

Electronically

**FILED**

by Superior Court of California, County of San Mateo

ON 9/14/2020

By /s/ Wai Shan Lee  
Deputy Clerk

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Attorney for Petitioner

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

(UNLIMITED JURISDICTION)

In the Matter of	)	Case No.: 20-CIV-03926
BAYVIEW CONDOMINIUM	)	
ASSOCIATION,	)	DECLARATION OF DAVID BEHLING
a California nonprofit corporation,	)	
	)	
Petitioner.	)	
	)	
	)	

I, DAVID BEHLING, declare as follows:

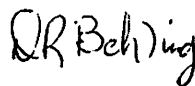
1. I am the Managing Agent for BAYVIEW CONDOMINIUM ASSOCIATION, INC. (the "Association"). I have been the Association's Managing Agent for ten years.
2. Attached to the Petition to approve the Restated Declaration as Exhibit "1" is a true and correct copy of the Petitioner's original Declaration of Covenants, Conditions, and Restrictions.
3. Attached to the Petition to approve the Restated Declaration as Exhibit "2" is a true and correct copy of the proposed Amended and Restated Declaration of Covenants, Conditions, and Restrictions.

DECLARATION OF DAVID BEHLING

- 1 4. The Association's members voted in favor of adoption of the proposed Amended and  
2 Restated Declaration of Covenants, Conditions, and Restrictions.
- 3 5. The Association's Board of Directors voted in favor of petitioning the Court to approve  
4 the Amended and Restated Declaration of Covenants, Conditions, and Restrictions.
- 5 6. The proposed Restated Declaration meets the needs of the Association to rationally  
6 address the protection, preservation, operation of the Property, and the ability of its  
7 Members to obtain loans for their condominiums.
- 8 7. The Association and its members want to (i) bring the Declaration into compliance with  
9 current law; (ii) ensure that condominiums within the Association continue to qualify for  
10 conventional mortgage financing; (iii) promote active participation by Owners in the  
11 operation of the Association; (iv) preserve the residential quality of the development; and  
12 (v) protect and preserve property values. The Restated Declaration achieves those goals.
- 13 8. The Association posts notices requires by the Davis-Stirling Act, Civil Code section  
14 4000 et seq. at its entrance lobbies.

15  
16  
17  
18 I declare under penalty of perjury under the laws of the State of California, that  
19 the foregoing is true and correct.

20 Executed on March 28, 2020 at Burlingame, California.

21  
22 

23  
24 BY DAVID R BEHLING

# EXHIBIT 1

WHEN RECORDED MAIL TO:

HERBERT J. STRICKSTEIN  
LAW CORPORATION  
2049 Century Park East - 12th Floor  
Los Angeles, California 90067

55588A0

RECORDED AT REQUEST OF  
FIRST AMERICAN TITLE INSURANCE CO.  
SAN MATEO COUNTY TITLE DIVISION

AUG 31 10 45 AM '79

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SAN MATEO COUNTY  
AUG 31 1979

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DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS  
BAYVIEW CONDOMINIUM  
CITY OF MILLBRAE, COUNTY OF SAN MATEO  
STATE OF CALIFORNIA

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WHEN RECORDED MAIL TO:

HERBERT J. STRICKSTEIN LAW CORPORATION  
2049 Century Park East - 12th Floor  
Los Angeles, California 90067

DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS  
BAYVIEW CONDOMINIUM  
CITY OF MILLBRAE, COUNTY OF SAN MATEO  
STATE OF CALIFORNIA

THIS DECLARATION is made this 17th day of July, 1979, by EQUITY PROPERTIES LIMITED 1972, A LIMITED PARTNERSHIP, hereinafter referred to as "Declarant," with reference to the following:

A. On or about the date of recordation of this Declaration in the Office of the County Recorder of San Mateo County, State of California, Declarant owns that certain real property, commonly known as Bayview Condominium, located at 1550 Frontera Way, in the City of Millbrae, County of San Mateo, State of California, improved with ninety-five (95) units, and with the property, improvements and all appurtenances and facilities thereon, being hereinafter collectively referred to as the "project," all of which is hereinafter more particularly described as follows:

Parcel A of Bayview Condominium as per Map recorded in Volume 99 of Maps, at Pages 71, 72, 73, 74 and 75 of Maps, in the Office of the County Recorder of San Mateo County (the "Property").

B. It is the desire and intention of Declarant to sell and convey interests in said real property to various individuals and subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens and charges between Declarant and the acquirers or users of said property, as hereinafter set forth.

NOW, THEREFORE, pursuant to the provisions of Chapter 1. of Title 6., Part IV of Division 2nd of the California Civil Code and Section 1368 of the California Civil Code, Declarant hereby declares that the property, improvements, appurtenances and facilities described herein and as shown on the Condominium Plan to be recorded in connection with the project, shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only and upon the following uniform covenants, conditions, restrictions, limitations, reservations, grants of easements, rights of way, rights, liens, charges and equitable servitudes, all of which are hereby declared, established, expressed and agreed: (1) to be in furtherance of a plan for the subdivision and sale of individual condominiums in a condominium project, as defined in Section 1350 of the Civil Code; (2) to be for the benefit and protection of the project, its desirability, value and attractiveness; (3) to be for the benefit of the owners of condominiums in the project; (4) to run with the land and be binding on all parties having or acquiring any right, title or interest in the project, or any portion thereof; (5) to inure to the benefit of every portion of the project and any interest therein; and (6) to inure to the benefit of and be binding on each successor and assignee in interest of each owner and of Declarant.

Any conveyance, transfer, sale, assignment, lease or sub-lease made by Declarant or by the Association (as hereinafter defined) of a condominium in the project will and hereby is deemed to incorporate by reference, the provisions of this Declaration, including but not limited to, covenants, conditions, restrictions, limitations, grants of easements, rights, rights of way, liens, charges and equitable servitudes contained herein.

The provisions of this Declaration shall be enforceable by Declarant, any owner or its or his successor in interest and shall also be enforceable by the Association, its Board of Directors or any person, firm or corporation duly authorized by the Association or its Board to enforce all or any one or more of the provisions hereof.

# ARTICLE I

## DEFINITION OF TERMS

Whenever used in this Declaration, the following terms shall mean:

1. Declarant, shall mean EQUITY PROPERTIES LIMITED 1972, a Limited Partnership, its successors and assigns, if such successors and/or assigns should acquire all or any portion of the property for the purpose of sale and are designated as the declarant by a duly recorded instrument executed by Equity Properties Limited 1972, a Limited Partnership.
2. Declaration, shall mean this Declaration, as the same may be amended, supplemented, changed or modified from time to time.
3. Unit, shall mean the elements of a condominium which are owned individually and not in common with owners of other elements of the project. The boundaries of the ninety-five (95) units are as shown and defined on the Condominium Plan.
4. Common Area, shall mean the entire project, excepting all units shown on the Condominium Plan, subject to the rights of use and easements described herein and in the document of conveyance through which each owner will acquire his condominium.
5. Condominium, shall mean a condominium as defined in Section 783 of the California Civil Code, consisting of an individual interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential unit on such real property; more particularly, an estate in real property, consisting of an undivided percentage interest in the Common Area, together with a separate



interest in a unit as hereinbefore defined in said property, and an exclusive easement to and the exclusive right to use those balcony areas and parking spaces as shown on the Condominium Plan.

6. Owner, shall mean the record owner or owners, if more than one, of a condominium in the project, including Declarant, so long as any condominiums remain unsold.

7. Association, shall mean an incorporated association, consisting of all owners of condominiums in the project, which entity shall have the duty of maintaining, operating and managing the Common Area of the project in the manner and to the extent provided for herein. Each owner shall become a member of Bayview Condominium Association, Inc. contemporaneously with the acquisition of his condominium without further documentation of any kind.

8. Organizational Meeting, shall mean the first meeting of owners which shall occur within forty-five (45) days after the close of sale of the first unit in the project which represents the fifty-first (51st) percentile interest authorized for sale under the first Public Report, but no later than six (6) months after the close of sale of the first unit in the project, at which meeting, a new Board of Directors shall be elected by secret written ballot of the members.

9. By-Laws, shall mean the duly adopted Association By-Laws, as the same may be amended from time to time.

10. Board, shall mean the Board of Directors of the Association.

11. Project, shall mean the entire parcel of real property, divided or to be divided into condominiums, including all structures and improvements thereon.

12. Property and Improvements, shall mean and include all that real property more particularly described as Parcel A of Bayview Condominium as per Map recorded in Volume 99 at Pages 71 to 75 inclusive of Maps, in the Office of the County Recorder of San Mateo County, together with ninety-five (95) units and Common Area shown thereon.

13. Condominium Plan, shall mean the Plan prepared, executed and recorded in connection with the project in Volume 99 at Pages 71 to 75 inclusive of Maps, in the Office of the County Recorder of San Mateo County, a copy of which is attached hereto as Exhibit "A" and made a part hereof.

14. Mortgage, shall mean and refer to a deed of trust, as well as a mortgage; "Mortgagee," shall mean and refer to a beneficiary under, or a holder of, a deed of trust, as well as a mortgagee.

15. Institutional Holder of First Mortgage, shall mean a bank or savings and loan association, or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

## ARTICLE II

### DESCRIPTION OF LAND AND IMPROVEMENTS

Section 1. Condominium Plan Best Authority. The following description is intended for information purposes only and in the event of any conflict between this description and the Condominium Plan, the Condominium Plan shall be deemed to conclusively control.

Section 2. Property Description. The property consists of Parcel A of Bayview Condominium as per Map recorded in Volume 99 at Pages 71 to 75 inclusive of Maps, in the Office of the County Recorder of San Mateo County. The hereinbefore described real property consists of an irregularly-shaped plot of land, approximately 3.3 acres in size, located in the City of Millbrae, County of San Mateo, State of California. Construction has been completed on said land and improvements consisting basically of one (1) building, housing a total of ninety-five (95) units, together with a total of one hundred forty-three (143) parking spaces.

Section 3. Description of Individual Condominium. Each condominium within the project which shall be offered for sale, shall consist of a fee simple interest in a particular unit, together with an undivided percentage interest as a tenant-in-common in the Common Area as set forth on Exhibit "B" hereto, the unit more particularly shown

and defined on the Condominium Plan recorded in Volume 99 at Pages 71 to 75 inclusive of Maps, in the Office of the County Recorder of San Mateo County, Exhibit "A" hereto and made a part hereof.

Section 4.        Parking Spaces and Balcony Areas. Each purchaser of a unit shall be granted by Declarant in the deed to said purchaser, an exclusive easement to and the exclusive right to use, no less than one (1) parking space and a balcony area, as shown on the Condominium Plan recorded in Volume 99 at Pages 71 to 75 inclusive of Maps, in the Office of the County Recorder of San Mateo County. All parking spaces shall be used only by the owners and their lessees and all such persons shall have and keep in force, property damage insurance on their automobiles.

Section 5.        Easements. Each owner shall receive, as an incident of conveyance of his unit, a non-exclusive easement appurtenant thereto for ingress, egress and support over, across and through the Common Area and every portion of any unit within the project required for the structural support of the building within which the unit is located. In the event any portion of the Common Area encroaches upon any unit, or any unit encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the project, a valid easement for the encroachment and for the maintenance of same, shall exist, so long as the encroachment exists.

### ARTICLE III

#### OWNERS' ASSOCIATION

Section 1.        Creation of Association. The owners of condominiums shall constitute an owners' association. Each owner of a condominium, including Declarant, shall be a member of the Association. Association membership shall be appurtenant to condominium ownership and each owner of a condominium shall automatically be a member of the Association. Ownership of a condominium within the project shall be the sole qualification for membership in the Association.



Section 2.                    Transfer of Membership!    The Association membership of each owner, including Declarant, shall be appurtenant to the condominium giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way, except on the transfer of title to said condominium and then only to the transferee of title to the condominium. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a condominium shall operate automatically to transfer the membership in the Association appurtenant thereto to the new owner thereof.

Section 3.                    Control of Common Area.    The Common Area shall be controlled by the owners in common through their membership in the Association. The Association shall have the responsibility to manage and maintain, or cause to be maintained, all of the Common Area in a state of high quality so as to keep the whole project in a first class condition.

#### ARTICLE IV

#### MANAGEMENT OF OWNERS' ASSOCIATION

Section 1.                    Creation of Board of Directors.    The members of the Association shall hold an organizational meeting within forty-five (45) days after the close of sale of the first unit in the project which represents the fifty-first (51st) percentile interest authorized for sale under the first Public Report, but no later than six (6) months after the close of sale of the first unit in the project, at which time a Board of Directors shall be elected by vote of the Association members. Prior to the organizational meeting, the initial Board named by Declarant shall manage the affairs of the Association.

Section 2.                    Annual Meetings.    Annual meetings of owners shall be held on the same day of the same month of each year after the organizational meeting. At the organizational meeting, the owners shall elect a Board of Directors consisting of five (5) members, all of whom shall be owners and which may include Declarant, or Declarant's representatives.

Section 3.      Owner Voting Rights.      The Association shall have two (2) classes of membership:

Class A shall be all those owners, with the exception of Declarant, and shall be entitled to one vote for each unit in which they hold the required interest for membership. When more than one person holds such interest in any unit, all such persons shall be members. The one vote for each unit shall be exercised as they among themselves determine, but in no event, shall more than one vote be cast with respect to any unit.

Class B member(s) shall be Declarant, and shall be entitled to three votes for each unit in which Declarant holds the interest required for membership; provided that the Class B membership shall cease and be converted to Class A membership on the happening of the following events, whichever shall occur sooner: (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership. However, should this occur prior to annexation of the real property described in Exhibit "E" hereto, then upon annexation of said real property and upon commencement of monthly maintenance charges by Declarant, for each unsold unit owned by Declarant, in determining the total votes outstanding in the Class B membership, the unsold units owned by Declarant in the annexed property shall be included; (b) two (2) years after original issuance of the most recently issued Public Report for a phase in the project; or (c) on December 31, 1982. So long as the two classes of members exist in the Association, no action by the Association which must have the prior approval of the members, shall be deemed approved by the members unless approved by the appropriate percentage of both classes of members.

Section 4.      Election and Removal of the Board.      Every owner entitled to vote at any Board election, may cumulate his vote and give a candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which his unit is entitled or may distribute his vote on the same principle among as many candidates as he desires. The entire Board or any individual director may be removed from office by the affirmative vote of fifty-

one (51%) percent of members entitled to vote at an election of the Board. However, unless the entire Board is removed, an individual director shall not be removed if the number of votes against the resolution for his removal exceeds the quotient arrived at when the total number of outstanding votes is divided by the authorized number of directors plus one. Cumulative voting in the election of the Board shall be prescribed for all elections in which more than two (2) positions on the Board are to be filled. If any or all of the directors are so removed, new directors may be elected at the same meeting.

Section 5. Special Procedure. To assure resident owners representation on the Board, at least one (1) member of the Board shall be elected solely by the vote of owners other than Declarant, at all elections where the owners, other than Declarant, do not have a sufficient percentage of voting power to elect at least one member of the Board through cumulative voting of all their votes. A director who has been elected to office solely by the votes of members of the Association, other than Declarant, may be removed from office prior to the expiration of his term only by the vote of at least a simple majority of the voting power residing in members other than Declarant.

Section 6. Voting Proxies. Voting may be carried on either in person or by proxy.

Section 7. Quorum Requirements for Association Meetings. At all meetings of owners, a quorum for the transaction of business through the presence in person or by proxy of such members, shall be established at fifty-one (51%) percent of the total voting power of the Association which shall be sufficient for the passage of any motion or adoption of any resolution, except in connection with amendment or repeal of this Declaration, as hereinafter set forth under Articles X or XVI. If the required quorum is not present, another meeting

may be called subject to the written notice requirements sent to all members at least ten (10) days in advance of such meeting, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. In the absence of a quorum at a meeting of members, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date.

Section 8. Written Notice of Meetings. Written notice of regular and special meetings shall be given to members by the Board at least ten (10) days in advance of any such meeting. The notice shall specify the date, time and place of meeting and in the case of a special meeting, the nature of business to be undertaken. A special meeting of members of the Association shall be promptly called by the Board upon: (a) the vote for such a meeting by a majority of a quorum of the Board; or (b) receipt of written request therefor, signed by members representing twenty-five (25%) percent of the total voting power of the Association, or by members representing not less than fifteen (15%) percent of the voting power residing in members other than Declarant.

Section 9. Indemnification for Performance of Duties. Every director, officer and member of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities, including attorney's fees, actually or necessarily incurred by or imposed upon him in connection with any claim, action, suit, proceeding, investigation or inquiry of whatever nature, in which he may be involved as a part or otherwise, by reason of his having been an officer or member of the Association, whether he continues in such capacity at the time of the incurring or imposition of such costs, expenses or liabilities, except in relation to matters



as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for wilful misconduct or negligence toward the Association in the performance of his duties or, in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such person may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such person.

#### ARTICLE V

##### DUTIES AND POWERS OF THE ASSOCIATION

Section 1.      Administration of Project.      The owners and each of them, together with all parties bound by this Declaration, covenant and agree that the administration of the project shall be in accordance with the provisions of this Declaration, the By-Laws and such rules and regulations as may be adopted by the Board, and amendments, changes and modifications thereto as may come into effect from time to time. In the event of any inconsistency between the provisions of this Declaration and provisions of the By-Laws or said rules and regulations, the provisions of this Declaration shall prevail.

Section 2.      Authority of Board.      Prior to the organizational meeting (first meeting of owners) and thereafter until their successors are elected, the initial Board or its duly appointed successors, shall manage the affairs of the Association. The Board, as constituted from time to time, shall at all times be responsible for the day-to-day operation and management of the affairs of the Association and shall have the sole power and duty to perform and

carry out the powers and duties of the Association, as set forth herein and in the By-Laws, together with the powers and duties otherwise expressly delegated to the Board by this Declaration or the By-Laws, except for action or activity expressly set forth herein or in the By-Laws or the California Corporations Code, as requiring the vote or assent of members of the Association or a given percentage thereof. Without limiting the generality of the foregoing, the Board shall have the following powers and duties:

(a) To enforce the applicable provisions of this Declaration, the By-Laws and other instruments for the management and control of the project. The Board shall have the right to adopt reasonable rules (and to impose reasonable monetary penalties for the violation thereof) and to amend the same from time to time relating to the use of the Common Area and any recreational and other facilities situated thereon, by owners and their tenants or guests and conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. Such rules may provide that the owner whose occupants leave property on the Common Area in violation of the rules, may be assessed to cover the expense incurred by the directors in removing such property and storing or disposing thereof. The directors may provide in such rules for reasonable rental charges to be made with respect to the use of any storage areas or facilities which may exist on the Common Area, provided that such charge shall, in no way, impose liability on the directors or any of the Board members for damage or loss to property

so stored, it being intended that the use of any such storage area or facility be solely at the risk of the person using the same. A copy of such rules and all amendments thereto shall be mailed to each owner and a copy shall be posted in one or more places on the Common Area where the same may be conveniently inspected.

(b) To pay taxes and assessments which are or could become a lien on the Common Area or some portion thereof.

(c) To delegate its powers to committees, officers or employees.

(d) To contract for materials and/or services for the Common Area or the Association, with the term of any service contract limited to a duration of one year, terminable upon thirty (30) days notice, except with the approval of a majority of the Association members, other than Declarant.

(e) To maintain the Common Area, all improvements thereon and all utilities thereunder, except those maintained by public utility companies, in good, clean, attractive and sanitary order and repair.

(f) To operate all recreational equipment and facilities located within the Common Area.

(g) To repaint exterior surfaces of all buildings situated on the properties as such repairing is required, in order to preserve the attractiveness of the community. Painting of exterior surfaces shall be deemed to include front doors, shutters, window trim, pot shelves, masonry, exterior walls, underneath side of roof overhangs and garage doors.

