no work in Soquel Creek, nor any debris allowed in the creek. If any work is necessary within the creek, contact California Department of Fish and Game for approvals.
7. There shall be no staging of construction materials in the road right-of-way.
8. Hours of construction shall be Monday to Friday 7:30AM – 9:00PM, and Saturday 9:00AM – 4:00PM, per city ordinance.

This permit is issued to the owner of the property. In executing this permit, owner agrees to comply with all terms of permit, including conditions of approval. Should you have any questions on this matter, do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Ry - B", followed by a horizontal line.

Ryan Bane
Senior Planner

Cc: Coastal Commission

Steelhead Engineering
1764 Esperanza Ct.
Santa Cruz, CA 95062
(831) 332-7657

October 6, 2010

**Ryan Bane
Senior Planner
City of Capitola
420 Capitola Ave.
Capitola, CA 95010**

RE: Emergency repair permit at 1850 Wharf Rd., Capitola, CA

Dear Ryan,

On behalf of Ted & Marilee Werfhorst I am submitting this letter in support of the application for an emergency permit to stabilize the stream bank below their property that abuts Soquel Creek.

The nature of the emergency is that a significant landslide occurred on March 17, 2010 which significantly reduced the lateral support for the piers that support the three levels of decks on the stream side of the house. According to the geotechnical investigation the piers extend to the soil / bedrock interface but do not penetrate the bedrock significantly. This means that the piers rely for lateral support on the soil. Approximately, the upper half of this support was lost during the landslide, leaving the piers vulnerable to further landsliding, erosion and seismic events which could cause sudden and catastrophic collapse. This would result in a complete loss of support for the decks, and possible a life threatening situation if the decks were occupied at the time.

The cause of the emergency is simply stated a landslide which resulted from the mixed soil and fractured rock matrix which overlays the weathered bedrock that daylights at the pronounced crown in the slope above the creek. The strength of the bedrock, as compared to the matrix above, is evidenced by the dramatic change in slope that occurs at the vertical face of the bluff at an approximate elevation of 30 ft above sea level. The geotechnical report indicates that the material above this elevation remains vulnerable to future landslides and accelerated erosion due to the loss of vegetation that occurred during the last event this spring.

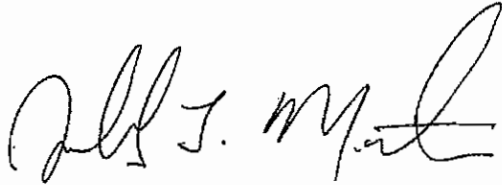
The area in danger is almost the entire width of the lot immediately behind the residence at 1850 Wharf Rd. depicted on the plans submitted on Sept. 21st, 2010.

A rigid concrete bulkhead secured to the slope with deep seated anchorage is the most effective and economically feasible approach to preventing both further erosion and landslides between the deck piers and the crown in the bluff face. These measures are depicted in detail sufficient for construction in the plans submitted Sept. 21st, 2010.

The proposed actions represent a permanent repair to the affected area, will restrain the existing deck piers from lateral movement towards the stream and can be implemented with a minimum of disturbance to the existing slope and slide scarp. The plans have been reviewed by the geotechnical engineer of record and are in accordance with his recommendations.

Ryan Bane
Senior Planner
City of Capitola
420 Capitola Avenue
Capitola, CA 95010
Via: email @ rbane@ci.capitola.ca.us
Page 2 of 2

Sincerely,

A handwritten signature in black ink, appearing to read "J.L. Martin". The signature is fluid and cursive, with the first name "J.L." and the last name "Martin" clearly distinguishable.

Jeffrey L. Martin, P.E.
RCE # 68028

[illegible]

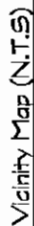
Ted & Marilee Werfhorst
1850 Wharf Rd., Capitola, CA

Craig N. Reid #2471
Jupp Geotechnology inc.
(408) 866-5436
Project 3367.1R1

Jeffrey L. Martin R.C.E. # 68028

Sunstone Construction Inc.
176 Gilman Ave.
Campbell, CA 95008
(408) - 379-0592

C1 - Existing Topography
 C2 - Slope Stabilization & Erosion Control
 S1 - Structural Details



Existing Site Topography

ATTACHMENT C

**PROJECT APPLICATION #10-084
1850 WHARF ROAD, CAPITOLA
SLOPE STABILIZATION PROJECT**

COASTAL FINDINGS

D. Findings Required. A coastal permit shall be granted only upon adoption of specific written factual findings supporting the conclusion that the proposed development conforms to the certified Local Coastal Program, including, but not limited to:

- The proposed development conforms to the City's certified Local Coastal Plan (LCP). The specific, factual findings, as per CMC Section 17.46.090 (D) are as follows:

(D) (2) Require Project-Specific Findings. In determining any requirement for public access, including the type of access and character of use, the city shall evaluate and document in written findings the factors identified in subsections (D) (2) (a) through (e), to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the city and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the adverse effects which have been identified will be alleviated or mitigated by the dedication. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning.

(D) (2) (a) Project Effects on Demand for Access and Recreation. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development. Analysis of the project's effects upon existing public access and recreation opportunities. Analysis of the project's cumulative effects upon the use and capacity of the identified access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative build-out. Projection for the anticipated demand and need for increased coastal access and recreation opportunities for the public. Analysis of the contribution of the project's cumulative effects to any such projected increase. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities;

- The proposed project is located on a steep slope on private property adjacent to Soquel Creek. The project will not directly affect public access and coastal recreation areas as it involves the stabilization of an existing slope, with no intensification or build out and no affect on public trail or beach access.

(D) (2) (b) Shoreline Processes. *Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site. Identification of anticipated changes to shoreline processes at the site. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development. Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to: wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity. Analysis of the effect of any identified changes of the project, alone or in combination with other anticipated changes, will have upon the ability of the public to use public tidelands and shoreline recreation areas;*

- The proposed project is located adjacent to Soquel Creek, approximately a half mile from the shoreline. No portion of the project is located along the shoreline or beach.

(D) (2) (c) Historic Public Use. *Evidence of use of the site by members of the general public for a continuous five-year period (such use may be seasonal). Evidence of the type and character of use made by the public (vertical, lateral, blufftop, etc., and for passive and/or active recreational use, etc.). Identification of any agency (or person) who has maintained and/or improved the area subject to historic public use and the nature of the maintenance performed and improvements made. Identification of the record owner of the area historically used by the public and any attempts by the owner to prohibit public use of the area, including the success or failure of those attempts. Description of the potential for adverse impact on public use of the area from the proposed development (including but not limited to, creation of physical or psychological impediments to public use);*

- The privately owned site has historically been used as private residences. There is no evidence of use of the site by members of the public for coastal access.

(D) (2) (d) Physical Obstructions. *Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline;*

- The proposed project is located on a steep slope on private property adjacent to Soquel Creek. The project will not block or impede the ability of the public to get to or along the tidelands, public recreation areas, or views to the shoreline.

(D) (2) (e) Other Adverse Impacts on Access and Recreation. *Description of the development's physical proximity and relationship to the shoreline and any public recreation area. Analysis of the extent of which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to*

diminish the public's use of tidelands or lands committed to public recreation. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development.

- The proposed project is located on a steep slope on private property adjacent to Soquel Creek. The slope stabilization system does not diminish the public's use of tidelands or lands committed to public recreation nor alter the aesthetic, visual or recreational value of public use areas.

(D) (3) (a – c) Required Findings for Public Access Exceptions. Any determination that one of the exceptions of subsection (F) (2) applies to a development shall be supported by written findings of fact, analysis and conclusions which address all of the following:

a. The type of access potentially applicable to the site involved (vertical, lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected, the agricultural use, the public safety concern, or the military facility which is the basis for the exception, as applicable;

b. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that agricultural resources, fragile coastal resources, public safety, or military security, as applicable, are protected;

c. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

- The project is not requesting a Public Access Exception, therefore these findings do not apply

(D) (4) (a – f) Findings for Management Plan Conditions. Written findings in support of a condition requiring a management plan for regulating the time and manner or character of public access use must address the following factors, as applicable:

a. Identification and protection of specific habitat values including the reasons supporting the conclusions that such values must be protected by limiting the hours, seasons, or character of public use;

b. Topographic constraints of the development site;

c. Recreational needs of the public;

d. Rights of privacy of the landowner which could not be mitigated by setting the project back from the access way or otherwise conditioning the development;

e. The requirements of the possible accepting agency, if an offer of dedication is the mechanism for securing public access;

f. Feasibility of adequate setbacks, fencing, landscaping, and other methods as part of a management plan to regulate public use.

- No Management Plan is required; therefore these findings do not apply

(D) (5) Project complies with public access requirements, including submittal of appropriate legal documents to ensure the right of public access whenever, and as, required by the certified land use plan and Section 17.46.010 (coastal access requirements);

- No legal documents to ensure public access rights are required for the proposed project

(D) (6) Project complies with visitor-serving and recreational use policies;

SEC. 30222

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

- The project involves a slope stabilization system for an existing residential use. No new use or change in use is proposed.

SEC. 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

- The project involves a blufftop stabilization system for an existing residential use. No new use or change in use is proposed.

c) Visitor-serving facilities that cannot be feasibly located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

- The project involves a slope stabilization system for an existing residential use. No new use or change in use is proposed.

(D) (7) Project complies with applicable standards and requirements for provision of public and private parking, pedestrian access, alternate means of transportation and/or traffic improvements;

- The project involves a slope stabilization system for an existing residential use. No new use or change in use is proposed.

(D) (8) Review of project design, site plan, signing, lighting, landscaping, etc., by the city's architectural and site review committee, and compliance with adopted design guidelines and standards, and review committee recommendations;

- The project complies with the design guidelines and standards established by the Municipal Code.

(D) (9) Project complies with LCP policies regarding protection of public landmarks, protection or provision of public views; and shall not block or detract from public views to and along Capitola's shoreline;

- The proposed project is located on a steep slope on private property adjacent to Soquel Creek. The project will not result in removal of trees or other resources that might be considered scenic resources. As site development would not affect or remove scenic views or scenic resources, development would not result in impacts to scenic views or scenic resources.

(D) (10) Demonstrated availability and adequacy of water and sewer services;

- The project involves a slope stabilization system for an existing residential use. No water or sewer services will be affected.

(D) (11) Provisions of minimum water flow rates and fire response times;

- The project involves a slope stabilization system for an existing residential use with no change in use.

(D) (12) Project complies with water and energy conservation standards;

- The project involves a slope stabilization system for an existing residential use with no change in use.

(D) (13) Provision of park dedication, school impact, and other fees as may be required;

- The project will be required to pay appropriate fees prior through building permit issuance.

(D) (14) Project complies with coastal housing policies, and applicable ordinances including condominium conversion and mobile home ordinances;

- The project does not involve a condo conversion or mobile homes. The existing residential units on the property will not be changed as part of the project.

(D) (15) Project complies with natural resource, habitat, and archaeological protection policies;

- Conditions of approval have been included to ensure compliance with established policies.

(D) (16) Project complies with Monarch butterfly habitat protection policies;

- The project is outside of any identified sensitive habitats, specifically areas where Monarch Butterflies have been encountered, identified and documented.

(D) (17) Project provides drainage and erosion and control measures to protect marine, stream, and wetland water quality from urban runoff and erosion;

- The project will comply with all applicable erosion control measures.

(D) (18) Geologic/engineering reports have been prepared by qualified professional for projects in seismic areas, geologically unstable areas, or coastal bluffs, and project complies with hazard protection policies including provision of appropriate setbacks and mitigation measures;

- Geologic/engineering reports have been prepared by qualified professionals for this project which is located in a geologic hazard zone. Conditions of approval have been included to ensure the project complies with hazard protection policies.

(D) (19) All other geological, flood and fire hazards are accounted for and mitigated in the project design;

- Geologic/engineering reports have been prepared by qualified professionals for this project which is located in a geologic hazard zone. Conditions of approval have been included to ensure the project complies with geological, flood, and fire hazards and are accounted for and will be mitigated in the project design.

(D) (20) Project complies with shoreline structure policies;

- The proposed project is not located along a shoreline.

(D) (21) The uses proposed are consistent with the permitted or conditional uses of the zoning district in which the project is located;

- The project involves a slope stabilization system for an existing residential use with no change in use.

(D) (22) Conformance to requirements of all other city ordinances, zoning requirements, and project review procedures;

- The project conforms to the requirements of all city ordinances, zoning requirements and project development review and development procedures.

(D) (23) Project complies with the Capitola parking permit program as follows:

- The project site is not located within the area of the Capitola parking permit program.



STAFF REPORT

TO: PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

DATE: JANUARY 11, 2011 (AGENDA: JANUARY 20, 2011)

SUBJECT: **723 EL SALTO DRIVE** **#10-082** **APN: 036-143-35**
Minor land division to convert four apartment units to condominiums in the VS/R-1 (Visitor Serving/Single-Family Residence) Zoning District.
Environmental Determination: Categorical Exemption
Property Owner: Doug Dodds

APPLICANT'S PROPOSAL

The applicant is proposing to convert an existing four-unit apartment complex into four condominium units. The apartment building is located at 723 El Salto Drive in the VS/R-1 (Visitor Serving/Single-Family Residence) zoning district. The use is consistent with the General Plan, Local Coastal Plan, Zoning Ordinance, and Subdivision Ordinance.

BACKGROUND

The existing parcel currently contains a 4-unit apartment building, a single-family house, and a 4-car carport structure. On February 4, 2010, the Planning Commission approved an application (#08-041) to subdivide a 5,850 square foot portion of the lot, which will contain the single-family house, with the remaining 29,959 square foot lot containing the four-unit apartment building. As part of that approval, conditions were included that required that the existing carport structure be demolished and a new 4-car carport and parking lot be constructed on the lot containing the 4-unit apartment building, in addition to new landscaping and pathways.

At this point in time, the applicant has not moved forward with the Final Map for the subdivision. But it should be noted that the proposed condo conversion application is dependent upon the completion of the previous application (#08-041) and conditions, including construction of a new 4-car carport, parking area, and landscaping including pedestrian walkways connecting the street and apartment building. A condition to this affect is included in the conditions of approval for the subject application.

DISCUSSION

The existing lot lies just to the west of the El Salto Resort, and extends from El Salto Drive to the north to the ocean bluff to the south. The site is relatively flat with the subject two-story four-unit apartment building on the southern portion of the lot, adjacent to the ocean bluff. The four units will continue to gain access from El Salto Drive, with a new driveway, new parking area and new landscaping conditioned as part of Application #08-041. The parking area will consist of a new 4-car carport, 4 uncovered spaces parked tandemly to those carport spaces, two guest spaces, as well as a new 4' concrete pedestrian walkway that connects the street to the parking area and apartment building.

The two-story apartment building contains four individual units, each unit being approximately 988 square feet in size with two bedrooms. As part of the approvals of Application #08-041, each unit will have two assigned parking spaces, one a carport space, the other a tandem uncovered space. In addition to the eight parking spaces for the unit owners, there are two spaces available for guest parking. This meets the zoning code requirement of 2.5 parking spaces per unit.

The complex will be set up the same way as most condominium projects, where the individual owners will own the air space of each unit, and the buildings and property are commonly owned by the condominium association. As is standard for townhome and condominium projects, a condition of approval has been added that final covenants, conditions and restriction (CC&Rs) documents be prepared by the applicant and reviewed by the Community Development Director, Public Works Director, and City Attorney for approval. A draft set of the Declaration of Covenants, Conditions and Restrictions is attached (Attachment C).

Condo Conversion

The City Subdivision Ordinance has a Condominium and Community Apartment Conversions Section that is fairly restrictive and limits the majority of multiple unit apartment buildings from converting to condominiums. However, the ordinance section only applies to "residential condominium projects" which is defined as "the conversion of an existing structure to a condominium containing **five** or more condominiums for residential purposes." Therefore, with the subject application converting only four units, the condo conversion ordinance does not apply and the conversions of the apartment units to individually owned condominium units are permitted with a minor land division.

RECOMMENDATION

Staff recommends that the Planning Commission **approve** application #10-082 based on the following Conditions and Findings for Approval.

CONDITIONS

1. The project approval consists of a tentative parcel map converting an existing four-unit apartment complex into four condominium units at 723 El Salto Drive.
2. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission.
3. The subdivider shall comply with all of the provisions of the approved Tentative Map and all pertinent provisions of the Municipal Code.

4. The proposed condo conversion Final Map shall not be approved for recordation until the Final Map and associated conditions of approval for Application (#08-041) are completed, approved, and recorded.
5. A Homeowner's Association CC&R document shall be prepared by the developer and subject to the approval of the Community Development Director, Public Works Director, and City Attorney. The CC&Rs shall be prepared and approved prior to recordation of the Parcel Map and all costs associated with the creation of the documents will be the responsibility of the applicant.
6. The owner/applicant shall comply with the Inclusionary Housing Ordinance.

FINDINGS

- A. **The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.**

Community Development Staff and the Planning Commission have reviewed the project and determined that the project is consistent with the development standards of the VS/R-1 (Visitor Serving/Single-Family Residence) Zoning District. Conditions of approval have been included to carry out the objectives of the Zoning Ordinance and General Plan.

- B. **The application will maintain the character and integrity of the neighborhood.**

Community Development Staff and the Planning Commission have reviewed the project and determined that the proposed project will maintain the character and integrity of the neighborhood. Conditions of approval have been included to ensure that the project maintains the character and integrity of the neighborhood.

- C. **The application is consistent with the Subdivision Map Act and local Subdivision Ordinance.**

The subdivision was designed in accordance with the Subdivision Map Act and local ordinances enacted pursuant thereto. Per the Subdivision Map Act, the proposed map is consistent with the General Plan, is physically suited for the proposed type and density of development, will not cause substantial environmental damage, or substantially and avoidably injure fish, wildlife or their habitats, will not cause serious public health problems, and will not conflict with public easements for access through, or use of, property within the proposed subdivision.

- D. **This project is categorically exempt under Section 15315 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15315 of the CEQA Guidelines exempts minor land divisions in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and Zoning.

Report Prepared By: Ryan Bane
Senior Planner

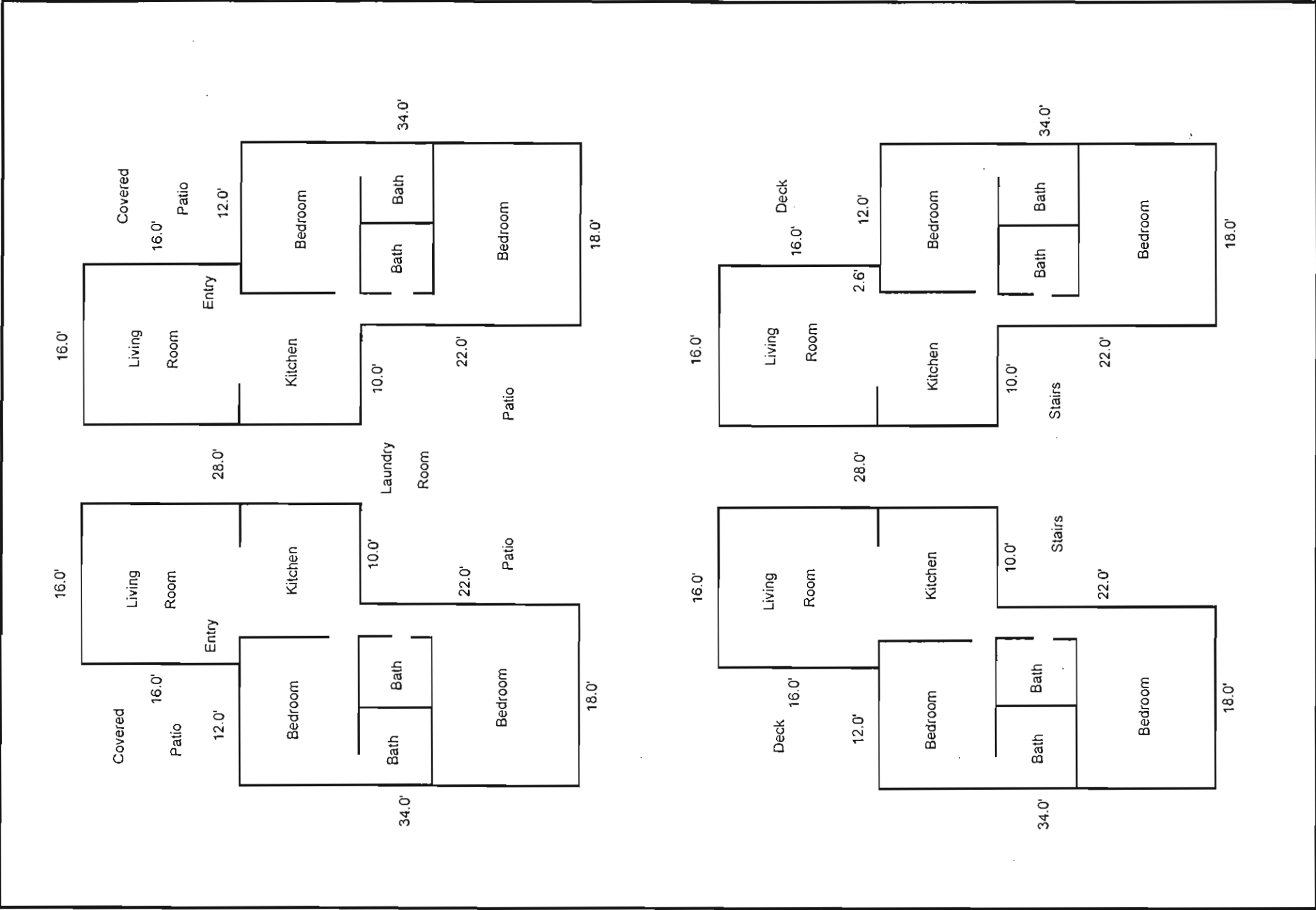
Attachment A – Tentative Parcel Map
Attachment B – Apartment Building Plans
Attachment C – Draft CC&Rs



LOCATED AT:
723 EL SALTO DRIVE
LOT 9 CAMP CAPITOLA
CAPITOLA, CA 95010

Building Sketch (Page - 1)

Borrower/Client DOUGLAS DODDS			
Property Address 723 EL SALTO DRIVE			
City CAPITOLA	County SANTA CRUZ	State CA	Zip Code 95010
Lender			



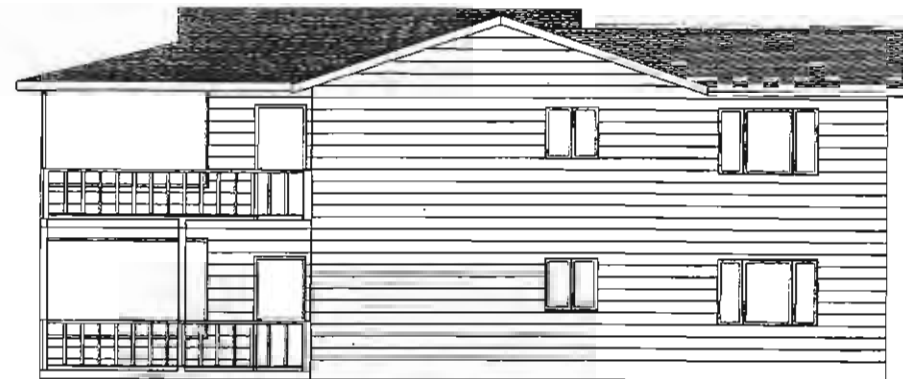
Building Sketch (Page - 2)

Borrower/Client	DOUGLAS DODDS		
Property Address	723 EL SALTO DRIVE		
City	CAPITOLA	County	SANTA CRUZ
		State	CA
		Zip Code	95010
Lender			

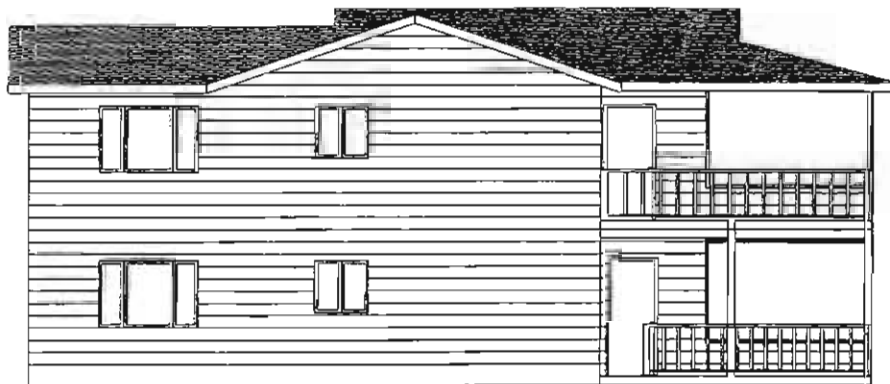
SKETCH CALCULATIONS		
Misc. Area		
Unit 2	A1 : 16.0 x 16.0 =	256.0
	A2 : 28.0 x 12.0 =	336.0
	A3 : 18.0 x 22.0 =	396.0
		988.0
Unit 3	A4 : 16.0 x 16.0 =	256.0
	A5 : 28.0 x 12.0 =	336.0
	A6 : 18.0 x 22.0 =	396.0
		988.0
Unit 4	16.0 x 16 =	256
	28.0 x 12 =	336
	18.0 x 22 =	396
Living Area		256.0
Unit 1	A7 : 16.0 x 16.0 =	336.0
	A8 : 28.0 x 12.0 =	396.0
	A9 : 18.0 x 22.0 =	988.0
Total Gross Living Area	= 3952 Square Feet	
		Total Living Area
		988.0