(h) To maintain the portion of the project not occupied by the units, in good, clean, attractive and sanitary order and repair.

(i) To maintain, repair and paint the roofs of all buildings situated on the property.

(j) To pay premiums, taxes and other assessments against the Common Area.

(k) To meet the costs of any liability insurance and fire insurance of the Common Area, fidelity bonds, Board of Directors errors and omissions insurance, out-of-pocket expenses of the Board relating to the operation of the Association, legal and accounting fees and including, without limitation, fees of any manager hereinbefore provided and a reasonable reserve for contingencies with respect to the Common Area.

(l) The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, any manager, the Declarant and the owners and occupants of condominiums, and their respective family members, guests, invitees and the agents and employees of each, against any liability incident to the ownership or use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$500,000.00 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use. The Association shall also obtain and maintain a master or blanket policy of fire insurance for the full insurable value of all of the improvements within the project. The form, content and term of the policy and its endorsements and the issuing company, must be satisfactory to all institutional mortgagees. If more than one in-



stitutional mortgagee has a loan of record against the project, or any part of it, the policy and endorsements shall meet the maximum standards of the various institutional mortgagees represented in the project. The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or their equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild.

The policy shall be in the amounts as shall be determined by the Board. The policy shall name as insured the Association, the owners and Declarant, so long as Declarant is the owner of any condominiums, and all institutional mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described hereinafter.

Except as provided herein, no owner can separately insure his unit or any part of it against loss by fire or other casualty covered by any insurance carrier under the immediately foregoing paragraph. If any owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the following paragraph dealing with payment of insurance proceeds to a trustee that result from the existence of such other insurance will be chargeable to the owner who acquired other insurance, and the owner will be liable to the Association to the extent of any such diminution. An owner can insure his personal property against loss. In addition, any improvements made by an owner to the real property within his unit may be separately insured by the owner, but the insurance is to be limited to the type and nature of coverage commonly known as tenant's improvements. All such insurance that is individually carried must contain a waiver of

subrogation rights by the carrier as to other owners, the Association and Declarant.

All insurance proceeds payable under the foregoing paragraphs, and subject to the rights of the mortgagees, may be paid to a trustee, to be held and expended for the benefit of the owners, mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in the jurisdiction where the project is located, that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

The Board may and, if required by any mortgagee, shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction and a decision not to rebuild, and a blanket policy of flood insurance. The Board also shall purchase and maintain worker's compensation insurance to the extent that it is required by law, for all employees of the project. The Board may also purchase and maintain fidelity bonds or insurance (which shall be in an amount not less than 150% of each year's estimated annual operating expenses and reserves and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any mortgagee. The Board shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance that it deems necessary or that is required by any mortgagee.

An owner may carry whatever personal liability and property damage liability insurance with respect to his condominium that he desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any mortgagee.

The Board is appointed attorney-in-fact by each owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to the foregoing paragraphs. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise, and to execute releases in favor of any insurer. Any mortgagee has the option to apply insurance proceeds payable on account of a condominium, in reduction of the obligated secured by the mortgage or such mortgagee.

(m) To enter on any privately owned lot or unit where necessary in connection with construction, maintenance or repair for the benefit of the Common Area or the owners in common

(n) To send to each member of the Association, written notice of regular and special meetings. Except in emergency situations, at least ten (10) days notice of any meeting shall be provided. The notice shall specify the date, time and place of the meeting and in the case of a special meeting, the nature of the business to be undertaken.

(o) To prepare or cause to be prepared a financial statement (including a balance sheet and income and expense statement) of the affairs of the Association, as follows: (i) as of the last day of the month closest in time to the date six (6) months following close of escrow for the sale of the first unit by Declarant to an owner. Said financial statement shall reflect the financial condition of the Association as of said date and shall summarize the financial transactions in which the Association was involved during the period between the close of the first sale and the date of the financial statement. The financial statement shall include a schedule of assessments received or receivable, itemized by unit and shall include the name of the person or entity assessed. A copy of said financial statement shall be distributed personally or by mail to each of the members of the Association and upon written request, to all first mortgagees, within sixty (60) days after the date of the financial statement; (ii) as of the last day of each fiscal year of the

Association: said financial statement shall reflect the financial condition of the Association as of said date and shall summarize the financial transactions in which the Association was involved during the period between the close of the first sale of a unit or the last of such financial statements and the date of the current financial statement. Said financial statement shall include an external audit by an independent public accountant for each fiscal year in which the gross income to the Association exceeds \$75,000.00, and a copy of the financial statement shall be distributed personally or by mail to each member of the Association and, upon written request, to all first mortgagees within ninety (90) days following the end of each fiscal year; (iii) to cause a proforma operating statement (budget) for the Association to be prepared for the second and each succeeding fiscal year of the Association, a copy of which shall be distributed personally or by mail to each of the members of the Association not less than sixty (60) days prior to the beginning of the fiscal year to which the budget relates.

(p) To establish and collect regular assessments to defray expenses attributable to ownership, use and operation of the Common Area and facilities with said assessments to be levied against each owner, including Declarant.

(q) To establish and collect special assessments for capital improvements or other purposes on the same basis as regular assessments.

(r) To file liens against unit owners because of non-payment of assessments duly levied and to foreclose said liens.

(s) To receive complaints regarding violations of this Declaration, the By-Laws or other instruments for the management and control of the Association; to hold hearings to determine whether or not to discipline members of the Association who violate



said management documents; to suspend the use privileges and voting rights of members who violate said management documents after hearing on the alleged violation has been held pursuant to the By-Laws and to impose reasonable monetary penalties.

(t) To acquire and hold for the benefit of the unit owners, tangible and intangible personal property and to dispose of same by sale or otherwise.

(u) To bond any members of any management body which participates in the management of the affairs of the Association.

(v) Any professional management body selected by Declarant or by the initial Board prior to the organizational meeting, shall be employed to manage only until the next annual owners meeting after the organizational meeting, at which time the continuance of the same or the selection of another body or agent shall be determined by majority vote of the Board, other than Declarant. Neither Declarant, nor its agent, nor the Board shall enter into any contract which binds the Association for a period in excess of one year and which shall be terminable upon thirty (30) days' notice, renewable for successive one-year periods, unless said contract is approved by a majority of the Association members, with the following exceptions: (i) a management contract, the terms of which have been approved by FHA or VA; (ii) a contract with a public utility company if the rates charged for materials or services are regulated by the Public Utilities Commission, provided that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and (iii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years' duration, provided that the policy permits for short-rate cancellation by the insured.

(w) The Board shall carry worker's compensation insurance covering all persons employed by it in the performance of its responsibilities under this Declaration and may obtain fidelity bonds for such of its employees as it may deem advisable.

(x) With respect to each contract made by the Board for repainting of exterior surfaces of building(s) and car storage spaces and each contract for work and/or materials related to the maintenance, repair, rebuilding or replacement of any building, structure or other improvement situated on the Common Area in which the amount to be paid by the Board exceeds \$500.00, the Board shall secure at least three (3) bids from responsible contractors and shall accept the lowest responsible bid so obtained. If the amount of the contract exceeds \$1,000.00, the Board shall require the contractor to furnish a completion bond assuring completion of the work and payment of all labor and materials bills for which a lien on the Common Area or any residential unit, could be claimed. The Board shall require from each contractor which it engages, satisfactory evidence that adequate worker's compensation and liability insurance is carried with respect to employees and activities of such contractor. In cases where a completion bond is not required, the Board shall require labor and material releases to be furnished by the contractor prior to making payment to same, unless the Board deems such requirements to be impractical or unnecessary to afford protection against liens.

(y) Only with the written assent of a majority of the voting power of the Association residing in members other than Declarant: (1) to incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of

five (5%) percent of the budgeted gross expenses of the Association for that fiscal year; (2) sell, during any fiscal year, property of the Association having an aggregate fair market value greater than five (5%) percent of the budgeted gross expenses of the Association for that fiscal year; (3) pay compensation to members of the Board or to officers of the Association for services performed in the conduct of Association business, provided that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

# ARTICLE VI

## COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1.      Creation of Lien.      Declarant, for each unit owned by it within the project, hereby covenants and each owner of any unit within the project, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) regular monthly assessments or charges; (2) special assessments for capital improvements; and (3) emergency assessments. Such assessments shall be fixed, established and collected from time to time as hereinafter provided. The regular, special and emergency assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and a continuing lien on the unit against which each such assessment is made, which lien shall be created and enforced in accordance with the provisions of this Article VI. Each such assessment and all other assessments levied in accordance with this Declaration, to-

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gether with late charges, interest, costs, penalties and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the owner of such unit when the assessment fell due.

Section 2.      Basic Maximum Amount of Regular Monthly Assessments.

(a) Each owner shall be obligated to pay to the Board or a designated member thereof, or to the manager, if any, an initial monthly maintenance charge as indicated on an exhibit attached hereto and made a part hereof. As and when the Association, budget shall increase or decrease, as hereinafter provided, such assessments shall be adjusted so that the owner of each unit bears the same relative proportion of the total budget as that initially borne. An owner shall also bear the same relative proportion of any special assessment levied pursuant to Section 3. hereof.

(b) The Board may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than Declarant, impose a regular annual assessment per unit which is more than twenty (20%) percent greater than the regular assessment for the immediately preceding fiscal year.

(c) The Association shall, upon demand, furnish to any owner liable for assessments, a certificate or letter signed by an officer of the Association setting forth whether the assessments on a specified unit have been paid and the amount of delinquency, if any. A charge of \$10.00 per certificate or letter may be made by the Board for the issuance thereof. Such certificate or letter shall be conclusive evidence of payment of any assessments therein stated to have been paid.

Section 3.      Special Assessments for Capital Improvements. In the event the regular monthly assessments described above, are insufficient for any reason, the Board shall have authority to levy a special assessment to make up the deficiency in the maintenance fund on the same basis as a regular assessment. However, on any proposed

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special assessment in any fiscal year, the Board may not, without the vote or written assent of a majority of the voting power residing in members other than Declarant, levy special assessments to defray costs of any action or undertaking on behalf of the Association which, in the aggregate exceeds five (5%) percent of the budgeted gross expenses of the Association for that fiscal year. The provisions herein with respect to special assessments do not apply where the special assessment against a member is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the member and his subdivision interest into compliance with the provisions of this Declaration.

Section 4.      Payment of Assessments by Declarant. On the first day of the month following the close of the first sales escrow, Declarant shall be obligated to pay the monthly maintenance charge and assessments hereinbefore provided for each unsold condominium.

Section 5.      Date of Commencement of Assessments. Regular assessments shall be paid by each owner in equal monthly installments in advance, on the first day of each month, beginning on the first day of the month following conveyance of the first unit to an individual owner. Special and emergency assessments shall be paid within thirty (30) days of receipt of a request to pay same. Declarant shall pay assessments for all unsold condominiums, commencing on the first day of the month following the close of the first sales escrow.

Section 6.      Maintenance Fund. Assessment charges so collected shall be promptly deposited in a commercial bank account in a bank to be selected by the Board or by the manager, if any, which account

shall be clearly designated in the name of the Association. The Board or the manager, as the case may be, shall have exclusive control of the account and shall be responsible to the owners for the maintenance of accurate records thereof at all times. No withdrawal shall be made from the account, except to pay for charges and expenses for the common benefit of all owners.

Section 7. Effect of Non-Payment of Assessments.

(a) Delinquency. Any assessment provided for in this Declaration shall become delinquent if not paid on the due date as established by the Board. With respect to each assessment not paid within fifteen (15) days after its due date, the Board may, at its election, require the delinquent owner to pay a late charge of not less than Ten (\$10.00) Dollars, or ten (10%) percent of the amount of the delinquent assessment, whichever is greater, together with interest at the maximum rate permitted by law on the delinquent sums, calculated from the date of delinquency to and including the date full payment is received by the Association.

(b) Notice of Lien. The Board may cause to be recorded in the Office of the County Recorder, a Notice of Claim of Lien ("Notice of Lien") securing the payment of any delinquent sums due the Association from any owner, as provided in Section 1356 of the Civil Code. Such Notice of Lien shall state the amount of the delinquent sums and other authorized charges and interest, including the cost of recording the notice, the expenses of collection in connection with the delinquent sums, reasonable attorneys' fees, a sufficient description of the condominium against which the same has been assessed, the name and address of the Association and the name of the unit owner thereof. Such Notice of Lien shall be signed by an authorized representative of the Association.

Upon payment to the Association of the delinquent sums and charges in connection therewith, or other satisfaction thereof,

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the Board shall cause to be recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the delinquent sums and charges. The Board may demand and receive the cost of recordation of the Notice of Release before recording the same.

Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien. In the event of default by the unit owner in the payment of any assessments, the Board shall notify in writing the unit owner within thirty (30) days following the due date and all persons and firms holding a mortgage or deed of trust by any unit owner on any condominium in the project who have requested notice by delivering a written request to the Board in accordance with the provisions of this Declaration.

(c) Enforcement of Liens. All sums assessed in accordance with the provisions of this Declaration, shall constitute a lien on the respective condominium prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority or seniority over other mortgages or deeds of trust) made in good faith and for value and recorded prior to the date on which the lien became effective.

Notwithstanding the foregoing, any assessment lien provided for hereunder shall be prior and superior to any Declaration of Homestead recorded after the recordation of this Declaration. Said lien shall become effective upon recordation of the Notice of Lien in the manner provided in (b) above. Such lien shall relate only to the individual condominium against which the

assessment was levied and not to the project as a whole. It shall be the duty of the Board to enforce the collection of any amounts due under this Declaration by one or more of the alternative means of relief afforded by this Declaration. Such lien, when delinquent, may be enforced by sale of the condominium by the Association, its attorney or other persons authorized to make the sale, after failure of the unit owner to pay an assessment as provided for herein. Such sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any manner permitted by law. An action may be brought to foreclose the lien of the Association by the Board or by any unit owner if the Board fails or refuses to act, after the expiration of thirty (30) days from the date on which the Notice of Lien was recorded, provided that at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the unit owner affected thereby. In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the condominium and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Association, through its agent, shall have the power to bid on the condominium at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same, and this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit in law or in equity, initiated pursuant to this section, may include reasonable attorney's fees as fixed by the court.

(d) Priority of Assessment Lien. Any lien created or claimed under the provisions of this Declaration, is expressly made subject and subordinate to the rights of the beneficiary of any first deed or trust or first mortgage on the entire project, or on any condominium therein, made in good faith and for value, and such lien



shall, in no way, defeat, invalidate or impair the obligation or priority of such first deed of trust or first mortgage, unless the beneficiary thereof shall expressly subordinate his interest in writing to such lien. Each holder of a first mortgage lien on a condominium who comes into possession of the condominium by virtue of foreclosure of the mortgage or by deed or other arrangement in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the condominium free of any claim for unpaid assessments and charges against the condominium which accrue prior to the time such holder comes into possession of the condominium.

Section 8. Rights of Board - Waiver of Owners. Each owner hereby vests in and delegates to the Board or its duly authorized representatives, the right and power to bring all actions at law or lien foreclosures, whether judicially or by power of sale, against any owner(s) for the collection of delinquent assessments in accordance herewith, and hereby expressly waives any objection to the enforcement of the obligation to pay assessments as set forth herein.

Section 9. Rate of Assessment. Both regular and special assessments shall be fixed in the same proportionate share as the owners respective interests in the Common Area and may be collected on a monthly basis.

Section 10. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, recreation, safety and welfare of the members thereof, their guests and invitees and in particular, shall be used for the purpose of improving, protecting, operating and maintaining the Common Area and facilities, improvements, landscaping and structures located thereon and providing for the acquisition and maintenance of the Common Area and the condominiums, and otherwise providing for the performance by the Board of each and every one of the powers and duties of said Board.

# ARTICLE VII

## USE RESTRICTIONS

Section 1.      One Use, Business Usage Prohibited. All units in the project shall be used solely for single family residences.

Section 2.      Maintenance of Unit. The owners shall maintain in good repair, the interiors of their units and shall have the exclusive right, at their sole cost and expense, to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, windows and doors bounding their respective units. If an owner fails to so maintain his unit or make repairs thereto in such manner as may be deemed necessary in the judgment of the Board, to preserve and protect the attractive appearance and value of the project, the Board shall give written notice to such owner stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that same be carried out within a period of sixty (60) days from the date such notice is given. If such owner fails to carry out such maintenance or repair within the period specified in the notice, the Board shall cause such work to be done and shall assess the cost thereof to such owner, such assessment to be due and payable within thirty (30) days after the Board gives written notice thereof.

Section 3.      Other Structural Changes. No owner shall, at his own expense or otherwise, make any alteration, addition or modification to the building in which his unit is located, or to any part or portion of the Common Area without the prior written approval of the Board. With respect to the installation of awnings, sunshades, screen doors and other minor installations to any individual unit, the prior written consent of the Board shall be exercised with a view toward promoting uniformity and thereby enhancing the

attractiveness of the property as a whole. No radio or television receiving or transmitting antennae or external apparatus shall be installed on any unit or in or on any part of the Common Area, without the prior written approval of the Board. Normal radio and television installations within an individual unit are excepted.

Section 4.        Signs.     The owner of a unit or his agent, may display a sign of customary and reasonable dimension, advertising his unit for sale or lease, which sign shall be of a professional type and of dignified appearance, and shall be placed in some appropriate location as determined by the Board, on the Common Area open to public view. The owner or his agent may include advertising on the sign that indicates: (a) the property is for sale, lease or exchange; (b) the agent's or owner's name; and (c) the address and telephone number of the agent or owner. Such sign may also be the sign of a licensed real estate broker engaged by an owner for the purpose of selling or leasing his unit. Nothing herein contained shall prohibit or restrict in any way, Declarant's right to construct such promotional signs or other sales aids on or about the portions of the premises which it shall deem reasonably necessary in conjunction with its original sales program for a period not to exceed three (3) years after issuance of the Final Subdivision Report.

Section 5.        Offensive Activity.     No owner shall permit or suffer anything to be done or kept on the project which shall increase the rate of insurance thereon, or which shall obstruct or interfere with the rights of other owners, or annoy them by unreasonable noises or otherwise; nor shall he commit or permit any nuisance on the project, or commit or suffer any immoral or illegal act to be committed thereon. Each owner shall comply with all applicable ordinances and statutes and with requirements of local and/or state

Boards of Health with respect to the occupancy and use of his unit.

Section 6.      Owner Liability.      Each owner shall be liable to the Board for any damage to the Common Area or to any equipment or improvements thereon, which may be sustained by reason of the negligence or willful misconduct of said owner or of his family members, relatives, guests or invitees both minor and adult, to the extent that any such damage shall not be covered by insurance. Said owner shall be assessed by the Board for the cost of repair or replacement thereof, together with costs and attorney's fees, such assessment to be due and payable within thirty (30) days after written notice thereof. In the case of joint ownership of a unit, the liability of such owners shall be joint and several. In the event of personal injury or property damage sustained by any one person while physically within the unit or private balcony or patio, and in the further event any other owner shall be sued or a claim made against him for said injury or damage, the owner(s) of the unit(s) in which said injury or damage occurs shall fully indemnify and hold harmless any such other owners against whom such claim shall be made, and shall further defend any such other owners, at their own expense in the event of litigation of such claim, provided that such protection shall not extend to any other owner whose own negligence may have caused or contributed to the cause, of any such injury or damage.

Section 7.      Common Area Improvements.      No fence, hedges or walls shall be erected and maintained on the Common Area except such as are installed in accordance with the initial construction of the buildings located thereon or approved in writing by the Board and further, no building, fence, structure or wall shall be



constructed on any of the open spaces unless approval therefor has been specifically obtained from the appropriate Department of the City of Millbrae.

Section 8.        Child Provision.    Each owner shall be accountable to the remaining owners for the conduct and behavior of children residing in or visiting in his condominium.

Section 9.        Parking Restrictions.    No trailer, camper, boat or similar-type vehicle shall be permitted to remain on any portion of the Common Area. No unit owner shall park his vehicle or allow his guests and/or tenants to park their vehicles, in any space other than that assigned to the owner and any spaces designated as "guest parking spaces."

Section 10.       Rubbish.        Trash, rubbish and trash receptacles shall not be permitted to remain on any portion of the Common Area, other than those trash bins provided by the Association.

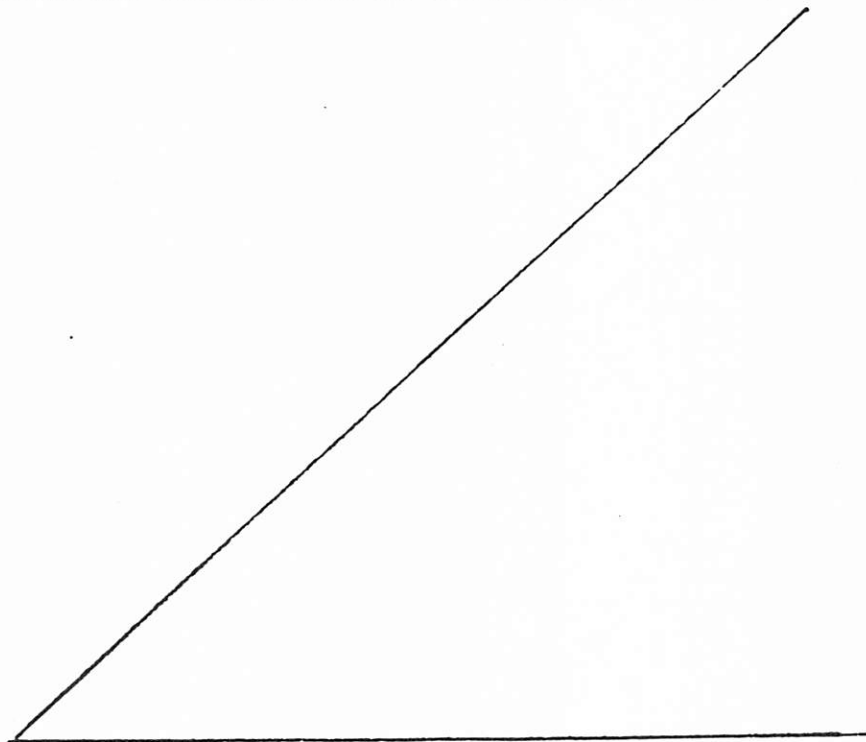
Section 11.       Pets.        No animals, which shall mean dogs and cats, livestock, reptiles or poultry, shall be kept in any condominium, except that usual and ordinary domestic fish and birds (in inside bird cages) may be kept as household pets within any condominium; provided: (a) they are not kept, bred or raised for commercial purposes or in unreasonable numbers; and (b) the prior written approval of the Board of Directors is first obtained. As used herein, "unreasonable numbers," shall be determined by the Board, but in no event shall such term be construed so as to permit the maintenance by any owner of more than two (2) pets per unit. The Association shall have the right to prohibit the maintenance of any pet which constitutes, in the opinion of the Board of Directors, a nuisance

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to any other owner. Notwithstanding the foregoing, nothing herein contained shall be construed in such a manner as to permit the maintenance of any animal contrary to any ordinance of the City of Millbrae.

Section 12. Association Maintenance and Decoration Authority.

The Board or its duly appointed agent, including the manager, if any, shall have the exclusive right to paint, decorate, repair, maintain, alter or modify the exterior walls, balconies, railings, exterior door surfaces, roofs and installations and improvements



on the Common Area, and no owner of a unit shall be permitted to do or have done any such work. The prior written approval of the Board shall be required for installation of any awnings, sunshades or screen doors. The restrictions set forth herein shall not apply to the initial construction of the buildings or improvements made thereto, by Declarant.

Section 13.      Exploration of Minerals.      No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in the project, or within five hundred (500) feet below the surface of the property and no derrick or other structure designed for use in boring for water, oil or natural gas, shall be erected, maintained or permitted on any portion of the project.

#### ARTICLE VIII

#### GENERAL PROVISIONS

Section 1.      Owner Key Deposit For Emergency Repair.      The Board shall have authority to designate one or more qualified repairmen or other persons, to enter on and within any individual unit, with or without the presence of the owner or occupant thereof, for the purpose of making emergency repairs therein or for necessary maintenance or repair of portions of the Common Area, or to abate any nuisance being conducted or maintained in said unit, in order to protect the property rights and best interests of the remaining owners. To facilitate this paragraph, all owners shall deposit with the property manager, or his nominee, a key to their units.

Section 2.        Continuing Liability for Assessments.    No owner may exempt himself from liability for his specified contribution to the maintenance fund by waiver of the use or enjoyment of the Common Area or by abandonment of his unit.

Section 3.        No Racial Restrictions.    , No owner shall execute or file of record any instrument which imposes a restriction on the sale, lease or occupancy of his unit on the basis of race, color, creed or sex.

Section 4.        Books and Records of the Association.    The membership register, books of account, minutes of meetings of members, of the Board and of committees of the Board, shall be made available for inspection and copying by any member of the Association or by his duly appointed representative at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association. The Board shall establish reasonable rules with respect to: (a) notice to be given the custodian of records by the member desiring to make the inspection; (b) hours and days of the week when such inspection may be made; and (c) payment of costs for reproducing documents required by a member. Every director shall have the absolute right, at any reasonable time, to inspect the books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

Section 5.        Taxes.    Each owner shall pay any real and personal property taxes separately assessed against his unit and all utility charges separately metered or charged against his unit, and such payment shall be made by each owner in addition to and separately from assessments otherwise payable to the Association by such owner.

Section 6.      Enforcement of Declaration and By-Laws.      The owners or any one of them, or any member of the Board, or the Board acting on behalf of the owners, or the jurisdiction in which the project is located, shall be entitled to bring legal action for damages against any condominium owner who shall default in the performance of any of the provisions hereof, the By-Laws or rules and regulations adopted by the Board for the protection of the project, including but not limited to, the covenant to pay assessment charges. Further, said persons shall be entitled to enjoin any violation of said documents, rules and regulations and shall be entitled to prosecute any other legal or equitable action that may be necessary to protect the project. If any owner, member of the Board or the Board shall deem it necessary to initiate any legal or equitable action for the protection of the project against any owner, then said persons shall be entitled to reasonable attorney's fees and costs of said action from said owner for expenses incurred in bringing or initiating the action. Any judgment rendered against any such defaulting owner shall include costs of said action, together with reasonable attorney's fees in an amount to be fixed by the court. Notwithstanding the foregoing, there shall be no purported power in the Association to cause a forfeiture or abridgment of an owner's rights to the full use and enjoyment of his individually owned condominium because of a failure by an owner to comply with the provisions of this Declaration, By-Laws or duly enacted rules of operation for the Common Area and facilities, except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or because of a foreclosure sale under a power of sale for failure of the owner to pay assessments levied by the Association.



Section 7.        Liberal Interpretation of Declaration.    The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the project for the mutual benefit of all owners.

Section 8.        Severability of Provisions.    The provisions herein shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any of the provisions herein, shall not affect the validity of the remaining provisions.

Section 9.        Cumulative Remedies.    Each and all legal or equitable remedies provided for herein, shall be deemed to be cumulative, whether so expressly provided for or not.

Section 10.       Successors and Assigns.    This Declaration shall be binding on and shall inure to the benefit of the heirs, personal representatives, successors and assigns of Declarant, and the heirs, personal representatives, grantees, lessees and assignees of the owners.

Section 11.       Waiver or Breach of Declaration.    No waiver or any breach of any of the covenants or conditions herein contained shall constitute a waiver of any succeeding or preceding breach of the same or any other covenant or condition contained herein.

Section 12.       Joint and Several Liability.    In the case of joint ownership of a unit, the liability of each of the owners thereof in connection with the liabilities and obligations of owners set forth in or imposed by this Declaration, shall be joint and several.

Section 13.       Delivery of Notices and Documents.    Any written notice or other document required by this Declaration, may be delivered personally or by mail. If by mail, such notice shall be

deemed to be delivered and received, unless expressly provided for herein or in the By-Laws to the contrary as to the type of notice being given, forty-eight (48) hours after a copy thereof has been deposited in the United States mail, postage prepaid, addressed as follows: (a) if to an owner, other than Declarant, to the address of any unit in the project owned by him in whole or in part, or to the address last furnished by such owner to the Board. Each owner, other than Declarant, shall file in writing with the Board, promptly upon his becoming an owner, his address for the purpose of giving notice and shall promptly notify the Board in writing of any subsequent change of address; (b) if to Declarant, whether in Declarant's capacity as an owner or in any other capacity: 11611 San Vicente Boulevard, Suite 860, Los Angeles, California 90049; (c) prior to the organizational meeting, notices to the Board shall be addressed as set forth in (b) above, and thereafter addressed to the Secretary of the Association. The Board shall cause the address of the Association Secretary to be posted in a conspicuous place. Further, from and after the organizational meeting, notice of the address of the Secretary of the Association shall be given to each owner within a reasonable time after the Board has received actual notice of such owner's purchase of a condominium.

Section 14. Notification of Sale of Condominium. Concurrently with the consummation of the sale of any unit under circumstances whereby the transferee becomes an owner thereof, or within five (5) business days thereafter, the transferree shall notify the Board in writing of such sale. Such notification shall set forth: (a) the name of the transferee and his transferor; (b) the street address

or unit number of the condominium purchased by the transferee; (c) the transferee's mailing address; and (d) the date of sale. Prior to receipt of such notice any and all communications required or permitted to be given by Declarant, the Board, the Architectural Committee or any agent or representative thereof, shall be deemed to be duly made and given to the transferee, if duly and timely made and given to said transferee's transferor.

# ARTICLE IX

## UTILITIES

Section 1.      Utility Rights.      The rights and duties of the owners with respect to lines for sanitary sewer, water, gas, electricity, telephone cables and air conditioning (if any), shall be governed by the following:

(a) Wherever sanitary sewer house connections and lines or electricity, gas, telephone, air conditioning (if any) lines or television cables are installed within the property, which connections or any portion thereof, lie in or on portions of the property owned by others than the unit owner of a unit served by said connections, the unit owners of any unit served by said connections shall have the right and are hereby granted an easement to the full extent necessary therefor, to enter on such portion of the property or to have the utility companies enter thereon to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

(b) Wherever sanitary sewer house connections and lines, facilities and/or water house connections and lines or electricity, gas, telephone, air conditioning (if any) lines, or television cables are installed within the property, which connections serve more than one unit, the owners of each unit served

by said connections shall be entitled to the full use and enjoyment of such portions of said connections as serve his unit.

(c) In the event any portion of said connection or line is damaged or destroyed through the negligent act or acts or failure to act, or willful misconduct of one unit owner or any of his agents, invitees, tenants, servants, guests or members of his family, so as to deprive other unit owners of the full use and enjoyment of said connection or line, then such connection or line shall be repaired and restored by the Association but at the expense of the unit owner who commits or whose guests, agents or family members commit such act or acts.

(d) In the event any portion of such connection or line is damaged or destroyed by some cause other than the negligence or willful misconduct of one of the unit owners, his family members, agents, guests, servants, tenants or invitees, (including ordinary wear and tear and deterioration from lapse of time), then in such event such connection or line shall be repaired and restored by the Board, such repair and restoration to be paid out of assessments levied in accordance with this Declaration equally against all owners.

(e) In the event of a dispute between owners with regard to the repair or rebuilding of said connection or line, or with regard to the sharing of the cost thereof, then on written request of one of such owners, addressed to the Association, the matter shall be submitted to the Board for a final and binding determination.

Section 2. Easements. Easements through the units and Common Area for all facilities for the furnishing of utility services, television cable service, heating and air conditioning (if any) lines within any unit, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring, shall be appurtenant to each unit and all other units and Common Area shall be subject thereto; provided that easements for such facilities shall at all times be and remain substantially in accordance with the initial construction of the project or the project as reconstructed after damage or destruction pursuant to the terms of this Declaration.

ARTICLE X

DESTRUCTION OF IMPROVEMENTS

Section 1. Reconstruction With Election of Owners. In the event of partial or total destruction of improvements of the Common Area and if the available proceeds of the insurance carried are sufficient for not less than ninety (90%) percent of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless within forty-five (45) days from the date of such destruction, seventy-five (75%) percent or more of the owners present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board shall be required to execute, acknowledge, file and record not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention to rebuild. If the proceeds of such insurance are less than ninety (90%) percent of the cost of reconstruction, such reconstruction may, nevertheless take place, if within forty-five (45) days from the date of said destruction, a majority of owners elect to rebuild.

Section 2. Reconstruction Assessments. If seventy-five (75%) percent of the owners determine to rebuild, each owner shall be obligated to contribute such funds as shall be necessary to pay his proportionate share of the reconstruction costs over and above the



insurance proceeds and the proportionate share of each owner shall be the same as his proportionate interest in the Common Area. In the event of failure or refusal by any owner to pay his proportionate share after notice to him, should such failure or refusal continue for a period of sixty (60) days, the Board may levy a special assessment against the owner which may be enforced under the lien provisions contained in this Declaration.

Section 3.      Obligation of the Board.      If the owners determine to rebuild, the Board shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest responsible bidder. The Board shall have authority to enter into a written contract with the contractor for such reconstruction work and the insurance proceeds held by the Board shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of the reconstruction at the earliest possible time.

Section 4.      Determination Not to Rebuild.      If the vote of seventy-five (75%) percent of the owners shall be insufficient to authorize rebuilding:

(a) Subject to the rights of mortgagees, any insurance proceeds available for such rebuilding, shall be distributed among the owners and their individual lenders by the Board, as their respective interests may appear, according to the fair market value of each condominium in relation to the fair market value of all condominiums.

(b) The Board shall have the duty, within one hundred twenty (120) days of the date of such loss to execute, acknowledge and record a certificate setting forth the determination of the owners not to rebuild and shall promptly cause to be prepared

133-4133

and filed, such revised maps and other documents as may be necessary to show the conversion of the project to the status of unimproved land or to show the elimination of one or more of the units as a result of such destruction.

Section 5.      Revival of Right to Partition Condominium. Upon the recordation of a certificate of intention not to rebuild, the right of any owner to partition his condominium through legal action shall forthwith revive.

Section 6.      Arbitration of Disputes. In the event of a dispute among the owners with regard to the provisions of this Article X, any owner may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to members of the Board and all owners as promptly as possible after reference to arbitration is made, giving all owners an opportunity to appear in the arbitration proceedings. The decision of the arbitrator in this matter shall be final and conclusive on all owners. The arbitrator may include in his decision, an award for costs and/or attorney's fees against any one or more of the parties to the arbitration.

Section 7.      Condemnation. In the event an action for condemnation is proposed or commenced by any governmental body having the right of eminent domain, the following provisions shall apply:

if such action or proposed action is for the condemnation of the entire project, or a portion thereof, upon unanimous consent of all owners, the project may be sold to such government body prior to judgment and the proceeds of such sale shall be distributed to the owners and their lenders, as their respective interests may appear, based on each owner's interest in the Common Area. Lacking such unanimous consent, any consequent compensation for the taking shall be distributed to the owners and their lenders, as their respective interests may appear, according to the proportionate interest in the property taken by the government body.

#### ARTICLE XI

##### SUSPENSION OF THE RIGHT TO PARTITION

The right of partition of the Common Area is hereby suspended pursuant to Section 1354 of the California Civil Code. The project may be partitioned and sold as a whole pursuant to the provisions of Section 1354 of the Civil Code upon a showing of the occurrences of any one of the events provided therein. Further, partition may be had of the project upon a showing that the conditions for such partition by sale set forth in Article X hereinabove, have been met. Nothing herein contained shall prevent partition or division of interest between joint or common owners of one condominium.

#### ARTICLE XII

##### PROHIBITION AGAINST SEVERABILITY OF COMPONENT INTERESTS IN UNITS

Section 1.      Prohibition of Severance. No owner shall be entitled to sever either his unit or any appurtenant easements there- to, in any condominium from his undivided interest in the Common Area for any purpose. Neither of said component interests may be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with and any violation or attempted violation of this pro-

vision shall be void and of no effect. It is intended hereby to restrict severability in accordance with the provisions of subparagraph (g) of Section 1355 of the Civil Code.

Section 2.      Conveyance of Entire Condominium. Subsequent to the initial sales of the condominiums, any conveyance of a condominium or component interest in the Common Area by the owner of any condominium, shall be presumed to convey the entire condominium, provided that nothing herein contained shall be construed to preclude the owner of any condominium from creating a co-tenancy in the ownership of said condominium with any other person(s).

#### ARTICLE XIII

##### TERM OF DECLARATION - COMPLIANCE WITH RULE AGAINST PERPETUITIES AND RESTRAINTS OF ALIENATION

The covenants contained herein shall run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2029, after which time, the covenants shall be automatically extended for successive periods of twenty-one (21) years, unless an instrument executed by not less than a majority of owners of the condominiums shall be recorded, cancelling or terminating this Declaration.

#### ARTICLE XIV

##### PROTECTION OF LENDERS

Section 1.      Written Notification to First Mortgagees. A first mortgagee is entitled to written notice from the Board of Directors of any default in the performance of an individual condominium mortgagor of any obligation under this Declaration, the By-Laws and Articles of Incorporation which is not cured within thirty (30) days. It shall be the responsibility of each owner of a

condominium to notify the Association within thirty (30) days of the close of his escrow to purchase a condominium, of the name and address of the holder of his first mortgage on his particular condominium.

Section 2.        Exemption from Right of First Refusal. Any right of first refusal shall not impair the rights of a first mortgagee to: (a) foreclose or take title to a condominium pursuant to the remedies provided in the mortgage; (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or (c) interfere with a subsequent sale or lease of a condominium so acquired by the first mortgagee.

Section 3.        Subordination of Assessment Lien to Mortgages. Any holder of a mortgage which comes into possession of the condominium pursuant to foreclosure of the mortgage, shall take the property free of any claim for unpaid assessments or charges against the mortgaged condominium which accrue prior to the time such holder comes into possession of the mortgaged condominium. The lien assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust now or hereafter placed on the properties subject to assessments; provided that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or trustee's sale. Such transfer or sale shall not relieve the property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

Section 4.        Leasing. Any lease agreement between a condominium owner and a lessee shall be required to provide that the terms of the lease shall be subject, in all respects to the provisions of this Declaration and the Association By-Laws and that any failure by a lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Further, with the exception of a lender in possession of a condominium unit following a default in a first mortgage or foreclosure proceeding, no unit owner shall be permitted to lease his unit for transient or



hotel purposes. No unit owner may lease less than the entire unit. Other than the foregoing, there is no restriction on the right of any condominium owner to lease his condominium.

Section 5. Prior Approval of First Mortgage Holders. Unless at least seventy-five (75%) percent of holders of first mortgage liens on individual condominiums have given their prior written approval, neither the Association, nor any individual owner shall: (a) by act or omission, seek to abandon or terminate the condominium status; (b) change the prorata interest or obligation of any condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds, or condemnation awards; and for determining the prorata share of ownership of each condominium in appurtenant real estate and any improvements thereon which are owned by condominium owners in the project in undivided prorata interests ("common area"); (c) by act or omission, change, waive or abandon any scheme of regulation or enforcement thereof, pertaining to the architectural design or exterior appearance of any condominiums, exterior maintenance of condominiums, maintenance of driveways or upkeep of landscaping in the project; (d) partition or subdivide any unit or the common area; (e) by act or omission, seek to abandon, partition, subdivide, encumber, release, hypothecate, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the project, shall not be deemed a transfer within the meaning of this clause; (f) fail to maintain fire and extended coverage on insurable project common property and condominiums on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value, based on current replacement costs; (g) use hazard insurance proceeds for losses to any condominium property for other than repair, replacement or reconstruction of such improvements; (h) make material amendments to the Declaration and/or the Association By-Laws.