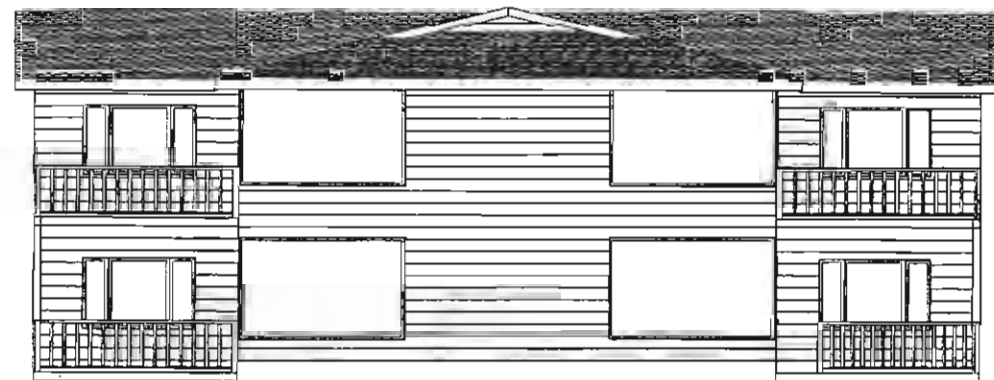
North Elevation



East Elevation



West Elevation



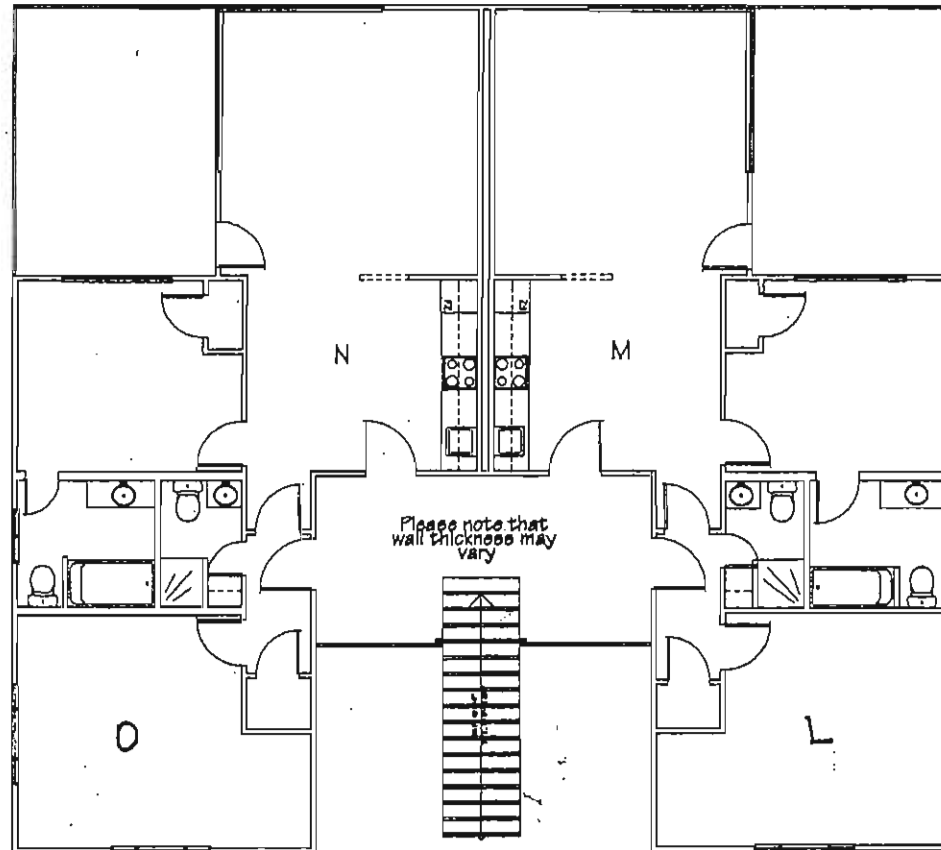
South Elevation

BY	DATE

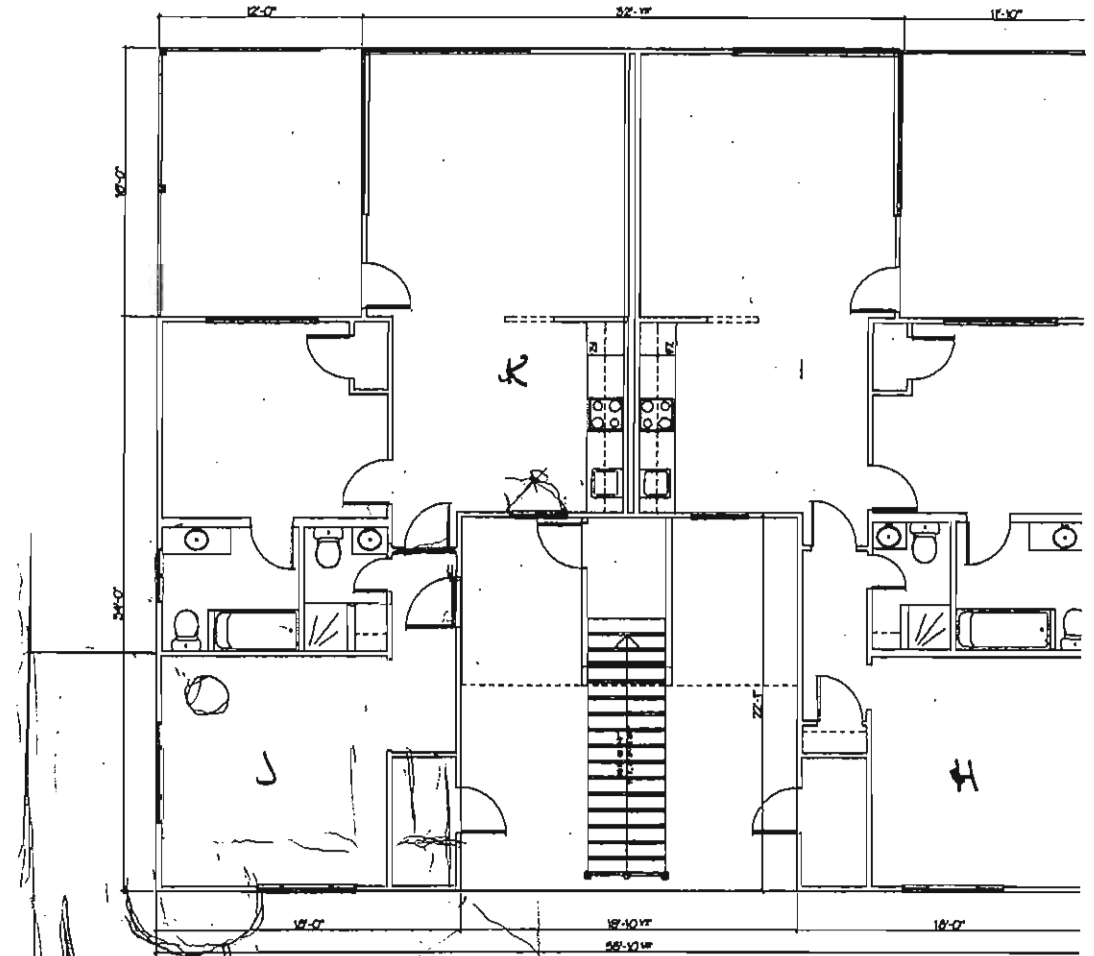
ELEVATIONS

EL SALTO

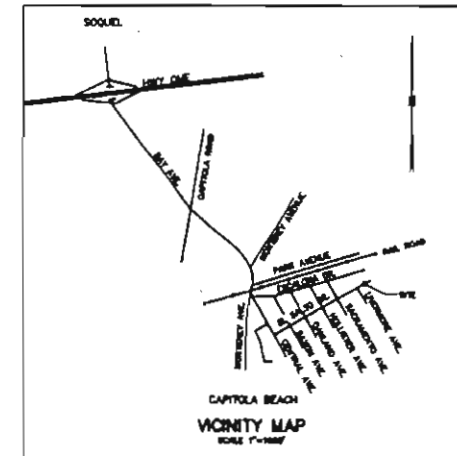
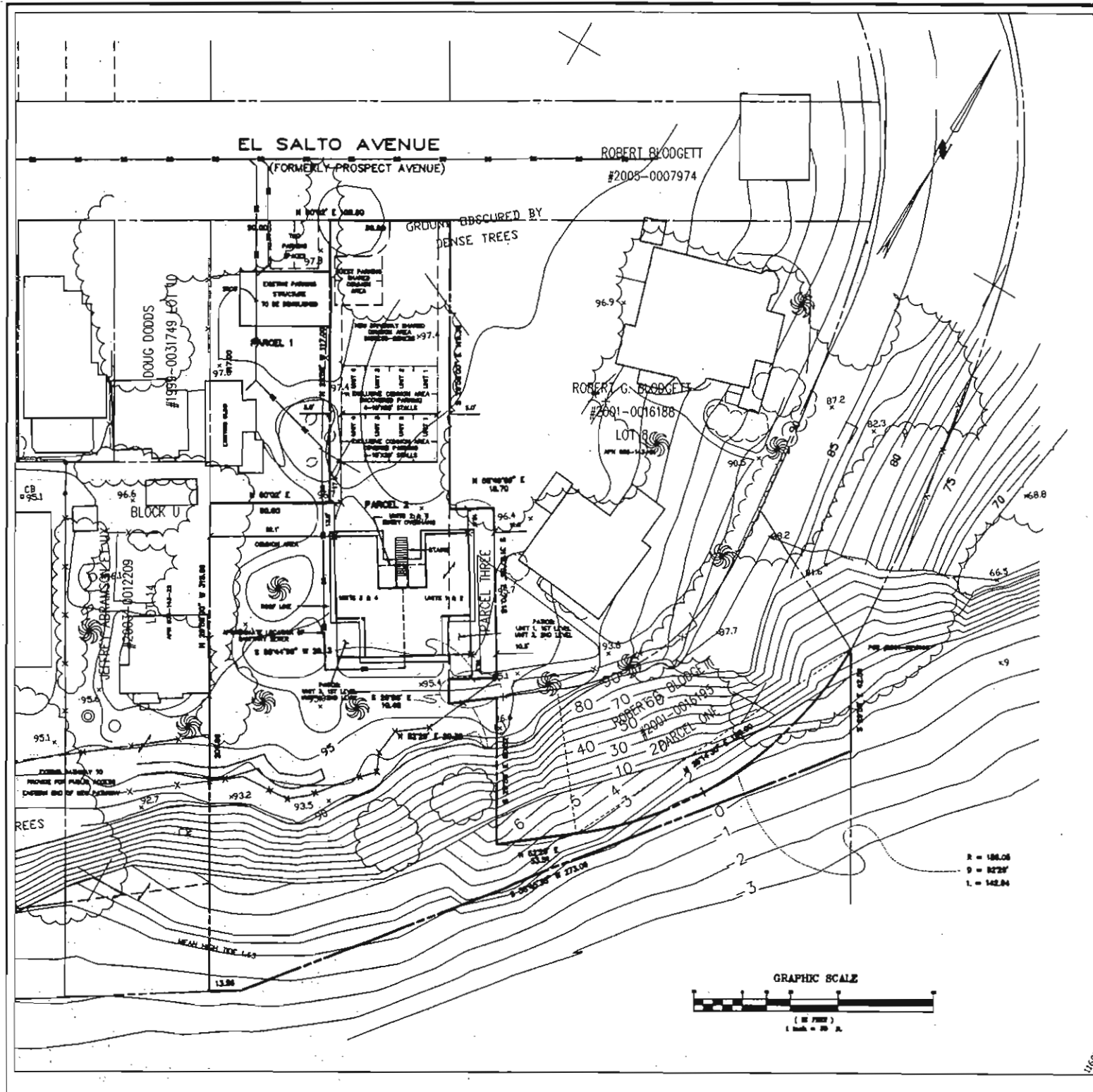
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Of	Amount



2ND FLOOR



1ST FLOOR



BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CALCULATED BEARING BETWEEN A FOUND SPIKE OPPOSITE THE NW CORNER OF LOT 28 BLOCK 1 AND THE FOUND 1/2" IRON PIPE AT THE SW CORNER OF LOT 38 BLOCK 1 AS SHOWN ON 88-18-22, (S 48°31'57" E 280.50) VS. S 48°31'57" E 280.67 AS FOUND.

BASIS OF ELEVATION:

BENCHMARK IS USGS BN "Z-215 1935" A BRASS DISC IN A CONCRETE DISC POST IN LAWN AT THE SOUTHWEST CORNER OF WORKMEN ANGLE AND THE UNION PACIFIC RAILROAD ELEVATION = 53.922 USGS DATUM MVD 1929 ADJUSTED.

NOTE:

PARCEL 1 AND PARCEL 2 SHOWN HEREON ARE FROM AN APPROVED MINOR LAND DIVISION APPLICATION NUMBER 08-041, RECORDATION OF FINAL MAPS FOR PARCEL 1 AND PARCEL 2 WILL BE COMPLETED PRIOR TO APPROVAL AND RECORDING OF A CONDOMINIUM PLAN.

APPROXIMATE LOCATION OF SANITARY SEWER IS BASED ON FOUND SANITARY SEWER CLEAROUT AND SANTA CRUZ COUNTY ENVIRONMENTAL HEALTH RECORD'S PERMIT AND SKETCH DATED FEBRUARY 4, 1991, CLEARED MARCH 11, 1991, FOR 620 EL SALTO DRIVE, APN 38-143-22, CURRENTLY APN 38-143-38. EASEMENT OVER PARCEL 1 OR NEW SANITARY SEWER CONNECTION MAY BE REQUIRED.

APN 38-143-38

BOWMAN & WILLIAMS CONSULTING CIVIL ENGINEERS 1011 CROWN STREET SANTA CRUZ, CA 95060 (831) 426-0000		PREPARED BY BOB DODDS 755 EL SALTO AVENUE MINOR AND SEWER (10-54), PARCEL 1 CAPITOLA, CALIFORNIA	
LOCKED LAND SURVEYOR NO 2013 SCALE 1"=30' DATE JAN 26, 1999 DRAWN BY	DESIGNED BY CHECKED BY FILE NO. 3418	SHEET NO. 3418 SHEET 1 OF 1	SHEET

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

ATTACHMENT C

RECEIVED

OCT 8 2019

CITY OF CAPITOLA

Declaration of Covenants, Conditions and Restrictions

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OF

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NOTARY

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This First Amendment And Restated Declaration is made on the date hereinafter set forth by _____, hereinafter referred to as "Declarant", being the owners of certain real property situated in the City of Santa Cruz, County of Santa Cruz, State of California, more particularly described as follows: :

Declarant does hereby declares that the real property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the following limitations, restrictions, easements, covenants, conditions, servitudes, liens, and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code Section 1350-1376 for the subdivision, improvements, protection, maintenance, and sale of condominiums within the real property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the real property. All of the limitations, restrictions, easements, reservations, covenants, conditions, servitudes, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title, or interest in the real property, are for the benefit of the real property, and shall be binding on and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1353.

This First Amended and Restated Declaration of Covenants, Conditions and Restrictions is intended to supercede and replace the Declaration of Covenants, Conditions and Restrictions recorded on June 15, 2007 as Instrument No. 2007-0033565.

ARTICLE I

DEFINITIONS

Section 1.01. "Association" shall mean and refer to the Association, an unincorporated association, its successors and assigns, the members of which shall be the owners of condominiums in the project.

Section 1.02. "Common area" shall mean and refer to all of the property described as Lot 1 on the hereinafter described map, except all units as defined below and as shown on the condominium plan.

Section 1.03. "Condominium plan" shall mean and refer to a condominium plan recorded pursuant to California Civil Code Section 1351(e), and any amendments to the plan. A copy of the condominium plan is attached as Exhibit "A" to this Declaration.

Section 1.04. "Condominium" shall mean and refer to an estate in real property as defined in California Civil Code Section 783 and 1351f consisting of an undivided interest as a tenant in common in all or any portion of a common area, together with a separate fee interest in a unit and any other separate interests in the real property as are described in this declaration, in the condominium plan, or in the deed conveying the condominium.

Section 1.05. "Common expense" means and includes the actual and estimated expenses of operating that portion of the common area which is not exclusive use common area.

Section 1.06. "Declarant" shall mean and refer to M. Greg Beccio, and his successors and assigns.

Section 1.07. "Declaration" shall mean and refer to this enabling declaration, as amended or supplemented from time to time.

Section 1.08. "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 9.06c.

Section 1.09. "Exclusive Use Common Area" shall mean and refer to those portions of the common area, if any, set aside for the exclusive use of the condominium owner or owners pursuant to Article II, Section 2.03. Each such exclusive use common area shall be appurtenant to the owner's unit and may not be conveyed or transferred apart from the unit. Except as expressly provided in this declaration, no other portion of the project is exclusive use common area.

Section 1.10. "Map" shall mean and refer to that parcel map entitled
Official Records of Santa Cruz County.

Section 1.11. "Member" shall mean and refer to a person entitled to membership in the association as provided herein.

Section 1.12. "Mortgage" shall mean a deed of trust as well as a mortgage.

Section 1.13. "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

Section 1.14. "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

Section 1.15. "Owner" shall mean and refer to the record fee title owner, whether one or more persons or entities, of a fee simple title to any condominium which is a part of the properties, except if a condominium is sold under a recorded contract of sale, the contract purchaser, rather than the fee owner, shall be considered the "owner". "Owner" shall not include persons or entities who hold an interest in a condominium merely as security for the performance of an obligation.

Section 1.16. "Person" means a natural person, a corporation, a partnership, a trustee, a trust, or other legal entity.

Section 1.17. "Project" or "development" shall mean and refer to the entire real property above-described.

Section 1.18. "Project documents" shall mean this declaration, as amended from time to time, the exhibits, if any, attached thereto, together with the other basic documents used to create and govern the project, including the map, and the articles of association.

Section 1.19. "Unit" shall mean and refer to that portion of the condominium that is not owned in common with the other owners of condominiums in the project, such units and their respective boundaries being shown and more particularly described in the condominium plan, deeds conveying condominiums, and this declaration. "Unit" does not include other interests in real property that are less than estates in real property, such as exclusive or nonexclusive easements. In interpreting deeds and plans, the existing physical boundaries of a unit or the unit reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or condominium plan, regardless of minor variances between boundaries shown on the condominium plan or in the deed and those of the building and regardless of settling or lateral movement of the building.

ARTICLE II

PROPERTY RIGHTS

Condominium Units

Section 2.01. Ownership of each condominium within the project shall include a unit; an undivided 1/4th interest in the common area, which shall be specified in the deed from Declarant to each owner and which undivided interest cannot be altered or changed as long as the prohibition against severability of component interests in a condominium remains in effect as provided in this declaration; a membership in the association; and any exclusive use common area appurtenant to such condominium as described in this declaration, the condominium plan and the deed to the condominium.

Owners' Easement of Enjoyment

Section 2.02. Every owner shall have a right and easement of enjoyment in and to the common area and any improvements or facilities on these areas which shall be appurtenant to and pass with title to every condominium, subject to reasonable rules and regulations from time to time set by the association as well as the right of the association to dedicate or transfer a portion of the common area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by said members, so long as the dedication or transfer shall be for the general benefit of the association and its members.

However, such easements shall be nonexclusive and shall be subordinate to, and shall not interfere with, the exclusive use common areas, if any. Each such nonexclusive easement shall be appurtenant to the respective condominium and shall pass with title to the condominium. Nonexclusive easements shall be subject to the following rights and restrictions:

- a. The right of the association to limit the number of guests, and to adopt and to enforce association rules.
- b. Subject to the provisions of Section 9.06 below, the right of the association to borrow money to improve, repair, or maintain the common area.
- c. The right of the association to adopt and enforce association rules concerning the control and use of any private streets, roadways, and paving areas located upon or across the common area, including the right to regulate the kind of vehicles and their speed and the parking of vehicles upon such private streets and roadways. Declarant or the association is authorized to delegate to a municipality or other governmental entity or to contract with any private security patrol company to exercise its authorized rights in connection with such private streets, roadways, and parking areas.

Encroachments

Section 2.04. If any portion of the common area encroaches on any unit or if any portion of a unit encroaches on the common area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all units in the common area are made subject to such easements. If any structure containing a unit is partially or totally destroyed and then rebuilt and any encroachment on the common area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all units and the common area are made subject to such easements.

Delegation of Use

Section 2.05. Any owner may delegate his or her rights of use and enjoyment of the common area and the facilities to the members of his or her family, his or her guests, tenants, employees, and invitees, and to such other persons as may be permitted by the bylaws and the association rules,

subject however to this declaration. However, if an owner has sold his or her condominium to a contract purchaser or has leased or rented it, the owner, members of the owner's family, guests, tenants, employees, and invitees shall not be entitled to use and enjoy any of such rights while the owner's condominium is occupied by the contract purchaser or tenant. Instead, the contract purchaser, or tenant, while occupying such condominium, shall be entitled to use and enjoy such rights, including the recreational facilities, and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an owner during the period of his or her occupancy. Each owner shall notify the secretary of the association of the names of any contract purchasers or tenants of such owner's condominium. Each owner, contract purchaser, or tenant shall also notify the secretary of the association of the names of all persons to whom such owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of owners. No such delegation shall relieve an owner from liability to the association or to other owners for payment of assessments or performance of the covenants, conditions and restrictions contained in this declaration. The association and each owner shall have a right of action directly against any tenant or contract purchaser of an owner, as well as against the owner, for nonperformance of any of the provisions of this declaration to the same extent that such right of action exists against such owner.

Right to Grant Easements

Section 2. 06. Declarant or the association shall have the power to grant and convey in the name of all of the owners as their attorney-in-fact (or in the name of the association as to property to which the aholds title) to any owner or other party easements and rights of way in, on, over, or under the common area for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, stormwater drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and each purchaser, in accepting a deed to a condominium, expressly consents to such easements and rights of way and authorizes and appoints the association and Declarant (as long as Declarant owns one or more condominiums) as attorney-in-fact of such owner to execute any and all instruments conveying or creating such easements or rights of way.

Non-Severability of Component Interests

Section 2.07. An owner shall not be entitled to sever his or her unit in any condominium from his or her membership in the association, and shall not be entitled to sever his or her unit and his or her membership from his or her undivided interest in the common area for any purpose. None of the component interests in a condominium can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with; and any violation or attempted violation of this provision shall be void. Similarly, no owner can sever any exclusive use easement appurtenant to his or her unit or the common area from his or her condominium, and any attempt to do so shall be void.

Partition of Common Area

Section 2.08. Except as expressly provided in this clause, an owner shall have no right to partition or divide his or her ownership of the common area. Partition of the common area can be had on the showing that the conditions to such partition as stated in Section 9.05 (relating to damage or destruction) or in Section 9.06 (relating to condemnation) or in Civil Code Section 1359(b) have been met. Nothing in this declaration shall prevent partition of a co-tenancy in a condominium.

The proceeds or property resulting from a partition shall be distributed to and among the respective owners and their mortgagees as their interests appear in proportion to the ratio that the fair market value of each owner's condominium bears to the fair market value of all owners' condominiums determined as provided in Section 9.06, but as of the date immediately prior to the event giving rise to the right of owners to partition the common area.

Each of the owners irrevocably appoints the association as attorney-in-fact and irrevocably grants to the association full power in the name and stead of such owner to sell the entire project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all owners when partition of the project may be had under Civil Code Section 1359 and under the circumstances authorizing partition under this declaration. The power of attorney shall (i) be binding on all owners, whether they assume the obligations under this declaration or not; (ii) be exercisable by a majority of the association acting on behalf of the association, subject to obtaining the prior approval by vote or written consent of 75 percent of the owners and 75 percent of all institutional first mortgagees; and (iii) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Membership

Section 3.01. 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 his or her ownership ceases for any reason, at which time his or her membership in the association shall automatically cease. When more than one person holds an interest in a condominium all such persons shall be members.

Transferred Membership

Section 3.02. Membership in the association shall not be transferred, pledged, or alienated in any way, except upon the sale or other transfer or encumbrance of the condominium to which it is appurtenant, and then only to the new fee owner or contract purchaser, in the case of a sale or other

transfer, or mortgagee, in the case of an encumbrance of such condominium. The mortgagee does not have membership rights until he or she becomes an owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No member may resign his or her membership. In the event the owner of any condominium should fail or refuse to transfer the membership registered in his or her name to the purchaser of his condominium, the association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

Membership Classes and Voting Rights

Section 3.03. Only memberships shall have voting rights, and the association shall have one class of voting memberships:

Joint Owner Disputes

Section 3.04. A vote for each condominium for any membership class shall, if at all, be cast as a unit. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any owner casts a vote or votes representing a certain condominium, it will thereafter be conclusively presumed for all purposes that said owner was acting with the authority and consent of all the owners of the condominium.

ARTICLE IV

DUTIES AND POWERS OF THE ASSOCIATION

General Powers

Section 4.01. The association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Corporation Law of California, subject only to such limitations on the exercise of its powers as are set forth in the articles, the bylaws, and this declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the association under this declaration, and to do and perform any act that may be necessary and proper for or incidental to, the exercise of any of the express powers of the association, including, without limitation, the acts enumerated in this Article IV.

Maintenance

Section 4.02. The association shall manage and maintain in good condition and repair the common area, including the private driveways. 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 neglect of an owner, or his or her guests, tenants, or invitees, the cost of which is not covered by insurance. The cost of repair or replacement resulting from such excluded items shall be the responsibility of each other; provided, however, that if an owner shall fail to make

the repairs or replacements which are the responsibility of such owner, as provided above, then after thirty (30) days notice to the owner and at public hearing, the association shall make such repairs or replacements, and the cost thereof shall be paid immediately to the association by the owner of such condominium. Any such amount, together with reasonable costs of collection (including reasonable attorneys' fees) and interest thereon at the legal rate of interest shall be a lien on the owner's interest in the condominium from and after the time the association causes to be recorded in the Recorder's Office of the county in which the condominium is located, a notice of delinquent assessment, which shall state the amount incurred by the association to perform such maintenance, a description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in California Civil Code Section 1367(d), the name and address of the trustee authorized by the association to enforce the lien by sale. Upon payment of the sum specified in the notice, the association shall cause to be recorded a further notice stating the satisfaction release of the lien thereof. The owners shall be responsible for maintaining their respective exclusive use common areas. The owners of each condominium shall be responsible for 1/4th of the cost of maintenance and repair by the association as provided herein. Any dispute regarding the nature, extent or cost of such maintenance and repair shall be resolved by arbitration as provided hereinafter.

Individual Maintenance of Units

Section 4.03. The owner of each unit shall be solely responsible for maintaining, repairing and replacing his unit, including the building, and all components thereof.

Insurance

Section 4.04. The association shall maintain such policy or policies of insurance as are desired by the owners.

Discharge of Liens

Section 4.05. After notice of hearing as provided in Section 4.12, the association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the member or members responsible for the existence of said lien.

Payment of Expenses

Section 4.06. 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.

Enforcement

Section 4.07. The association shall enforce this declaration and has authority to enforce it as

more particularly set forth in Section 8.01 below.

Manager

Section 4.08. The association shall have the authority to employ a manager or other persons and to 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 and 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.

Contracts

Section 4.09. The association shall have the power to contract for goods and/or services for the common area or for the association, subject to limitations set forth in the by-laws or elsewhere in the project documents.

Delegation

Section 4.10. The association 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 association shall not delegate its responsibility for hearings required to be given by the association.

Option of Rules

Section 4.11. The association or the officers may adopt reasonable rules not inconsistent with this declaration relating to the use of the common area and all facilities thereon, and the conduct of owners and their tenants and guests with respect to the property and other owners.

Access

Section 4.12. For the purpose of performing construction, maintenance or emergency repair for the benefit of the common area or the owners in common, the association's agents or employees shall have the right, after reasonable notice (not less than 48 hours) to the owner thereof, to enter any condominium or to enter any portion of the common area at reasonable hours. In case of emergency, the right shall be immediate upon notice. Such entry shall be made with as little inconvenience to the owner as practicable and any damage caused thereby shall be repaired by the Association at the expense of the association.

Additional Association Powers

Section 4.13. The association shall have the power, subject to compliance with Section 1354 of the California Civil Code, to institute, defend, settle, or intervene on behalf of the association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (A) enforcement of the governing instruments, (B) damage to the common areas, (C) damage to the separate interests which the association is obligated to maintain or repair, or (D) damage to the separate interest which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.