Section 6. Examination of Books and Records. The holders of first mortgages shall have the right to examine the books and records of the Association.

Section 7. Taxes, Assessments and Charges. All taxes, charges and assessments which may become liens prior to first mortgages under local law, shall relate only to the individual condominiums and not to the project as a whole. First mortgagees of condominiums may jointly and singly pay taxes or other charges which are in default and which may or have become a charge against the common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 8. Reserves for Replacement. An adequate reserve fund for replacement of the Common Area facilities must be established by the Association and must be funded by regular monthly assessments rather than by special assessments.

Section 9. No Priority Over Rights of First Mortgagees. No provision herein shall give a condominium owner, or any other party, priority over any rights of first mortgagees of condominiums pursuant to their mortgages in the case of a distribution to condominium owners of insurance proceeds or condemnation awards for losses to or a taking of condominiums and/or the common area. Such first mortgagees shall be entitled to timely written notice of any such damage or destruction of the common area, if such loss or taking exceeds \$10,000.00 or damage to a condominium covered by a mortgage exceeds \$1,000.00. Additionally, if any condominium or portion thereof is made the subject matter of any condemnation or eminent domain proceeding, no provision herein shall entitle the owner of a condominium or any other party to priority over a first mortgagee of a condominium with respect to any distribution to such condominium of the proceeds of any award or settlement. Such first mortgagees shall be entitled to timely written notice of any such proceeding or proposed acquisition.

Section 10. Further Notice to Lenders. The Association shall give written notice to any first mortgagee of all meetings of the Association. Each such first lien holder shall have the right to be

represented at such meetings, but shall have no voting rights unless it has succeeded to title to one or more of the condominiums by foreclosure. Further, the Association shall deliver to each such first mortgagee, a copy of the Association's annual audited statement within ninety (90) days after the end of the Association's fiscal year.

Section 11. Professional Management of Project. Any agreement for professional management of the project shall provide that any management contract or any agreement with Declarant, may be terminated, with or without cause, on thirty (30) days notice without payment of a termination fee and that the maximum term of such contract shall be one year. In the event the Association determines to terminate professional management and assume self-management of the project, the prior written approval of at least holders of seventy-five (75%) percent of the first mortgages shall be required.

Section 12. Obligation to Cure Breach. Any first mortgagee who acquires title to any condominium pursuant to the remedies provided in the mortgage or through foreclosure of the mortgage, shall not be obligated to cure any breach of this Declaration which is non-curable or of a type which is not practical or feasible to cure.

Section 13. Amendment. No amendment of this Article shall affect the rights of any first mortgagee recorded prior to the recordation of such amendment who does not join in the execution thereof.

Section 14. Breach of Declaration. No breach of the covenants, conditions or restrictions contained in this Declaration, nor the enforcement of any lien provisions created herein, shall affect, impair, defeat or render invalid the lien of any mortgage made in good faith and 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 with respect to a condominium.

Section 15.      Federal Home Loan Mortgage Corporation Requirements.

If any loan secured by a mortgage encumbering a condominium is owned by the Federal Home Loan Mortgage Corporation ("FHLMC") or its successors or assigns, or is tendered to the FHLMC or its successors or assigns for purchase, the Association and owners shall obtain and maintain in full force and effect, all insurance coverages which may at any time and from time to time be required by the FHLMC or its successors or assigns and shall otherwise comply in all respects with all insurance requirements of the FHLMC which may be in effect at any time and from time to time.

Section 16.      Conflict. If there is any conflict between any provisions of this Article XIV and any other provisions in this Declaration or the Association By-Laws, the language contained in this Article XIV shall control.

ARTICLE XV

BREACH

Section 1.      Right of Entry. Violation of any of the provisions, covenants, restrictions, easements or reservations contained herein, shall give to Declarant or Declarant's successors or to the Association, the right to enter on the property on or as to which the violation exists and to abate and remove, at the



expense of the owner thereof, any thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions of this Declaration. Such entry shall be made only after three (3) days' notice to said owner and with as little inconvenience to said owner as possible. Any damage caused by such entry shall be repaired by the Association. Declarant or its successors shall not thereby be deemed guilty of any manner of trespass by such entry, abatement or removal.

Section 2.      Nuisance.      The result of every act or omission whereby any provision, covenant, condition, restriction, easement or reservation herein contained is violated, in whole or in part, is hereby declared to be and constitutes, a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by Declarant or its successors, or by the Association. Such remedy shall be deemed cumulative and not exclusive.

Section 3.      Right of Lien Holder.      A breach of any of the provisions, covenants, conditions, restrictions, easements or reservations herein contained, shall not affect or impair the lien or charge of any bona fide first mortgage or first deed of trust made in good faith and for value on any of the units, provided that any subsequent owner of the unit shall be bound by these provisions, covenants, conditions, restrictions, easements and reservations, whether such owner's title was acquired by foreclosure or trustee's sale.

Section 4.      Enforcement.      In the event of a breach of any of the provisions, covenants, conditions, restrictions, easements or



reservations hereby established which is continued for thirty (30) days, the Board may enforce any and all of the terms and conditions of this Declaration. It is hereby declared that damages at law for such breach, are inadequate. The restrictions provided for herein shall be enforceable equitable servitudes and shall inure to and bind all owners of the residential units.

# ARTICLE XVI

## AMENDMENT

Section 1.      Subsequent to Close of First Escrow. Subsequent to the close of the first escrow, each and all of the covenants, conditions and restrictions contained herein, may be modified, amended, augmented or deleted in the following manner and not otherwise: by the execution of either an amended Declaration or amendment to this Declaration, duly executed and acknowledged by not less than seventy-five (75%) percent of the voting power of the Association residing in members other than Declarant (except that any amendment to Article XIV, Protection of Lenders, shall also require the consent of beneficiaries holding seventy-five (75%) percent of first trust deeds which may then be of record as valid encumbrances against the project or any portion thereof), provided that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, so long as the two-class voting structure is in effect in the Association, this Declaration may not be amended without the vote or written consent of seventy-five (75%) percent of each class of membership. Said amended Declaration or amendment to Declaration shall not be effective for any purpose unless and until recorded in the Office of the County Recorder, but shall thereafter be conclusive and presumed to be valid as to anyone relying thereon in good faith.

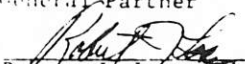
Section 2. Prior to Close of First Escrow Prior to the close of the first escrow, Declarant shall have the right to amend this Declaration by executing and recording, with the consent of beneficiaries of all trust deeds then of record, the desired amendment, after receiving the prior written approval of the California Department of Real Estate and any other municipal and/or state administrative agency then having regulatory jurisdiction over the project, and the recording of said amendment shall be presumed to be valid as to anyone relying thereon in good faith.

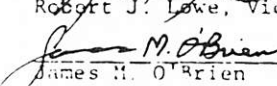
Section 3. Approval of the City. Any amendment which would defeat the obligation of the Association to maintain the Common Area in a first class condition and in a good state of repair, or which would defeat the assessment procedure to insure said maintenance, must be first approved in writing by the City of Millbrae.

IN WITNESS WHEREOF, Declarant has executed this Declaration, the day and year first hereinabove written.

EQUITY PROPERTIES LIMITED 1972, a  
Limited Partnership

By: EEC Property Management, Inc.,  
General Partner

  
Robert J. Lowe, Vice-President

  
James M. O'Brien  
Assistant Secretary

RECORDED & INDEXED BY COUNTY

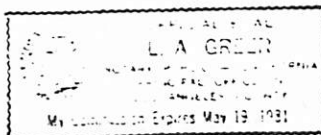
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On this 20 day of July, 1979, before me,  
a Notary Public in and for said State, personally  
appeared Robert L. Green and James M. Green, known to me to be  
the Vice-President and Assistant Secretary respectively of EVO  
Property Management, Inc., the corporation that executed the with-  
in instrument and known to me to be the persons that executed the  
within instrument on behalf of said corporation, said corporation  
being known to me to be the general partner of Equity Properties  
Limited, the partnership that executed the within instrument  
and also related to me that such corporation executed the same as  
its partner and that such partnership executed the same.

WITNESSES my hand and official seal.

Signature L. J. Green



# **OWNER'S CERTIFICATE**

This map was prepared by me or under my direction and is based upon a field survey in conformity with the requirements of the Subdivision Map Act at the request of Equity Funding Ltd. 1972 to 1979. I hereby state that the subdivision map procedure of the local agency have been complied with and that this map conforms to the approved tentative map and the conditions of approval thereof which were required to be fulfilled prior to the filing of this map. The survey is true and complete as shown.

*[Signature]*  
 J. A. J. J.

## **CITY CLERK'S CERTIFICATE**

I hereby state that I have compared this map and that the subdivision as shown herein is substantially the same as it appeared on the tentative map and any approved alterations thereof; that all the provisions of the California "Subdivision Map Act" and of the City of Millbrae Ordinance applicable at the time of approval of the tentative map have been complied with, and that I am satisfied that the same have been lawfully approved.

Date: 8/24/79

*[Signature]*  
 J. A. J. J.

## **RECORDING'S CERTIFICATE**

File No. \_\_\_\_\_ Per \_\_\_\_\_  
 Filed this \_\_\_\_\_ day of \_\_\_\_\_, 1979, at \_\_\_\_\_  
 in Volume \_\_\_\_\_ of Book of Maps of the County of \_\_\_\_\_  
 L.A. Co., State of \_\_\_\_\_

## **NOTICE TO CREDITORS**

County of \_\_\_\_\_

## **NOTES**

1. All distances are shown in feet and decimals thereof.
2. The blue border indicates the boundary of the land subdivided by this map.

## **NOTES OF RECORD**

The bearing of the centerline of Frontiera Way, bearing N 0° 00' 00" E, as shown upon the map entitled "Mills Estate No. 20, Millbrae, San Mateo County, California", recorded in Volume 59 of maps at page 12, San Mateo County Records, was taken at the date of bearing upon this map.

# **THE BAYVIEW CONDOMINIUMS**

SAN MATEO COUNTY, CALIFORNIA

Being a Subdivision of Lot 2, Block 1,  
 Map of Mills Estate No. 20

Scale 1" = 40'  
 LUIS ATTILIO BA-18  
 Civil Engineer & Surveyor  
 Millbrae, California  
 August, 1979

## **CITY CLERK'S CERTIFICATE**

I, John J. J., City Clerk of the City of Millbrae, State of California, hereby certify that the City Council of the City of Millbrae at its regular meeting held on the 24th day of July, 1979, approved the herein subdivision map.

Date August 22, 1979

*[Signature]*  
 J. A. J. J.

## **MILLBRAE HEIGHTS CONDOMINIUM**

VOL. 75 MAPS, PAGE 81

Not'd and recorded by: CS  
 Indexed by: 17

311'2" SUBDIVISION MAP  
 J.C. LAND SURVEY MAP  
 REQUEST OF Equity Funding Ltd., 1972 by First American Title Insurance Company  
 DATE AUG 27 1979 TIME 10:30 S.W.N. SERIAL NO. 6346810 P. 111.00  
 TITLE (Sub and/or Tract) "THE BAYVIEW CONDOMINIUMS"  
Being a result of Lot 2, Block 1, Map of Mills Estate No. 20  
City of Millbrae  
 VOL. NO. 54 (MAPS) PAGE NO. 71, 72, 73, 74 & 75  
 VOL. NO. 54 (J.C. LAND SURVEY MAP) PAGE NO. \_\_\_\_\_  
 VOL. NO. \_\_\_\_\_ (ASSESSMENT MAP) PAGE NO. \_\_\_\_\_  
 VOL. NO. \_\_\_\_\_ (PARCEL MAP) PAGE NO. \_\_\_\_\_

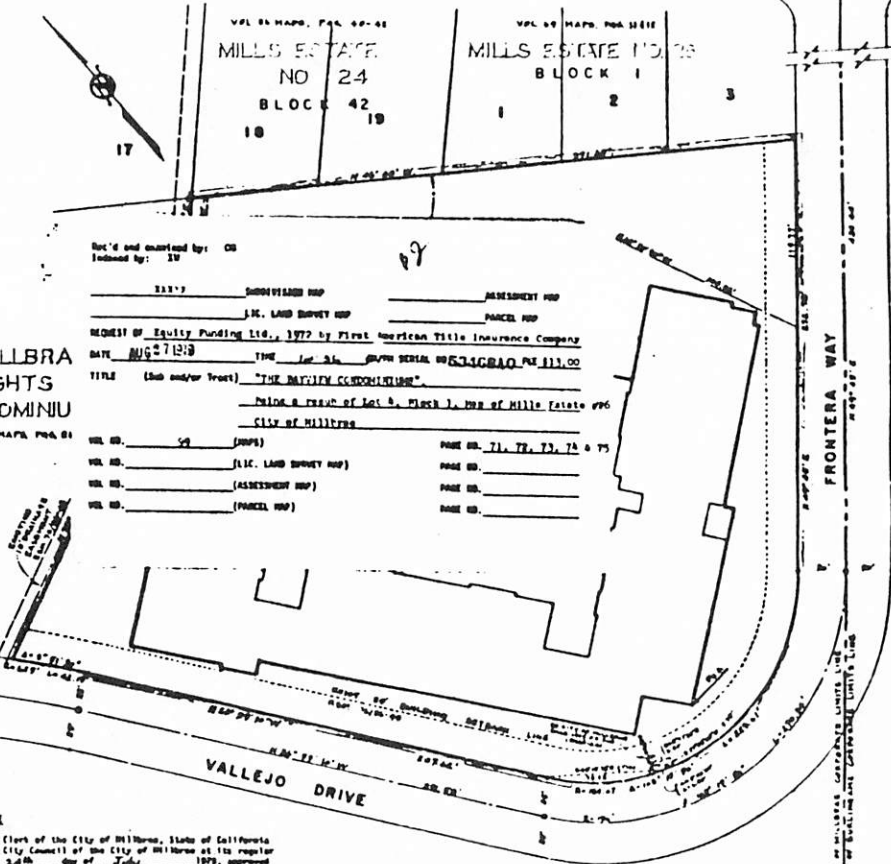


EXHIBIT "A"

Sheet 1 of 5 Sheets



# **ENGINEER'S CERTIFICATE**

This map was prepared by me or under my direction and is based upon a field survey to conform with the requirements of the Subdivision Map Act at the request of Equity Funding Ltd., 1975. I hereby state that the subdivision map procedures of the local agency have been complied with and that this map conforms to the approved tentative map and the conditions of approval thereof which were required to be fulfilled prior to the filing of this map. The survey is true and complete as shown.

*John P. Smith*  
 John P. Smith, E.C.E. 1975

## **CITY ENGINEER'S CERTIFICATE**

I hereby state that I have examined this map and that the subdivision as shown thereon is substantially the same as it appeared on the tentative map and any approved alterations thereon; that all the provisions of the California "Subdivision Map Act" and of the City of Millbrae Ordinance applicable at the time of approval of the tentative map have been complied with; and that I am satisfied that the same are substantially correct.

Dated 8/20/79

*John P. Smith*  
 John P. Smith, City Engineer

## **OWNER'S CERTIFICATE**

File No. \_\_\_\_\_ For \_\_\_\_\_  
 Filed this \_\_\_\_\_ day of \_\_\_\_\_, 1979, at \_\_\_\_\_  
 to return \_\_\_\_\_ of \_\_\_\_\_ at the request of Equity Funding Ltd., 1975.

## **NOTES**

1. All distances are shown to front and distance shown.

2. The blue border indicates the boundary of the land subdivided by this map.

## **DEED OF BOUNDARY**

The bearing of the subdivision of Frontiers Way, bearing S 40° 00' E, as shown upon the map entitled "Mills Estate No. 24, Millbrae, San Mateo County, California", recorded in Volume 99 of maps at page 12, San Mateo County Records, was taken at the time of bearings upon this map.

# **THE BAYVIEW CONDOMINIUMS**

SAN MATEO COUNTY, CALIFORNIA  
 Being a Subdivision of Lot 4, Block 1,  
 Map of Mills Estate No. 24  
 Scale 1" = 40' LOUIS ATTILIO BORDA  
 Civil Engineer & Surveyor  
 Millbrae, California August 1, 1979

## **CITY CLERK'S CERTIFICATE**

I, *Maria McKelvie*, City Clerk of the City of Millbrae, State of California, hereby certify that the City Council of the City of Millbrae at the regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 1979, approved the herein subdivision map.

Date August 22, 1979

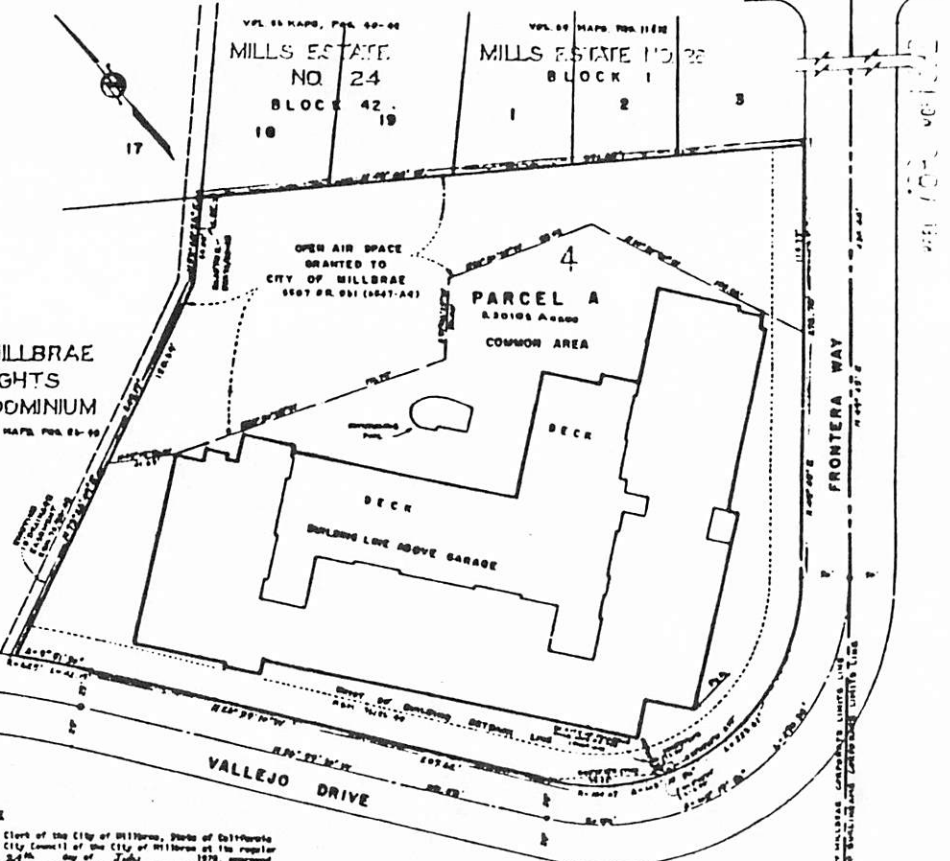
*Maria McKelvie*  
 Maria McKelvie, City Clerk

## **MILLBRAE HEIGHTS CONDOMINIUM**

VOL. 75 MAPS, PAGES 24-25

VOL. 51 MAPS, PAGES 60-61  
**MILLS ESTATE NO. 24**  
 BLOCK 42

VOL. 51 MAPS, PAGES 11-12  
**MILLS ESTATE NO. 25**  
 BLOCK 1





RECORDING'S OFFICE CAN MAKE IDENTITY

# THE BAYVIEW CONDOMINIUMS

SAN MATEO COUNTY MILLBRAE CALIFORNIA

Being a Subdivision of Lot 4, Block 1,  
Map of Mills Estate No. 28

Scale: 1" = 20'

LEWIS ATTILIO ARITA  
Civil Engineer & Surveyor  
Millbrae, California

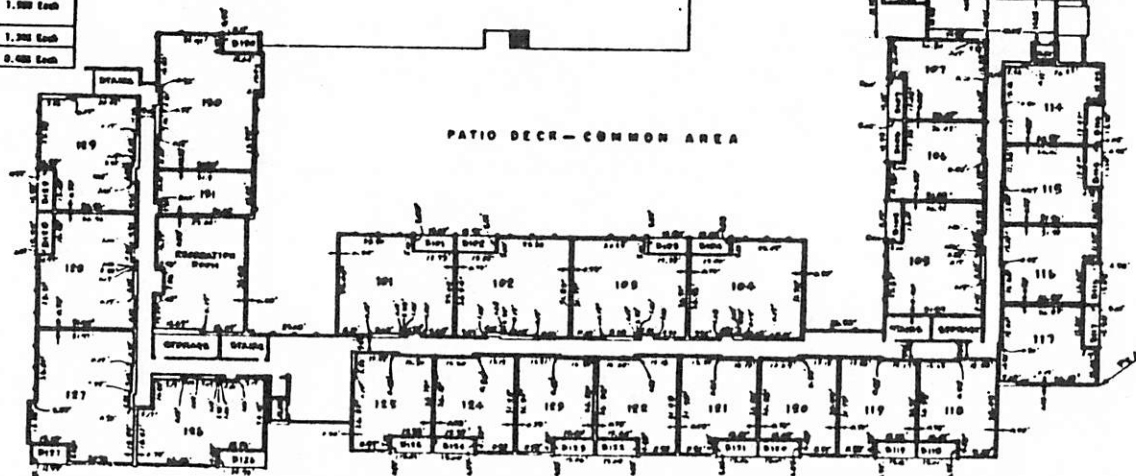
August, 1979

## TABLE

UNIT NO.	Percentage of Ownership of Common Area
101, 102, 114 Through 118	0.025 Each
204, 207, 214 Through 229, 231, 232	
301, 307, 314 Through 329, 331, 332	
101 Through 103, 105, 106, 111 Through 113, 120, 121	1.250 Each
201 Through 203, 205, 206, 211 Through 213, 220, 221	
301 Through 303, 305, 306, 311 Through 313, 320, 321	
110, 127, 130	1.500 Each
210, 227, 230	
310, 327, 330	
100, 200, 300	1.250 Each
100	
100	0.400 Each

## NOTES

- The Subdivision depicted herein is subject to the provisions of the California Condominium Act, Title 6, Part 4, Division Two of the Civil Code.
- "Unit" means a numbered parcel so designated. The boundaries of each unit are the interior unfinished surface (exclusive of walls, doors, windows, etc.) of the perimeter walls, bearing walls, floors, fireplaces, ceilings, windows and window frames, door and door frames and trim, and includes both the portions of the building so described and the air space so encompassed. The physical boundaries of the condominium unit, or of a condominium unit reconstructed to substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the lines and brands represented herein, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown herein and those of the building.
- "Common Area" means all lands and improvements not located within the units. The common area includes, but is not limited to, all staircases, roofs, foundations, bearing walls, pipes, ducts, flues, chases, conduits, wires, utility installations in the exterior walls, columns and girders to the unfinished surface thereof, regardless of location within said units.
- The floor of each unit shall run a percentage interest in the common area as listed in Table A herein.
- The right, title and interest in the common area are vested collectively to the unit owners.
- Each area designated with a "P" and a number is a Parking Area, being an exclusive easement, the use of which is reserved to the owner assigned.
- Each area designated with a "D" and a number is a Deck Area, being an exclusive easement, the use of which is reserved to the owner of the correspondingly numbered unit.
- Elevations Below City of Millbrae Dates.
- All building walls are at 90 degree angles.



FIRST FLOOR PLAN

All dimensions are in feet and inches unless otherwise noted.

FLOOR ELEV. = 591.95'  
CEILING ELEV. = 599.94'

Sheet 2 of 3 Sheets

RECORDED'S OFFICE SAN MATEO COUNTY

# THE BAYVIEW CONDOMINIUMS

MILLBRAY

SAN MATEO COUNTY

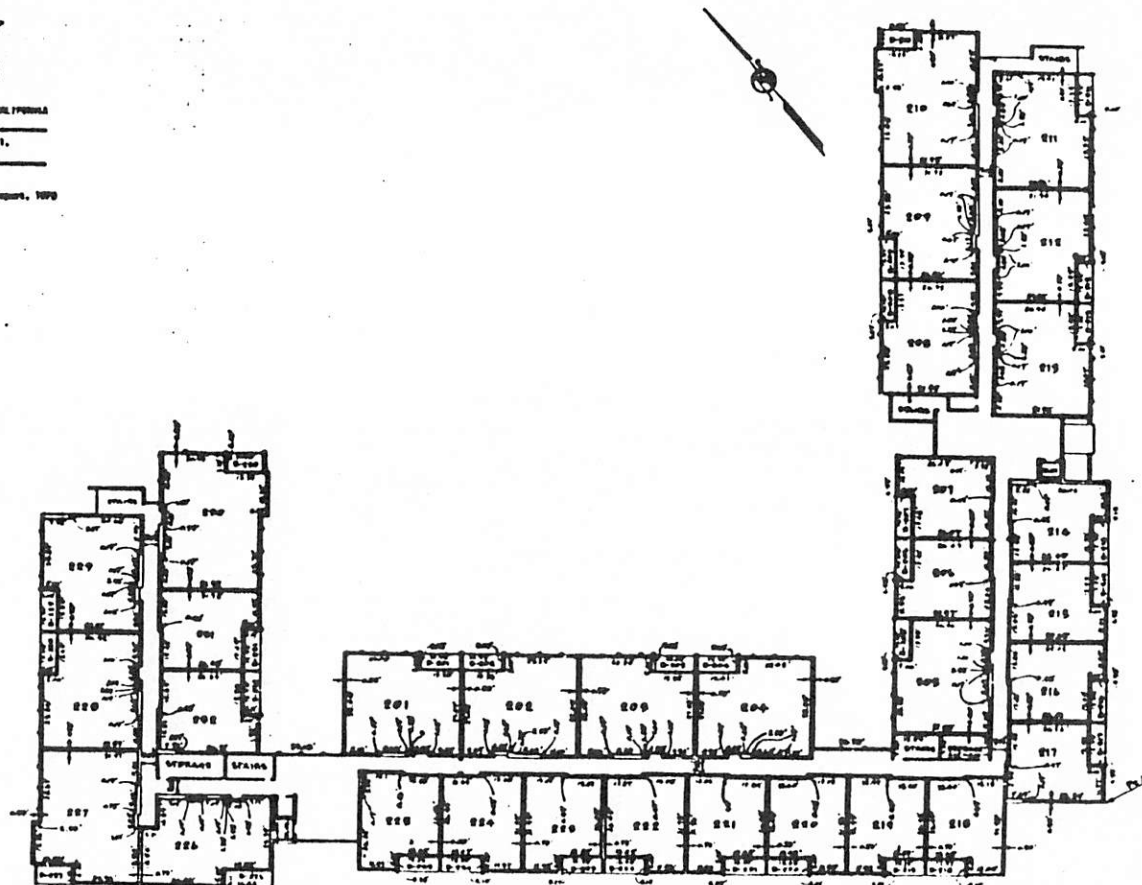
CALIFORNIA

Being a subdivision of Lot 4, Block 1,  
Map of Mills Estate No. 25

Scale: 1" = 20'

LOUIS ARTHUR JONES  
Civil Engineer & Surveyor  
Millbrae, California

August, 1970



SECOND FLOOR PLAN

FLOOR ELEV. • 600.94'

CEILING ELEV. • 608.94'

RECORDED'S OFFICE SAN MATEO COUNTY



# THE BAYVIEW CONDOMINIUMS

MILPITAS

SAN JOSE COUNTY

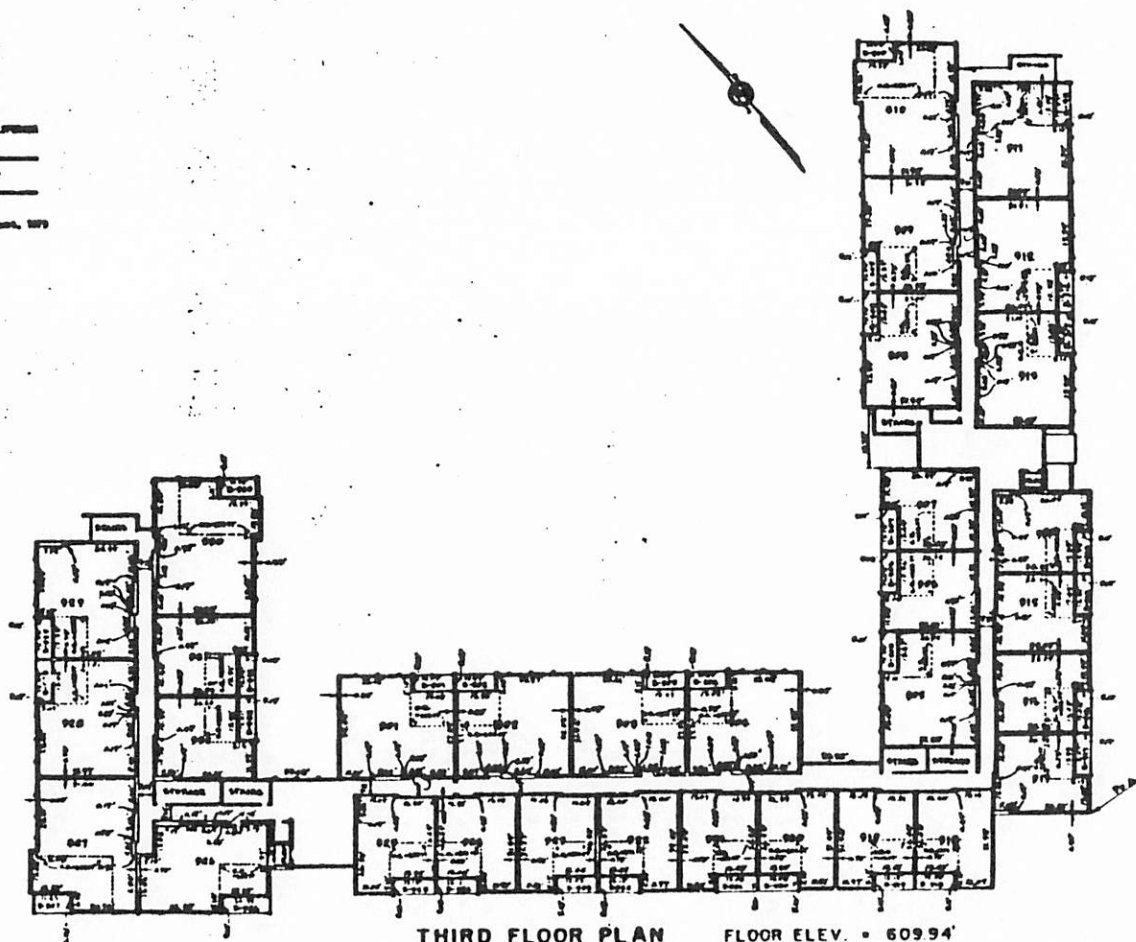
CALIFORNIA

Being a Subdivision of Lot 4, Sheet 1,  
Map of M.I.'s Estate No. 25

Scale: 1" = 30'

SAVED AFTER 10 DAYS  
Civil Engineer & Surveyor  
1111 Street, California

August, 1979



THIRD FLOOR PLAN

All numbers refer to 1/4" scale drawings noted.

FLOOR ELEV. = 609.94'

CEILING ELEV. = 617.94', EXCEPT AS NOTED

Sheet 3 of 3 Sheets

RECORDED'S OFFICE SAN MATEO COUNTY

901-759-1336

## EXHIBIT "B"

PURSUANT TO ARTICLES II. 3. AND VI. 2. OF THIS DECLARATION, THIS  
EXHIBIT IS ATTACHED HERETO AND MADE A PART HEREOF

RECORDER'S OFFICE SAN MATEO COUNTY

<u>UNIT</u>	<u>UNIT TYPE</u>	<u>PERCENTAGE OF INTEREST IN COMMON AREA</u>	<u>* ESTIMATED INITIAL MONTHLY MAINTENANCE CHARGE</u>
101	B	1.23%	\$93.30
102	B	1.23%	\$93.30
103	B	1.23%	\$93.30
104	B	1.23%	\$93.30
105	B	1.23%	\$93.30
106	A	.82%	\$62.20
107	A	.82%	\$62.20
108	B	1.23%	\$93.30
109	B	1.23%	\$93.30
110	C	1.50%	\$113.78
111	B	1.23%	\$93.30
112	B	1.23%	\$93.30
113	B	1.23%	\$93.30
114	A	.82%	\$62.20
115	A	.82%	\$62.20
116	A	.82%	\$62.20
117	A	.82%	\$62.20
118	A	.82%	\$62.20
119	A	.82%	\$62.20
120	A	.82%	\$62.20
121	A	.82%	\$62.20
122	A	.82%	\$62.20
123	A	.82%	\$62.20
124	A	.82%	\$62.20
125	A	.82%	\$62.20
126	B	1.34%	\$101.64
127	C	1.50%	\$113.78
128	B	1.23%	\$93.30
129	B	1.23%	\$93.30
130	C	1.50%	\$113.78
131	S	.48%	\$36.41
201	B	1.23%	\$93.30
202	B	1.23%	\$93.30
204	B	1.23%	\$93.30
205	B	1.23%	\$93.30
206	A	.82%	\$62.20
207	A	.82%	\$62.20
208	B	1.23%	\$93.30
209	B	1.23%	\$93.30
210	C	1.50%	\$113.78
211	B	1.23%	\$93.30
212	B	1.23%	\$93.30
213	B	1.23%	\$93.30
214	A	.82%	\$62.20
215	A	.82%	\$62.20
216	A	.82%	\$62.20
217	A	.82%	\$62.20
218	A	.82%	\$62.20
219	A	.82%	\$62.20
220	A	.82%	\$62.20
221	A	.82%	\$62.20
222	A	.82%	\$62.20
223	A	.82%	\$62.20
224	A	.82%	\$62.20
225	A	.82%	\$62.20
226	B	1.34%	\$101.64
227	C	1.50%	\$113.78
228	B	1.23%	\$93.30
229	B	1.23%	\$93.30
230	C	1.50%	\$113.30
231	A	.82%	\$62.20



EXHIBIT "B"  
Page 2 of 2

RECORDER'S OFFICE SAN MATEO COUNTY

<u>UNIT</u>	<u>UNIT TYPE</u>	<u>PERCENTAGE OF INTEREST IN COMMON AREA</u>	<u>* ESTIMATED INITIAL MONTHLY MAINTENANCE CHARGE</u>
232	A	.82%	\$62.20
301	B	1.23%	\$93.30
302	B	1.23%	\$93.30
303	B	1.23%	\$93.30
304	B	1.23%	\$93.30
305	B	1.23%	\$93.30
306	A	.82%	\$62.20
307	A	.82%	\$62.20
308	B	1.23%	\$93.30
309	B	1.23%	\$93.30
310	C	1.50%	\$113.78
311	B	1.23%	\$93.30
312	B	1.23%	\$93.30
313	B	1.23%	\$93.30
314	A	.82%	\$62.20
315	A	.82%	\$62.20
316	A	.82%	\$62.20
317	A	.82%	\$62.20
318	A	.82%	\$62.20
319	A	.82%	\$62.20
320	A	.82%	\$62.20
321	A	.82%	\$62.20
322	A	.82%	\$62.20
323	A	.82%	\$62.20
324	A	.82%	\$62.20
325	A	.82%	\$62.20
326	B	1.34%	\$101.64
327	C	1.50%	\$113.78
328	B	1.23%	\$93.30
329	B	1.23%	\$93.30
330	C	1.50%	\$113.78
331	A	.82%	\$62.20
332	A	.82%	\$62.20

A = 1 Bedroom  
B = 2 Bedroom  
C = 2 Bed. + Den

\* Individual unit assessments are currently based on a monthly Homeowners Association budget of \$7,585.44; if budget changes, individual assessments will change accordingly, or as shown in the Final Subdivision Public Report issued by the State of California Department of Real Estate.

FILE 7690 PAGE 133

# EXHIBIT 2

AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF THE  
BAYVIEW CONDOMINIUM ASSOCIATION, INC.

AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF THE  
BAYVIEW CONDOMINIUM ASSOCIATION, INC.

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Bayview Amended & Restated Dec.Index.2018.doc  
02/28/2018 - bcw  
03/04/2020 - lba

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF THE  
BAYVIEW CONDOMINIUM ASSOCIATION, INC.**

This amended and restated Declaration is made with reference to the following facts:

A. The Association and its Members are the Owners of certain Property located in the City of Millbrae, County of San Mateo, State of California, more particularly described as all of the real property shown on that certain Subdivision Map entitled "The Bayview Condominiums Millbrae," recorded in the Office of the Recorder of San Mateo County, State of California, on the 27th day of August, 1979, in Volume 99 of Maps at Pages 71 through 75.

B. Covenants, conditions and restrictions have previously been imposed upon the Property as recorded on August 31, 1979 at Document No. 55568-AO and a First Amendment thereto recorded on October 5, 1979 at Document Number 68287-AO in the Office of the Recorder of San Mateo County, State of California.

C. The Association intends by this document to amend and restate those restrictions previously imposed upon the Property by the prior Declarations. Said prior Declarations are hereby consolidated into this document, which retains and incorporates all the provisions of the prior Declarations which are not inconsistent with the provisions hereof.

NOW, THEREFORE, Association hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, used, occupied, and improved, subject to the covenants, conditions and restrictions, all of which are imposed as equitable servitudes pursuant to a general plan for the purpose of improving and protecting the value and attractiveness of the Property, and every part thereof. All of these covenants, conditions and restriction shall constitute covenants which shall run with the land and shall be binding upon and inure to the benefit of the Association and all Persons having or acquiring any right, title or interest in or to any part of the Property.

## ARTICLE I DEFINITIONS

Whenever used in the Governing Documents, the following terms shall mean:

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

1.2. "Association" means Bayview Condominium Association, Inc., a California non-profit mutual benefit corporation.

1.3. "Board" means the Board of Directors of the Association.

1.4. "Bylaws" means the duly adopted Association By-Laws, as the same may be amended from time to time.

1.5. "Civil Code" shall mean the California Civil Code, commonly known as the Davis Stirling Act. The Civil Code can be found online at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

1.6. "Common Area" means the entire Project, excepting all Units shown on the Map, subject to the rights of use and easements described herein and in the document of conveyance through which each Owner will acquire his or her Condominium. The Common Area includes all lands and improvements not located within the units. The Common Area includes, but is not limited to, all staircases, roofs, foundations, bearing walls, pipes, duct flues, chutes, conduit, wires, utility installations to the outlets, walls, columns and girders to the unfinished surface thereto, regardless of location within said Units.

1.7. "Condominium" means a condominium as defined in Section 783 and 4125 of the California Civil Code, consisting of an individual interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential Unit on such real property; more particularly, an estate in real property, consisting of an undivided percentage interest in the Common Area, together with a separate interest in a Unit as hereinbefore defined in said property, and an exclusive easement to and the exclusive right to use those balcony areas and parking spaces as shown on the Map.