The association shall have the power to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or nonbinding arbitration proceedings. The association shall provide, or in good faith attempt to provide, 120 days advance notice of the association's intent to initiate the prosecution of any civil action and of 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 notice can be given (A) more than 120 days prior to the expiration of any pertinent statute of limitations, and (B) without prejudice to the association's right to enforce the governing 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. Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the governing documents, or for declaratory relief or injunctive relief to enforce the governing documents in conjunction with a claim for monetary damages no in excess of \$5,000, the association shall endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1354(b) of the Civil Code.

ARTICLE V

UTILITIES

Owners' Rights and Duties

Section 5.01. The rights and duties of the owners of condominiums within the project with respect to sanitary sewer, water, electricity, gas and television receiving and telephone lines and facilities shall be as follows:

- a. Whenever storm or sanitary sewer, drainage, plumbing, water, electricity, gas, television receiving, telephone lines or connections, are installed within the property which connections or any portion thereof lie in or upon condominiums owned by other than the owner of a condominium served by said connections, the owners of any condominium served by said connections shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain said connections as and when necessary, due to failure or inability of the association to take timely action to make such repairs or perform such maintenance, subject to 48 hours advanced notice. In case of emergency the right shall be immediate upon notice.

- b. Whenever storm or sanitary sewer, drainage, plumbing, water, electricity, gas, television receiving or telephone lines or connections, are installed within the property which connections serve more than one condominium, the owner of each condominium served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his or her condominium.
- c. In the event of a dispute between owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such owners addressed to the association, the matter shall be submitted to arbitration and the decision of the arbitrator shall be final and conclusive on the parties.

Easements for Utilities and Maintenance

Section 5.02. Easements over and under the property for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded map of the property, and as may be hereafter required or needed to service the property, are hereby reserved by Declarant and its successors and assigns, including the association, together with the right to grant and transfer the same.

Association's Duties

Section 5.03. The association shall maintain all utility installations located in the common area except for those installations maintained by utility companies, public, private, or municipal. The association shall pay all charges for utilities supplied to the project except those metered or charged separately to the condominiums.

ARTICLE VI

USE RESTRICTIONS

In addition to all the covenants contained herein, the use of the property and each condominium herein is subject to the following:

Usage

Section 6.01. 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 therein. Notwithstanding the foregoing, a condominium may be used as a combined residence and executive or professional office by the owner thereof, so long as its use does not interfere with the quiet enjoyment by other condominium owners of their residences. 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.

No condominium or any portion thereof 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 unit or units or any portion thereof in the project rotates among various persons, either corporation, 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 25 consecutive calendar days or less. Provided, this Section shall not be construed to limit the personal use of any condominium or any portion thereof in the project by any condominium owner or his or her or its social or familial guests.

Nuisances

Section 6.02. No noxious, illegal, or seriously offensive activities shall be carried on upon any condominium, or in any part of the property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the owners of the respective 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.

Vehicle Restrictions

Section 6.03. No trailer, camper, mobile home, motor home, house car, commercial vehicle, truck (other than standard size pickup truck or standard size van), boat, inoperable automobile, or similar equipment shall be permitted to remain upon any area within the property unless placed or maintained within an enclosed garage or carport. Commercial vehicles shall not include sedans or standard size vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the association. No noisy or smoky vehicles shall be operated on the property. No unlicensed motor vehicles shall be operated on the property.

Signs

Section 6.04. No sign of any kind shall be displayed to the public view on any condominiums or on any portion of the property without the approval of the association, except such signs as may be used by the Declarant or its designees for the purpose of developing, selling and improving condominiums within the project for a period of time not to exceed the date on which the last condominium is sold by Declarant or three years from the date of recordation of this declaration, whichever is sooner. In exercising its rights under this provision, Declarant shall not unreasonably interfere with the use of the common area by any owner. Notwithstanding the foregoing, the association shall not prohibit or restrict the right of any owner or his or her agent to display or have displayed on their unit or on a unit owned by others with their consent, or both, signs which are

reasonably located, in plain view of the public, are reasonable dimensions and design, and do not adversely affect public safety, including traffic safety, and which advertise the property for sale, lease or exchange, or advertise directions to the property.

Animals

Section 6.05. No animals, reptiles, insects or birds of any kind shall be raised, bred, or kept in any condominium, or on any portion of the property; except that no more than a total of two usual and ordinary household pets such as dogs, cats, birds, etc. may be kept provided that they are not kept, bred, or maintained for any commercial purposes, and that they are kept under reasonable control at all times.

After making a reasonable attempt to notify the owner, Declarant or any owner may cause any unleashed dog found within the common area to be removed by Declarant (or any owner) to a point or county animal shelter, by calling the appropriate authorities, whereupon the owner may, upon payment of all expenses connected therewith, repossess the dog. The owner shall be given immediate notice of any such removal. Owners shall prevent their pets from soiling all portions of the common area and shall promptly clean up any mess left by their pets. Owners shall be fully responsible for any damage caused by their pets.

Garbage and Refuse Disposal

Section 6.06. All rubbish, trash and garbage shall be regularly removed from the property, 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, woodpiles, or storage piles shall be kept screened and concealed from view of other condominiums, streets and common areas.

Architectural Control

Section 6.08. No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the property, nor shall

any alteration or improvement of any kind be made thereto until the same has been approved in writing by the association.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the association or 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 Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to remain in accordance with a color scheme previously approved by the association or the committee, or to rebuild in accordance with plans and specifications previously approved by the association or by the committee. Nothing contained herein shall be construed to limit the right of an owner to paint the interior of his or her condominium any color desired.

In the event the association fails to approve or disapprove plans and specifications 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.

Clothes Lines

Section 6.09. There shall be no outside laundering or drying of clothes, except inside fenced patios and then only if the clothes cannot be seen from the street, common area, or other condominiums.

Power Equipment and Car Maintenance

Section 6.10. No power equipment, hobby shops, or car maintenance (other than emergency work) shall be permitted on the property except with prior written approval of the association. Approval shall not be unreasonably withheld and in deciding whether to grant approval the association shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

Liability of Owners for Damage to Common Area

Section 6.11. The owner of each condominium shall be liable to the association for all damage to the common area or improvements thereon caused by such owner or any occupant of his or her condominium or guest, or by the owners' pets, except that portion of said damage, if any, fully covered by insurance. Liability of an owner shall be established only in accordance with the provisions of Section 4.12 of this declaration.

Sports Apparatus

Section 6.12. No sports apparatus shall be permitted on any condominium which is visible

from other condominiums or from common areas.

Antennas, Etc.

Section 6.13. Subject to the requirements of Civil Code Section 1376, as it may be amended from time to time, no exterior radio, television or other antennas or satellite dishes of any type shall be erected or maintained on any condominium without the prior written consent of the architectural review committee. The architectural review committee shall review all requests for antennas or satellite dishes in light of the architectural review committee rules.

Garage Sales

Section 6.14. No auctions, yard sales, garage sales, or similar events shall be conducted on or about any condominium or the common area.

Drainage Alterations

Section 6.15. No owner shall do any act or construct any improvements which may interfere with the natural or established drainage systems or patterns within the project without the prior written consent of the association.

ARTICLE VII

GENERAL PROVISIONS

Enforcement

Section 7.01. 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, and in such action shall be entitled to recover reasonable attorney's fees as are determined by court. Failure by the association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Severability

Section 7.02. Should any provision or portion hereof 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.

Term

Section 7.03. The covenants and restrictions of this declaration shall run and bind the property, 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 said covenants and restrictions in whole or in part, or to terminate the same.

Amendments

Section 7.04. Prior to close of escrow on the sale of the first condominium, Declarant may amend this declaration. After sale of the first condominium, 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. No amendment shall adversely affect the rights of the holder of any mortgage of record prior to the recordation of such amendment.

Encroachment Easements

Section 7.05. Each condominium within the property is hereby declared to have an easement over all adjoining condominiums and the common area for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, repair, settlement, shifting, or movement of a structure, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the intentional conduct of said owner or owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the owners of each condominium agree that minor encroachments, over adjoining condominiums or common areas shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Rights of First Lenders

Section 7.06. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning the mortgage with first priority over any other mortgage) on any unit made in good faith for value, but all of said 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.

Notices

Section 7.07. Any notices 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 72 hours after a copy of the same has been deposited in the United States mail, first-class or registered, postage prepaid, addressed to each person at the current address given by such person to the association or addressed to the condominium of such person if no address has been given to

the association.

Owner's Compliance

Section 7.08. 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, or the bylaws, as lawfully amended from time to time and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

Enforcement by City of

Section 7.09. The owners of all lots subject to this declaration recognize that the proper maintenance of the common area is for the benefit of all citizens of the City of _____ and that the City of _____ intended third party beneficiary of this Declaration, and may, thirty days after notice to the association, exercise the same powers of enforcement as the association. In the event the association does not adequately maintain the common area, the City of Santa Cruz may after written notice to the association, undertake the maintenance of such common area. Any and all costs incurred by the City in maintaining the common area shall be a lien against the maintenance fund and the property of the individual members of the association.

ARTICLE VIII

DESTRUCTION - DUTY TO REBUILD - INSURANCE

Association Insurance

Section 8.01. The association shall obtain and continue in effect a master policy of insurance covering all of the personal property and supplies of the association, comprehensive general liability insurance insuring the association and each owner for his liability and for the common area, and a fidelity bond covering officers, directors, and employees in an amount to be determined by the Board, but in no event less than a sum equal to three (3) months' aggregate assessments on all lots plus reserve funds.

Each owner appoints the association, or any insurance trustee to be designated by the association, as attorney-in-fact for the purpose of purchasing and maintaining the association's insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The association and any insurance trustee shall be required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for lot owners and their first mortgage holders, as their interests may appear.

All insurance shall contain "severability of interest provision", "cross-liability

endorsement" and waiver of subrogation as to the association, officers, directors, members, guests, agents and employees.

The minimum limits on the liability insurance policy shall be two million dollars (\$2,000,000.00) single limit and shall include personal injury, bodily injury, property damage and liability for non-owned automobiles. Worker's compensation insurance shall at all times be carried to the extent required to comply with any applicable law. Officers and directors liability insurance shall be carried by the association to cover persons serving in such capacities.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessment levied by the association and a portion of such payment necessary for the insurance premiums may be held in a separate account of the association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due.

Individual Insurance - Obligation to Repair

Section 8.02. Each owner shall obtain and maintain a policy of fire and casualty insurance coverage for the full insurable value of his or her condominium, including his or her exclusive use common area. If all or any portion of any condominium is damaged or destroyed by fire or other casualty, it shall be the duty of the owner of said condominium to rebuild, repair or reconstruct said condominium in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty. The owner or owners of any damaged condominium shall be obligated to proceed with all due diligence and commence reconstruction within six (6) months after damage occurs, unless prevented by causes beyond their reasonable control.

Arbitration

Section 8.03. Any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this agreement will, on the written request of one party served on the other, be submitted to arbitration before a single neutral arbitrator whose decision shall be final and conclusive. The arbitration will comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 and following of the California Code of Civil Procedure. The parties shall be entitled to discovery pursuant to 1283.05. If the parties are unable to agree on an arbitrator, either party may apply to the Presiding Judge of the Santa Cruz County Superior Court for the appointment of an arbitrator. The cost of arbitration and any proceedings required to appoint the arbitrator shall be borne in such proportions as the arbitrator decides.

_____, IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has signed this
____ day of _____

EXHIBIT "A"

CONDOMINIUM PLAN

FOR LOT

BEING THE LANDS WITHIN THE CITY OF _____, CALIFORNIA,
KNOWN AS _____
AND RECORDED IN VOLUME _____ OF PARCEL MAPS AT PAGE _____
RECORDS OF SANTA CRUZ COUNTY

I HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR, NUMBER 7367, OF THE STATE OF CALIFORNIA; THAT A SURVEY WAS MADE UNDER MY DIRECTION AND THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN ON THIS PLAN; THAT THE MONUMENTS AND BENCHMARKS ARE OF THE CHARACTER, AND OCCUPY, OR WILL OCCUPY, THE POSITIONS, INDICATED ON THE WITHIN PLAN AND THAT THEY ARE SUFFICIENT TO ENABLE THIS SURVEY TO BE RETRACED, AND THAT THE BUILDINGS ARE, OR WILL BE, AS SHOWN; AND THAT THE CONDOMINIUM PLAN CONSISTS OF A DESCRIPTION OR SURVEY MAP OF A CONDOMINIUM PROJECT WHICH REFERS TO, OR SHOWS MONUMENTATION ON THE GROUND AND A THREE DIMENSIONAL DESCRIPTION OF THE PROJECT IN SUFFICIENT DETAIL TO IDENTIFY THE COMMON AREAS AND EACH SEPARATE INTEREST PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA CIVIL CODE SECTION 1351(e)."

DATE _____



CONDOMINIUM PLAN

BEING THE LANDS WITHIN THE CITY OF CALIFORNIA,
KNOWN AS
AND RECORDED IN VOLUME OF PARCEL MAPS AT
RECORDS OF SANTA CRUZ COUNTY

GENERAL CONDOMINIUM NOTES

THE SUBDIVISION DEPICTED HEREON IS SUBJECT TO THE PROVISIONS OF THE CALIFORNIA
CONDOMINIUM ACT, TITLE 6, PART 4, DIVISION SECOND OF THE CALIFORNIA CIVIL CODE.

THE TERM "UNIT" SHALL MEAN A NUMBERED UNIT SO DESIGNATED ON THESE SHEETS. A "UNIT"
CONSISTS OF THE SPACE BOUNDED BY AND CONTAINED WITHIN THE INTERIOR SURFACES OF THE
PERIMETER WALLS, FLOORS, CEILINGS, SKYLIGHTS, WINDOWS, AND DOORS OF EACH CONDOMINIUM
UNIT, EACH OF SUCH SPACES BEING DEFINED AND REFERRED TO HEREIN AS A UNIT WITH FLOOR AND
CEILING LIMITS AS INDICATED ON SHEETS 3 AND 4.

EACH UNIT INCLUDES BOTH THE PORTIONS
OF THE BUILDING SO DESCRIBED AND THE AIRSPACE SO ENCOMPASSED, BUT THE FOLLOWING ARE NOT
PART OF THE UNIT: BEARING WALLS, COLUMNS, FLOORS, STAIRWAY STRUCTURES, ROOFS,
FOUNDATIONS, CONDUITS, WIRES AND OTHER UTILITY INSTALLATIONS, WHEREVER LOCATED EXCEPT
THE OUTLETS THEREOF WHEN LOCATED WITHIN THE UNIT. IN INTERPRETING DEEDS, DECLARATIONS
AND PLANS, THE EXISTING PHYSICAL BOUNDARIES OF THE UNIT OR OF A UNIT RECONSTRUCTED IN
SUBSTANTIAL ACCORDANCE WITH THE ORIGINAL PLANS THEREOF SHALL BE CONCLUSIVELY PRESUMED
TO BE ITS BOUNDARIES RATHER THAN THE METES AND BOUNDS (OR OTHER DESCRIPTION) EXPRESSED
IN THE DEED, PLAN OR DECLARATION REGARDLESS OF SETTLING OR LATERAL MOVEMENT OF THE
BUILDING AND REGARDLESS OF MINOR VARIANCE BETWEEN BOUNDARIES SHOWN ON THE PLAN OR IN
THE DEED AND DECLARATION AND THOSE OF THE BUILDING.

A FREEHOLD ESTATE CONSISTING OF THE REMAINING PORTION OF THE PROJECT IS DESCRIBED AND
REFERRED TO HEREIN AS "LOT 1, COMMON AREA". COMMON AREA SHALL INCLUDE WITHOUT
LIMITATION, EACH CONDOMINIUM STRUCTURE, (EXCEPT FOR THE UNITS), THE SOLID EARTH OF THE LOT
UPON WHICH THE STRUCTURE IS LOCATED AND THE AIR SPACE ABOVE THE STRUCTURE, ALL BEARING
WALLS, FLOORS, COLUMNS, ROOFS, SLABS, FOUNDATIONS, LOBBIES, COMMON STAIRWAYS AND
COMMON HALLS, RESERVOIRS, TANKS, PUMPS, AND OTHER CENTRAL SERVICES, PIPES, DUCTS,
CHUTES, CONDUITS, WIRES AND OTHER UTILITY INSTALLATIONS OF THE CONDOMINIUM STRUCTURE
WHEREVER LOCATED EXCEPT THE OUTLETS THEREOF WHEN LOCATED WITHIN THE UNITS, LAWNS,
PAVEMENT, TREES, AND OTHER LANDSCAPING ON THE LOTS ON WHICH THE CONDOMINIUM
STRUCTURES ARE LOCATED AS WELL AS ALL OTHER PROPERTY IN THE PROJECT NOT SPECIFICALLY
DESCRIBED ABOVE. COMMON AREA MAY BE USED FOR UTILITY PURPOSES.

ALL PURPOSE ACKNOWLEDGMENT – CALIFORNIA

STATE OF

COUNTY OF

ON _____ BEFORE me _____, a Notary Public,
personally appeared _____,
, 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.

Signature _____

DATE: 11/11/11	BY: J. L. BOWMAN	PROJECT: 11-11-11	SCALE: 1" = 20'
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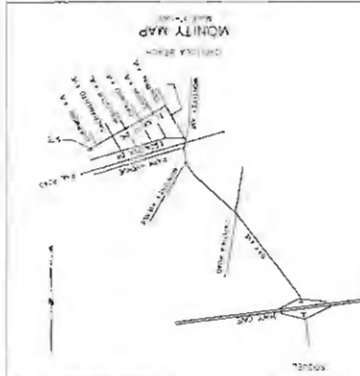
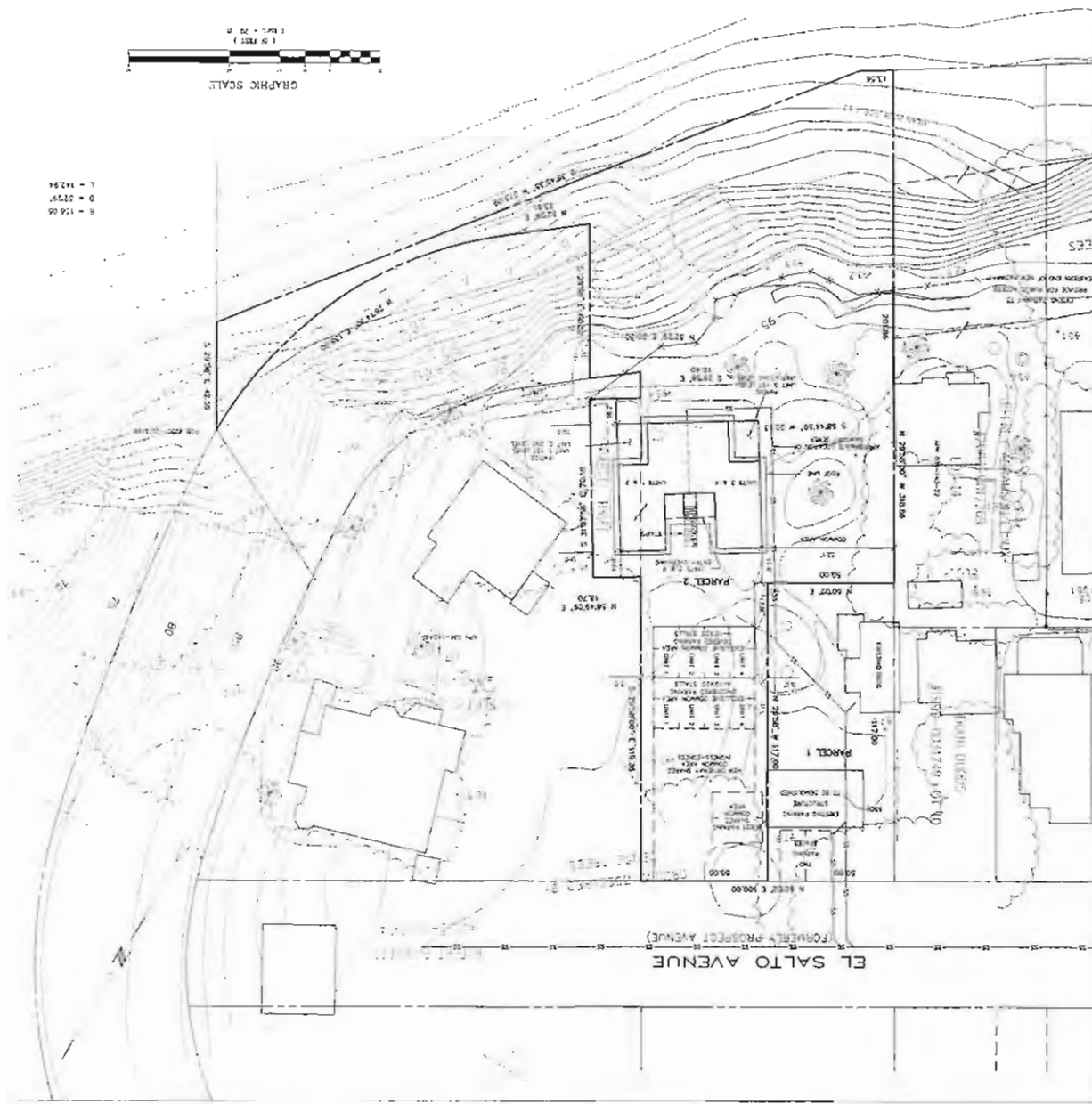
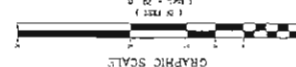
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NOTE:

BASE OF ELEVATION:

BASE OF BEARINGS:



STAFF REPORT

TO: PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

DATE: JANUARY 12, 2010 (AGENDA: JANUARY 20, 2011)

SUBJECT: **100-200 KENNEDY DRIVE #10-104 APN: 036-031-01**
Master Use Permit for an existing industrial property in the IP (Industrial Park) Zoning District.
Environmental Determination: Categorical Exemption
Property Owner: John McCoy

APPLICANT'S PROPOSAL

The applicant is requesting approval of a Master Conditional Use Permit for the light industrial buildings located at 100-200 Kennedy Drive in the IP (Industrial Park) zoning district. Approval of the proposed Master Use Permit would be consistent with the General Plan and Zoning Ordinance.

DISCUSSION

The 45,725 square foot site at the end of Kennedy Drive is currently occupied by an older 4,803 square foot building (former Moto Italiano) as well as a newly constructed 7,072 square foot light industrial building with an additional 2,448 square feet of interior mezzanine space. The new building is split into five individual commercial units which range from 1,318 to 1,455 square feet. Being recently developed, the site conforms to current city parking and landscaping requirements. At present, the new building is vacant with the exception of *Pelican Ranch Winery* which recently moved into the building. The wine production use falls under the category of "Manufacture of food products" and is therefore a principally permitted use in the IP zoning. Other principally permitted uses in the IP zoning include:

- A. *Administrative, executive and financial offices;*
- B. *Experimental, film or testing laboratories;*
- C. *Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;*
- D. *Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils;*

- E. *Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;*
- F. *Any other research or light manufacturing use which the planning commission finds not to be inconsistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties;*
- G. *Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.*

The proposed Master Conditional Use Permit for the industrial complex would allow not only the principally permitted uses listed in the IP zoning, but also a list of specific uses that would normally require an individual use permit. The applicant is attempting to build a community of food production related companies, similar to the Swift Street Courtyard in Santa Cruz (Kelly's French Bakery, Bonny Doon Winery, etc.) The industrial complex would host a mix of specialty foods, including the potential for tasting rooms and food education classes. With that in mind, he is requesting the following uses be permitted under the Master Conditional Use Permit:

1. Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site; and
2. Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on site.

Per Zoning Code Section 17.60.160, after a Master Use Permit has been issued, tenant use permits that occupy less than 12,000 square feet shall be approved by the Community Development Director upon inspection of the property, and verification that it and its landscaping are in good repair, and that all other conditions of the master use permit are being met. If one of the above-mentioned uses was proposed and of concern to the Director, the Director can require that a Conditional Use Permit be approved by the Planning Commission. In addition, a tenant use permit may be revoked if the tenant is the cause of violation of a condition of the Master Use Permit.

Pelican Ranch Winery

A good example of the two uses proposed as part of the Master Use Permit is the recently relocated *Pelican Ranch Winery*. As previously mentioned, the winery has moved into one of the units as a principally permitted food product manufacturer. Approval of the Master Use Permit would allow them to add a wine education and tasting room to the existing wine production use. The principal goal of the family operation is to produce fine wines and also engage information dissemination on topics such as sensory evaluation, oenology, and viticulture. If permitted, their tasting room would be approximately 466 square feet, have 1-2 part time employees, with tastings Friday through Sunday, noon to 5PM.

Covenants, Conditions and Restrictions (CC&Rs)

CC&Rs have been recorded as part of the condo conversion that was approved in February 2010. The CC&Rs restrict the permitted uses on the property, as well as provide conditions that the unit owners or lessees must follow in order to reduce impacts not only to each other, but to residences bordering the property. The conditions listed in the CC&Rs have been included as conditions of the Master Use Permit for consistency.

Parking

The site provides a total of 43 off-street parking spaces, 23 of which are located toward the front of the building off of Kennedy Drive. The remaining 20 parking spaces are located in the rear of the main building, and are intended for employee usage.

The City of Capitola Parking Ordinance does not provide specific requirements for industrial type uses. Therefore, determination of the appropriate parking is determined by the following code section:

17.51.210 Uses not specifically mentioned.

In the case of any building, structure or premises the use of which is not specifically mentioned in this chapter, the provisions for a use which is so mentioned and to which such use is similar, as determined by the planning commission, shall apply.

When the site was developed, staff looked at similar uses mentioned in the parking ordinance, and determined that a combination of office, wholesale/warehouse, and retail was likely the most similar uses listed. The older 4,803 square foot building is currently being used for warehouse storage, with a parking requirement of 1 space/5,000 square feet. The new building is vacant with the exception of the previously mentioned *Pelican Ranch Winery*. Taking a somewhat conservative approach, staff looked at the following parking scenario:

Use	Square Footage	Parking Requirement	Number of Spaces
Office	6,096	1 space/ 240 square feet	25 spaces
Retail	2,400	1 space/ 240 square feet	10 spaces
Warehouse	5,827	1 space/ 5000 square feet	1 space
		TOTAL REQUIRED	36 spaces

The above scenario assumes that half of the existing building (2,400 sq. ft.) would be retail, 1,200 would be office, and the remaining 1,200 would be warehouse. It also assumes that the entire mezzanine in the new building would be used as office (2,448 sq. ft.) in addition to the proposed office space (2,448 sq. ft.), with the remaining space being warehouse/manufacturing (4,624 sq. ft.). Based on this scenario, a total of 36 parking spaces would be required. The proposed project provides a total of **43 spaces**.

In addition to looking at this scenario, staff looked at R&D and industrial parking requirements from other local jurisdictions:

City of Santa Cruz	R&D	1 space/ 325 square feet
City of San Jose	R&D	1 space/ 350 square feet
	Industrial	1 space/ 350 square feet
City of Monterey	R&D	1 space/ 500 square feet
	Industrial	1 space/ 500 square feet
Proposed Project	R&D / Industrial	1 space/ 341 square feet

Based on the conservative scenario for the potential uses on the site, as well as comparing the average parking provided per square foot to other city's parking requirements, staff feels that the proposed 43 parking spaces will be sufficient for the uses permitted under the Master Use Permit.