1.8. "Declaration" means this Declaration, as the same may be amended, supplemented, changed or modified from time to time.

1.9. "Director" means those Owners who are elected or appointed to serve on the Board.

1.10 "Governing Documents" means and includes this Amended and Restated Declaration as it may be amended from time to time, and the Articles, Bylaws and Rules.

1.11 "Institutional Holder of First Mortgage" means a bank or savings and loan association, or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

1.12 "Manager" means the Person retained by the Board, and charged with the operation of the Association.

1.13 "Map" means that subdivision map entitled "The Bayview Condominiums, Millbrae" recorded on August 27, 1979, in Volume 99 of Maps at Pages 71 through 75, County of San Mateo, State of California.

1.14 "Member" means a Person entitled to membership in the Association as provided herein.

1.15 "Mortgage" means a deed of trust, as well as a mortgage; "Mortgagee" means a beneficiary under, or a holder of, a deed of trust, as well as a Mortgagee.

1.16 "Owner" means the record Owner or Owners, if more than one of a Condominium in the Project.

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

1.18 "Project" means the entire parcel of real property, divided into condominiums, including all structures and improvements thereon.

1.19 "Property and Improvements" means and includes all that real property more particularly described on the Map.

1.20 "Rules" means the Rules adopted by the Board pursuant to Section 4.3 (a) of this Declaration.

1.21 "Unit" means the elements of a Condominium which are owned individually and not in common with Owners of other elements of the Project. The boundaries of each Unit are a numbered parcel so designated on the Map. The boundaries of each Unit are the interior unfinished surface (exclusive of paint, paper, wax, tile, enamel, or other finishings) of the perimeter walls, bearing walls, floors, fireplaces, ceilings, windows and window frames, door and door frames and trim, and includes both the portions of the building so described and the air space so encompassed. The physical boundaries of the Condominium Unit, or of a Condominium Unit reconstructed in substantial accordance with the original plans thereof, shall



be conclusively presumed to be its boundaries rather than the metes and bounds expressed hereon, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown hereon and those of building.

1.22 "Total Voting Power" means the total of ninety-five (95) votes allotted to the Owners.

## ARTICLE II DESCRIPTION OF LAND AND IMPROVEMENTS

2.1 **Condominium Plan Best Authority:** The following description is intended for information purposes only and in the event of any conflict between this description and the Map, the Map shall be deemed to conclusively control.

2.2 **Property Description:** The Property consists of Parcel A of Bayview Condominium as per the Map. The Property consists of an irregularly-shaped plot of land, approximately 3.3 acres in size, located in the City of Millbrae, County of San Mateo, State of California. Construction has been completed on said land and improvements consisting basically of one (1) building, housing a total of ninety-five (95) Units, together with a total of one hundred forty-three (143) parking spaces.

2.3 **Description of Individual Condominium:** Each Condominium within the Project consists of a fee simple interest in a particular Unit, together with an undivided percentage interest as a tenant in common in the Common Area as set forth on Exhibit "A" attached hereto and made a part hereof.

2.4 **Parking Spaces and Balcony Areas:** The deed to each Condominium shall include an exclusive easement to and the exclusive right to use, no less than one (1) parking space and a balcony area, as shown on the Map. All parking spaces shall be used only by the Owners and their lessees and all such Persons shall have and keep in force, property damage insurance on their automobiles.

2.5 **Easements:** Each Owner shall receive, as an incident of conveyance of his or her Unit, a non-exclusive easement appurtenant thereto for ingress, egress and support over, across and through the Common Area and every portion of any Unit within the Project required for the structural support of the building within which the Unit is located. In the event any portion of the Common Area encroaches upon any Unit, or any Unit encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of same, shall exist, so long as the encroachment exists.

2.6 **Delegation of Use:** Any Owner may delegate his or her right of enjoyment

to the Common Area to the Owners of his or her family, tenants, or contract purchasers who reside on the Condominium. However, if an Owner has sold his or her Condominium to a contract purchaser or rented it, the Owner, his or her family, guests or invitees, shall not be entitled to use and enjoy the Common Area while the Owner's Condominium is occupied by such contract purchaser or tenant.

### ARTICLE III OWNERS' ASSOCIATION

3.1. **Creation of Association:** The Owners of Condominiums shall constitute an Owners' Association. Each Owner of a Condominium shall be a Member of the Association. Association membership shall be appurtenant to Condominium Ownership and each Owner of a Condominium shall automatically be a Member of the Association. Ownership of a Condominium within the Project shall be the sole qualification for membership in the Association.

3.2. **Transfer of Membership:** The Association membership of each Owner shall be appurtenant to the Condominium giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way, except on the transfer of title to said Condominium and then only to the transferee of title to the Condominium. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

3.3. **Association to Manage Property:** The management of the Property and control of the Common Area shall be vested in the Association in accordance with the Governing Documents. The affairs of the Association shall be administered in accordance with the provisions of the Governing Documents.

3.4. **Voting:** At any vote of the Owners, each of the Owners shall be entitled to cast one vote for each Condominium owned by him or her. When more than one (1) Person owns any Condominium, all such Persons shall be Members. The vote for such Condominium shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

### ARTICLE IV DUTIES AND POWERS OF THE ASSOCIATION

4.1. **Administration of Project:** The Owners and each of them, together with all parties bound by this Declaration, covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Bylaws and such Rules and regulations as may be adopted by the Board, and amendments, changes and modifications thereto as may come into effect from time to time. In the event of any inconsistency between the

provisions of this Declaration and provisions of the Bylaws or said Rules and regulations, the provisions of this Declaration shall prevail.

4.2. **Duties:** In addition to the duties enumerated in its Governing Documents, and without limiting the generality thereof, the Association shall perform the following duties:

(a) To pay taxes and assessments which are or could become a lien on the Common Area or some portion thereof.

(b) To contract for materials and/or services for the Common Area or the Association.

(c) To maintain the Common Area, all improvements thereon and all utilities thereunder, except those maintained by public utility companies, in good, clean, attractive and sanitary order and repair. 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 the responsible Owner after notice and a hearing as provided in the Bylaws. The maintenance responsibilities of the Association are set forth on Exhibit "B" attached hereto and incorporated herein by reference.

(d) To operate all recreational equipment and facilities located within the Common Area.

(e) To repaint exterior surfaces of all buildings situated on the properties as such repainting is required, in order to preserve the attractiveness of the community. Painting of exterior surfaces shall be deemed to include front doors, shutters, window trim, pot shelves, masonry, exterior walls, underneath side of roof overhangs and garage doors.

(f) To maintain the portion of the Project not occupied by the Units, in good, clean, attractive and sanitary order and repair.

(g) To maintain, repair and paint the roofs of all buildings situated on the property.

(h) To maintain such policies of insurance as are required by Article IX of this Declaration.

(i) To fix, levy, collect, and enforce assessments as set forth in Article V hereof.

4.3. **Powers:** The Association shall have all of the powers set forth in the Articles, Bylaws and this Declaration, together with the general power to do any and all things that a corporation organized under the laws of the State of California may lawfully do in operating for the benefit of its Owners, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to do any and all lawful things that may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration and to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners and guests of the Owners. In addition to the powers enumerated in its Articles and Bylaws or elsewhere provided for herein and without limiting the generality thereof, the Association shall have the following powers:

(a) To adopt Rules in accordance with the Declaration and Civil Code Section 4340 et seq., relating to the use of the Common Area and all facilities thereon, and the conduct of Members and their tenants and guests with respect to the Property and other Members; impose fines and other discipline, establish move-in fees, title transfer fees, and such other fees as may be reasonably necessary for the operation of the Association. Written copies of such Rules and any schedule of fines or penalties adopted by the Board shall be furnished to the Owners.

(b) To enforce the provisions of the Governing Documents in any manner provided by law or in equity, including but not limited to self help. The Association may impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Governing Documents. Penalties may include, but are not limited to, fines, recording a notice of noncompliance against a Condominium, suspension of voting rights, or rights to use the recreational facilities or other appropriate discipline, provided the Owner is given notice and a hearing as provided in the Bylaws, except for the failure to pay assessments.

(c) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of real property, except the sale of a Condominium acquired through foreclosure of assessment lien, shall be approved by the affirmative vote of Owners representing a majority of a quorum of the Total Voting Power.

(d) To employ a Manager or other Persons and to contract with independent contractors to perform any assigned duties as directed by the Board, except for the responsibility to levy fines, impose discipline, hold hearings, or make capital expenditures. Any contract with a firm or Person appointed as a Manager or managing agent shall not exceed a one (1) year term and shall provide for the right of the Association to terminate the same for cause on thirty (30) days' written notice, and without cause and without payment of a termination fee or penalty on ninety (90) days' written notice.

(e) To, by the affirmative vote of Owners representing a majority of a quorum of the Total Voting Power, grant easements in addition to those shown on the Map,

where necessary for utilities, cable television, sewer facilities, or other purposes, over the Common Area to serve the Owners or Condominiums in common.

(f) To borrow money, but, only with the affirmative vote of Owners representing a majority of a quorum of the Total Voting Power, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

## **ARTICLE V** **ASSESSMENTS**

**5.1. Creation of the Lien and Personal Obligation For Assessments:** Each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees: (a) to pay to the Association annual, special, emergency and reimbursement assessments, such assessments to be established and collected as hereinafter provided; and (b) to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law. The annual, special, emergency and reimbursement assessments, together with interest, late charges, collection costs, and attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment lien. Each such assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the Persons, joint and several, who were the Owners of such Condominium at the time when the assessment fell due. No Owner shall be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium. The interest of any Owner in the amounts paid pursuant to any assessment upon the transfer of Ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such assessments after paying all amounts properly charged against such assessments shall be distributed to the then Owners on the same pro rata basis on which the assessments were collected.

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

**5.3. Assessments:** There are four (4) types of assessments: annual; special; emergency and reimbursement.

**5.3.1. Annual Assessment:** The Board shall establish and levy annual assessments, in an amount that the Board estimates will be sufficient to raise the funds needed to



perform the duties of the Association during each fiscal year. The annual assessment shall also include a portion for reserves as the Board considers appropriate to adequately meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair.

5.3.2. **Special Assessments:** The Board at any time may levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate.

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

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

5.3.4. **Reimbursement Assessments:** The Board may levy a reimbursement assessment against any Owner and his or her Condominium who has caused damage to the Common Area, or whose failure to comply with the Governing Documents has necessitated an expenditure of monies by the Association to bring such Owner or Condominium into compliance with said documents or in otherwise performing its functions, including but not limited to attorneys' fees. Such assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended, shall be due and payable to the Association when levied and shall be levied only after notice and a hearing as provided in the Bylaws.

5.4. **Restrictions on Annual or Special Assessments:** The Board may not impose an annual assessment which is more than twenty percent (20%) greater than the annual assessment for the immediately preceding fiscal year, or levy special assessments to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written consent of Owners casting a majority of the votes at a meeting of the Association

at which a quorum is present. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Total Voting Power.

5.5. **Division of Assessments:** Annual, special and emergency assessments shall be charged to and divided between the Condominiums in proportion to their interest in the Common Area as set forth on Exhibit "A." Reimbursement assessments may be levied against any individual Condominium.

5.6 **Notice of Assessment:** The Association shall provide notice by first-class mail to the Owners of any increase in the annual assessment, or special or emergency assessments, not less than thirty (30) nor more than sixty (60) days prior to the assessment becoming due.

5.7. **Due Date of Assessments:** The Board shall fix the amount of the annual assessment against each Condominium and send written notice thereof to every Owner at least thirty (30) days in advance of each annual assessment period, provided that failure to comply with the foregoing shall not affect the validity of any assessment levied by the Association. Failure by the Board to set assessments shall not be deemed a waiver of the assessments but rather the prior year's assessment shall continue. Each Owner shall be obligated to pay assessments in equal monthly installments on or before the first day of each month, or in such other reasonable manner as the Board shall designate. Special or emergency assessments may be collected in one (1) payment, or periodically as the Board shall direct.

5.8. **Effect of Nonpayment of Assessments:** Any assessment not paid within fifteen (15) days after the due date shall be delinquent, shall incur a late payment penalty in the amount of ten percent (10%) of the delinquent assessment and shall bear interest at the maximum rate allowed by law commencing thirty (30) days after the due date until paid.

5.9. **Transfer of Condominium by Sale or Foreclosure:** Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale of any Condominium pursuant to the foreclosure of a First Lien Mortgage shall extinguish the lien of such assessments (including attorney's fees, late charges, or interest levied in connection therewith) as to payments that became due prior to such foreclosure sale, except for assessment liens recorded prior to the Mortgage. No sale or transfer shall relieve such Condominium from liability for any assessments thereafter becoming due or from the lien thereof.

Where the Mortgagee of a first Mortgage or other purchaser of a Condominium obtains title to the same as a result of foreclosure of any such first Mortgage, such acquirer of title, his or her successor and assigns, shall not be liable for the assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer, except for assessment liens recorded prior to the Mortgage. No amendment to the preceding sentence may be made without the affirmative vote of Owners representing at least sixty-seven percent (67%) of the Total Voting Power, and the consent of

fifty-one percent (51%) of the Eligible Mortgage Holders. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Owners including such acquirer, his or her successors or assigns.

In any transfer of a Condominium, the grantor shall remain personally liable to the Association for all unpaid assessments against the Condominium up to and including the date of the transfer. The grantee shall be entitled to a statement from the Association dated as of the date of transfer, setting forth the amount of the unpaid assessments against the grantor due the Association. The grantee shall be personally liable for assessments imposed after the transfer. In any event, the Condominium shall be subject to a lien for all such assessments.

**5.10. Enforcement; Remedies:** If an assessment is delinquent, the Association may record a notice of assessment lien against the Condominium of the delinquent Owner 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 Lien Mortgage. The notice of assessment lien shall state the amount of the assessment, collection costs, attorney's fees, late charges, and interest, a description of the Condominium against which the assessments and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any agent retained by the Association for that purpose.

An assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the assessment lien, or sale by a trustee substituted pursuant to California Civil Code Section 2934(a). Any nonjudicial sale shall be conducted in accordance with the provisions of Sections 5720, 2924, 2924b, 2924c, 2924f, 2924g, and 2924h of the California Civil Code, or any successor statutes thereto, applicable to the exercise of powers of sale in Mortgages and deeds of trust, or in any other manner permitted by law. The Association shall be entitled to recover all attorneys' fees and costs incurred from the defaulting Owner.

The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. During the period a Condominium is owned by the Association following foreclosure: (a) no right to vote shall be exercised on behalf of the Condominium; (b) no assessment shall be assessed or levied on the Condominium; and (c) each other Condominium shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of foreclosure. The Board may execute, acknowledge, and record a deed conveying title to the Condominium which deed shall be binding on the Owners, their successors, and all other parties.

Nothing herein shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay assessments. Suit to recover a money judgment for unpaid assessments, late charges, interest and attorneys' fees shall be

maintainable without foreclosing or waiving the lien securing the same. The Board may suspend the voting rights of a Member who is in default in payment of any assessment, without notice and hearing.

5.11 **Waiver of Exemption:** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article V the benefit of any homestead or exemption law of California in effect at the time any assessment or installment thereof becomes delinquent or any lien is imposed.

5.12 **Unallocated Taxes:** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, such taxes shall be included in the assessments made under the provisions of Section 5.3.1 and, if necessary, a special assessment may be levied against the Units in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

## **ARTICLE VI** **USE RESTRICTIONS**

In addition to all of the covenants contained herein, the use of the Property and each Condominium therein is subject to the following:

6.1 **Residential Use:** Each Condominium shall be used for residential purposes only and no part of the Property shall be used for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of a Condominium may use a room or rooms in the Unit as an office provided that the use is judged by the Board to be unobtrusive to other residents; that the primary use of the Condominium is as a residence; no advertising or sign is used in any manner in connection with the office use; no customers, suppliers, clients, or patients enter the Condominium on any regular basis; and that no vehicles are parked, laid over, or dispatched from the Property. The Board shall have the authority to adopt additional Rules regarding the use of offices within the Property in order to maintain the residential characteristics of the Property. Residency shall be limited to no more than two (2) persons per bedroom, plus one person, in any Condominium. No tent, trailer, mobile home, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence either temporarily or permanently.

6.2 **Maintenance of Unit:** The Owners shall maintain in good repair the interiors of their Units and shall have the exclusive right, at their sole cost and expense, to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, windows and doors bounding their respective Units. Owners shall maintain, repair and replace their windows and sliding glass doors, including frame, hardware and screen. Owners shall keep their exclusive use parking spaces, patios and balconies neat and clean. Owners shall prevent

potted plants or any other property from damaging deck surfaces, and shall be responsible for any damages caused thereby. Each Owner shall maintain, repair and replace the landscaping, hosebib, faucet and spigot in their patio. Each Owner shall maintain their wastewater drain pipes from the Unit to a common pipe shared by another Unit. Owners shall maintain all lights controlled by a switch located in their Unit. The maintenance responsibilities of the Owners and the Association are set forth on Exhibit "B" attached herein by reference. Each Owner shall clean his or her fireplace and chimney flue. All exterior window coverings must be white or beige.

If an Owner fails to so maintain his or her Unit or make repairs thereto in such manner as may be deemed necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Project, the Board shall give written notice to such Owner stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that same be carried out within a period of sixty (60) days from the date such notice is given. If such Owner fails to carry out such maintenance or repair within the period specified in the notice, and after notice and a hearing as provided in the Bylaws, the Board may cause such work to be done and shall assess the cost thereof to such Owner, such assessment to be due and payable within thirty (30) days after the Board gives written notice thereof.

**6.3 Other Structural Changes:** No Owner shall, at his own expense or otherwise, make any alteration, addition or modification to the building in which his or her Unit is located, or to any part or portion of the Common Area without the prior written approval of the Board. This includes the removal of carpeting for the purpose of installing any type of floor covering other than replacement carpeting. Any Owner requesting the replacement of carpet flooring with any hard surface material such as hardwood flooring, must submit manufacturer's specifications or samples verifying that the flooring material is engineered to lessen sound transference between below and adjoining Units. The Owner will also be required to obtain written permission and release of liability from below and adjoining Owners. With respect to the installation of awnings, sunshades, screen doors and other minor installations to any individual Unit, the prior written consent of the Board shall be exercised with a view toward promoting uniformity and thereby enhancing the attractiveness of the Property as a whole. No radio or television receiving or transmitting antennae or external apparatus shall be installed on any part of the Common Area, without the prior written approval of the Board. Normal radio and television installations within an individual Unit or balcony are excepted.

**6.4 Signs:** No sign or flag of any kind shall be displayed to the public view in the Common Area without the prior written consent of the Board. No signs or flags shall be displayed to the public view on any Condominiums, except (a) such signs as are approved by the Board; (b) one (1) "For Sale" or "For Rent" or "For Exchange" sign not more than four (4) square feet in size, provided the design and locations are reasonable, (c) a noncommercial sign, poster, flag, or banner made of paper, cardboard, cloth, plastic, or fabric, may be posted or displayed from the window, door, balcony, or outside wall of the Unit and; (d) the American flag. Signs may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other



similar building, landscaping, or decorative component, or including the painting of architectural surfaces.

**6.5 Offensive Activity:** No Owner shall permit or suffer anything to be done or kept on the Project which shall increase the rate of insurance thereon, or which shall obstruct or interfere with the rights of other Owners, or annoy them by unreasonable smells, noises or otherwise, nor shall he or she commit or permit any nuisance on the Project, or commit or suffer any immoral or illegal act to be committed thereon. Each Owner shall comply with all applicable Rules, ordinances and statutes and with the requirements all governmental authorities with respect to the occupancy and use of his or her Unit. There shall be no harassment of any Owner, tenant, Manager, contractor or vendor by any Owner or tenant. There shall be no smoking of any substance anywhere on the Property, including the Units and the Common Area.

**6.6 Owner Liability:** Each Owner shall be liable to the Association for any damage to the Common Area or to any equipment or improvements thereon which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family members, relatives, guests or invitees both minor and adult to the extent that any such damage shall not be covered by insurance. Each Owner shall be liable to the Association for the cost of repair of any and all damage caused by a waste over flow if it is determined by the Board, based upon any and all relevant information, to be caused by that Owner's exclusive use waste pipes. Said Owner shall be assessed by the Board for the cost of repair or replacement thereof, together with costs and attorney's fees, after notice and a hearing as provided in the Bylaws. In the case of joint ownership of a Unit, the liability of such Owners shall be joint and several. In the event of personal injury or property damage sustained by any one person while physically within the Unit or private balcony or patio, and in the further event any other Owner shall be sued or a claim made against him or her for said injury or damage, the Owner(s) of the Unit(s) in which said injury or damage occurs shall fully indemnify and hold harmless any such other Owners against whom such claim shall be made, and shall further defend any such other Owners, at their own expense in the event of litigation of such claim, provided that such protection shall not extend to any other Owner whose own negligence may have caused or contributed to the cause of any such injury or damage.

**6.7 Common Area Improvements:** No fence, hedges or walls shall be erected and maintained on the Common Area except such as are installed in accordance with the initial construction of the buildings located thereon or approved in writing by the Board and further, no building, fence, structure or wall shall be constructed on any of the open spaces unless approval therefor has been specifically obtained from the appropriate department of the City of Millbrae.

**6.8 Parking Restrictions:** No trailer, camper, boat or similar-type vehicle shall be permitted to remain on any portion of the Common Area. No Unit Owner shall park his or her vehicle or allow his or her guests and/or tenants to park their vehicles in any space other than that assigned to the Owner and any spaces designate as "guest parking spaces." No noisy, smoky, inoperable or unlicensed vehicles shall be operated or parked upon the Property. There shall be

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no repair or reconstruction of vehicles within the Property except for emergency vehicle repairs. The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by any Owner, their family, guests or tenants, in any manner allowed by law. The Association shall not be liable for any damages incurred by the vehicle owner, or any Owner, because of the removal in compliance with this section, or for any damage to the vehicle caused by the removal. The Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated handicapped without prior authority, or in a manner which interferes with any entrance to, or exit from, the Property or any parking space located thereon. The Board is authorized to adopt parking and vehicle Rules for common and assigned parking places.

6.9 **Rubbish:** Trash, rubbish and trash receptacles shall not be permitted to remain on any portion of the Common Area, other than those trash bins provided by the Association.

6.10 **Pets:** One (1) usual and ordinary domestic dog, cat, fish or bird (inside a bird cage) may be kept as a household pet within any Condominium; provided it is not kept, bred or raised for commercial purposes and the prior written approval of the Board is first obtained. The Association shall have the right to prohibit the maintenance of any pet which constitutes, in the opinion of the Board, a nuisance to any other Owner, after notice and a hearing to the Owner of such pet.

Notwithstanding the foregoing, nothing herein contained shall be construed in such a manner as to permit the maintenance of any animal contrary to any ordinance of the City of Millbrae.

Dogs over twenty-five (25) pounds in weight, or fighting breeds, including but not limited to, Pit Bulls, Rottweilers, Akita, including Japanese and Akita Inu, Bernes, including Mountain Dog, Berner Sennenhund, Bernese Cattle Dog, Canary Dogs, including Perro de Presa Canario, Chow Cow, Doberman, Husky, including American, Eskimo and Greenland, Karelian Bear Dog, Rhodesian ridgeback, Russo-European Laika, including Russian Laika and Karelian Bear Laika, Wolf Hybrids And any breed of guard dog trained to attack are prohibited. Owners shall prevent their pet from making excessive noise and from soiling walks, paths, patios, courtyards, lawn and shrub areas, all portions of the Common Area. Each Owner shall pick up their pet's droppings and be financially responsible for any damage caused by any pet kept by the Owner or his or her family, tenants or guests. The Board is authorized to adopt rules for pets and their owners.

6.11 **Association Maintenance and Decoration Authority:** The Board or its duly appointed agent, including the Manager, if any, shall have the exclusive right to paint, decorate, repair, maintain, alter or modify the exterior walls, balconies, railings, exterior door surfaces, roofs and installations and improvements on the Common Area, and no Owner of a Unit shall be permitted to do or have done any such work. The prior written approval of the Board shall be required for installation of any awnings, sunshades or screen doors.

**6.12 Exploration of Minerals:** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in the Project, or within five hundred (500) feet below the surface of the Property and no derrick or other structure designed for use in boring for water, oil or natural gas, shall be erected, maintained or permitted on any portion of the Project.

**6.13 Lease:** As used in this Section "Lease" shall mean any and all agreements, including, but not limited to Leases, subleases, rental agreements, for the use or occupancy of all or any part of a Condominium. Any Owner who wishes to lease his or her Condominium must comply with each of the following restrictions, and the Lease will be subject to these restrictions whether they are included within the Lease or not:

1. Owners are required to personally reside in their Condominiums, except that no more than twenty eight (28) of the Condominiums may be leased to others by the Owners thereof at any time. The Board may enact Rules and Regulations to implement restrictions on leasing.

2. All Leases must:

- (a) follow the current Rules and Regulations and this Declaration, which must be made a part of and attached to the lease; and
- (b) be acknowledged in writing by the lessee.

3. All Owners who lease their Condominiums shall promptly notify the Secretary or Association Manager in writing with a copy of the first and last pages of the Lease together with:

- (a) an acknowledgement the Lessee has received the Rules and Regulations and the Declaration, and
- (b) remit to the Association the required turnover fees,
- (c) a copy of the Bayview Rental Application for every tenant occupying such condominium, and
- (d) address, email, and telephone number where such Owner can be reached.

4. Each Owner shall be responsible for compliance with the provisions of the Rules and the Declaration by his or her tenants and shall pay the penalties imposed pursuant to the Rules and the Declaration for any violation thereof by his or her tenant(s). The Owner shall be liable for any and all damages and costs incurred by the Association due to their tenants and their tenant's guests.

5. By becoming a tenant, each tenant agrees to be bound by the Rules and the Declaration, and recognizes and accepts the rights and power of the Association to evict a tenant for any violation by the tenant of the Rules and the Declaration. Any failure of the tenant to

comply with the Rules and the Declaration shall be a default under the Lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant. The Association will give the Owner notice and a hearing as provided in the Bylaws before the Association may file for eviction.

6. If any Owner, acting as a landlord or tenant is in violation of the provisions of the Rules and the Declaration, the Association, after reasonable notice to the Owner, may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant has violated any of the provisions of the Rules and the Declaration, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the Owner is not a plaintiff in the action and/or the tenant is not otherwise in violation of tenant's Lease with the Owner/landlord. For purposes of granting a forcible detainer against the tenant, the Owners and their tenants agree that the Lease was made for the express benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedies that the Association has. The Association may recover all its costs, including court costs and reasonable attorneys' fees, and such costs and fees shall also be enforceable by a reimbursement assessment.

7. The Board of Directors shall have the authority, in cases they determine to be hardships, to grant relief from this Section. This granting shall be determined on a case-by-case basis.

8. Grandfather Provision. This Section shall not affect or be applicable to any Owner of record as of January 2, 2014, or as provided in Civil Code Section 4740(c). However, all Condominiums will be counted for the purposes of determining the number of leased Condominiums.

6.14 **Smoking:** Bayview Condominium Association is a **smoke-free property**. There is to be no Smoking in or about the Project. The Smoking and Vaping of cigarettes, cigars, pipes or any other substances or devices, with or without medical prescription, shall NOT be permitted or allowed within the Project, including, but not limited to, the Common Area or within any Unit or within any Exclusive Use Common Area.

## ARTICLE VII GENERAL PROVISIONS

7.1 **Owner Key Deposit For Emergency Repair:** The Board shall have authority to designate one or more qualified repairmen or other persons, to enter on and within any individual Unit, with or without the presence of the Owner or occupant thereof for the



purpose of making emergency repairs therein or for necessary maintenance or repair of portions of the Common Area, or to abate any nuisance being conducted or maintained in said Unit in order to protect the property rights and best interests of the remaining Owners. To facilitate this paragraph, all Owners shall deposit with the property Manager, or his or her nominee, a key to their Unit.

**7.2 Continuing Liability for Assessments:** No Owner may exempt him or herself from liability for his or her specified contribution to the maintenance fund by waiver of the use or enjoyment of the Common Area or by abandonment of his or her Unit.

**7.3 Non Discrimination:** No Owner shall, either directly or indirectly forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of their Condominium to any person of a specified race, sex, gender, gender identity, gender expression, adulthood, marital status, color, religion, ancestry, disability, genetic information, source of income, sexual orientation, national origin, or any other protected class.

**7.4 Taxes:** Each Owner shall pay any real and personal property taxes separately assessed against his or her Unit and all utility charges separately metered or charged against his or her Unit, and such payment shall be made by each Owner in addition to and separately from assessments otherwise payable to the Association by such Owner.

**7.5 Enforcement of Declaration and Bylaws:** The Owners or any one of them or the Board acting on behalf of the Association shall be entitled to bring legal action for damages against any Condominium Owner who shall default in the performance of any of the provisions hereof, the Bylaws or Rules and regulations adopted by the Board for the protection of the Project, including but not limited to, the covenant to pay assessment charges. Further, said Persons shall be entitled to enjoin any violation of said documents, Rules and regulations and shall be entitled to prosecute any other legal or equitable action that may be necessary to protect the Project. If any Owner or the Board shall deem it necessary to initiate any legal or equitable action for the protection of the Project against any Owner, then said Persons shall be entitled to reasonable attorney's fees and costs of said action from said Owner for expenses incurred in bringing or initiating the action. Any judgment rendered against any such defaulting Owner shall include costs of said action, together with reasonable attorney's fees in an amount to be fixed by the court. Notwithstanding the foregoing, there shall be no purported power in the Association to cause a forfeiture or abridgement of an Owner's rights to the full use and enjoyment of his or her individually owned Condominium because of a failure by an Owner to comply with the provisions of this Declaration, Bylaws or duly enacted Rules of operation for the Common Area and facilities, except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or because of a foreclosure sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

**7.6 Liberal Interpretation of Declaration:** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Project for the mutual benefit of all Owners

**7.7 Severability of Provisions:** The provisions herein shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any of the provisions herein shall not affect the validity of the remaining provisions.

**7.8 Cumulative Remedies:** Each and all legal or equitable remedies provided for herein shall be deemed to be cumulative, whether so expressly provided for or not.

**7.9 Successors and Assigns:** This Declaration shall be binding on and shall inure to the benefit of the Owners, their heirs, personal representatives, successors and assigns.

**7.10 Waiver or Breach of Declaration:** No waiver or any breach of any of the covenants or conditions herein contained shall constitute a waiver of any succeeding or preceding breach of the same or any other covenant or condition contained herein.

**7.11 Joint and Several Liability:** In the case of joint ownership of a Unit, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

**7.12 Owner's Notice:** Each Owner shall, on an annual basis, provide written notice to the Association of all of the following:

(a) The address or addresses to which notices from the Association are to be delivered.

(b) The alternate or secondary address to which notices from the Association are to be delivered.

(c) The name and address of his or her legal representative, if any, including any Person with power of attorney or other Person who can be contacted in the event of the Owner's extended absence from the Condominium.

(d) Whether the Condominium is Owner-occupied, is rented out or vacant.

If the Owner fails to provide the notices set forth herein the Condominium address shall be deemed to be the address to which notices are to be delivered.

**7.13 Notice of Transfer:** No later than fifteen (15) days after the sale or transfer of any Condominium, the transferee shall notify the Association in writing of such sale or transfer. Such notice shall set forth:

- (a) the Condominium involved;
- (b) the name and address of the transferee and transferor; and
- (c) the date of sale or transfer.

Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to receipt of any such notification by the Association, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to said transferor. However, the Owner shall be responsible for compliance with all the Governing Documents whether or not notice is given.

## ARTICLE VIII UTILITIES

**8.1 Utility Rights:** The rights and duties of the Owners with respect to lines for sanitary sewer, water, gas, electricity, telephone, television and internet cables shall be governed by the following:

(a) Wherever sanitary sewer house connections and lines or electricity, gas, telephone, television or internet cables are installed within the Property which connections or any portion thereof, lie in or on portions of the Property owned by others than the Unit Owner of a Unit served by said connections, the Unit Owners of any Unit served by said connections shall have the right and are hereby granted an easement to the full extent necessary therefor to enter on such portion of the Property or to have the utility companies enter thereon to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

(b) Wherever sanitary sewer hose connections and lines, facilities and/or water hose connections and lines or electricity, gas, telephone, television or internet cables are installed within the Property, which connections serve more than one Unit, the Owners of each Unit served by said connections shall be entitled to the full use and enjoyment of such portions of said connections and serve his or her Unit.

(c) In the event any portion of said connection or line is damaged or destroyed through the negligent act or acts or failure to act or willful misconduct of one Unit Owner or any of his or her agents invitees, tenants, servants, guest or members of his or her family so as to deprive other Unit Owners of the full use and enjoyment of said connection or line, then such connection or line shall be repaired and restored by the Association but at the expense of the Unit Owner who commits or whose guests, agents or family members commit such act or acts.

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(d) In the event any portion of such connection or line is damaged or destroyed by some cause other than the negligence or willful misconduct of one of the Unit Owners, his or her family members, agents, guests, servants, tenants or invitees, (including ordinary wear and tear and deterioration from lapse of time), then in such event such connection or line shall be repaired and restored by the Association.

(e) Waste water drain lines serve stacks of six (6) Units, two (2) on each floor. Owners and their family members, tenants, and guests are prohibited from disposing of any material or substance down sinks, drains or toilets that causes a clog and shall be liable to the Association and other Owners for the repair of any damages caused thereby. The Board is authorized to adopt Rules to enforce such prohibition. In the event that the Board is unable to identify the Owner responsible for the clog, each Owner shall be responsible for the repair of his or her Unit interior damages, and the cost of Common Area repairs shall be equitably divided between the six (6) Owners in the stack, as determined by the Board.

(f) In the event of a dispute between Owners with regard to the repair or rebuilding of said connection or line, or with regard to the sharing of the cost thereof, then on written request of one of such Owners addressed to the other the matter shall be submitted to alternative dispute resolution pursuant to Civil Code Sections 5925 et. seq.

**8.2 Easements:** Easements through the Units and Common Area for all facilities for the furnishing of utility services, telephone, television and internet cable service, or heating within any Unit, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring, shall be appurtenant to each Unit and all other Units and Common Area shall be subject thereto; provided that easements for such facilities shall at all times be and remain substantially in accordance with the initial construction of the Project or the Project as reconstructed after damage or destruction pursuant to the terms of this Declaration.

## **ARTICLE IX**

### **INSURANCE**

**9.1 Association Insurance:** Association shall obtain and maintain the following insurance:

(a) A master hazard policy insuring one hundred percent (100%) of the insurable replacement cost of all of the Common Area in the Property;

(b) If obtainable, an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or

maintained real or Personal property; the amount of general liability insurance which the Association shall carry at all times shall be not less than \$3,000,000.00 aggregate;

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

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

(e) Officers and Directors liability insurance in at least the minimum amount of \$1,000,000;

(f) Earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates as determined by the Board; and

(g) Such other insurance as the Board in its discretion considers necessary or advisable.

(h) The following endorsements should be included, if applicable: (i) changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement"); (ii) inflation guard coverage; (iii) "agreed-amount" endorsement (to eliminate a coinsurance problem); (iv) replacement cost endorsement; and (v) primary coverage endorsement.

**9.2 Coverage Amounts:** The amount, term, and coverage of any policy required hereunder including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard Mortgage clauses, and notices of changes or cancellations shall satisfy the minimum requirements imposed for this type of Property by the Civil Code, the Federal National Mortgage Association ("FNMA") and the Federal Housing Administration ("FHA") or any successor thereto, unless the cost thereof is determined by the Board to be unreasonable. If the FNMA or FHA requirements conflict, the more stringent requirement shall be met. If FNMA and FHA do not impose requirements on any policy required hereunder, the term, amount, and coverage of such policy shall be no less than that which is customary for similar policies on similar properties in the area. The Board shall periodically and not less than once every three (3) years review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

**9.3 Insurance Trustee:** Each Owner appoints the Association or any insurance trustee designated by the Board to act on behalf of the Owners in connection with all insurance



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matters arising from any insurance policy maintained by the Association, including, without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.

**9.4 Waiver of Subrogation:** Any insurance maintained by the Association shall contain a waiver of subrogation as to the Association and its officers, the Directors, the Owners and occupants of the Condominiums and their Mortgagees, and, if obtainable, a cross liability or severability of interest endorsement insuring each insured against liability to each other insured. However, an Owner shall pay any deductible incurred by the Association due to the negligent or intentional act or omission of the Owner, his or her family, guests, tenants, or pets, after notice and a hearing as provided in the Bylaws.

**9.5 Owners' Insurance:** Insurance maintained by the Association does not cover improvements inside an Owner's Unit and does not cover personal liability for damages or injuries occurring within the Unit or caused by the Unit Owner or occupant. Each Owner shall insure his or her personal property and the improvements within his or her Unit including, but not limited to, floor coverings, wall coverings, window shades, draperies, furniture, furnishings, light fixtures, cabinets, appliances and all other improvements located within the boundaries of his or her Unit against loss. Each Owner shall obtain personal liability insurance in the minimum amount of \$500,000. In addition, any improvements made by an Owner within his or her Unit must be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance." No Owner shall separately insure his or her Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance.

**9.6 Failure to Insure:** The Association, its Directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Owners fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Owner and Eligible Mortgage Holders that the insurance will not be obtained or renewed.

**9.7 Limitation of Liability:** Neither the Officers, the Directors, nor the Association, shall be liable for any failure of water supply or other service to be obtained and paid for by the Association hereunder, or for injury or damage to Person or property caused by the elements, or by an Owner or occupant, or resulting from water or dirt which may leak or flow from outside or from any parts of the Common Area, or from any of its pipes, drains, conduits, appliances or equipment, or from any other place, unless the Association is insured for the loss. No diminution or abatement of assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

ARTICLE X  
DESTRUCTION OF IMPROVEMENTS

**10.1 Reconstruction with Election of Owners:** In the event of partial or total destruction of improvements of the Common Area and if the available proceeds of the insurance carried are sufficient for not less than ninety percent (90%) of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless within forty-five (45) days from the date of such destruction, Owners representing seventy-five percent (75%) or more of the Total Voting Power vote that such reconstruction shall not take place. If reconstruction is to take place, the Board shall be required to execute, acknowledge, file and record not later than one hundred twenty (120) days from the date of such destruction a certificate declaring the intention to rebuild. If the proceeds of such insurance are less than ninety percent (90%) of the cost of reconstruction, such reconstruction may nevertheless take place, if within forty-five (45) days from the date of said destruction, Owners representing a majority Total Voting Power votes to rebuild.

**10.2 Reconstruction Assessments:** If Owners determine to rebuild, each Owner shall be obligated to contribute such funds as shall be necessary to pay his or her proportionate share of the reconstruction costs over and above the insurance proceeds and the proportionate share of each Owner shall be the same as his or her proportionate interest in the Common Area. In the event of failure or refusal by any Owner to pay his or her proportionate share after notice to him or her, should such failure or refusal continue for a period of sixty (60) days, the Board may levy an assessment against the Owner which may be enforced under the lien provisions contained in this Declaration.