Environmental Review

Section 15301 of the CEQA Guidelines exempts the operation, leasing, or minor alteration of existing facilities that involve negligible or no expansion of use. No adverse environmental impacts were discovered during review of the proposed project.

RECOMMENDATION

Staff recommends that the Planning Commission **approve** application #10-104 based on the following Conditions and Findings for Approval.

CONDITIONS

1. The project approval consists of a Master Conditional Use Permit for the light industrial buildings located at 100-200 Kennedy Drive
2. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission.
3. Truck loading and unloading hours shall be limited to 7:30AM – 8PM to minimize noise impacts to neighboring residents.
4. The approved sign program shall permit tenants signage along the north elevation of the new building where the main entrances to the office areas will be located. Each of the five tenant spaces will be permitted one wall sign, with a maximum height of 20” and a maximum length of 8’. Signs are to be of wood or metal construction with vinyl graphics. These sign requirements will also apply to the existing building when new tenants are incorporated and the existing nonconforming signs are removed.
5. All businesses shall obtain a sign permit from the Community Development Department.
6. No roof equipment is to be visible to the general public. Any necessary roof screening is to match the color of the building as closely as possible. Plans for any necessary screening shall be submitted to the Community Development Department prior to, or in conjunction with, building permit submittal.
7. Rosedale Avenue shall be open to vehicular access for the proposed project and Cabrillo Estates Mobile Home Park at all times.
8. The property owner shall maintain a gate, for which they control access, at the location of the previous gate that was removed. The gate shall cross the entire roadway.
9. All lighting shall be focused downward and away from adjacent properties. The Planning Commission shall review lighting upon receipt of a legitimate complaint.
10. All uses shall be conducted wholly within an enclosed building, except for off-street parking and loading facilities and no merchandise shall be displayed outside the building without an individual Conditional Use Permit being issued for the business.
11. All businesses within the center shall obtain a business license prior to operating.
12. Prior to leasing of any space upon the subject property, the holder of the master use permit shall inform all prospective tenants, or tenants renewing or extending leases, of the conditions of the master use permit and of the requirements of 17.60.160 of the Capitola Municipal Code.
13. Prior to leasing of any space upon the subject property, the holder of the master use permit shall submit in writing a description of the prospective tenant, including the name of the business, type business, number of employees and the square footage of the space to be

leased to the Community Development Department. Upon inspection of the property and verification that the landscaping is in good repair and that all the conditions of the master use permit are being met, the tenant use permit shall be issued.

14. A tenant use permit shall be revoked in the manner provided in Section 17.60.120 if the tenant is the cause of violation of a condition of the Master Use Permit.
15. Businesses occupying over 12,000 square feet of building shall obtain a standard conditional use permit with approval from the Planning Commission.
16. Manufacturing and industrial processes shall use only gas or electricity as a fuel; provided, however, that equipment using other fuel may be installed for standby purposes only.
17. No owner or invitee shall use or permit any sound system including, but not by way of limitation, loudspeakers, public address, systems, sound amplifiers, radio or broadcast within the project in such a manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the building towards the residential areas.
18. No vehicle used regularly on site and under control of a business owner or invitee shall be equipped with back up noise devices audible more than twenty feet from vehicle and owner and invitee shall encourage delivery vehicles outside of their control to approach the facility in such a way to minimize noise.
19. Hours of normal operation on site shall be 7:30AM until 8PM unless a Conditional Use Permit has been obtained, and any activity outside of these hours shall be confined to quiet indoors activity no audible outside of the building. Vehicles coming and going at any non-business hours shall be quiet and conform to normal sound levels.
20. Equipment or machinery regularly used in the production of goods or services on site that produces audible at the property boundaries, including but not limited to sawing, cutting, grinding, shall require a Conditional Use Permit. Air compressors shall be of a quiet type and enclosed inside the building in sound containing enclosures.
21. Approved uses to be permitted by the Master Use Permit are as follows:
 - Administrative, executive and financial offices;
 - Experimental, film or testing laboratories;
 - Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;
 - Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils;
 - Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;
 - Any other research or light manufacturing use which the planning commission finds not to be inconsistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties;
 - Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.

- Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site; and
- Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on site

FINDINGS

A. The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.

Community Development Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District. Conditions of approval have been included to carry out the objectives of the Zoning Ordinance and General Plan.

B. The application will maintain the character and integrity of the neighborhood.

Planning Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District and will not negatively impact the surrounding neighborhood. Conditions of approval have been included to ensure that the project maintains the character and integrity of the neighborhood.

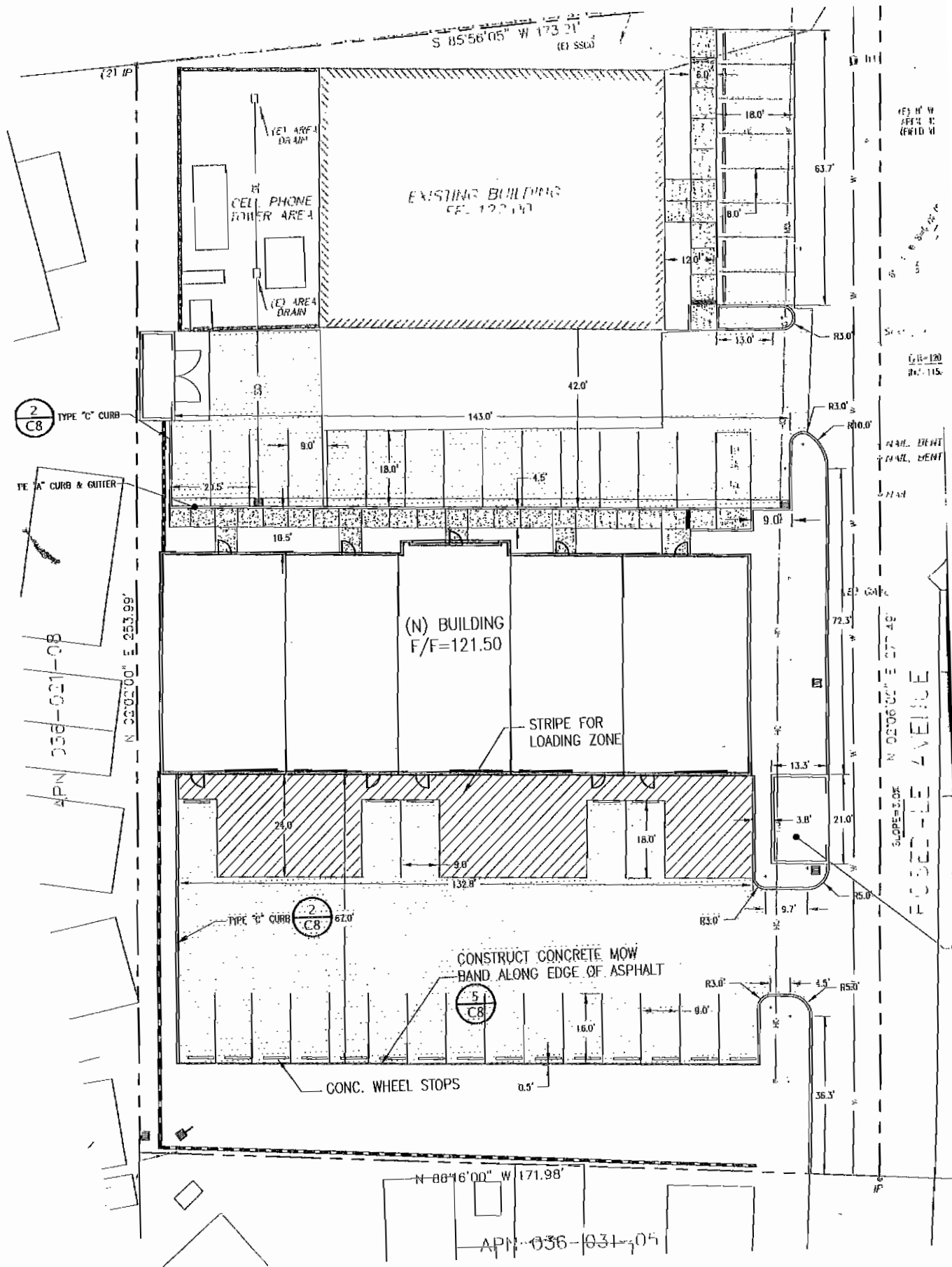
C. This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.

Section 15301 of the CEQA Guidelines exempts the operation, leasing, or minor alteration of existing facilities that involve negligible or no expansion of use. No adverse environmental impacts were discovered during review of the proposed project.

Report Prepared By: Ryan Bane
Senior Planner

Attachment A – Site Plan
Attachment B – Letter from the applicant, dated December 14, 2010
Attachment C – Master Use Permit
Attachment D – Recorded CC&Rs for the property

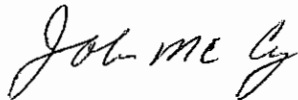
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To the City of Capitola:

We are asking for a Master Conditional Use Permit for the entire property instead of one unit at a time so that we can attract the best possible mix of businesses to our community. Once before, we attempted to build a community of food production related companies, but the Permit process caused them to locate elsewhere. We are fortunate that Phil and Peggy Crews of Pelican Ranch Winery have the ability to follow this process to completion this time. We believe that they will be the nucleus of a new movement of businesses to Capitola.

I was recently questioned at the City offices about the use of the old motorcycle building, and I replied that it is now used only for dead storage. When I operated my business from that location, we sold \$20,000.00 motorcycles and other merchandise that generated sales tax income for the City, plus there were the usual business licenses and fees and business interactions with dozens of other firms in the surrounding area. Today, there is no revenue source for anyone except the original low 1994 property tax value. Someday, I would like this property to become a vital part of the Capitola business community again, and I certainly hope that we can allow enough business uses for the beautiful new building units to attract viable small companies.



John McCoy
Property Owner

MASTER USE PERMIT FOR
100-200 KENNEDY DRIVE

1. All businesses shall comply with all conditions of approval placed on the industrial complex.
2. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission.
3. Truck loading and unloading hours shall be limited to 7:30AM – 8PM to minimize noise impacts to neighboring residents.
4. The approved sign program shall permit tenants signage along the north elevation of the new building where the main entrances to the office areas will be located. Each of the five tenant spaces will be permitted one wall sign, with a maximum height of 20" and a maximum length of 8'. Signs are to be of wood or metal construction with vinyl graphics. These sign requirements will also apply to the existing building when new tenants are incorporated and the existing nonconforming signs are removed.
5. All businesses shall obtain a sign permit from the Community Development Department.
6. No roof equipment is to be visible to the general public. Any necessary roof screening is to match the color of the building as closely as possible. Plans for any necessary screening shall be submitted to the Community Development Department prior to, or in conjunction with, building permit submittal.
7. Rosedale Avenue shall be open to vehicular access for the proposed project and Cabrillo Estates Mobile Home Park at all times.
8. The property owner shall maintain a gate, for which they control access, at the location of the previous gate that was removed. The gate shall cross the entire roadway.
9. All lighting shall be focused downward and away from adjacent properties. The Planning Commission shall review lighting upon receipt of a legitimate complaint.
10. All uses shall be conducted wholly within an enclosed building, except for off-street parking and loading facilities and no merchandise shall be displayed outside the building without an individual Conditional Use Permit being issued for the business.
11. All businesses within the center shall obtain a business license prior to operating.
12. Prior to leasing of any space upon the subject property, the holder of the master use permit shall inform all prospective tenants, or tenants renewing or extending leases, of the

conditions of the master use permit and of the requirements of 17.60.160 of the Capitola Municipal Code.

13. Prior to leasing of any space upon the subject property, the holder of the master use permit shall submit in writing a description of the prospective tenant, including the name of the business, type business, number of employees and the square footage of the space to be leased to the Community Development Department. Upon inspection of the property and verification that the landscaping is in good repair and that all the conditions of the master use permit are being met, the tenant use permit shall be issued.
14. A tenant use permit shall be revoked in the manner provided in Section 17.60.120 if the tenant is the cause of violation of a condition of the Master Use Permit.
15. Businesses occupying over 12,000 square feet of building shall obtain a standard conditional use permit with approval from the Planning Commission.
16. Manufacturing and industrial processes shall use only gas or electricity as a fuel; provided, however, that equipment using other fuel may be installed for standby purposes only.
17. No owner or invitee shall use or permit any sound system including, but not by way of limitation, loudspeakers, public address, systems, sound amplifiers, radio or broadcast within the project in such a manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the building towards the residential areas.
18. No vehicle used regularly on site and under control of a business owner or invitee shall be equipped with back up noise devices audible more than twenty feet from vehicle and owner and invitee shall encourage delivery vehicles outside of their control to approach the facility in such a way to minimize noise.
19. Hours of normal operation on site shall be 7:30AM until 8PM unless a Conditional Use Permit has been obtained, and any activity outside of these hours shall be confined to quiet indoors activity no audible outside of the building. Vehicles coming and going at any non-business hours shall be quiet and conform to normal sound levels.
20. Equipment or machinery regularly used in the production of goods or services on site that produces audible at the property boundaries, including but not limited to sawing, cutting, grinding, shall require a Conditional Use Permit. Air compressors shall be of a quiet type and enclosed inside the building in sound containing enclosures.
21. Approved uses to be permitted by the Master Use Permit are as follows:
 - Administrative, executive and financial offices;
 - Experimental, film or testing laboratories;
 - Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not

including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;

- Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils;
- Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;
- Any other research or light manufacturing use which the planning commission finds not to be inconsistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties;
- Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.
- Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site; and
- Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on site

RECORDING REQUESTED BY:

John McCoy

WHEN RECORDED, MAIL TO:

John McCoy
PO BOX 970
Soquel, CA 95073

(Space Above For Recorder's Use)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR 100-200 KENNEDY DRIVE
COMMERCIAL CONDOMINIUMS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS dated for reference purposes as of December __, 2010, is made by John J. McCoy, Trustee of the McCoy Trust, created on February 25, 2008 ("Declarant"). This Declaration is made with reference to the facts set forth in the following Preamble. All capitalized terms set forth in the Preamble and not otherwise defined therein shall have the meaning set forth in Article I below.

P R E A M B L E

Declarant is the owner of certain real property situated in the City of Capitola, Santa Cruz County, California, described as follows:

Parcel A and Units 1 through 6, inclusive, of Tract ____, as shown on a Map filed in Book 117, Pages __ to __, of Parcel Maps, in the Office of the County Recorder of said County.

Original APN: 036-031-01

Declarant deems it desirable, for the efficient preservation of the amenities in the Project, to create a "condominium project" within the meaning of Section 1351(f) of the California Civil Code, pursuant to the Davis-Stirling Common Interest Development Act (the "Davis-Stirling Act") to subdivide the above-referenced property as authorized by Section 66427 of the California Government Code into "condominiums" (as defined in Section 783 of the California Civil Code) and to impose mutually beneficial restrictions under a general plan for ownership and use of the Project for the benefit of all Condominiums created therein pursuant to the Davis-Stirling Common Interest Development Act (the "Davis Stirling Act"). The general plan for development of the Project provides for formation of an incorporated association pursuant to the California Nonprofit Mutual Benefit Corporation Law, the Members of which will be the Owners of the Condominiums within the Project, for purposes of exercising the powers assigned

to such Association in the Governing Documents or otherwise authorized by Section 1363 of the California Civil Code (excluding subsection (b) thereof), including the power to (1) own, maintain and administer the Common Area, (2) administer and enforce the Governing Documents, and (3) collect and disburse the Assessments and charges hereinafter created.

Declarant declares that the Project will be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes contained in this Declaration, all of which are for the purpose of enhancing the attractiveness and desirability of the Project, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Project. The easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes set forth herein will (1) run with and burden the Project and will be binding upon all Persons having or acquiring any interest in the Project, their heirs, successors in interest and assignees; (2) inure to the benefit of the Project and any interest therein; (3) inure to the benefit of and be binding upon Declarant and his successors in interest and assignees and each Owner and each Owner's successors in interest and assignees; and (4) may be enforced by Declarant, any Owner, or the Association.

ARTICLE I: DEFINITIONS

The following terms shall have the meanings set forth below, unless the context clearly indicates otherwise:

1.1 Articles. "Articles" means the Articles of Incorporation of the Association as amended from time to time.

1.2 Assessment. "Assessment" means any Common Assessment, Capital Improvement Assessment, Extraordinary Assessment, Reconstruction Assessment or Compliance Assessment imposed by the Association on all or any one of the Condominiums within the Project pursuant to the terms of this Declaration.

1.3 Assessment, Capital Improvement. "Capital Improvement Assessment" means a charge which the Board levies against the Owners and their Condominiums representing a portion of the cost to the Association for installation or construction of any capital Improvements on Common Area. Capital Improvement Assessments will be levied in the same proportion as Common Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.4 Assessment, Common. "Common Assessment" means a charge levied against the Owners and their Condominiums to be used to satisfy Common Expenses. The Common Assessment is a regular assessment as described in California Civil Code Section 1366.

1.5 Assessment, Compliance. "Compliance Assessment" means a charge against a particular Owner directly attributable to or reimbursable by that Owner equal to the cost incurred by the Association for corrective action performed pursuant to the Governing Documents, plus interest and other charges on such Compliance Assessments as provided for in the Governing

Documents. Compliance Assessments may include collection costs, expenses and reasonable attorneys' fees.

1.6 Assessment, Extraordinary. "Extraordinary Assessment" means a charge levied against Owners and their Condominiums representing any expense incurred or to be incurred in accordance with the Governing Documents which cannot be imposed as a Common Assessment, Capital Improvement Assessment or Reconstruction Assessment. Extraordinary Assessments will be levied in the same proportions as Common Assessments.

1.7 Assessment, Reconstruction. "Reconstruction Assessment" means a charge which the Board may levy against the Owners and their Condominiums representing a portion of the Association's cost to reconstruct any Improvements to or within the Common Area. Reconstruction Assessments will be levied in the same proportion as Common Assessments.

1.8 Association. "Association" means the 100-200 Kennedy Drive Association, a nonprofit mutual benefit corporation, and its successors in interest. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.9 Association Maintenance Funds. "Association Maintenance Funds" means the accounts created for the Association receipts and disbursements pursuant to Article VIII hereof.

1.10 Board of Directors. "Board" or "Board of Directors" means the Board of Directors of the Association. The Board shall be appointed or elected, as applicable, pursuant to the Bylaws.

1.11 Building(s). "Building(s)" means, individually or collectively, any one or both of the commercial buildings located within the Project and all additions, alterations, replacements and modifications thereto and any other commercial buildings constructed within the Project from time to time.

1.12 Budget. "Budget" means a written, itemized estimate of the Association's income and Common Expenses approved by the Board pursuant to the Bylaws.

1.13 Bylaws. "Bylaws" means the Bylaws of the Association as amended from time to time.

1.14 City. "City" means the City of Capitola, Santa Cruz County, California, and its various departments, divisions, employees and representatives.

1.15 Close of Escrow. "Close of Escrow" means the date on which a deed conveying a Condominium is executed and Recorded by Declarant. The term "Close of Escrow" shall not include Recording a deed between Declarant and any affiliate of Declarant or any successor to any rights of the Declarant.

1.16 Common Area. "Common Area" means that certain area within the Project described as "Common Area" on the Condominium Plan. Common Area shall include all structural components of the Buildings as well as Demising Walls constructed to divide contiguous Units under separate ownership, any Common Utility Improvements located within a Unit or any other

portion of the Project. Common Area shall further include easements and reservations for the benefit of the Association over the real property within the Project as set forth in this Declaration. Upon the first Close of Escrow for the sale by Declarant of a Condominium within the Project, the Common Area designated on the Condominium Plan shall be owned by the Owners of all Condominiums within the Project as tenants-in-common. Unless otherwise expressly set forth herein, any references in this Declaration to Common Area are references to the Common Area within the Project as a whole and not to portions thereof.

1.17 Common Expenses. "Common Expenses" means those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of the following:

- (a) Maintaining, managing, operating, repairing and replacing the Common Area;
- (b) Unpaid Capital Improvement Assessments, Common Assessments, Compliance Assessments, Extraordinary Assessments and Reconstruction Assessments;
- (c) Managing and administering the Association;
- (d) Compensation paid by the Association to the Manager (if any), accountants, attorneys and Association employees;
- (e) The cost of all utilities and mechanical and electrical equipment serving the Common Area as well as any commonly-metered utilities serving the Units or any other utility services provided by the Association, and any other services benefiting the Common Area or the Owners, if the Board elects to provide such services to the Owners;
- (f) Premiums for fire, casualty and liability insurance, worker's compensation insurance, and other insurance to be maintained by the Association pursuant to Article IX hereof;
- (g) Premiums for fidelity bonds for the Board of Directors and Association employees;
- (h) Taxes and assessments paid by the Association;
- (i) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Project;
- (j) Reasonable Reserves; and
- (k) All other expenses incurred by the Association for any reason whatsoever in connection with the Project or services provided to or for the benefit of Owners and occupants of the Project.

1.18 Common Utility Improvements. "Common Utility Improvements" means all gas, water and waste pipes, all sewers, ducts, chutes, conduits, wires and other utility installations located anywhere within the Project which serve the Common Area or multiple Units within the Project,

including utility installations located under the Buildings, within the exterior walls of the Buildings, within utility-bearing Demising Walls separating the Units and within any portions of the Units subject to utility easements in favor of the Association as set forth in Section 6.4.2 below. The Common Utility Improvements shall further include all lines, pipes or conduits serving the Common Area and/or multiple Units within the Project commencing from the point of connection to utility lines within a public right-of-way up to, and excluding, the point at which utility improvements serving only one of the Units connect to such Common Utility Improvements.

1.19 Condominium. “Condominium” means an estate in real property as defined in California Civil Code Section 1351(f). A Condominium consists of a separate ownership interest in fee in a Unit together with an undivided fee simple ownership interest in the Common Area of the Project in which the Unit is located and all easements appurtenant thereto. Subject to the provisions of Section 10.3 below, the undivided fee simple interest in the Common Area is appurtenant to each Unit within the Project and is a fraction having one (1) as its numerator and the number of Units in the Project as its denominator; and shall be held by the Owners of Condominiums in the Project as tenants-in-common. Each undivided interest in the Common Area, fee title to the respective Unit, all easements conveyed therewith and the appurtenant Membership in the Association shall not be separated or separately conveyed, and each such undivided interest, Membership and easements shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. This restriction on severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Project is suspended in accordance with Section 1359 of the California Civil Code. Any conveyance by an Owner of a Condominium, or any portion thereof, shall be presumed to convey the entire Condominium together with a Membership in the Association.

1.20 Condominium Plan. “Condominium Plan” means the Recorded condominium plan for the Project, as amended from time to time. The Condominium Plan shall consist of (a) a description or survey map of the Project which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Common Area and each Unit within the Project, and (c) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Project, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Project.

1.21 Declarant. “Declarant” means John J. McCoy, Trustee of the McCoy Trust, created on February 25, 2008, his successors and any Person to whom he assigns any of his rights and powers under this Declaration by express written assignment. Any such assignment may include some or all of the rights of the Declarant and may be subject to such conditions or limitations as Declarant may impose in his sole and absolute discretion.

1.22 Declarant Rights Termination Date. “Declarant Rights Termination Date” means the date when Declarant no longer owns real property in the Project.

1.23 Declaration. “Declaration” means this instrument as amended and restated from time to time.

1.24 Demising Walls. “Demising Walls” means any walls separating Units under common ownership from other Units under separate ownership. Demising Walls shall not be deemed to include internal walls constructed by or on behalf of any Owner located entirely within such Owner’s Unit.

1.25 Design Guidelines. “Design Guidelines” means any architectural or design guidelines which may be adopted by the Declarant and/or the Board from time to time pursuant to Article IV below (the “Condominium Design Guidelines”).

1.26 Exclusive Use Easement. “Exclusive Use Easement” means any portion of the Common Area which is subject to an exclusive use easement granted to the Owner of one or more (but not all) of the Condominium(s) within the Project for the exclusive use of the occupants of such Condominium(s).

1.27 Fiscal Year. “Fiscal Year” means the fiscal accounting and reporting period selected by the Board for the Association.

1.28 Governing Documents. “Governing Documents” means this Declaration, the Articles and Bylaws of the Association and the Rules and Regulations (including the Condominium Design Guidelines, if any).

1.29 Governmental Requirements. “Governmental Requirements” means all applicable laws, rules, regulations, orders, ordinances, subdivision requirements, zoning restrictions, map conditions and all other requirements of the City and any other local governmental agency with jurisdiction over the Project.

1.30 Hazardous Materials Laws. “Hazardous Materials Laws” means all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like relating to the environmental condition of the Project or the presence of “Hazardous Materials” (as defined below) in, on, above, under or otherwise affecting the Project including, without limitation, (i) Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), and (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), Section 311 of the Federal Water Pollution Control Act (33 USC Section 1251 *et seq.*), Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 USC Section 9601 *et seq.*, Section 401.15 of the Clean Water Act, 40 CFR 116, and Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 USC Section 11002 *et seq.* As used herein, the term “Hazardous Material” means any hazardous or toxic substance, material or waste which

is or becomes regulated by any local governmental authority, the State of California or the United States Government, and includes, without limitation, petroleum, asbestos, pesticides, polychlorinated biphenyls, solvents, and any other material or substance which is defined as a "Hazardous Waste," "Extremely Hazardous Waste," "Restricted Hazardous Waste," "Hazardous Substance," or "Hazardous Material" under applicable Hazardous Materials Law.

1.31 Improvement. "Improvement" means any improvement constructed or installed above or below ground within the Project, including without limitation all (a) the Buildings, the Demising Walls within the Buildings or any other building or structure located on the Project from time to time and any appurtenance thereto, (b) any directory or monument signs, directional signs, poles, trash enclosures, the paint on all Buildings, exterior lights or exterior light standards located on the exterior of the Buildings, (c) any type of railings, ramps, walls, exterior air conditioning equipment, antennae, awnings, stairways or decks attached or adjacent to any of the Buildings, (d) any utility lines, or other pipes, sewers, ducts, chutes, conduits, wires or other utility installations located anywhere within the Project. The term Improvement shall further include the following (collectively, the "Owner Improvements"): (i) interior walls, dividers, cabinets, cases, bookcases, shelves or storage racks attached to Demising Walls or other structural elements of the Buildings, (ii) wall coverings, window coverings or floor coverings, and (iii) any other fixtures, equipment or other improvements or structures located within any Unit. Finally, the term Improvements shall include any installation, construction, remodeling, replacement, refinishing, or alteration of any of the foregoing.

1.32 Manager. "Manager" means the Person retained by the Association, if any, to perform management functions of the Association as limited by the Governing Documents and the terms of the agreement between the Association and such Person. The Manager may be Declarant or an affiliate of Declarant.

1.33 Member, Membership. "Member" means Declarant and any Person holding a Membership in the Association pursuant to Section 5.1 below. "Membership" shall mean the voting, and other rights and privileges of the Owners of the Condominiums within the Project as Members of the Association, together with the corresponding duties and obligations, as provided in the Governing Documents.

1.34 Mortgage; First Mortgage. "Mortgage" means any mortgage, indenture of mortgage, or deed of trust encumbering the interest, whether fee or leasehold, of an Owner in a Condominium. "First Mortgage" means any such mortgage, indenture of mortgage, or deed of trust which is a first priority lien on such Condominium as well as any other mortgage, indenture of mortgage, or deed of trust which secures a loan guaranteed by the U.S. Small Business Administration.

1.35 Mortgagee; First Mortgagee. "Mortgagee" means a mortgagee, or trustee and beneficiary under a Mortgage, and to the extent applicable, a fee owner or lessor or sublessor of any Condominium which is the subject of a lease under which any Owner becomes a lessee in a so-called "sale and leaseback" or "assignment and subleaseback" transaction. First Mortgagee shall refer to the mortgagee, trustee or beneficiary under any First Mortgage.

1.36 Notice and Hearing. "Notice and Hearing" means written notice and a hearing before the Board as provided in the Bylaws and this Declaration.

1.37 Owner. "Owner" means the Person, including Declarant, who is the record owner of fee simple title to any Condominium within the Project. The term "Owner" may include a seller under an executory contract of sale but excludes Mortgagees. If a Condominium is subject to a lease, the owner of the fee title and not the lessee of the applicable Condominium shall be deemed the Owner regardless of the term of the Lease. If an Owner leases an entire Condominium to a person, such Owner may assign its rights and delegate its obligations under this Declaration as to such Condominium to the lessee under any such lease so long as such Owner provides notice thereof to the Board and remains responsible for its obligations under this Declaration. Whenever an Owner transfers such Owner's entire interest in a Condominium to another Person, the transferring Owner shall be released and discharged from the obligations thereafter accruing under this Declaration, and the new Owner shall be responsible for all such obligations thereafter accruing under this Declaration and shall be bound by this Declaration.

1.38 Permittees. "Permittees" means all Persons from time to time entitled to the use and occupancy of any Unit within the Project (or any portion thereof) under any lease, deed or other arrangement with an Owner and the respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires of such Persons.

1.39 Person. "Person" means one or more natural individuals or any entity with the legal right to hold title to real property. When the word "person" is used and is not capitalized, the word only refers to natural persons.

1.40 Project. "Project" means all of the Units and Common Area encumbered by this Declaration from time to time. The Project is a "common interest development" and a "condominium project" as defined in Sections 1351(c) and 1351(f) of the California Civil Code.

1.41 Record, File, Recordation. "Record," "File," or "Recordation" means, with respect to any document, the entry of such document in the Official Records of the Santa Cruz County Recorder.

1.42 Reserves. "Reserves" means those Common Expenses for which Association funds are set aside pursuant to Article VIII of this Declaration for funding the maintenance, repairs and replacement of the major components of the Common Area or to make additional improvements to the Common Area which would not reasonably be expected to recur on an annual or more frequent basis and for payment of deductible amounts for insurance policies which the Association maintains pursuant to Section 9.1 below. The amount of Reserves to be maintained by the Association will be determined annually by the Board pursuant to reserve guidelines established in accordance with prudent property management practices generally applied for a commercial "common interest development." The Board may suspend funding of Reserves as it deems appropriate, including, without limitation, the right to maintain Reserves at less than one hundred percent of the Association's cost to reconstruct the Common Area.

1.43 Rules and Regulations. "Rules and Regulations" means such reasonable, nondiscriminatory rules and regulations consistent with this Declaration for the maintenance, use, and enjoyment of the Common Area and the Condominiums, as may be adopted from time to time by Declarant or the Association. Such Rules and Regulations shall include, without limitation, any Condominium Design Guidelines adopted by Declarant or the Association from time to time. Each Owner shall be obligated to comply with, and the Association is authorized and empowered to enforce, the Rules and Regulations, provided that any such enforcement shall be accomplished in a uniform and nondiscriminatory manner.

1.44 Sign Program. "Sign Program" means (i) the set of design standards and other requirements regulating Signs on the Project, as adopted by the City, and (ii) any other standards, rules or regulations which may be promulgated by Declarant and/or adopted by the Board regulating Signs on the Project.

1.45 Signs. "Signs" means all advertising, placards, signs, names, billboards, insignia, numerals, addresses, and descriptive words of any type affixed, inscribed, constructed, or maintained on the Project or on any Improvement thereon.

1.46 Unit. "Unit" means a separate interest in space as defined in Civil Code Section 1351(f). Each Unit is a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. The approximate boundaries of each Unit will be shown on the Condominium Plan. In the event that two (2) or more separate but contiguous Units (as shown on the Condominium Plan) are conveyed concurrently to same Owner or Owners, all such contiguous Units shall be referred to herein collectively as a "Unit." Each Unit includes the hardware on entry doors and the glass portions of the windows, doors and other glass surfaces that are constructed at Unit boundaries. In interpreting deeds, the Declaration and the Condominium Plans, the actual boundaries of each Unit shall be deemed to extend to the interior unfinished surfaces of the Demising Walls and/or exterior walls of the Building within which the Unit is located and to the unfinished surfaces of the floors and structural ceilings encompassing the Unit, as constructed or reconstructed in substantial accordance with the original plans for the Building. In the event that any "drop" ceilings or "false" ceilings are installed within a Unit, the Unit shall nonetheless be deemed to extend beyond such drop ceiling to the unfinished surface of the structural ceiling above and to the surface of any structural beams extending below such structural ceiling. The foregoing interpretation shall apply notwithstanding any description expressed in this Declaration or the Condominium Plan and/or grant deed conveying such Unit, regardless of settling or lateral movements of Improvements, and regardless of minor variances between Unit boundaries shown in the Condominium Plan or and/or grant deed conveying such Unit and those of the Improvement.

ARTICLE II: USE RESTRICTIONS

The Project shall be held, used and enjoyed subject to the following restrictions:

2.1 Permitted Uses. The Condominiums in the Project may be used only for the following uses:

- (a) Administrative, executive and financial offices;

(b) Experimental, film or testing laboratories;

(c) Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;

(d) Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils, unless otherwise approved by the City and the Board;

(e) Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;

(f) Any other research or light manufacturing use which the planning commission of the City finds not to be inconsistent with the purpose of Chapter 17.36 of the City's Municipal Code and which will not impair the present or potential use of adjacent properties; and

(g) Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.

2.2 Other Required Conditions.

(a) All uses shall be conducted wholly within a completely enclosed Building, except for gas pumps, and off-street parking and loading facilities, public and quasi-public uses and public utility service yards.

(b) Manufacturing and industrial processes shall use only gas or electricity as a fuel; provided, however, that equipment using other fuel may be installed for standby purposes only.

(c) Noise. No owner or invitee shall use or permit any sound system including, but not by way of limitation, loudspeakers, public address systems, sound amplifiers, radio or broadcast within the Project in such a manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the building towards the residential areas.

(d) No vehicle used regularly on site and under control of Owner or Invitee shall be equipped with back up noise devices audible more than twenty feet from vehicle and Owner and invitee shall encourage delivery vehicles outside of their control to approach the facility in such a way to minimize noise

(e) Hours of normal operation on site shall be 7:30AM until 8PM unless a Conditional Use Permit has been obtained, and any activity outside of these hours shall be confined to quiet indoors activity not audible outside of the building. Vehicles coming and going at any non-business hours shall be quiet and conform to normal sound levels.

(f) Equipment or machinery regularly used in the production of goods or services on site that produces audible at the property boundaries, including but not limited to sawing, cutting, grinding, shall require a Conditional Use Permit. Air compressors shall be of a quiet type and enclosed inside the building in sound containing enclosures.

2.3 Nuisances. No noxious or offensive activities shall be carried on upon any part of the Project, which may be, or may become, a nuisance to the Owners, or which shall in any way interfere with the quiet enjoyment of any other Owner's Condominium, or which shall in any way increase the rate of insurance for the Common Area or any other Condominium within the Project. Each Owner shall comply with all applicable governmental noise abatement ordinances. Every use shall be operated so that (a) it does not emit any obnoxious or dangerous amount of heat, glare, radiation or fumes outside of the Unit in which the use is being conducted, and (b) so that ground vibration inherently and recurrently generated by such use is not perceptible, without instruments, at any point outside of the Unit in which the use is being conducted, and (c) so that such use does not result in the emission of any electro-mechanical or electro-magnetic disturbance radiation that would interfere with uses or activities conducted on any other portion of the Project. No materials or wastes shall be permitted within a Unit in such form or manner as to permit transfer thereof outside of such Unit by natural causes or forces and all materials or wastes which might cause fumes or dust or which might constitute a fire hazard or which might be edible by, or otherwise attractive to animals or insects shall be stored only within the Unit. Except as to common trash bins or other such facilities as authorized and maintained by the Association, there shall be no storage of trash or other materials of any kind in any portion of the Common Area. Any such prohibited storage may be removed by the Association at the expense of the responsible Owner. As set forth in Chapter 10.52 of the City's Municipal Code, there shall be no storage of abandoned, wrecked, dismantled or inoperative vehicles or parts thereof on any portion of the Common Area, including operable vehicles not in daily use.

2.4 Signs. All Signs displayed anywhere within the Project must comply with (a) all applicable Governmental Requirements governing the type of advertising permitted of the Owner by all licensing authorities with jurisdiction over the Project or the applicable Owner, (b) any Condominium Design Guidelines or Sign Program which may be adopted for the Project from time to time. Without limiting the foregoing, no Signs may be installed hung, flown or maintained on or over the Common Area (including, without limitation, from or adjacent to any exterior walkways or railings within the Common Area) or shown or displayed from or visible from the outside of any Unit other than (i) the monument signage installed by Declarant, (ii) Signs which state that a Condominium is for rent or sale (provided such Signs otherwise comply with the Sign Program and any applicable Condominium Design Guidelines, (iii) Signs that may be required by a legal proceeding or (iv) any other Sign otherwise approved by Declarant or, following the Declarant Rights Termination Date, the Board in their sole discretion. The Association may summarily cause all unauthorized Signs to be removed or destroyed.

2.5 Further Subdivision. Except as otherwise provided in this Declaration, no Owner other than Declarant may physically or legally subdivide a Condominium in any manner. This provision does not limit the right of an Owner to (a) transfer or sell any Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or community property; (b) sell such Owner's Condominium; or (c) rent or lease such Owner's

Condominium by a written lease or rental agreement subject to this Declaration. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of this Declaration, nor may Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Project seek any such judicial partition.

2.6 Leasing. An Owner may rent all or any portion of such Owner's Condominium provided that the Condominium is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of this Declaration. In the event that any Permittee occupying any Condominium or portion thereof pursuant to a lease thereof fails to comply with the provisions of this Declaration, such non-compliance shall constitute a breach of the lease as well as a violation of this Declaration.

ARTICLE III: ASSOCIATION

3.1 General Duties and Powers. The Association has the duties and powers set forth in the Governing Documents and also has the general and implied powers of a nonprofit public benefit corporation generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers set forth in the Governing Documents. All of the Association's powers shall be exercised by its Board of Directors except those powers reserved in specific provisions of the Governing Documents to the Members.

3.2 Specific Duties and Powers. In addition to its general powers and duties, the Association, after it is formed, shall have the following specific powers and duties:

3.2.1 The Common Area. The power and duty to accept, maintain, repair and otherwise manage the Common Area in accordance with the Governing Documents. The Association may install or remove capital Improvements on or within the Common Area. The Association may reconstruct, replace or refinish any Improvement on or within the Common Area.

3.2.2 Utilities. The power and duty to obtain, for the benefit of the Project, all commonly metered water, gas and electric services necessary to serve the Common Area, and the power, but not the duty, to install, operate, maintain and repair any utility system and communications and information transmission facilities serving any of the Owners or their Permittees and to charge the costs of operation of these systems to the Owners based on their relative use of these utility systems.

3.2.3 Trash; Janitorial Services. The power and duty to provide trash collection services from the common trash enclosures within the Common Area, and the power but not the duty to provide for janitorial services to the Units within the Project.

3.2.4 Granting Rights. The power and duty to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in portions of the Common Area, to the extent any such grant is reasonably required for (a) any necessary utilities, sewer facilities and storm drain systems to serve the Common Area or the Units, (b) purposes of conformity with the as-built

location of Improvements installed or authorized by Declarant, or (c) other purposes consistent with the intended use of the Project as a condominium project, along with the power, but not the duty, to grant easements or licenses or other rights over the Common Area for (i) Exclusive Use Easements, (ii) roof-mounted antenna, HVAC or other mechanical equipment, or (iii) communications and information transmission facilities, in each case as requested by the Owner of any Condominium but subject to such reasonable rules, regulations, insurance or indemnification requirements as the Board may impose in its sole discretion.

3.2.5 Employ Personnel. The power, but not the duty, to employ a Manager and any other Persons necessary for the effective operation and maintenance of the Common Area, including legal, management and accounting services.

3.2.6 Insurance. The power and duty to maintain liability, fire, worker's compensation and other insurance with respect to the Project and the directors, officers and agents of the Association and the power, but not the duty, to maintain fidelity bonds for the Board and the Association, all in accordance with Article IX.

3.2.7 Right of Entry. The power, but not the duty, to enter into any Unit for the purpose of exercising the Association's rights and performing the Association's duties under this Declaration and for inspecting any portion of the Project in connection therewith. The power, but not the duty, after Notice and Hearing, to enter upon any Condominium without being liable to any Owner except for reasonably avoidable damage caused by such entry, in order to (a) enforce by peaceful means the provisions hereof, or (b) maintain or repair any Condominium or any Improvement thereon, if for any reason the responsible Owner fails to perform such maintenance or repair as required by the Governing Documents. The cost of such enforcement, maintenance and repair shall be a Compliance Assessment enforceable as set forth herein. The Owner shall promptly pay all amounts due for such work, and the costs and expenses of collection (including attorney fees) may be added, at the option of the Board, to the amounts specially assessed against such Owner. If an emergency occurs, such entry upon a Condominium by or on behalf of the Board shall be permitted without Notice and Hearing.

3.2.8 Rules and Regulations. The power, but not the duty, to establish and modify the Rules and Regulations (including, without limitation, Condominium Design Guidelines), subject to the following:

(a) Areas of Regulation. Rules and Regulations may concern, without limitation, use of the Common Area, Signs, minimum maintenance standards, and any other matter within the Association's jurisdiction; provided, however, that such Rules and Regulations shall be consistent with the Governing Documents.

(b) Limits on Regulation. The Rules and Regulations must fairly apply to all Owners. The Rules and Regulations shall not regulate the content of political signs; however, they may regulate the time, place and manner of posting of such signs. The Owners may display religious and holiday Signs, symbols and decorations within their Units of the kinds normally displayed in commercial offices, except the Association may adopt time, place and manner restrictions with respect to any such displays visible outside of the Unit in which they are located or otherwise as

necessary to comply with insurance requirements. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was located on or within such Owner's Condominium prior to the adoption of such modification if such personal property was in compliance with all Rules and Regulations previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Condominium and shall not apply to (i) subsequent Owners who take title thereto after the modification is adopted, (ii) clarifications to the Rules and Regulations or (iii) violations of any Hazardous Materials Laws or other applicable Governmental Requirements.

(c) Declarant Rights. Nothing herein shall limit Declarant's right to unilaterally impose Rules and Regulations (including, without limitation, Condominium Design Guidelines) on the Project prior to the Declarant Rights Termination Date provided that such Rules and Regulations otherwise comply with the provisions of this Section 3.2.8.

(d) Effective Date. All changes to the Rules and Regulations will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Project or (ii) sent to the Owners via first class mail or by any system or technology designed to record and communicate messages.

(e) No Liability. Neither Declarant nor the Association shall be liable in damages to any Owner, or to any other Person subject to or affected by this Declaration, on account of the establishment, amendment, restatement, deletion, and/or waiver of any Rules or Regulations in accordance with this Section 3.2.8.

3.2.9 Borrowings. The power, but not the duty, to borrow money for purposes authorized by the Governing Documents and in connection therewith, to pledge or assign any personal property of the Association (including, without limitation, the Association's right to impose Assessments pursuant to this Declaration) as security for any such borrowing.

3.2.10 Contracts. The power, but not the duty, to enter into contracts for purposes authorized by the Governing Documents, including but not limited to contracts with Owners or other Persons to provide services or to maintain and repair Improvements within the Project and elsewhere which the Association is not otherwise required to provide or maintain pursuant to the Governing Documents; provided, however, that any such contract shall provide for reimbursement to the Association for the costs of providing such services or maintenance. The Association may also contract with third-party providers including, without limitation, Declarant and its affiliates to provide required services to its Members.

3.2.11 Indemnification.

(a) For the Association Representatives. To the fullest extent authorized by California law, the Association shall have the power and the duty to indemnify Board members, the Association officers, and all other Association committee members for all damages and pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person brought because of performance of acts or omissions that are within what the Person in good faith believed to be the scope of the Person's

Association duties ("Official Acts"). Board members, the Association officers and all Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section 3.2.11(a). The entitlement to indemnification hereunder inures to the benefit of the personal representatives and successors-in-interest of any Person entitled to such indemnification.

(b) For Other Agents of the Association. The Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for any damages and pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person because of an Official Act as authorized by California law.

(c) Provided by Contract. The Association also has the power, but not the duty, to contract with any Person to provide indemnification beyond the scope of indemnification authorized by law on such terms and subject to such conditions as the Board may impose.

3.2.12 Communications Facilities. The power, but not the duty, to install, operate, hold, own, manage, and maintain communications and information transmission facilities for the purpose of promoting and facilitating communications services between and among the occupants of Units in the Project, as well as the power, but not the duty, to contract for the installation, operation or management of communications and information transmission facilities for the common benefit of all of the Units and Owners in the Project, and to assign or license the communications and information transmission facilities to third parties.

3.2.13 Special Events on Common Area. The power, but not the duty, to grant permission to an Owner or Owners for the short term exclusive use of the Common Area for periodic special events and to charge any such Owner or Owners a reasonable fee for the short term exclusive use of any portion of the Common Area for such special event, provided that the use of the Common Area by other Owners for the conduct of their business from their Units is not materially and adversely affected by the special event.

3.3 Permitted Functions. The Association is formed exclusively for those social welfare purposes and activities which are specifically and directly related to (a) the duties and powers enumerated in this Article III, (b) maintaining, operating and using the Common Area, including the Improvements located therein, (c) collecting assessments to finance the maintenance and use of the Common Area, and (d) administering and enforcing the Governing Documents (collectively, the "Permitted Functions"). Permitted Functions do not include those activities prohibited by Section 3.4 below. The funds and resources of the Association shall be used exclusively for the direct costs of Permitted Functions. This Section does not preclude the use of the Common Area by Declarant for promotional special events and other purposes as authorized by the Governing Documents.

3.4 Prohibited Activities. The Association is prohibited from taking any action which is inconsistent with, or which would abrogate, any right or exemption in Article XVII. Without limiting the foregoing, the Association shall not (i) participate in federal, state or local political

activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Project (e.g., endorsement or support of (A) legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals); or (ii) conduct, sponsor, participate in or expend funds or resources for any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association.

3.5 Standard of Care; Non-liability.

3.5.1 Scope of Powers and Standard of Care.

(a) General Scope of Powers. Rights and powers conferred on the Board, or any committees or representatives of the Association by the Governing Documents are not duties charged upon those Persons unless the rights and powers are explicitly identified as including duties in the Governing Documents or in law. Unless a duty to act is imposed on the Board or any committees or representatives of the Association by the Governing Documents or law, the Board, and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future. Moreover, if it is determined that an action or decision does not meet the standards set forth in Sections 3.5.1(b) or 3.5.1(c) below, as applicable, provided that such action or decision is not shown to be willful or malicious, the action or decision may be reversed without further liability to the party making the decision or taking such action.

(b) Business Affairs. This Section 3.5.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances and committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(i) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, professional property managers, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence;

(iii) A committee of the Board upon which the Board member does not serve, as to matters within its designated authority, which committee the member believes to merit confidence, so long as, in any such case, the member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 3.5.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All changes to the business judgment rule applicable to the Association shall be interpreted to change this Section 3.5.1(b).

(c) The Association Governance. This Section 3.5.1(c) applies to Board actions and committee decisions in connection with interpretation and enforcement of the Governing Documents, architectural and landscaping control, regulation of uses within the Project, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

3.5.2 Non-liability. No Person is liable to any other Person, other than the Association or a party claiming in the name of the Association, for injuries or damage resulting from such Person's Official Acts, except to the extent that injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association, or to any party claiming in the name of the Association, for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. The Association is not liable for damage to property in the Project unless caused by the gross negligence or willful and malicious misconduct of the Association or its agents.

ARTICLE IV: DESIGN CONTROL

4.1 Alteration of Common Area. Except as expressly set forth in this Article IV, no improvement or work which alters or adversely affects the Common Area shall be made or done by any Person other than Declarant or the Association. Notwithstanding the foregoing, but subject to compliance with the provisions of all applicable Governmental Requirements and this Article IV, each Owner may modify the Owner's Unit and the route over the Common Area leading to the front entrance of the Owner's Unit, at the Owner's sole expense, to facilitate access to the Owner's Unit by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code Section 1360 or any other applicable law.

4.2 Owner Improvements. No Owner shall permit or cause any portion of the Owner Improvements visible to another Unit or the exterior of the Building to be altered, installed, constructed, reconstructed, replaced, assembled, maintained, relocated, removed or demolished (each, a "Owner Alteration") unless such Owner Alteration conforms to all applicable Governmental Requirements, the Sign Program, as well as any Condominium Design Guidelines which may be adopted by Declarant or the Board from time to time pursuant to Section 4.5.1 below. Following the Close of Escrow for the sale of each Condominium by Declarant, each Owner shall submit to Declarant for review and approval all plans and specifications for any Owner Alterations to the Unit. Declarant's written approval of any such plans and specifications for initial Owner Alterations shall satisfy the approval requirements of this Article IV. Following Declarant's approval of such plans and specifications, all such initial Owner Alterations shall be constructed in a timely, lien-free manner in compliance with Section 4.8, Section 4.9, and Section 4.10 below. Subject to the foregoing, the following Owner Alterations shall further require the approval of the Approving Authority (as defined in Section 4.5.2 below):

(a) Any Owner Alterations affecting the exterior of any Building within the Project or which would otherwise be visible from outside of the Owner's Unit;

(b) Any Owner Alterations which would pierce, modify or otherwise impact any Demising Walls or Roof within the Project;

(c) Any Owner Alterations that would impact in any manner the operation of utilities serving the Common Area or any other Unit, or any common water or sewer lines or fire or life safety systems which serve more than one (1) Unit within the Project, or any conduits, drains, pipes or lines necessary for the operation thereof;

(d) Any Owner Alterations which would materially increase the load on any utility services provided by the Association;

(e) Any Owner Alterations that would cause an increase in the cost of insurance to be carried by the Association or the Owner of any other Unit within the Project; and

(f) Any other Owner Alteration which would materially, adversely impact the use and occupancy of any other Owner's Unit within the Project (other than temporary, minor impacts resulting from construction activity related to the performance of such Owner Alteration).

4.3 Identical Replacements. Notwithstanding the foregoing, neither Declarant nor the Board shall unreasonably withhold consent to any replacement of an Improvement within a Unit for which submittals were previously approved as set forth above, provided that the replacement Improvement is substantially identical to the Improvement previously so approved.

4.4 Exemption. Notwithstanding any other provision of the Governing Documents, Declarant and any Person to whom Declarant may assign its rights and obligations hereunder pursuant to Section 17.8 need not obtain Board approval with respect to construction or development activities within the Project prior to initial completion thereof.

4.5 Approval Standards.

4.5.1 Condominium Design Guidelines; Preapproval. Declarant and, following the Declarant Rights Termination Date, the Board may, in its reasonable discretion, adopt Condominium Design Guidelines setting forth architectural standards for Owner Alterations to be constructed by or on behalf of any Owner within the Project. Such Condominium Design Guidelines may include, without limitation, reasonable restrictions on the conduct of construction activity within the Project so as to minimize damage to Common Area and/or other Units and any other adverse impacts on the use and occupancy of other Units within the Project. The Declarant and the Board may, either through the Condominium Design Guidelines or through separate action, pre-approve certain types or classes of Owner Alterations which otherwise comply with the Condominium Design Guidelines if, in the exercise of their reasonable judgment, preapproval of such types or classes of Owner Alterations is appropriate in carrying out the purposes of the Governing Documents.

4.5.2 Architectural Approval Authority. Prior to the Declarant Rights Termination Date, Declarant shall be the "Approving Authority" for purposes of exercising all approval, inspection and enforcement rights set forth in this Article IV. Notwithstanding the foregoing, Declarant may delegate its rights as Approving Authority to the Board at any time before the Declarant Rights Termination Date. Upon any such delegation, but in any event from and after the Declarant Rights Termination Date, the Board shall be the Approving Authority for purposes of this Article IV; provided, however, that the Board may appoint a committee of Members of the Association and delegate to such committee its authority hereunder. The Board shall further have the power, but not the duty, to retain Declarant or any other Persons to advise the Approving Authority in connection with the review, approval and/or inspection of any Owner Alterations pursuant to this Article IV.

4.5.3 Basis of Approval. The Approving Authority may disapprove any submittals which are not in harmony or conformity with (a) other existing or proposed Improvements within the Project, (b) this Declaration, (c) requirements of the City, (d) the Condominium Design Guidelines and (e) any other master utility or general aesthetic or architectural plans and criteria for the Project. Without limiting the generality of the foregoing, the Approving Authority may evaluate such matters as the effect of design and use of the Owner Alterations on other Units within the Project and Improvements located or operations conducted thereon.

4.5.4 Exculpation. Neither the Approving Authority nor any Person retained by the Approving Authority in connection with the review and approval of Owner Alterations pursuant to this Article IV, shall be liable in damages to anyone making submittals as provided herein, or to any Owner, or other Person subject to or affected by this Declaration, on account of (a) the approval or disapproval of any submittal; (b) any construction, performance or nonperformance by an Owner of any work on or within any Unit, whether or not pursuant to approved submittals; (c) any mistake in judgment, negligence, action or omission in the Approving Authority's exercise of its rights, powers and duties hereunder; or (d) the enforcement of or failure to enforce any of the Governing Documents. Every Person who makes submittals for approval of a Owner Alteration agrees by reason of such submittal, and every Owner of a Unit within the Project, by acquiring title to any Condominium or an interest therein affected by such Owner Alteration, agrees not to bring any suit or action against Declarant, the Association or the Approving Authority or any Person retained by any of the foregoing in connection herewith seeking to recover any such damages. Approval of any submittal by the Approving Authority shall not constitute the assumption of any responsibility by, or impose any liability upon, Declarant, the Association or the Approving Authority with respect to the accuracy or sufficiency of the submittal.

4.6 Review and Approval Process.

4.6.1 Architectural Review Fee. As a condition of its review of submittals, the Approving Authority may charge a reasonable architectural review fee to be paid at or before the time preliminary plans and specifications are submitted for approval to cover overhead and other costs of reviewing the submittals.