**10.3 Obligation of the Board:** If the Owners determine to rebuild, the Board shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest responsible bidder. The Board shall have authority to enter into a written contract with the contractor for such reconstruction work and the insurance proceeds held by the Board shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of the reconstruction at the earliest possible time.

**10.3.1 Owner's Responsibility for Repair:** Each Owner shall be responsible for the reconstruction, repair or replacement of the interior of his or her Unit, including but not limited to, the floor coverings, wall coverings, window shades, draperies, furniture, furnishings, light fixtures, cabinets, appliances, and all other improvements not covered by insurance maintained by the Association.

**10.4 Determination Not to Rebuild:** If the Owners shall vote not to authorize rebuilding:

(a) Subject to the rights of mortgagees, any insurance proceeds available for such rebuilding, shall be distributed among the Owners and their individual mortgagees by the Board, as their respective interests may appear, according to the fair market value of each Condominium in relation to the fair market value of all Condominiums, said values to be determined a qualified independent appraiser selected by the Board. In the event of a failure to agree on an appraiser, the appraiser shall be appointed by the then President of the San Mateo County Bar Association.

(b) The Board shall have the duty, within one hundred twenty (120) days of the date of such loss to execute, acknowledge and record a certificate setting forth the determination of the Owners not to rebuild and shall promptly cause to be prepared and filed such revised maps and other documents as may be necessary to show the conversion of the Project to the status of unimproved land or to show the elimination of one or more of the Units as a result of such destruction.

**10.5 Revival of Right to Partition Condominium:** Upon the recordation of a certificate of intention not to rebuild, the right of any Owner to partition his or her Condominium through legal action shall forthwith revive.

**10.6 Condemnation:** The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

In the event of a taking or acquisition of part or all of any Unit or Units, the proceeds shall be payable to the affected Owners and their Mortgagees who shall thereafter be divested of any right, title or interest in the Property. The remaining portion of the Property shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Property. Where the condemned Condominiums are not valued separately by the condemning authority or by the court, proceeds of condemnation shall be distributed among Owners and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Property can be sold, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree on an appraiser, the appraiser shall be appointed by the then President of the San Mateo County Bar Association.

If there is a substantial taking of the Property (more than fifty percent (50%) of all Property improvements), the remaining Owners may sell the remaining Property with the

affirmative vote of a majority of the remaining Owners and the approval of fifty-one percent (51%) of the remaining Mortgagees. For the purpose of effecting a sale under this section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Property, terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to repair and resurvey, or to sell the entire Property as permitted hereunder within sixty (60) days following the date of a substantial taking, any Owner may file a partition action as to the entire Property under Civil Code Section 4610, or any successor statute, and the court shall order partition by sale of the entire Property and distribution of the sale proceeds as provided herein. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described above.

#### ARTICLE XI SUSPENSION OF THE RIGHT TO PARTITION

The right of partition of the Common Area is hereby suspended pursuant to Section 4610 of the California Civil Code. The Project may be partitioned and sold as a whole pursuant to the provisions of Section 4610 of the Civil Code upon a showing of the occurrences of any one of the events provided therein. Further, partition may be had of the Project upon a showing that the conditions for such partition by sale set forth in Article X hereinabove have been met. Nothing herein contained shall prevent partition or division of interest between joint or common Owners of one Condominium.

#### ARTICLE XII PROHIBITION AGAINST SEVERABILITY OF COMPONENTS IN UNITS

**12.1 Prohibition of Severance:** No Owner shall be entitled to sever either his or her Unit or any appurtenant easements thereto in any Condominium from his or her undivided interest in the Common Area for any purpose. None of said component interests may be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with and any violation or attempted violation of this provision shall be void and of no effect.

**12.2 Conveyance of Entire Condominium:** Any conveyance of a Condominium or component interest in the Common Area by the Owner of any Condominium shall be presumed to convey the entire Condominium, provided that nothing herein contained shall be construed to preclude the Owner of any Condominium from creating a co-tenancy in the ownership of said Condominium with any other Person(s).

#### ARTICLE XIII TERM OF DECLARATION - COMPLIANCE WITH RULE AGAINST PERPETUITIES AND RESTRAINTS OF ALIENATION

The following information was obtained from the records of the Department of the Interior, Bureau of Land Management, and the Bureau of Reclamation, and is being furnished to you for your information. The information is being furnished to you in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. 552, and the Department's policy on the release of information. The information is being furnished to you in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. 552, and the Department's policy on the release of information. The information is being furnished to you in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. 552, and the Department's policy on the release of information.

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the East (CLPE) in the United States. The Commission is therefore unable to determine whether the CLPE is a legitimate organization or a subversive one.

[illegible][illegible]

SECRET



The covenants contained herein shall run with the land and shall be binding on all Owners and all Persons claiming under them until January 1, 2059, after which time the covenants shall be automatically extended for successive periods of twenty-one (21) years, unless an instrument approved by the affirmative vote of Owners representing seventy-five percent (75%) of the Total Voting Power shall be recorded, cancelling or terminating this Declaration.

#### ARTICLE XIV PROTECTION OF LENDERS

14.1 **Written Notification to First Mortgagees:** A first Mortgagee is entitled to written notice from the Board of Directors of any default in the performance of an individual Condominium mortgagor of any obligation under this Declaration, the Bylaws and Articles of Incorporation which is not cured within thirty (30) days. It shall be the responsibility of each Owner of a Condominium to notify the Association within thirty (30) days of the close of his or her escrow to purchase a Condominium, of the name and address of the holder of his or her first Mortgage on his or her particular Condominium.

14.2 **Exemption from Right of First Refusal:** Any right of first refusal shall not impair the rights of a first Mortgagee to: (a) foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage; (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or (c) interfere with a subsequent sale or lease of a Condominium so acquired by the first Mortgagee.

14.3 **Subordination of Assessment Lien to Mortgages:** Any holder of a Mortgage which comes into possession of the Condominium pursuant to foreclosure of the Mortgage, shall take the property free of any claim for unpaid assessments or charges against the mortgaged Condominium which accrue prior to the time such holder comes into possession of the mortgaged Condominium. The lien assessments provided for herein shall be subordinate to the lien of any first Mortgage or deed of trust now or hereafter placed on the properties subject to assessments; provided that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Condominium pursuant to a decree of foreclosure or trustee's sale. Such transfer or sale shall not relieve the Condominium from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessments.

14.4 **Leasing:** Any lease agreement between a Condominium owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Association By-Laws and that any failure by a lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Further, with the exception of a lender in possession of a Condominium Unit following a default in a first Mortgage or foreclosure proceeding, no Unit Owner shall be permitted to lease his or her Unit for transient or hotel purposes. No Unit Owner may lease less

than the entire Unit other than the foregoing, there is no restriction on the right of any condominium owner to lease his condominium.

**14.5 Prior Approval of First Mortgage Holders:** Unless at least seventy-five (75%) percent of holders of first Mortgage liens on individual Condominiums have given their prior written approval, neither the Association, nor any individual Owner shall: (a) by act or omission, seek to abandon or terminate the Condominium status; (b) change the prorata interest or obligation of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds, or condemnation awards; and for determining the prorata share of ownership of each Condominium in appurtenant real estate and any improvements thereon which are owned by Condominium Owners in the Project in undivided prorata interests ("Common Area"); (c) by act or omission, change, waive or abandon any scheme of regulation or enforcement thereof, pertaining to the architectural design or exterior appearance of any Condominiums, exterior maintenance of Condominiums, maintenance of driveways or upkeep of landscaping in the Project; (d) partition or subdivide any Unit or the Common Area; (e) by act or omission, seek to abandon, partition, subdivide, encumber, release, hypothecate, sell or transfer the Common Area, however the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Project, shall not be deemed a transfer within the meaning of this clause; (f) fail to maintain fire and extended coverage on insurable project common property and Condominiums on a current replacement cost basis in an amount not less than one hundred percent (100%) percent of the insurable value, based on current replacement costs; (g) use hazard insurance proceeds for losses to any Condominium property for other than repair, replacement or reconstruction of such improvements; (h) make material amendments to the Declaration and/or the Association By-Laws.

**14.6 Examination of Books and Records.** The holders of first Mortgages shall have the right to examine the books and records of the Association.

**14.7. Taxes, Assessments and Charges.** All taxes, charges and assessments which may become liens prior to first Mortgages under local law, shall relate only to the individual Condominiums and not to the Project as a whole. First Mortgagees of Condominiums may jointly and singly pay taxes or other charges which are in default and which may or have become a charge against the common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such property and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**14.8 Reserves for Replacement:** An adequate reserve fund for replacement of the Common Area facilities must be established by the Association and must be funded by regular monthly assessments rather than by special assessments.

14.9 **No Priority Over Rights of First Mortgagees:** No provision herein shall give a Condominium Owner, or any other party, priority over any rights of first Mortgagees of Condominiums pursuant to their Mortgages in the case of a distribution to Condominium Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominiums and/or the Common Area. Such first Mortgagees shall be entitled to timely written notice of any such damage or destruction of the Common Area, if such loss or taking exceeds \$10,000.00 or damage to a Condominium covered by a mortgage exceeds \$1,000.00. Additionally, if any Condominium or portion thereof is made the subject matter of any condemnation or eminent domain proceeding, no provision herein shall entitle the Owner of a Condominium or any other party to priority over a first Mortgagee of a Condominium with respect to any distribution to such Condominium of the proceeds of any award or settlement. Such first Mortgagees shall be entitled to timely written notice of any such proceeding or proposed acquisition.

14.10 **Further Notice to Lenders:** The Association shall give written notice to any first Mortgagee of all meetings of the Association. Each such first lien holder shall have the right to be represented at such meetings but shall have no voting rights unless it has succeeded to title to one or more of the Condominiums by foreclosure. Further, the Association shall deliver to each such first mortgagee, a copy of the Association's annual audited statement within ninety (90) days after the end of the Association's fiscal year.

14.11 **Professional Management of Project:** Any agreement for professional management of the project shall provide that any management contract or any agreement with Declarant, may be terminated, with or without cause, on thirty (30) days notice without payment of a termination fee and that the maximum term of such contract shall be one year. In the event the Association determines to terminate professional management and assume self-management of the Project, the prior written approval of at least holders of seventy-five percent (75%) of the first Mortgages shall be required.

14.12 **Obligation to Cure Breach:** Any first Mortgagee who acquires title to any Condominium pursuant to the remedies provided in the Mortgage or through foreclosure of the Mortgage, shall not be obligated to cure any breach of this Declaration which is non-curable or of a type which is not practical or feasible to cure.

14.13 **Amendment:** No amendment of this Article shall affect the rights of any first Mortgagee recorded prior to the recordation of such amendment who does not join in the execution thereof.

14.14 **Breach of Declaration:** No breach of the covenants, conditions or restrictions contained in this Declaration, nor the enforcement of any lien provisions created herein, shall affect, impair, defeat or render invalid the lien of any Mortgage made in good faith and 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 with respect to a Condominium.

**14.15 Federal Home Loan Mortgage Corporation Requirements:** If any loan secured by a Mortgage encumbering a Condominium is owned by the Federal Home Loan Mortgage Corporation ("FHLMC") or its successors or assigns, or is tendered to the FHLMC or its successors or assigns for purchase, the Association and Owners shall obtain and maintain in full force and effect, all insurance coverages which may at any time and from time to time be required by the FHLMC or its successors or assigns and shall otherwise comply in all respects with all insurance requirements of the FHLMC which may be in effect at any time and from time to time.

**14.16 Conflict:** If there is any conflict between any provisions of this Article XIV and any other provisions in this Declaration or the Association By-Laws, the language contained in this Article XIV shall control.

#### **ARTICLE XV BREACH**

**15.1 Right of Entry:** Violation of any of the provisions, covenants, restrictions, easements or reservations contained herein shall give to the Association the right to enter the Unit or Common Area on or at which the violation exists and to abate and remove, at the expense of the Owner thereof, anything or condition that may be or exists thereon contrary to the intent and meaning of the provisions of this Declaration. Except in case of emergency, such entry shall be made only after three (3) days' notice to said Owner and with as little inconvenience to said Owner as possible. The Association shall not thereby be deemed guilty of any manner of trespass by such entry, abatement or removal.

**15.2 Nuisance.** The result of every act or omission whereby any provision, covenant, condition, restriction, easement or reservation herein contained is violated, in whole or in part, is hereby declared to be and constitutes, a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the Association. Such remedy shall be deemed cumulative and not exclusive.

**15.3 Right of Lien Holder:** A breach of any of the provisions, covenants, conditions, restrictions, easements or reservations herein contained, shall not affect or impair the lien or charge of any bona fide first Mortgage or first deed of trust made in good faith and for value on any of the Units, provided that any subsequent Owner of the Unit shall be bound by these provisions, covenants, conditions, restrictions, easements and reservations, whether such Owner's title was acquired by foreclosure or trustee's sale.

15.4 **Enforcement:** In the event of a breach of any of the provisions, covenants, conditions, restrictions, easements or reservations hereby established the Association may enforce any and all of the terms and conditions of this Declaration. It is hereby declared that damages at law for such breach are inadequate. The restrictions provided for herein shall be enforceable equitable servitudes and shall inure to and bind all Owners of the residential units.

**ARTICLE XVI**  
**AMENDMENT**

This Declaration may be amended only by the affirmative vote of Owners representing a majority of the Total Voting Power. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the president of the Association and recorded in the Recorder's Office of the County of San Mateo. No amendment shall adversely affect the rights of the holder of any Mortgage of record prior to the recordation of such amendment.

**IN WITNESS WHEREOF**, this Amended and Restated Declaration is executed by the President of the Association.

I hereby certify and declare under penalty of perjury, that the foregoing Amended and Restated Declaration has been approved by the percentage of Owners required by the Declaration.

Executed at \_\_\_\_\_, California, on the \_\_\_\_\_, day of \_\_\_\_\_, 2019.

BAYVIEW CONDOMINIUM  
ASSOCIATION, INC.

By: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California     )  
                                      )ss.  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2019, before me, \_\_\_\_\_, a Notary Public, personally appeared, \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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.

Signature \_\_\_\_\_

CC&R\ Bayview Amended and Restated CC&Rs REDLINED.8.2.18

08/02/2018 - bcw

08/03/2018 - bcw

02/15/19 - bcw

05/10/2019 - bcw



# EXHIBIT A

### Percentage of Interest in Common Area

UNIT	UNIT TYPE	% Interest	UNIT	UNIT TYPE	% Interest	UNIT	UNIT TYPE	% Interest
101	B	1.23%	201	B	1.23%	301	B	1.23%
102	B	1.23%	202	B	1.23%	302	B	1.23%
103	B	1.23%	203	B	1.23%	303	B	1.23%
104	B	1.23%	204	B	1.23%	304	B	1.23%
105	B	1.23%	205	B	1.23%	305	B	1.23%
106	A	0.82%	206	A	0.82%	306	A	0.82%
107	A	0.82%	207	A	0.82%	307	A	0.82%
108	B	1.23%	208	B	1.23%	308	B	1.23%
109	B	1.23%	209	B	1.23%	309	B	1.23%
110	C	1.50%	210	C	1.50%	310	C	1.50%
111	B	1.23%	211	B	1.23%	311	B	1.23%
112	B	1.23%	212	B	1.23%	312	B	1.23%
113	B	1.23%	213	B	1.23%	313	B	1.23%
114	A	0.82%	214	A	0.82%	314	A	0.82%
115	A	0.82%	215	A	0.82%	315	A	0.82%
116	A	0.82%	216	A	0.82%	316	A	0.82%
117	A	0.82%	217	A	0.82%	317	A	0.82%
118	A	0.82%	218	A	0.82%	318	A	0.82%
119	A	0.82%	219	A	0.82%	319	A	0.82%
120	A	0.82%	220	A	0.82%	320	A	0.82%
121	A	0.82%	221	A	0.82%	321	A	0.82%
122	A	0.82%	222	A	0.82%	322	A	0.82%
123	A	0.82%	223	A	0.82%	323	A	0.82%
124	A	0.82%	224	A	0.82%	324	A	0.82%
125	A	0.82%	225	A	0.82%	325	A	0.82%
126	A	1.34%	226	B	1.34%	326	B	1.34%
127	C	1.50%	227	C	1.50%	327	C	1.50%
128	B	1.23%	228	B	1.23%	328	B	1.23%
129	B	1.23%	229	B	1.23%	329	B	1.23%
130	C	1.50%	230	C	1.50%	330	C	1.50%
131	S	0.48%	231	A	0.82%	331	A	0.82%
			232	A	0.82%	332	A	0.82%
UNIT	UNIT TYPE	% Interest	UNIT	UNIT TYPE	% Interest	UNIT	UNIT TYPE	% Interest
A = 1 Bedroom								
B = 2 Bedroom								
C = 2 Bedroom + Den								

# EXHIBIT B

Column1 Column2 Column3 Column4

Bayview Maintenance Responsibility Checklist			
Obligation to Maintain			
#	Association	Owner	Maintenance Item
1		X	Air-Conditioning - Owner Installed
2	X		Ants, Bees & Wasps (common area)
3		X	Ants, Bees & Wasps (within unit)
4	X		Balcony Deck Surface - unless caused by Owner's potted plants
5	X		Carport (structural elements, including floor & lights)
6		X	Carport (cleaning & sweeping of floor)
7		X	Caulking of unit windows
8		X	Ceiling (finished surface)
9		X	Chimney cleaning
10		X	Circuit Breakers for unit
11	X		Decks (structural & finish)
12		X	Decks (cleaning, sweeping & Maintenance of finished floor surface/ decking material)
13		X	Doorbell unit
14	X		Drains in common areas
16	X		Driveways (resurfacing, structural repair & replacement)
17		X	Dryer vent cleaning unit
18		X	Electrical wiring (interior of unit and vehicle charging)
19		X	Electrical wiring (for use of, and to service a single unit)
20	X		Entry System intercom
21	X		Fences
22		X	Fireplace (fireboxes) cleaning and sweeping, and maintenance and repair of fireplace damper
23		X	Fireplace- structural repair & maintenance
24	X		Fire sprinklers testing
25		X	Flooring of unit (tile, carpeting, wood flooring, etc...)
26		X	Unit Front door repair/ replace hardware, weatherproofing, sheathing and frame
27	X		Front entry walkway, landing, stairs (cleaning & sweeping)
28	X		Front entry walkway, landing, stairs (structural repair & maintenance)
29	X		Courtyard landscaping
30	X		Front door of unit exterior surface painting
31	X		Gas lines in common area
32		X	Gas lines inside unit
33		X	Baseboard electric heaters
35		X	Interior of unit (doors, finished surfaces, non-bearing walls)
36	X		Landscape common area
37		X	Landscape in enclosed patio
38		X	Lights (patio or deck) porch fixture & bulb
39	X		Light poles (common area)
40		X	Mailboxes (keys & locks)
41	X		Mailboxes (structural & exterior maintenance)
42	X		Paint exteriors
43		X	Plumbing fixtures inside unit
44	X		Plumbing pipes that service more than one unit

45	X		Plumbing stoppage in association maintained pipe which is not cause by owner negligence
46		X	Plumbing stoppage in association maintained pipe which is caused by owner negligence
47	X		HOA controls repair, owner pays
48	X		Perimeter exterior walls, painting, & resurfacing
49	X		Rain gutters and downspouts
50	X		Rats/ Rodents (common area)
51	X		Roof repairs (structural, roofing paper, shingles, vents, etc...)
52		X	Smoke detector/ sirens (in units)
53	X		Stair stringers
54	X		Structural repair of buildings
55		X	Telephone and Cable wiring exclusively serving unit
56	X		Telephone utility installations within common area
57	X		Termite treatment and repair (exterior)
58		X	Termite repair of interior cabinets & interior walls
59	X		Trash collection (excluding large items that do not fit in standard bin)
60		X	T.V. Reception
61	X		Walkways on common area