4.6.2 Initial Submittals. In order to obtain approval of any Owner Alteration, each Owner shall be required to deliver the following submittals to the Approving Authority:

(a) Two (2) sets of basic conceptual drawings;

(b) Two (2) sets of schematic plans and preliminary specifications, consistent with the basic conceptual drawings previously approved by the Approving Authority, including, but not limited to, site plans showing in reasonable detail the proposed type of use, size, gross floor area, shape, height, location, material and color scheme of each proposed Improvement, all utilities and service connections, and all exterior lighting and Signs related thereto (if any); and

(c) Before commencement of any Owner Alterations, two (2) sets of final working drawings and specifications, based on approved basic design concepts and schematic plans and preliminary specifications, including, but not limited to, color and material palette and signage.

4.6.3 Partial Submittals; Preparation of Submittals. Partial submittals may be made and approved, but construction or assembly of any Owner Alterations may not proceed beyond the scope of the approval received. All plans and specifications submitted shall be prepared by an architect or engineer licensed to practice in California, and signed by the Owner or by an agent authorized by the Owner in writing.

4.6.4 Waiver of Submittal Requirements. The Approving Authority may waive the requirement for any submittal identified in this Section 4.6 in the sole discretion thereof.

4.7 Approval; Deemed Approval. If the Approving Authority approves a submittal, it shall endorse its approval on one set of submitted documents and return the set to the Person from whom the documents were received. The Approving Authority shall be conclusively deemed to have given its approval to a submittal unless within thirty (30) calendar days after such submittal has been received, it delivers written notice specifying in reasonable detail each item which has been disapproved or in connection with which additional information is required. Approval of any proposals, plans and specifications or drawings for any Owner Alterations by the Approving Authority shall not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

4.8 Contractor Requirements. The Approving Authority shall have the right, but not the duty, to require as a condition to approval of any Proposed Alteration that the contractors or subcontractors to be engaged by the responsible Owner to perform any construction, installation or other services required in connection with the Proposed Alteration (collectively, the "Work") provide to the Association, prior to commencing Work within the Project, proof of any workers' compensation insurance coverage required by law as well as commercial general liability insurance coverage against any claims or liabilities arising from the performance of the Work or other activities of such contractor or subcontractor on the Project in connection therewith in an amount satisfactory to the Association in its reasonable discretion. The Association shall further have the right to require all such contractors and subcontractors to deliver certificates of insurance for the foregoing commercial general liability insurance naming the Association as an additional insured thereunder. Without limiting the foregoing, the Association shall have the

right, but not the duty, to disapprove any contractors or subcontractors engaged by an Owner to perform Work within the Project to the extent that the failure to perform such Work in a good and workmanlike-manner could have a material, adverse effect on the Common Area.

4.9 Commencement and Completion of Improvements. Unless otherwise specified by the Approving Authority in its approval of a submittal, each Owner shall have a period of six (6) months after the date of such approval within which to commence work on such Owner Alteration in accordance with the approval. Each Owner shall give the Approving Authority at least fifteen (15) days' prior written notice of the commencement of any work of Owner Alteration. Approval of a submittal shall expire six (6) months after the date such approval is given. If an Owner fails to commence the work covered by such submittal in accordance with the approved document or documents within such period, any previous approvals for such work shall be invalid, and the Owner shall be obligated to make a new submittal prior to commencing construction of such Owner Alteration. After construction of an Owner Alteration is commenced by an Owner, such Owner shall diligently pursue such work to completion.

4.9.1 Inspection of Work. Declarant or the Board, as applicable, or their duly authorized representative may inspect any work for which its approval is required under this Article IV ("Work"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with applicable approvals of the Work or with the requirements of the Governing Documents ("Noncompliance").

(a) Time Limit. The right of Declarant or the Board to inspect the Work and notify the responsible Owner of any Noncompliance pursuant to this Section 4.9.1 shall terminate sixty (60) days after the Board has received written notice from the Owner that the Work has been completed and the Work has, in fact, been completed.

(b) Remedy. If an Owner fails to remedy any Noncompliance within sixty (60) days from the date of notification of noncompliance, the Board may Record a notice of Noncompliance (if allowed by law) and commence an alternate dispute resolution procedure or a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

4.9.2 Certificate of Compliance. Following completion of the Work, the performing Owner shall, upon request by the Approving Authority, supply a certification from a licensed or registered architect that the Work as designed by such architect has been completed in accordance with the final working drawings and specifications previously approved by the Approving Authority.

4.9.3 Presumption of Compliance. Upon expiration of one (1) year after the Recording date of a valid notice of completion with respect to such Work, the Work shall, in favor of purchasers and Mortgagees in good faith and for value without knowledge of any noncompliance and noncompletion, be deemed to be in compliance and completed in accordance with all provisions of this Article IV, unless either (i) an actual notice of noncompliance or noncompletion is executed and Recorded by Declarant or the Board, or (ii) legal proceedings are instituted by Declarant or the Board to enforce compliance or completion. Notwithstanding the foregoing, nothing in this Section 4.9 shall be deemed to constitute a representation or warranty

by Declarant or the Board for the benefit of any such purchasers and/or Mortgagees that the Work complies with applicable Governmental Requirements or the requirements of any Master Restrictions or any Design Guidelines promulgated pursuant thereto.

4.10 Removal of Liens. No Owner shall permit any mechanics, or materialmen, or other similar liens to be created or maintained against any Unit upon which labor or material has been performed or furnished in connection with the construction of an Owner Alteration. An Owner may post a bond and contest any such lien at the Owner's sole expense.

ARTICLE V: OWNERS' MEMBERSHIP AND VOTING RIGHTS

5.1 Membership. Every Owner of a Condominium within the Project shall, upon Close of Escrow for its acquisition of such Condominium, automatically become a Member of the Association and shall remain a Member thereof until ownership ceases. Memberships in the Association are not assignable, except to the Person to which title to the Condominium has been transferred. Every membership in the Association is appurtenant to and may not be separated from the fee ownership of such Condominium. Ownership of a Condominium is the sole qualification for membership in the Association.

5.2 Transfer. The Membership in the Association held by any Owner of a Condominium may not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Condominium, and then only to the purchaser or Mortgagee thereof. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. The Association shall have the right to rely on evidence of Record title to a Condominium for purposes of determining the Person entitled to exercise the Membership rights appurtenant to ownership of such Condominium; provided however, that any Owner who has sold a Condominium to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. Any such delegation to a contract purchaser prior to transfer of Record title to the applicable Condominium must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all charges and Assessments attributable to the contract seller's Condominium which accrue before such title is transferred. The Association may levy a reasonable Membership transfer fee against any Condominium being transferred to reimburse the Association for the administrative cost of transferring the associated Membership to the new Owner thereof on the records of the Association.

5.3 Voting Rights. The Association shall have one (1) class of voting membership.

5.4 Vote Distribution Among Members. All voting rights shall be subject to the Governing Documents. When more than one Person holds an interest or interests in any Condominium (each, a "co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the votes to which the Condominium is entitled). Such co-owners may all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the votes for each Condominium shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the votes for such Condominium shall be exercised as the majority in interests of

the co-owners thereof mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the voting co-owner is acting with the consent of the other co-owners. No votes shall be cast for any Condominium where the co-owners present in person or by proxy owning the majority of interests therein cannot agree to said votes or other action. The nonvoting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Condominium and shall be entitled to all other benefits of ownership. Voting results are deemed valid and final when more than fifty percent of the condo owners representing four or more of the six units agree on any voting matter.

5.5 Actions Subject to Declarant's Veto. Through the Declarant Rights Termination Date, Declarant shall have the right to veto the following actions authorized by this Declaration:

5.5.1 Change in Design. Any change in the general, overall architectural and landscaping design of the Project or the Common Area.

5.5.2 Rules and Regulations. The adoption of Rules and Regulations; and any modification of the Rules and Regulations.

5.5.3 Amendments. Any proposed amendments to this Declaration.

ARTICLE VI: EASEMENTS

6.1 Owners' Easements.

6.1.1 Use and Enjoyment of Common Area. Declarant hereby establishes and reserves, for the benefit of every Owner, his tenants and guests, a nonexclusive easement for access, ingress, egress, use and enjoyment of, in and to the Common Area in connection with the use and enjoyment of each Condominium in the Project. This easement is appurtenant to and passes with title to every Condominium in the Project. This easement is subject to all other rights and easements set forth in the Governing Documents, including without limitation, the following:

- (a) The Association's exercise of its powers granted hereunder;
- (b) The establishment of such Rules and Regulations pertaining to the use of the Common Area as may be adopted from time to time by Declarant and/or the Board pursuant to the provisions of this Declaration;
- (c) The Association's right to grant, consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Common Area for purposes consistent with the intended use of the Project;
- (d) The rights and reservations of Declarant established in Article XVII of this Declaration;
- (e) The Association's right to add to, repair, replace, maintain, refinish or remove any Improvement on the Common Area and to consent to or otherwise cause the construction of

additional Improvements on the Common Area, in each case for the benefit of the Owners or for other purposes consistent with the intended use of the Project as a business condominium project;

(f) The Association's right to reasonably restrict access to maintenance facilities and other areas of the Common Area, including without limitation, the right to restrict access to portions of the Common Area for purposes of establishing Exclusive Use Easements for the exclusive use of the Owner or Permittees of any Condominium within the Project; provided however, that no such Exclusive Use Easement shall interfere with the rights of other Owners to access their Units;

(g) Easements as shown on any Recorded subdivision map or Recorded parcel map of the Project, and any other easements now or hereafter recorded against the Common Area;

(h) The easements reserved in the other Sections of this Article VI or any easements, licenses, rights-of-way or interests that may be granted by Declarant pursuant to Section 17.2 below; and

(i) The Association's right to restrict or prohibit the conduct of auction or sale of any type on any portion of the Common Area except with the express prior approval of the Board which may be withheld in the Board's sole discretion.

6.1.2 Delegation of Use. Any Owner entitled to the right and easement of use and enjoyment of the Common Area may delegate those rights and easements to such Owner's tenants, contract purchasers or subtenants who occupy all or any portion of such Owner's Unit, subject to reasonable regulation by the Board.

6.1.3 Owner Utility Easements. Declarant hereby establishes and reserves for the benefit of the Owners of each Unit within the Project easements over the Common Area and each Unit for purposes of installing, repairing and maintaining utility improvements for water, heating, ventilating and air conditioning, and telecommunications systems which serve such Owners' Units; provided, however, that such utility improvements, and any wires, conduits, or other facilities or equipment related thereto, must be encased within continuous conduit and may not be installed within any portion of the other Owner's Unit other than (a) that portion of such Unit which is not more than [fill in the blank] inches from the bottom of the structural ceiling of such Unit or (b) in the event that a "drop" or "false" ceiling has been installed in such Unit, that portion of the Unit which is above the drop ceiling. Any entry by an Owner or its Permittees into any other Owner's Unit pursuant to this Section 6.1.3 shall further be subject to the following provisions:

(a) Prior Notice. Any entry into a Unit by any other Owner pursuant to the easements reserved in this Section 6.1.3 may be made only upon at least three (3) business days advance written notice (the "Entry Notice") to the Owner of the Unit to be entered. Upon receipt of such Entry Notice, the Owner of the Unit to be entered shall have the right to designate an alternative date and time for such entry either during or after normal business hours, provided that the designated date shall in no event be later than five (5) business days after delivery of the

applicable Entry Notice. In the event that the Owner or Permittee of the Unit to be entered fails to designate an alternative date and time for such entry within three (3) business days after delivery of the Entry Notice, the party desiring to enter such Unit may enter the Unit at the date and time designated in the Entry Notice. Notwithstanding the foregoing, prior notice shall not be required for any emergency entry necessary to prevent material damage to the Unit to be entered or any other Unit within the Project or any personal property located therein.

(b) Owner's Right to be Present. Without limiting the foregoing, the Owner of the Unit to be entered shall have the right to be present, or to have a designated representative present, during any entry into such Owner's Unit pursuant to this Section 6.1.3. In the event that the Owner of the Unit fails to have a representative present at the date and time designated in the Entry Notice (or such alternative date and time as may be designated by the Owner of the Unit to be entered pursuant to the preceding paragraph), then such Owner shall be deemed to have waived its right to have a representative present during such entry.

(c) Insurance Requirements; Conduct During Entry. Any entry into an Owner's Unit by any other Owner pursuant to the rights and easements reserved in this Section 6.1.3 shall be conducted in a manner so as to minimize any damage to such Unit or disruption of the operations conducted within such Unit in accordance with this Declaration. All contractors or other persons entering any Owner's Unit pursuant to the easement granted pursuant to this Section 6.1.3 shall maintain in effect general commercial liability insurance providing coverage against claims which arise out of or result from the exercise of such easement. Such policies shall name the Owner of the Unit to be entered as an additional insured and shall have a single per occurrence limit of not less than One Million and No/100 Dollars (\$1,000,000.00), with an aggregate limit not less than Two Million and No/100 Dollars (\$2,000,000.00). The Unit to be entered shall, following completion of the work to be performed by the entering party, be left in substantially the same condition as existed immediately preceding such entry and the Owner of the Unit for whose benefit such entry occurred shall be solely responsible for repairing any damage to the Unit caused by such entry

6.2 Declarant's Easements.

6.2.1 Telecommunications Easement. Declarant reserves for itself and for the benefit of the Association, non-exclusive blanket easements (collectively, "Telecommunications Easements") over the Project for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing telecommunications facilities inside the Project building only, except for unit number one. Such easements shall be freely transferable by Declarant to any other Person and their successors and assigns; provided, however, that the holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Project by any Owner. If the exercise of any Telecommunications Easement results in damage to the Project, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage.

6.2.2 Access Easement Over the Common Area. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees, contractors, customers and invitees a nonexclusive

easement over the Common Area for access, ingress, egress, use and enjoyment in connection with the promotion and marketing of the Project, including, without limitation, the sale, leasing or financing of Condominiums or all or any portion of the Improvements located thereon; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners established by this Declaration. Without limiting the generality of the foregoing, Declarant may erect and maintain Signs and permit prospective purchasers, lessees and lenders to enter upon the Common Area as Declarant deems reasonably necessary in connection with the promotion or marketing of the Project.

6.2.3 Construction License Over the Common Area. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees and contractors a construction license over portions of the Common Area as reasonably required for purposes of (a) complying with any applicable Governmental Requirements or (b) otherwise exercising any of the rights set forth in Article XVII below; provided however, that the license reserved pursuant to this Section 6.2.3 shall not be exercised in such a manner as to interfere with the rights of other Owners to access their Units, and the license granted hereunder shall terminate upon the Declarant Rights Termination Date.

6.2.4 Inspection, Maintenance, and Repair. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees and contractors nonexclusive easements for access over the Project to perform necessary inspection, maintenance and repair of any Improvement constructed by Declarant, as contemplated in Section 14.4.2 below or as otherwise deemed necessary and proper by Declarant.

6.3 Association Maintenance and Repair. Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Units for purposes of access, inspection and maintenance as necessary to fulfill the obligations and perform the duties of the Association pursuant to the Governing Documents. Without limiting the foregoing, Declarant further reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over each of the Units for purposes of satisfying any maintenance obligations of the Owner of such Unit pursuant to Section 7.2 below or otherwise enforcing, by peaceful means, the provisions of this Declaration should the Owner of such Unit fail, after Notice and a Hearing, to perform such maintenance or remedy any other noncompliance with this Declaration.

6.4 Miscellaneous Easements. Declarant reserves and accepts the following easements for the benefit of the Association, the Common Area, the Units and Owners:

6.4.1 Easements For Public Service Use. Declarant reserves easements over the Project for public services, including but not limited to, the right of law enforcement and fire protection personnel to enter upon any part of the Project for the purpose of carrying out their official duties; provided however, that nothing in this Section 6.4.1 shall be deemed to be a gift or dedication of any portion of the Project to the general public or for any public purpose. It is the intention of Declarant that the use of the Project be limited to the purposes expressed in this Declaration under the ownership and control of the Owners. The right of the public to make use of the Project is by permission, and subject to control, of the Owners.

6.4.2 Utilities and Communication Service. Nonexclusive easements over all Units and the Common Area, as necessary for installation, maintenance and repair of utility (including water and drainage) and communication services to the Project or any portion thereof; including but not limited to, the right of any public utility or mutual water district of ingress and egress over the Common Area for purposes of servicing utilities within the Project, reading and maintaining meters, and using and maintaining fire hydrants located in the Project. The easements established or reserved pursuant to this Section 6.4.2 and the preceding Section 6.4.1 shall remain in effect and shall not be modified until the holder of the beneficial rights to any such easement approves the termination or modification, as applicable, of such easement.

6.4.3 Encroachments. Reciprocal easements for encroachment and maintenance in the event that any Improvement within a Unit encroaches upon the Common Area or another Unit, or if any Demising Walls or any other portion of the Common Area encroaches upon any Unit, in each case as a result of (a) minor variances in original construction or reconstruction thereof approved pursuant to Article IV of this Declaration, or (b) the repair, shifting, settlement or movement of any Improvement within the Project following completion of the construction or reconstruction thereof.

6.4.4 Easements on Maps. Easements as shown on any Recorded subdivision map or Recorded parcel map of the Project.

6.5 Exclusive Use Easement for Unit 1. The area shown on the Condominium Plan as "Exclusive Use Easement – 1975.68 Sq. Ft." is for the exclusive use of the Owner and occupants of Unit 1. The Association shall have no obligation to maintain, manage, operate, repair or replace this Exclusive Use Easement or any Improvements located thereon. Notwithstanding any other provision in this Declaration, the Owner of Unit 1 shall have the right to maintain the existing cellular telephone towers located within this Exclusive Use Easement and to install additional cellular telephone towers, subject to compliance with all Governmental Requirements.

ARTICLE VII: MAINTENANCE OBLIGATIONS

7.1 Maintenance of Common Area. The Association's obligation to maintain the Common Area within the Project shall commence on the date of the first Close of Escrow for a Condominium within the Project to a Person other than Declarant or any of its affiliates. At such time, the Association shall provide for the operation and maintenance of the Common Area. The Association may, but shall be under no obligation to, take such security measures as it deems reasonably appropriate to keep the Common Area reasonably secure. Any security measures provided by Association shall be subject to the Security and Privacy Disclaimer set forth in Section 16.13 of this Declaration. The Association shall have the right from time to time to select a professional Manager (which may be Declarant or a party affiliated with Declarant) to operate and maintain the Common Area.

7.1.1 Association Maintenance Standards. The Association shall maintain the Common Area in a clean, safe, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget for the Association. The Association shall

maintain the air conditioning compressors and other roof mounted equipment at the sole cost of the individual Owners benefited thereby. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Area. Each Owner shall immediately notify the Association of any dangerous, defective or other condition within any portion of the Common Area which could cause injury to person or property within such Owner's Unit or any portion of the Common Area adjacent thereto.

7.1.2 Changes to Common Area. Except as otherwise specifically provided in this Declaration, the Association shall be entitled to make any change in the alignment, location, nature, size, extent or configuration of the Improvements in the Common Area existing from time to time as the Association, in its sole and absolute discretion, shall deem desirable and in the best interests of all Persons using the Common Area.

7.1.3 Common Area Inspections. The Board shall periodically cause inspections of the Common Area to determine the condition of the Common Area ("Condition Inspections") at least once every three (3) years. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section. Condition Inspections shall, at a minimum, (a) determine whether the Common Area is being maintained adequately in accordance with the maintenance standards established in Section 7.1.1 above, (b) identify the condition of the Common Area, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair thereof, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. Without limiting the foregoing, the Board shall regularly consult with the Manager (if applicable) or such other experts, contractors or consultants as the Board may deem appropriate to determine whether the maintenance standards established in Section 7.1.1 above are being followed, and if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Project.

7.2 Maintenance Obligations of Owners. Each Owner, at its sole cost and expense, subject to the provisions of this Declaration, shall maintain, repair, replace and restore all Improvements located within each Owner's Unit in a neat, sanitary and attractive condition and otherwise in accordance with all Governmental Requirements and any Rules and Regulations and, if applicable, shall repair, replace and restore all Owner Improvements or personal property located within such Owner's Unit. The Association shall maintain the air conditioning compressors and other roof mounted equipment at the sole cost of the individual Owners benefited thereby. If any Owner shall permit any Owner Maintenance Item or other portion of such Owner's Condominium, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or shall otherwise fail to maintain any portion of such Owner's Unit in accordance with this Declaration, the Association shall have the right to seek any remedies at law or in equity which it may have. In addition, the Association shall have the right, but not the duty, after Notice and Hearing, to enter upon such Owner's Condominium to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Compliance Assessment enforceable as set forth in this Declaration.

7.2.1 Trash Disposal. Each Owner shall be solely responsible for ensuring that all trash generated by the Owner and any Permittee of such Owner's Unit is either stored within such Unit in a clean, sanitary and safe manner or placed in trash receptacles located within the Common Area as designated by the Board. The Association shall provide trash removal services from such common trash receptacles as often as the Board deems reasonably necessary, but in no event less than once per week. Notwithstanding the foregoing, in no event shall the Owner of any Unit or any Permittee thereof deposit any trash or other materials within such trash receptacles except in strict compliance with all applicable Hazardous Materials Laws and other Governmental Requirements, and each Owner shall indemnify the Association for any violation thereof by such Owner or its Permittee as more particularly set forth in Section 7.4 below. In no event may any Owner or its Permittee deposit any trash or other materials into the trash receptacles within the Common Area which is generated from any source or use other than the use and occupancy of such Owner's Unit.

7.3 Disputes Regarding Maintenance Obligations. If a dispute arises between Owners or between an Owner and the Association regarding any maintenance obligation, the Board, in its reasonable discretion, shall determine who is responsible for the maintenance obligation and that decision shall be binding on the Association and all Owners.

7.4 Environmental Compliance. Each Owner shall comply, and shall ensure that all of its Permittees comply, with all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like relating to the environmental condition of the Project or the presence of Hazardous Materials in, on, above, under or otherwise affecting the Project including, without limitation, the statutes referenced in Section 1.30 above. Furthermore, each Owner shall, subject to Section 12.2 below, protect, indemnify, defend, and hold Declarant, each other Owner and the Association, and each of their respective members, managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising as a result (directly or indirectly) of or in connection with any violation of Hazardous Materials Laws occurring within such Owner's Unit or, to the extent arising from actions of such Owner or any Permittee thereof, within the Common Area.

7.5 Utilities and Communications and Information Transmission Facilities. The Association shall provide all utilities serving the Common Area; provided, however, that the Association shall have no obligation to pay the cost of any electricity, gas, telecommunications or other utilities provided to the Units for use of the Owners and Permittees thereof, and all such utilities shall be separately metered and billed to the Owner or Permittee of the applicable Unit. The water serving the restroom and the Units will generally be served by a common meter. In the event that the Association provides commonly-metered utilities to the Units and subsequently determines, in its sole discretion, that the use of such commonly-metered utilities by the occupants of a given Unit within the Project materially exceeds the use of such commonly-metered utilities by other Units within the Project, the Association may (a) require the Owner of such Condominium to cause such utilities to be separately metered to the Owner's Unit, at the Owner's sole expense or (b) impose an additional charge on the Owner of such Unit to offset the cost of such excess usage. Each Owner shall maintain and repair, or cause to be maintained and repaired at the Owner's expense, all utility lines, sewer laterals, drainage systems] and permitted

communications and information transmission facilities which exclusively serve the Owner's Unit. All utility lines and permitted communications and information transmission facilities installed by any Owners which serve one or more (but not all) of the Units within the Project but which are not maintained and repaired by the local governmental agency or utility company providing such services shall be jointly maintained by the Owners of the Units served by such facilities or utility and communications services.

ARTICLE VIII: OBLIGATION TO SHARE COSTS

8.1 Creation of Assessment Obligation.

8.1.1 Personal Obligation. Declarant hereby covenants to pay for each Condominium owned by Declarant, and each Owner subsequently acquiring title to any Condominium within the Project is deemed to covenant to pay to the Association (a) Common Assessments, (b) Capital Improvement Assessments, (c) Compliance Assessments, (d) Extraordinary Assessments, and (e) Reconstruction Assessments. Except as provided in this Section, all Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, are a charge and can become a lien upon the Condominium against which such Assessment is made and are also the personal obligation of the Person who was the Owner of the Condominium at the time when the Assessments fell due.

8.1.2 Waiver of Use. No Owner may become exempt from personal liability for Assessments levied by the Association, nor may an Owner release the Owner's Condominium from the liens and charges hereof, by waiving the use and enjoyment of the Common Area or any facilities therein or by abandoning such Owner's Condominium.

8.2 Maintenance Funds of the Association. The Board shall budget, establish and maintain certain accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the Association's performance of its functions. The Maintenance Funds may be established as trust accounts at a banking or savings institution and may be combined so long as reserve funds are not combined with operating funds and the funds are treated as separate funds for accounting purposes. The Association's Maintenance Funds shall include:

8.2.1 General Operating Fund. A General Operating Fund for current Common Expenses of the Association;

8.2.2 General Reserve Fund. A General Reserve Fund for the deposit of Reserves attributable to Improvements included within the Common Area; and

8.2.3 Miscellaneous Maintenance Funds. Any other Association Maintenance Funds which the Board may deem necessary.

The Board may determine that funds remaining in the General Operating Fund at the end of the Fiscal Year be either (i) transferred to the General Reserve Fund, or (ii) retained and used to reduce the Common Assessments otherwise payable into such Maintenance Fund for the

following Fiscal Year. On dissolution of the Association incident to the abandonment or termination of the Project as a condominium development, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

8.3 Purpose of Assessments. Assessments and any other amounts deposited into the Maintenance Funds shall be used exclusively to (a) promote the Owners' health, recreation and welfare, (b) operate, improve and maintain the Common Area, and (c) discharge other Association obligations under the Governing Documents. Disbursements from the Maintenance Funds shall be limited to specific purposes as follows:

8.3.1 General Operations. Disbursements from the General Operating Fund shall be made for payments of Common Expenses, for the common benefit of all Owners.

8.3.2 General Reserves. Disbursements from the General Reserve Fund shall be made solely for funding Reserve expenditures.

8.4 Assessment Components and Rates. Each annual Common Assessment is an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts of prospective deposits into the General Operating and Reserve Funds, and any other Maintenance Fund established by the Association. The assessment rate for each condominium within the project shall be sixteen and two-thirds percent (16.67%) of any Common Assessment.

8.5 Establishing Common Assessments. Common Assessments shall be initially levied against the Condominiums and their Owners according to the initial Budget of the Association approved by the Board prior to commencement of Common Assessments. Thereafter, Common Assessments shall be adjusted in accordance with each revised Budget subsequently approved by the Board. The Board shall fix the amount of the Common Assessment against each Condominium at least thirty (30) days in advance of each Fiscal Year. If the Board determines that Common Expenses may be properly paid by collection of a Common Assessment in an amount less than the maximum authorized Common Assessment, the Board may levy a Common Assessment which is less than the maximum authorized amount. If the Board determines that the Common Assessment being collected is or will become inadequate to pay all Common Expenses, the Board shall immediately determine the approximate amount of the inadequacy and levy a supplemental Common Assessment. Written notice of any change in the amount of any Common Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than ninety (90) days before the first installment of such increased Assessment becomes due.

8.6 Special Assessments. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment, Reconstruction Assessment or Extraordinary Assessment (each, a "Special Assessment" for purposes of this Section 8.6) only for purposes authorized in this Declaration.

8.7 Commencement of Common Assessments. Common Assessments shall commence as to the Condominiums as of the date on which the Association's obligation to maintain the Common Area commences pursuant to Section 7.1 above.

8.8 Collection of Common Assessments. Each Owner shall pay all Assessments payable hereunder in installments at such frequency and in such amounts and by such methods as may be established by the Board pursuant to this Article VIII. The Association shall, upon demand and for a reasonable charge, furnish a statement setting forth whether the Assessments on a specified Condominium have been paid. A properly completed statement as to the status of Assessments against a Condominium is binding upon the Association as of the date of its issuance. The Association may use any method of collecting Assessments allowed by law including charging credit cards or electronic transfers. At the Association's discretion, the additional cost of any method of collection can be collected from the Owner electing the method of collection and does not have to be divided equally among all Owners.

Each installment of Common Assessments may be paid by the Member to the Association in one check or payment or in separate checks or payments attributable to specified Association Maintenance Funds. If any payment of a Common Assessment installment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the payment received by the Association from that Owner shall be credited in order of priority first to the General Operating Fund until that portion of the Common Assessment has been satisfied, then to the General Reserve Fund until that portion of the Common Assessment has been satisfied, then to any other Maintenance Funds established by the Association.

8.9 Exempt Property. The following property is exempt from assessments imposed pursuant to this Declaration: (a) all portions of the Project dedicated to and accepted by a local government agency; and (b) the Common Area.

ARTICLE IX: INSURANCE

9.1 Association Insurance.

9.1.1 Casualty Insurance. Association shall maintain standard form fire insurance with such extended coverage endorsements as are commonly written in California, written by insurance companies with a Best's rating of at least A, VIII, covering all Improvements on the Common Area, in an amount not less than one hundred percent (100%) of the actual replacement cost thereof, without deduction for depreciation (excluding foundation and excavation cost); provided, however, that (a) the Association shall have the power, but not the duty, to obtain insurance for damage to the Common Area due to earthquakes or floods, in such amounts and with such coverage as the Board shall deem appropriate in its sole discretion and (b) the Association shall have no obligation to maintain fire and casualty insurance for any Improvements installed by any Owner within such Owner's Unit.

9.1.2 Liability Insurance. Association shall maintain commercial general liability insurance naming the Owners as additional insureds, providing coverage against claims and

liability for bodily injury, death and property damage arising out of activities of the Association or the Owners with respect to the Common Area, written by insurance companies with a Best's rating of at least A, VIII, with limits of liability of at least Two Million Dollars (\$2,000,000) combined single limit or such greater amount as may be required pursuant to Section 1365.9 of the California Civil Code. The insurance shall include contractually assumed liability endorsements. The liability limits of the liability insurance to be maintained by the Association pursuant to this Section 9.1.2 may be increased by the Association, based on relevant factors including, without limitation, inflation, increased liability awards, and the advice of professional insurance advisors.

9.1.3 Other Insurance. Such other insurance covering risks customarily insured by associations managing condominium projects similar to the Project in construction, location and use. Such additional insurance shall include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Section 1365.7 of the California Civil Code. Notwithstanding the foregoing, the Association has the power, but not the duty, to obtain insurance for the Common Area for loss due to earthquake and flood, in such limits and with such coverage as the Board determines is appropriate in its sole discretion.

9.1.4 Beneficiaries. The insurance policies to be maintained by the Association pursuant to this Section 9.1 (collectively, the "Association Insurance Policies") shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements established in this Declaration.

9.1.5 Notice of Expiration Requirements. If available, each of the Association Insurance Policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days prior written notice to any insurance trustee named pursuant to Section 9.1.8 below and to each Mortgagee who has filed a written request with the carrier for such notice.

9.1.6 Insurance Premiums. Premiums for Association Insurance Policies are Common Expenses; provided, however, that any deductible amounts or self-insurance retention component of claims covered by such Association Insurance Policies shall be payable from the Association's Reserve Fund.

9.1.7 Annual Insurance Review. The Board shall review the Association's insurance policies at least annually to determine the appropriate amount of coverage under the casualty and fire insurance referred to in this Section 9.1. If economically feasible, the Board may, at its sole discretion, obtain a current appraisal of the full replacement value of the Improvements within the Project (other than Owner Improvements) except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, as it deems appropriate.

9.1.8 Trustee for Policies. The Association is trustee of the interests of all named insureds under the Association Insurance Policies. Unless an insurance policy provides for a different procedure for the filing of claims, all claims made under any such Association Insurance Policy must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any such Association Insurance Policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers on any claims submitted under the Association Insurance Policies. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any Association Insurance Policy and to perform such other functions necessary to accomplish this purpose. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting the Association Insurance Policies, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

9.2 Owners' Insurance Obligations. Each Owner shall maintain the following insurance coverages (the "Owner Insurance Policies"):

9.2.1 Casualty Insurance. Each Owner shall maintain, at its sole cost and expense, standard form fire and casualty insurance with extended coverage endorsements as written in California, written by insurance companies with a Best's rating of at least A, VIII, covering the Improvements within such Owner's Unit, which insurance shall be in an amount as near as possible to one hundred percent (100%) of the actual replacement cost thereof, without deduction for depreciation.

9.2.2 Liability Insurance. Each Owner shall maintain, at its sole cost and expense, commercial general liability insurance (occurrence form) written by insurance companies with a Best's rating of at least A, VIII, with limits of liability not less than Two Million Dollars (\$2,000,000) combined single limit, insuring against (i) any and all activities within any said Owner's Unit, and (ii) liability for the activities and business operations of such Owner and its Permittees within the Project. The insurance shall include contractually assumed liability endorsements. The policy shall be primary and not in excess of, or contributory with, other insurance carried by the Declarant and the Association pursuant to this Declaration. Such insurance may provide for reasonable and customary deductible amounts. The liability limits of the Owner's liability insurance required pursuant to this Section 9.2.2 may be periodically increased by the Association, based on relevant factors including, without limitation, inflation, increased liability awards, and the advice of professional insurance advisors.

9.2.3 Worker's Compensation. Each Owner shall maintain, and shall require its Permittees to maintain, Worker's Compensation and Employer's Liability Insurance, as required by law.

9.2.4 Additional Owner Insurance Requirements.

(a) All Owner Insurance Policies shall be written as primary policies, not contributing with, and not in excess of coverage which the Association may carry. Such insurance may provide for reasonable and customary deductible amounts. If on account of the failure of Owner to comply with the provisions of this Section 9.2, the Association is adjudged a coinsurer by its insurance carrier, then, in addition to all other remedies available to the Association, any loss or damage the Association shall sustain by reason thereof shall be borne by such Owner and shall be immediately paid by such Owner upon receipt of a bill therefor and evidence of such loss. Coverage afforded under the Owner Insurance Policies or any other insurance maintained by Owner or its Permittees, whether or not required pursuant to this Article IX, may not adversely affect or diminish any coverage under any of the Association Insurance Policies. If any loss intended to be covered by any Association Insurance Policy occurs and the proceeds payable under such Association Insurance Policy are reduced due to coverage afforded by any policies so maintained by any Owner or its Permittees, such Owner shall assign the proceeds payable thereunder to the Association, to the extent of such reduction, for application to the liabilities incurred by the Association which would otherwise have been covered by proceeds payable under the applicable Association Insurance Policies.

(b) Each Owner shall deliver certificates of insurance evidencing the coverage required under this Section 9.2 to the Association not later than thirty (30) days after taking title to a Condominium within the Project, and thereafter at least 30 days prior to expiration of each Owner Insurance Policy. Such certificates shall name the Association, Declarant and the Manager as additional insureds and shall expressly provide that the interest of the same therein shall not be affected by any breach by Owner of any policy provision for which such certificates evidence coverage. Further, all certificates shall expressly provide that not less than 30 days prior written notice shall be given to the Association in the event of material alteration to or cancellation of the coverages evidenced by such certificates. Duplicate copies of all Owner Insurance Policies shall be deposited with the Association on request.

(c) Any insurance required to be carried by an Owner pursuant to this Article IX may be carried by an Owner's or its Permittees under a blanket policy or under policies maintained by the Owner or Permittees with respect to other property owned or operated by the Owner or Permittees or their affiliates, provided that Declarant and Association are not deprived of any insurance benefits hereunder. Nothing in this Declaration shall be deemed to preclude any Owner from carrying any additional insurance as such Owner may deem necessary or appropriate.

9.3 Required Waivers. All Owner Insurance Policies shall include a waiver of subrogation claims against the Association, Declarant and, if applicable, Manager. All Association Insurance Policies shall provide for a waiver of subrogation of claims against each Owner and such Owner's Permittees. In addition to the foregoing, as to any claims arising under the Association Insurance Policies and/or Owner Insurance Policies, the Association and the Owners hereby

waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by such Persons. Without limiting the foregoing, any Association Insurance Policies and Owner Insurance Policies insuring against physical damage must provide, if reasonably possible, for waiver of:

- (a) any defense based on coinsurance;
- (b) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association and/or Owner, as applicable, in violation of this Article IX;
- (c) any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;
- (d) any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;
- (e) notice of the assignment by any Owner of his interest in the insurance by virtue of a conveyance of any Condominium;
- (f) any right to require any assignment of any Mortgage to the insurer;
- (g) any denial of an Owner's claim because of negligent acts by the Association or other Owners; and
- (h) prejudice of the insurance by any acts or omissions of Owners or Permittees thereof that are not under the control of the Association or the insured Owner, as applicable.

ARTICLE X: DAMAGE TO IMPROVEMENTS

10.1 Damage to Common Area. Each Owner is liable to the Association for damage to the Common Area sustained due to the negligence or willful misconduct of an Owner or any Persons for whom such Owner may be responsible which is not fully reimbursed to the Association by proceeds from the Association Insurance Policies and/or Owner-Maintained Policies, including without limitation any deductible amounts under any insurance policies against which the Association files a claim for such damage. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made upon any Association Insurance Policies and/or Owner-Maintained Policies and (b) levy as a Special Assessment against the responsible Owner a charge equal to (i) any deductible paid in connection with such claim, (ii) the increase (if any) in the insurance premium directly attributable to the damage caused by such Owner or the Persons for whom such Owner may be liable as described herein and (iii) any other costs or expenses incurred by the Association which are not reimbursed by proceeds from Association

Insurance Policies and/or Owner-Maintained Policies. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary.

10.2 Restoration of Common Area.

10.2.1 Association's Obligation to Restore. If all or any portion of the Common Area is damaged or destroyed (including without limitation, any portion of the Buildings or the Demising Walls or Common Utility Improvements located therein), the Association shall cause such Improvements to be restored to their former condition as promptly as practical on the terms set forth in this Article X. The Board shall prepare or obtain the documents necessary for commencing such reconstruction as promptly as practical. The Project shall be reconstructed or rebuilt substantially in accordance with the Condominium Plans and the "as-built" plans for the Buildings and other Improvements within the Common Area, unless changes thereto have been approved by at least sixty-seven percent (67%) of the Owners.

10.2.2 Funding of Restoration Costs. The Association shall use the proceeds of its insurance and/or any Special Assessments payable to the Association pursuant to Section 10.1 above, to fund all costs incurred by the Association in performing reconstruction or repair of the Project pursuant to this Article X (the "Reconstruction Costs"). In the event that such insurance proceeds and/or Special Assessments are not sufficient to fund the full amount of the Reconstruction Costs, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. Notwithstanding the foregoing, any Reconstruction Assessment exceeding ten percent (10%) of the amount of Annual Assessment otherwise payable by the Owners within the Fiscal Year in which the Reconstruction Assessment is to be levied, or more than thirty percent (30%) of the Annual Assessments otherwise payable over the period in which the Reconstruction Assessment will be levied if spread over more than one (1) Fiscal Year (collectively, the "Reconstruction Assessment Limit"), must be approved by Owners holding at least sixty-seven percent (67%) of the voting power of the Association.

10.2.3 Disapproval of Restoration. In the event that (a) the Board fails to affirmatively approve restoration and repair of the Project and impose any Reconstruction Assessment necessary to fund the full amount of the Reconstruction Costs, if any, in connection therewith, or (b) the Owners fail to approve any Reconstruction Assessment requiring Owner approval pursuant to Section 10.2.1 above, in each case within six (6) months after the date on which the destruction occurred, then the Board shall proceed as provided in Section 10.3 below.

10.2.4 Additional Limitations on Restoration Obligation. Notwithstanding the foregoing, subject to the approval of Owners holding at least sixty-seven percent (67%) of the voting power of the Association, the Association need not perform any repair or reconstruction which is not required by applicable Governmental Requirements.

10.3 Sale of Property and Right to Partition. No Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the Project, or any part thereof, except as provided in Section 1359(b) of the California Civil Code. For purposes of Subsection 4 of Section 1359(b), partition may occur only if the following conditions are

satisfied: (a) within six (6) months after the date on which destruction occurred, the Board shall have failed to approve the repair and/or restoration of the Project and/or the Owners shall have failed to approve any Reconstruction Assessment requiring Owner approval, in each case as contemplated in Section 10.2.3 above, or (b) within twelve (12) months after the date on which destruction occurred, restoration or repair has not actually commenced for any reason other than causes beyond the reasonable control of the Association. In such event, the Association shall prepare, execute and Record, as promptly as practical, a certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners and execute such other documents and instruments as may be necessary for the Association to consummate the sale of the Project at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately before such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Project. The Board is authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. However, the balance then due on any valid Mortgage of Record shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing in this Declaration prevents partition of a co-tenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted, or reduced to judgment.

10.4 Owner's Restoration Obligations. Each Owner shall be solely responsible for the restoration and repair of any damages to Owner Improvements located within such Owner's Unit. Without limiting the foregoing, each Owner shall be obligated to repair and restore, as soon as commercially reasonable, any damage to Owner Improvements which is visible from outside such Owner's Unit or which would otherwise impact the Building, any structural components thereof or the cost of insurance on the Common Area or any other Unit within the affected Building. In the event that the Owner is obligated to restore any Owner Improvements pursuant to the preceding sentence, such repair and restoration shall be commenced as soon as commercially reasonable. All debris and rubble from the damage or destruction shall be promptly removed by such Owner from the Owner's Unit and shall not be stored or maintained for any period of time within the exterior areas of the Common Area. No damage or destruction shall relieve the Owner of the affected Unit from the obligation to pay Assessments pursuant to this Declaration. All restoration and repair to be performed by any Owner, whether voluntary or mandatory shall be performed in accordance with the following requirements.

(a) All work shall be performed in a good and workmanlike manner and shall conform to applicable Governmental Requirements, the Master Restrictions, the Building Design Guidelines

and all other provisions of this Declaration (including, without limitation, the provisions of Article IV hereof).

(b) All such work shall be completed with due diligence and at the sole cost and expense of the Owner performing it.

10.5 Notice to Owners and Listed Mortgagees. The Board, immediately on having knowledge of any material damage or destruction to the Common Area, shall promptly notify all Owners and Mortgagees, insurers and guarantors of first Mortgages on Condominiums in the Project who have filed a written request for such notice with the Board.

ARTICLE XI: EMINENT DOMAIN

The term "taking" as used in this Article means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. For purposes of this Article XI, (i) "Remaining Units" shall be defined as those Units within the Project which are either (a) not affected by the taking or (b) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their same condition as before the taking, and (ii) a "Minor Taking" shall be defined as a taking of any portion of the Project which can be restored in a manner such that operation of the Project and the Remaining Units located therein will not, after such restoration, be substantially and adversely affected.

11.1 Project Condemnation. If there is a taking of all or any portion the Project such that the continued ownership, operation and use of the Project in accordance with this Declaration is substantially and adversely affected, then the Board shall proceed with the sale of that portion of the Project which was not taken and distribute the net proceeds of such sale to the Owners of the Remaining Units after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 10.3 above unless Owners of the Remaining Units holding at least one-third (1/3) of the voting power in the Association allocated to the Remaining Units approve, by affirmative vote within one hundred twenty (120) days after the effective date of the taking (a) continuation of the Project, (b) the repair, restoration and replacement (to the extent feasible) of the Common Area and the Remaining Units and (c) imposition of any Reconstruction Assessment necessary to fund such repair and restoration in the event that the "Available Restoration Funds" (as defined below) would be insufficient to fund the full cost of restoring the Common Area. "Available Restoration Funds" shall be defined as the sum of (i) the total amount of the condemnation proceeds payable to the Association upon such takings plus (ii) any amounts the Owners of the Remaining Units wish to contribute to restoration of the Common Area.

11.2 Taking of a Condominium. Upon the taking of any Condominium within the Project, or any portion thereof (other than a taking of the undivided interest in the Common Area appurtenant to such Condominium), any portion of such Owner's Unit which is not taken shall, following demolition thereof, become part of the Common Area, and the Owners of such taken Units, by acceptance of the award allotted to them in the condemnation proceedings, shall be deemed to have relinquished (a) to the other Owners in the Project, on the basis of their relative

ownership of the Common Area therein, such Owners' undivided interest in the Common Area, and (b) to the Association, the remaining portions of the taken Units (if any). Each Owner relinquishing his interests pursuant to this Section 11.2 shall, at the Board's request and at the Association's expense, execute and acknowledge such deeds and other instruments which the Board deems necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit shall not be liable for Assessments under this Declaration which accrue on or after the date such Owner accepts his condemnation award. Without limiting the foregoing, for purposes of any vote of the Members required pursuant to this Article XI, the Membership in the Association appurtenant to the ownership of any Condominium within the Project which is the subject of a taking shall be deemed terminated upon the effective date of such taking as contemplated in this Section 11.2 and the Owner of any Unit so taken shall have no further voting rights in the Association.

11.3 Minor Takings.

11.3.1 Mandatory Restoration Following Minor Taking. The Association shall be obligated to repair and restore the affected portions of the Common Area following a Minor Taking provided that payment of all Reconstruction Costs to be incurred by the Association in performing such repair and restoration, as reasonably estimated by the Association, will not, after application of the Available Restoration Funds, require imposition of a Reconstruction Assessment exceeding the Reconstruction Assessment Limit. In such event, the Association shall promptly undertake such restoration of the affected portions of the Common Area and, if necessary, the Board shall levy a Reconstruction Assessment equal to the amount of Restoration Costs exceeding the Available Restoration Funds (the "Excess Restoration Costs") as necessary to fund such repair and restoration. Notwithstanding the foregoing, nothing in this Section 11.3.1 shall obligate the Association to restore any Owner Improvements or personal property located within the Remaining Units.

11.3.2 Optional Restoration Following Minor Taking. In the event that the Excess Restoration Costs to be incurred by the Association as a result of a Minor Taking would exceed the Reconstruction Assessment Limit, then the Board shall call a Special Meeting of the Members of the Association for purposes of approving or disapproving imposition of a Reconstruction Assessment in excess of the Reconstruction Assessment Limit. Unless the required Reconstruction Assessment is approved by a majority of votes cast by the Owners of the Remaining Units at such Special Meeting (but further provided that at least fifty percent (50%) of the voting power of the Association allocated to the Remaining Units is represented, either in person or by proxy, at such Special Meeting), the Association shall have no obligation to restore any portion of the Common Area affected by such taking. Furthermore, should the continued ownership, operation and use of the Project in accordance with this Declaration be substantially and adversely affected in the absence of such restoration, the Project shall be sold pursuant to Section 11.1 above. Upon approval of the required Reconstruction Assessment, the Board shall contract for such restoration and levy a Reconstruction Assessment which shall be added to the Available Restoration Funds and applied to restoration of the Common Area.

11.4 Condemnation Awards. Subject to Section 10.1 above, the Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All

condemnation awards shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Section 11.4.

11.4.1 Award for Taking of Condominium. Any award in condemnation for the taking of a Condominium shall be paid to the Owner of the Condominium so taken.

11.4.2 Award for Taking of Common Area. Any award in condemnation for the taking of all or any portion of the Common Area shall be paid to the Association and shall be applied to the Restoration Costs to be incurred by the Association in restoring the Common Area following such taking. If the Restoration Costs are less than the amount of the condemnation awards payable upon such taking, then that portion of the condemnation awards which exceeds the Restoration Costs shall be paid to the Owners of the Remaining Units in proportion to the decrease in the fair market value of each of their Condominiums resulting from such taking. Notwithstanding the foregoing, in the event that, following a taking of the Project as described in Section 11.1 above, the Owners of the Remaining Units do not elect to continue the Project pursuant thereto, then any award in condemnation for such taking shall be distributed to the Owners of the Remaining Units after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 10.3.

11.4.3 Awards Not Compensatory For Value Of Real Property. Any portion of an award in condemnation which does not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

11.4.4 Payments to Mortgagees. Notwithstanding anything to the contrary set forth in this Article XI, before the distribution to the Owners of any portion of any award in condemnation payable to the Association, the Association is hereby authorized to first apply any such distribution to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority.

11.5 Notice to Owners and Mortgagees. The Board, on learning of any taking affecting a Unit or a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgages on Condominiums in the Project who have filed a written request for such notice with the Association.

ARTICLE XII: INDEMNITY

12.1 Owner Indemnity. In addition to any other indemnity obligations set forth elsewhere in this Declaration, each Owner (the "Indemnifying Owner") shall, subject to Section 12.2 below, protect, indemnify, defend, and hold Declarant, Declarant's affiliates, each other Owner and the Association, and each of their respective members, managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising (directly or indirectly) as a result of or in connection with (i) any accident, injury, loss, or

damage, to any Person or loss or damage to the Project occurring on or within (or resulting from acts committed on or within) the Indemnifying Owner's Condominium, (ii) use of such Owner's Condominium, or the conduct of any business or work or things done, permitted or suffered in or about the Indemnifying Owner's Condominium or (iii) use of any other portion of the Project, or the conduct of any business or work or things done, permitted or suffered in or about any other portion of the Project by the Indemnifying Owner or its Permittees and (iv) the Indemnifying Owner's breach of this Declaration.

12.2 General Provisions. Notwithstanding anything to the contrary in this Article XII, (a) no Person shall be entitled to indemnification for any damage arising from their gross negligence or willful misconduct or the gross negligence or willful misconduct of their Permittees and (b) the Association, the Declarant and each Owner, for itself and its Permittees, waives any right of recovery against the other Owners and their Permittees for any loss, damage, or injury to the extent the loss, damage or injury is actually covered by insurance.

ARTICLE XIII: RIGHTS OF MORTGAGEES

13.1 General Protections. No amendment or violation of the Declaration, no lien created under Article XIV and no enforcement of the Governing Documents shall defeat or render invalid the rights of the Mortgagee under any First Mortgage encumbering one (1) or more Condominiums made in good faith and for value. However, after the foreclosure of any such Mortgage, such Condominium will remain subject to this Declaration. For purposes of the Governing Documents, "first Mortgage" means a Mortgage with first priority over other Mortgages on such Condominium, and "first Mortgagee" means the Mortgagee of a first Mortgage.

13.2 Payments of Delinquent Amounts. First Mortgagees may, jointly or singly, pay taxes, assessments or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

13.3 Additional Rights

13.3.1 Notices. Each First Mortgagee, insurer or guarantor of a First Mortgage encumbering any Condominium within the Project, on filing a written request for notification with the Board, is entitled to written notice from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Project or the Condominium securing the First Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Condominium securing the First Mortgage, which notice each Owner consents to and authorizes; (c) a lapse, cancellation, or material modification of any Association Insurance Policy; (d) any abandonment of that portion of the Project within which the Condominium securing the Mortgage may be located and/or termination of the Association; and (e) any proposed action of the Association which, pursuant to the terms of this Declaration,

requires consent by a specified percentage of First Mortgagees who have submitted a written request to the Association for notice of such proposed action.

13.3.2 Amendments. The provisions of this Article XIII and any other provision of this Declaration specified in Section 16.7.4 below may not be amended except with the consent of the required percentage of first Mortgagees as more particularly set forth therein.

ARTICLE XIV: ENFORCEMENT

14.1 Enforcement of the Governing Documents. All disputes arising under the Governing Documents, other than those described in Section 14.2, Section 14.3, or regulated by or otherwise subject to Civil Code Section 1375, shall be resolved as follows:

14.1.1 Violations Identified by the Association. If the Board determines that there is a violation of the Governing Documents, or that an Improvement which is the maintenance responsibility of an Owner needs maintenance, repair, restoration, or painting, then the Board, in addition to any other remedies set forth in this Declaration, may give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation. If an Owner does not perform such corrective action required by the Board within the allotted time, the Board, after Notice and Hearing, may remedy the violation and charge the cost to the Owner as a Compliance Assessment. The Board may collect any such delinquent Compliance Assessments pursuant to the procedures established in Section 14.2 below.

14.1.2 Violations Identified by an Owner. If an Owner alleges that another Owner or other Person is violating the Governing Documents other than nonpayment of an Assessment, the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1369.520 of the California Civil Code, or litigation for relief.

14.1.3 Legal Proceedings. Failure to comply with the Governing Documents by an Owner, or any other Person, is grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of a lien, or any combination thereof. However, the procedures established in the California Civil Code and in Sections 14.1.1 and 14.1.2 must first be followed, if they are applicable.

14.1.4 Limitation on Expenditures. Except as expressly set forth in this Section 14.1.4, the Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Members holding the majority of the voting power of the Association (excluding, if applicable, any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1369.520 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the design control provisions contained in Article IV, (c) to collect any unpaid assessments levied pursuant to the Governing Documents, (d) for a claim, the total value of which is less than

five hundred thousand dollars (\$500,000), or (v) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify its Members of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

14.1.5 Additional Remedies. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against the Condominium owned by the Owner responsible for a violation of any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of the Declaration that was violated, the violation committed, and the steps as may be required to remedy the noncompliance. Once the noncompliance is remedied or the non-complying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

14.1.6 No Waiver. Failure to enforce any provision of the Governing Documents does not waive the right to enforce that provision, or any other provision.

14.1.7 Right to Enforce. The Board or any Owner may enforce the Governing Documents subject to Section 1369.520 of the California Civil Code. Each remedy provided for in the Governing Documents is cumulative and not exclusive or exhaustive. The City also has the right, but not the obligation, to enforce the provisions of this Declaration. The Association shall reimburse the City for all costs reasonably incurred by the City in enforcing the provisions of this Declaration. The City shall be a third party beneficiary to this Declaration.

14.2 Nonpayment of Assessments Delinquency.

14.2.1 Delinquency. Any installment of an Assessment is delinquent if not paid within fifteen (15) days after the due date established by the Board. Any Assessment installment not paid within thirty (30) days after the due date, plus all reasonable costs of collection, including attorneys' fees, and late charges bears interest at the maximum legal rate commencing thirty (30) days from the date the Assessment becomes due and continuing until paid. The Board may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(e)(2). The Association need not accept any tender of a partial payment of an amount due and acceptance of any such tender does not waive the Association's right to demand and receive full payment.

14.2.2 Remedies. The Association may bring an action at law against the Owner personally obligated to pay amounts due or may foreclose its lien against the Condominium of

such Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorney fees as fixed by the court. In the event that the Association elects to enforce an Owner's obligation to pay Assessments by Recordation of a lien against such Owner's Condominium, the provisions of this Section 14.2.2 shall govern.

(a) Priority of Assessment Lien. Any Assessment Lien recorded pursuant to this Declaration shall be prior and superior to all other liens, except (A) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (B) the lien or charge of any First Mortgage of Record made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) was Recorded against the respective Condominium. Sale or transfer of any Condominium shall not affect the Assessment Lien, except that the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a First Mortgage extinguishes the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer relieves such Condominium from liens for any Assessments becoming due after the sale or transfer. No Person who obtains title to a Condominium pursuant to a judicial or nonjudicial foreclosure of the First Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Condominium which became due prior to the acquisition of title to the Condominium by such Person. Such unpaid share of Common Expenses or assessments is a Common Expense collectible from all of the Owners including such Person.

(b) Creation of Lien.

(i) Before the Association may place a lien upon an Owner's Condominium to collect a past due Assessment, the Association shall send written notice ("Notice of Intent to Lien"), at least thirty (30) days prior to Recording of such lien, to the Owner by certified mail. The Notice of Intent to Lien must contain the following information: (1) the fee and penalty procedure of the Association, (2) an itemized statement of the charges owed by the Owner (including the principal owed, any late charges, any interest, and the method of calculation of such interest or late charge and any attorney fees incurred by the Association as a result of such delinquency), (3) the collection practices used by the Association, (4) a statement that the Association may recover reasonable costs of collecting past due Assessments, (5) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (6) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (7) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, and (8) a statement that the Owner has the right to request a meeting with the Board, as provided by Civil Code Section 1367.1(c).

(ii) An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to

the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Notice of Intent to Lien.

(iii) An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in Section 14.2.2(a) above. The Association shall provide the Owner with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Notice of Intent to Lien, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

(iv) At any time thirty (30) days or more after mailing of the above-referenced Notice of Intent to Lien, the Association may Record a "Notice of Delinquent Assessment" against the Condominium of the delinquent Owner. Such Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must recite (i) the legal description of the Condominium, (ii) the record Owner thereof, (iii) the amount claimed (which may at the Association's option include interest and late charges plus reasonable attorneys' fees and expenses), (iv) the Association's name and address, and (v) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be mailed to the delinquent Owner, by certified or registered mail, postage prepaid, as set forth in Section 2924b of the California Civil Code, no later than ten (10) days after Recordation. Recordation of the Notice of Delinquent Assessment creates a lien on the Condominium of the delinquent Owner as provided in Section 1367 of the California Civil Code. The lien shall continue until the full amount claimed therein is paid or otherwise satisfied. No action may be brought to enforce any Assessment Lien unless at least thirty (30) days has expired following Recordation of the related Notice of Delinquent Assessment. Assessments described in Section 1367(c) of the California Civil Code and Section 2792.26(c) of Title 10 of the California Code of Regulations may not become a lien against an Owner's Condominium enforceable by the sale thereof under Sections 2924, 2924b and 2924c of the California Civil Code.

(c) Foreclosure Sale. Provided that (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby, the Board, its attorneys or other Persons authorized by the Board may conduct a sale to foreclose an Association lien in accordance with the provisions of Sections 2924, 2924a, 2924b, 2924c and 2924f of the California Civil Code, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages, or in any other manner permitted by law. The Association, through duly authorized agents, may bid on the Condominium at foreclosure sale, and acquire and hold, lease, encumber and convey the Condominium. Upon completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value of the Condominium during any period of continued occupancy by the defaulting Owner or any Persons claiming under the defaulting Owner.

(d) Receivers. In addition to foreclosure and other remedies of the Association, each Owner, by acceptance of a deed to such Owner's Condominium, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Condominium subject to the right, power and authority of the Association to collect and apply such rents, issues and profits to any delinquent assessments owed by such Owner, reserving to the Owner the right, prior to any default by the Owner in the payment of assessments, to collect and retain such rents, issues and profits as they become due and payable. Upon default, the Association may, upon the expiration of thirty (30) days following delivery to the Owner of a Notice of Delinquent Assessment, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described herein, (a) enter in or upon and take possession of the Condominium or (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner hereunder, and in such order as the Association may determine. The entering upon and taking possession of the Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(e) Release of Lien. Upon the timely curing of any default for which the Association Recorded a Notice of Delinquent Assessment, the Association's officers shall, within twenty-one (21) days of payment of the full amount claimed in the Notice of Delinquent Assessment, Record an appropriate Release of Lien. The Board may require payment by the defaulting Owner of a reasonable fee, to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the lien upon any Condominium created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

14.3 Alternative Dispute Resolution of Assessment Disputes. Disputes between an Owner and the Association regarding the Assessments imposed by the Association may be submitted to alternative dispute resolution in accordance with Civil Code Section 1369.520 if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all fees and costs associated with the preparation and filing of a Notice of Delinquent Assessment (including mailing costs and attorneys fees not to exceed the maximum amount allowed by law) and states by written notice to the Association that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after the Recording of a Notice of Delinquent Assessment. Upon receipt of such written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as set forth in Civil Code Section 1369.520. The right of any Owner to utilize alternative dispute resolution under this Section may not be exercised more than two times in any calendar year, and not more than three times within any five (5) consecutive calendar years. Nothing within this Section shall preclude any Owner and the Association, upon mutual agreement, from entering into alternative dispute resolution in a different manner than set forth herein. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through

(d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

14.4 Declarant Disputes. For purposes of this Section 14.4, “Declarant Disputes” shall mean any dispute between any Owner and Declarant or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of Declarant (collectively, the “Declarant Parties”), or between any Declarant Party and the Association, regarding the design, construction or installation of any Improvements in the Project constructed by or on behalf of Declarant, including without limitation, any dispute relating to any construction performed by or on behalf of Declarant prior to the recordation hereof. Notwithstanding the foregoing, Declarant Disputes shall not include (a) any disputes where the amount in controversy is less than Five Thousand Dollars (\$5,000) nor (b) any action taken by the Association against Declarant to collect delinquent Assessments.

14.4.1 Notice. Any Owner or the Association asserting a Declarant Dispute (the “Claimant”) against any Declarant Party shall give written notice of the Declarant Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 describing the nature of the Declarant Dispute and any proposed remedy (the “Dispute Notice”) to Declarant and the Declarant Party against whom such Declarant Dispute is asserted (the “Respondent”).

14.4.2 Right to Inspect and Correct. Beginning on the date the Dispute Notice is delivered to the Respondent and continuing until the Declarant Dispute is resolved, the Respondent and its representatives have the right to (a) meet with the Claimant at a reasonable time and place to discuss the Declarant Dispute, (b) enter the Project to inspect any areas that are subject to the Declarant Dispute, and (c) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Project to take and complete the corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate but is not obligated to take any corrective action. The right to inspect and correct granted in this Section is in addition to the rights granted in Civil Code Section 1375 (the “Calderon Act”). The procedures established in the Calderon Act may be implemented, before, during or after the procedure in this Section is implemented.

14.4.3 Mediation. If the Declarant Dispute is not resolved within sixty (60) days after Respondent’s receipt of the Dispute Notice (or in the event that Respondent has commenced corrective action pursuant to Section 14.4.2 above, ninety (90) days after receipt of the Declarant Dispute Notice), Declarant or Respondent may require that the parties submit the Declarant Dispute to mediation. Failure of Declarant or Respondent to submit the Declarant Dispute to mediation within the foregoing period shall constitute a waiver of such party’s right to submit the Declarant Dispute to mediation. Upon submission of the Declarant Dispute to mediation, such Declarant Dispute shall be mediated pursuant to (i) the JAMS mediation procedures in existence when the Declarant Dispute Notice is delivered, or (ii) mediation procedures of any other entity offering mediation services that is mutually acceptable to Claimant and Respondent. The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the

mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these Sections, including the Sections which preclude use of material in future proceedings and the Sections which provide for confidentiality of material. Each party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator, shall be borne by the Respondent unless the parties agree otherwise.

14.4.4 Judicial Reference. If a Declarant Dispute remains unresolved after completion of mediation entered into by the parties pursuant to the preceding Section, the Claimant may file a lawsuit. All lawsuits regarding Declarant Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, as modified by this Section 14.4.4:

(a) The referee shall be a retired judge who served on the Superior Court of the State of California in Santa Cruz County, California with substantial experience in the type of matter in dispute and without any relationship to the parties or interest in the Project, unless the parties agree otherwise. Claimant and Respondent shall meet to select the referee no later than thirty (30) days after service of the initial complaint on the Respondent. Any dispute regarding selecting the referee shall be resolved by the court in which the complaint is filed.

(b) The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other person unless (i) all parties to the judicial reference proceeding consent, or (ii) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(c) The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of both parties to the judicial reference proceeding.

(d) The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense. The referee may rule on all post-hearing motions in the same manner as a trial judge.

(e) The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding. The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure Section 632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Declarant Dispute had been tried by the court. The decision of the referee shall be subject to appeal in the same manner as if the Declarant Dispute had been tried by the Court.

(f) Each party shall bear its own attorney's fees and costs incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of a stenographic record of the proceedings, shall be advanced equally by the Claimant and all Respondents against whom the Declarant Dispute has been asserted. However, the referee shall have the power to reallocate such fees and costs among the parties in the referee's final ruling. This provision does not modify any provision of any contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and such Declarant Party.

14.4.5 Statute of Limitations. Nothing in this Section 14.4 shall be deemed to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that either party may commence a legal action which in the good faith determination of that party is necessary to preserve that party's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 14.4.

14.4.6 Agreement to Dispute Resolution; Waivers of Jury Trial; Amendment. DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 14.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 14.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY. THIS SECTION 14.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

14.4.7 Calderon Act. Section 14.4 governs only the resolution of Disputes with Declarant Parties. Unless the subject matter of a dispute expressly involves an action for damages against Declarant and/or any Declarant Parties, such dispute shall not be governed by the provisions of the Calderon Act. Each party in a dispute with Declarant Parties shall bear its own attorney fees and costs, and the prevailing party shall not be entitled to an award of attorney fees and costs, except to the extent provided under the Calderon Act.

ARTICLE XV: REAL PROPERTY TAXES AND ASSESSMENTS

15.1 Real Property Taxes and Assessments. Each Owner shall pay, or cause to be paid, when due, all real estate or personal property taxes and assessments which may be levied, assessed, or charged by any public authority against the Owner's Condominium or any other part thereof or

any Owner Improvements installed therein. If an Owner shall claim that any property tax or assessment (including the rate thereof or the assessed valuation of the property) is excessive or illegal, the Owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings. Nothing contained in this Article shall require an Owner to pay any real property tax or assessment as long as (a) no other Owner's Condominium or the Common Area would be immediately affected by such failure to pay; and (b) the amount or validity thereof shall be contested in good faith. If the failure to pay such real property tax or assessment affects another Owner's Condominium or the Common Area, the other Owner or the Association may demand that the nonpaying Owner post an appropriate bond to secure payment of the delinquent taxes pending resolution of the proceedings to contest the tax. If such a bond is not posted within ten (10) days after receipt of such demand by the nonpaying Owner, the Association shall have the right, but not the obligation, to pay such tax and shall have a lien on the nonpaying Owner's Condominium for the amount so paid until reimbursed. Any such lien shall be subject and junior to, and shall in no way impair or defeat, a lien or charge of any Mortgagee.

15.2 Unsegregated Real Property Taxes. In the event that real estate taxes on any of the Condominiums within the Project are not separately assessed as of the Close of Escrow for the sale of such Condominium by Declarant, each Owner shall take such action as may be reasonably necessary to obtain separate real estate tax assessment of such Condominium. To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied on the Project. If all Condominiums in the Project are taxed under a tax bill covering all of the Project, then each Owner shall pay his share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall allocate taxes among the Owners and their Condominiums in the Project, based on the percentage of Assessments allocable to each such Condominium pursuant to Section 8.4 above. The Association shall, at least forty-five (45) days before the delinquency date of any tax installment, deliver to each Owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his share. The Association shall impose a Special Assessment on the Condominium of any delinquent Owner in an amount equal to any sum advanced by the Association pursuant to this Section 15.2, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of his share of the taxes.

ARTICLE XVI: MISCELLANEOUS

16.1 Notices. Except as otherwise provided in this Declaration, notice to be given to an Owner or Mortgagee must be in writing and may be delivered to the Owner or Mortgagee, or designated representative of such party, as applicable, personally or by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means, at the address provided by such Owner and/or Mortgagee to the Association. If an Owner does not furnish an address, notice may be sent to the street address of an Owner's Unit.

Delivery of such notice to one (1) or more co-owners of a Condominium, to any general partner of a partnership owning the Condominium, or to a manager or member of a limited liability company owning a Condominium, constitutes delivery to all Co-owners, the partnership or the limited liability company. Delivery of such notice to any officer or agent for the service of process on a corporation constitutes delivery to the corporation. Alternatively, notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner or Mortgagee at the most recent address furnished by such Owner or Mortgagee to the Declarant or the Association, as applicable. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of any meeting of Members or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed from time to time and circulated to all Owners or sent by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means to such address or telephone number as the Board may establish. All notices to Declarant shall be sent to:

John McCoy
PO BOX 970
Soquel, CA 95073

Each Owner and Declarant may change its address by written notice to each other given in the manner hereinabove stated.

16.2 Interpretation.

16.2.1 General Rules. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development, ownership and operation of a condominium project and for the ownership and maintenance of the Common Area located therein. Any violation of this Declaration is a nuisance. The Governing Documents shall be interpreted so as to be consistent with law. The Governing Documents shall be construed and governed by the laws of the State of California. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each include the other, unless the context dictates otherwise. Except as otherwise expressly provided herein, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable. All references made in this Declaration to statutes are to those statutes as amended or restated and to subsequently enacted replacement statutes.

16.2.2 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and any Articles, Bylaws, Rules and Regulations or Condominium Plan, then this Declaration shall prevail.

16.2.3 Severability. The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this

Declaration by a court of competent jurisdiction or any other means does not affect the validity or enforceability of any other provisions of this Declaration.

16.3 Effect of Declaration; Binding Covenants Running With the Land; Equitable Servitudes. Every Person who owns, occupies or acquires any right, title, estate or interest in any Condominium within the Project hereby consents and agrees, and shall be conclusively deemed to have consented and agreed, to every easement, restriction, reservation, right, covenant, condition and equitable servitude contained herein, whether or not any reference to the Governing Documents is contained in the instrument by which such Person acquired its interest in such Condominium within the Project. Each and all of the restrictions, covenants, and easements of this Declaration (i) shall constitute equitable servitudes which shall apply to and be binding on the Owners and all Persons having or hereafter acquiring any interest in any portion of the Project and each and all of their respective successors, assigns, Mortgagees, and Permittees; and (ii) are imposed pursuant to a general plan for the improvement and use of the Project and are designed for the mutual benefit of the Owners. The covenants contained in this Declaration shall constitute covenants running with the land in the Project; shall be binding upon, and shall inure to the benefit of, the Project and any portion thereof or interest therein; and shall be binding upon, and shall inure to the benefit of, Declarant, all Owners, and any Person having or acquiring any portion of the Project or any interest therein and their successive owners and assigns. Notwithstanding the foregoing, except as otherwise expressly provided herein, the rights or privileges conferred upon the Owners by this Declaration shall not inure to the benefit of any Permittee or other Person who is not an Owner, nor shall any non-Owner be deemed to be a third party beneficiary of any of the provisions contained herein.

16.4 Recordation. This Declaration shall be Recorded in the Office of the County Recorder of Santa Cruz County, California and shall be effective upon such Recordation.

16.5 Estoppel Certificate. Each Owner, Declarant and the Association shall, upon the written request of Declarant (for so long as Declarant is an Owner) or any other Owner, issue to the requesting party, or to any prospective Mortgagee or purchaser of such requesting party's Condominium, an estoppel certificate stating (i) whether the Declarant, Owner or the Association (as applicable) to whom the request has been directed knows of any default under this Declaration relating to or materially affecting the requesting Owner's Condominium and, if there are known defaults, specifying the nature thereof, (ii) whether, to the best knowledge of the Declarant, such Owner or the Association (as applicable), this Declaration has been modified or amended in any respect and, if there are known amendments, specifying the nature thereof, and (iii) whether, to the best knowledge of the Declarant, such Owner or the Association (as applicable), this Declaration is, at that time, in full force and effect.

16.6 Duration. This Declaration and each term, easement, covenant, restriction and undertaking contained herein will remain in effect for a term of ninety-nine (99) years from the date of Recordation hereof and will automatically be renewed for successive ten (10) year periods thereafter, unless Members holding at least sixty-seven percent (67%) of the voting power of the Association vote not to automatically renew the term of this Declaration following initial expiration thereof.

16.7 Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

16.7.1 Unilateral Amendment Before First Close of Escrow. Notwithstanding any other provisions of this Section 16.7.1, at any time before the first Close of Escrow of a Condominium to an Owner other than Declarant, Declarant may amend or terminate this Declaration by Recording a written instrument which effects the amendment and is signed and acknowledged by Declarant.

16.7.2 Member Approval. Except as otherwise expressly provided in this Declaration, all amendments to this Declaration can be adopted by Members holding at least a majority of the voting power of the Association; provided however that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for any action to be taken under the provision that is the subject of the proposed amendment.

16.7.3 Mortgagee Approval. In addition to the required notice and consent of Members and Declarant, the following amendments to the Governing Documents must be approved by fifty-one percent (51%) of the First Mortgagees who have requested notice of proposed actions: (a) an amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to First Mortgagees, insurers and guarantors of First Mortgages in this Declaration; (b) an amendment which would or could result in a First Mortgage being canceled by forfeiture; (c) an amendment relating to the insurance provisions or to the application of insurance proceeds or to the disposition of any money received in any taking under condemnation proceedings; (d) an amendment which would restrict leasing of Units and (e) an amendment which would subject any Owner to a right of first refusal or other such restriction if the Owner's Condominium is proposed to be sold, transferred or otherwise conveyed (provided, however, that the foregoing shall not be deemed to limit or otherwise affect the enforceability of any such provisions set forth in the Master Restrictions).

16.7.4 Notice to Mortgagees. Each First Mortgagee of a first Mortgage on a Condominium in the Project which is sent written notice of a proposed amendment of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment if the First Mortgagee fails to submit a response to the notice within thirty (30) days after the date of the mailing receipt.

16.7.5 Certification of Amendments. A copy of each amendment shall be certified by at least two (2) Association officers, and the amendment will be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) officers of the Association that the requisite number of Members have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, is conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for at least four (4) years. The certificate of any termination or amendment which requires the written consent of any First Mortgagees must include a certification that the requisite approval of such First Mortgagees was obtained. The certificate of any termination or

amendment which requires the written consent of Declarant or is subject to Declarant's veto right must include Declarant's signature.

16.8 Attorney Fees; Court Costs. If any action or proceeding is instituted to enforce or interpret this Declaration or for damages on account of the breach of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the other party its reasonable attorneys fees and costs and expenses of litigation incurred in such action or proceeding.

16.9 Force Majeure. If the Association, any Owner or any other Person shall be delayed or hindered in or prevented from the performance of any act required to be performed by such Person under this Declaration by reason of acts of God, strikes, lockouts, unavailability of materials, failure of power, governmental laws or regulations, riots, insurrections, adverse weather conditions preventing the performance of work as certified to by the licensed architect, engineer, or other individual overseeing the performance of the relevant work, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period equal to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

16.10 Additional Provisions. Notwithstanding the provisions contained in the Governing Documents, the Association and the Owners should be aware that there may be (a) provisions of laws, such as the Davis-Stirling Act (but expressly excluding those provisions thereof specified in Section 1373 of the California Civil Code as being inapplicable to commercial common interest developments) or (b) provisions of the Master Restrictions, which may supplement or override the Governing Documents. Declarant makes no representations or warranties regarding the future enforceability of any provision in the Governing Documents.

16.11 No Representations and Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, the Association or their agents or employees in connection with the Project, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration.

16.12 Mergers and Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by the Governing Document, together with the covenants and restrictions established upon any other property, as one plan.

16.13 Security and Privacy Disclaimer. Services provided by the Declarant or the Association may provide access control or other security benefits to the Project; however, these services do not provide security for Persons, personal property or Condominiums or Improvements in the

Project. Neither Declarant nor the Association undertake any obligation to provide security for the Project nor do they make any representations or warranties whatsoever concerning the privacy, security and/or safety of the Project. Neither the Association nor Declarant shall be liable to any Person and each Owner waives any claim against the Association and Declarant, for (i) any unauthorized or criminal entry of third parties into the Project, any Unit or any other Improvements in the Project, (ii) any damage, injury or death of any Person, or (iii) any loss of property in and about the Project, any Unit or any Improvements in the Project, if any of such events listed in items (i) to (iii) are caused by any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of the security services provided by the Association.

ARTICLE XVII: DECLARANT RIGHTS

17.1 Interest of Declarant. Declarant, in cooperation with the City and the Master Declarant, has created a comprehensive plan for the development of the Project which includes modern planning objectives formulated for the common good within the Project. Declarant intends, but is not obligated, to develop the Building(s) in the Project, provided, however, Declarant makes no covenant, representation or warranty that the Building(s) or the Project will be developed as intended. Nothing contained herein or in any provision of any of the other Governing Documents shall obligate Declarant to develop the Project or construct any specific Improvements within the Project or on any other land. The completion of that work and the sale, resale and other disposal of the Condominiums developed within the Project is essential to the establishment of the Project as a quality condominium development. Each Owner acknowledges that Declarant has a substantial interest in assuring compliance with, and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration. The provisions of this Article XVII supersede and control all other provisions of the Declaration as applied to Declarant.

17.2 Development Rights. Until the Declarant Rights Termination Date, Declarant shall have the right to take any of the following actions without the approval of any other Owner or the Association.

17.2.1 Subdivision. To subdivide or re-subdivide the Project prior to the first Close of Escrow for a Condominium within the Project. Declarant shall further have the right to relocate the boundaries of any of the Units remaining unsold within the Project or the boundaries of the Common Area adjacent thereto, and in connection therewith, to record amendments to the Condominium Plan for the Building within which such any such Units may be located.

17.2.2 Development; Compliance with Map Requirements. To complete excavation, grading, construction of Improvements or other development activities on the Common Area or on any portion of the Project owned by Declarant, and to take all actions necessary to comply with any map or other development conditions imposed by the City or the Master Declarant in connection with the development of the Project.

17.2.3 Construction; Plan Modifications. To unilaterally modify from time to time Declarant's development plan for the Project, or any portion thereof or any portion of the Annexable Area located adjacent thereto, and/or to alter or abandon construction plans and

designs, to modify Improvements or to construct additional Improvements as Declarant deems advisable in the course of developing the Project. Notwithstanding the foregoing, no such construction of additional Improvements or modification of Common Area may alter the dimensions of or otherwise materially adversely impact any Unit adjacent to the portion of the Common Area so altered without the prior written consent of the Owner of such Unit.

17.2.4 Creating Additional Easements. At any time before acquisition of title to a Condominium by a purchaser from Declarant, to establish additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others over the applicable Unit as reasonably necessary for the proper development and disposal of the Project. For so long as Declarant owns any Condominium within the Project, the right to grant or create exclusive and nonexclusive easements, licenses, rights-of-way and other interests in and over the Common Area for access, ingress, parking, egress, utilities, exclusive or shared trash enclosures, drainage and other purposes as Declarant from time to time deems necessary or desirable in connection with the sale or financing of one or more Condominiums in the Project; provided however, that no easements, licenses, reservations or rights-of-way established pursuant to this Section 17.2.4 shall unreasonably interfere with the rights of any Owner to access its Unit from the Common Area.

17.3 Declarant's Sales and Marketing Rights. Until the Declarant Rights Termination Date, Declarant shall have the right to take any of the following actions without the approval of any other Owner or the Association.

17.3.1 Signs. To erect, construct and maintain on the Project structures, Signs and displays reasonably necessary for the conduct of the business of constructing, developing and marketing the Project.

17.3.2 Sales Activity. To sell any portion of the Project directly or through agents and representatives, and to use the Common Area for access to the sales facilities of Declarant by prospective purchasers, sales agents and Declarant, and to use any Condominiums owned by Declarant within the Project as real estate sales offices.

17.3.3 Access Rights, Sales Activity. To use and to permit prospective purchasers of Condominiums to use, on a nonexclusive basis, the Common Area and any Improvements located thereon, without further cost, for access, ingress, egress and use as necessary to (a) show the Project to prospective purchasers or tenants; and (b) dispose of the Project as provided in this Declaration. Declarant and prospective purchasers and tenants are also entitled to the nonexclusive use of any portions of the Common Area for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Project. The use of the Common Area by Declarant may not unreasonably interfere with the use thereof by the other Owners.

17.3.4 Project Name. The Project shall be marketed under the general name "100-200 Kennedy Drive Condominiums." Declarant may change the marketing name of the Project at any time in Declarant's sole discretion.

17.4 Special Power of Attorney. Each Owner, by accepting and recording a grant deed to a Condominium in the Project, is deemed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Project, as Owner's Attorney-in-Fact, for Owner and for each of Owner's mortgagees, optionees, Owners, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and each Owner is deemed thereby to have conveyed to Declarant a special power of attorney coupled with an interest authorizing Declarant to act as each Owner's attorney-in-fact for purposes of preparing, executing, acknowledging and recording any amendment to or restatement of the Condominium Plan covering such Owner's Condominium for the purposes stated in Section 17.2.1 above and/or in order to correct errors, to conform to as-built conditions, or to bring such Condominium Plan into compliance with any City, County, State or Federal laws or regulations; provided that no such amendment may change the location or dimensions of any Unit previously conveyed to an Owner without such Owner's express written consent. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

17.5 Declarant's Notice Rights. Following the Declarant Rights Termination Date, the Association shall provide Declarant with all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration without the need on Declarant's part to specifically request any such notices.

17.6 Exemption. Declarant is exempt from the requirements of Article IV of this Declaration.

17.7 Declarant Approval Rights.

17.7.1 Before Declarant Rights Termination Date. Without limiting the provisions of Section 14.2.2 above, the following actions may not be taken by the Association at any time before the Declarant Rights Termination Date without the prior written approval of Declarant:

- (a) Any amendment or action requiring the approval of First Mortgagees;
- (b) The annexation to the Project of additional real property;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant; or
- (d) Any change in the general, overall, architectural or landscape design of the Project or the Common Area.

17.8 Priority of Declarant Rights; Assignment of Rights. Nothing in this Declaration limits, and no Owner or the Association will interfere with, Declarant's exercise of the rights established pursuant to this Article XVII. Any portion of the rights of Declarant under this Article XVII or elsewhere in the Declaration may be assigned by Declarant to any successor in

interest to any portion of Declarant's interest in the Project by an express written assignment which specifies the rights of Declarant so assigned.

[Signature on Following Page]

IN WITNESS WHEREOF, the undersigned has executed this Declaration to be effective upon Recordation in the Official Records of the County.

John J. McCoy, Trustee of the McCoy
Trust, created on February 25, 2008

ACKNOWLEDGEMENT

State of California

County of _____

On _____, before me, _____, a Notary Public, personally appeared John J. McCoy, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal

Notary Public