



San Francisco Assessor-Recorder
Mabel S. Teng, Assessor-Recorder
DOC- 2004-H675819-00

Check Number 4793

Monday, MAR 15, 2004 08:43:52

Ttl Pd \$106.00

Nbr-0002429057

REEL I594 IMAGE 0170

0J1/JL/1-34

**RECORDING AND RETURN
REQUESTED BY:**

D. Andrew Sirkin, Esq.
Bickel & Associates
1375 Grand Avenue, Suite 200
Piedmont, CA 94610
(510) 595-8200

THE GOLDMINE HILL

**FIRST RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

MASTER TABLE OF CONTENTS

RECITALS.....	5
ARTICLE 1. DEFINITIONS.....	5
1.1 "Assessments".....	5
1.2 "Association".....	5
1.3 "Board" or "Board of Directors".....	5
1.4 "Condominium".....	6
1.5 "Condominium Plan".....	6
1.6 "Emergency".....	6
1.7 "Governing Documents".....	6
1.8 "Governmental Regulations".....	6
1.9 "Mortgage".....	6
1.10 "Mortgagee".....	6
1.11 "Occupant".....	6
1.12 "Owner".....	6
1.13 "Percentage Interest".....	6
1.14 "Property".....	6
1.15 "Reasonable Entry Notice".....	6
1.16 "Rules".....	6
1.17 "Utilities".....	7
ARTICLE 2. OWNERS' PROPERTY RIGHTS.....	7
2.1 BOUNDARIES.....	7
2.2 DIVISION OF PROPERTY.....	7
A. Unit.....	7
B. Common Area.....	7
C. Exclusive Use Common Area.....	7
D. Condominium.....	7
2.3 SEVERANCE AND SUBDIVISION OF CONDOMINIUMS.....	7
2.4 OWNER'S EASEMENTS.....	8
ARTICLE 3. ASSOCIATION POWERS AND DUTIES.....	8

3.1	GENERAL POWERS OF ASSOCIATION.....	8
3.2	ENFORCEMENT	8
3.3	ADOPTION OF RULES.....	9
3.4	LEGAL ACTIONS.....	9
3.5	MECHANICS LIENS.....	9
3.6	UTILITY SERVICE.....	9
3.7	ASSOCIATION'S EASEMENT FOR ACCESS.....	9
3.8	DUTY TO REVIEW FINANCIAL STATUS.....	9
3.9	ANNUAL BUDGETING AND REPORTING	9
	A. Operating Budget.....	10
	B. Dispute Resolution Reminder.....	10
	C. Insurance Summary.....	10
	D. Assessment and Foreclosure Policy.....	10
	E. Annual Report.....	10
3.10	RESERVE STUDY.....	10
3.11	RESERVE FUND ADMINISTRATION.....	11
	A. Reserve Fund Account.....	11
	B. Using Reserve Funds.....	11
	C. Borrowing Reserve Funds.....	11
3.12	DOCUMENTS PROVIDED AT OWNER REQUEST.....	11
3.13	MANAGER.....	12
ARTICLE 4. ASSOCIATION DECISIONMAKING.....		12
4.1	AUTHORITY OF BOARD	12
4.2	ACTIONS REQUIRING OWNER APPROVAL.....	12
ARTICLE 5. ASSESSMENTS AND LIENS		14
5.1	TYPES OF ASSESSMENTS	14
	A. Regular Annual Assessments.....	14
	B. Special Assessments.....	14
	C. Personal Reimbursement Assessments.....	14
5.2	USE OF ASSESSMENTS.....	14
5.3	DIVISION OF ASSESSMENTS.....	14
5.4	PAYMENT OF ASSESSMENTS.....	14
5.5	DELINQUENT ASSESSMENTS.....	15
	A. Delinquency Timing and Charges.....	15
	B. Repeated Delinquency.....	15
	C. Assessment Liens.....	15
	D. Owner Rights and Remedies.....	15
	E. Homestead Waiver.....	16
	F. Payment of Delinquent Assessments.....	16
5.6	STATUS CERTIFICATE	16
ARTICLE 6. MAINTENANCE AND ALTERATION.....		17
6.1	OWNER MAINTENANCE RESPONSIBILITY	17
	A. Owner's Unit.....	17
	B. Owner's Exclusive Use Common Area.....	17
	C. Damage To Other Units Or Common Area.....	17
	D. Consequences Of Owner's Failure To Maintain.....	17
6.2	ASSOCIATION MAINTENANCE RESPONSIBILITY.....	17
	A. Common Area.....	17
	B. Exclusive Use Common Area.....	17
	C. Consequential Damages.....	17
	D. Tree Maintenance and View Preservation.....	17

6.3	ALTERATION OF UNITS	18
6.4	ALTERATION OF COMMON AREA	18
	A. Permitted Alterations Of Interior EUCA	18
	B. Permitted Alterations Of Exterior EUCA	18
	C. Signs	18
6.5	ASSOCIATION APPROVAL PROCEDURES	18
	A. Application For Alteration Approval	18
	B. Time Limit For Association Decision	19
	C. Standards For Association Decision	19
	D. Architectural Rules	19
	E. Decisionmaking Body	19
	F. Proceeding With Approved Work	20
	G. Liability	20
6.6	INSPECTION AND NONCOMPLIANCE	20
6.7	BIDDING AND CONTRACTOR SELECTION FOR ASSOCIATION WORK	20
ARTICLE 7. USE RESTRICTIONS		21
7.1	CONDOMINIUM USE	21
7.2	PARKING AND USE OF MOTOR VEHICLES	21
7.3	REMOVAL OF MOTOR VEHICLES	21
7.4	NUISANCE	21
7.5	ANIMALS	21
7.6	GARBAGE DISPOSAL	22
7.7	RIGHT TO LEASE	22
7.8	CLOTHES LINE	22
7.9	WINDOW COVERINGS	22
7.10	STORAGE	22
7.11	DELEGATION OF RIGHTS	22
7.12	USE OF BALCONIES	22
7.13	RESTRICTED AREAS	23
7.14	BARBEQUING	23
ARTICLE 8. INSURANCE		23
8.1	GENERAL LIABILITY INSURANCE	23
8.2	DIRECTORS' AND OFFICERS' LIABILITY INSURANCE	23
8.3	FIRE AND CASUALTY INSURANCE	23
8.4	OTHER INSURANCE	23
8.5	GENERAL POLICY PROVISIONS	23
8.6	INSURER RATING	23
8.7	REVIEW OF INSURANCE POLICIES	24
8.8	NOTICE OF CHANGE IN INSURANCE COVERAGE	24
8.9	INABILITY TO OBTAIN INSURANCE	24
8.10	OWNER'S INSURANCE	24
8.11	CASUALTY INSURANCE DEDUCTIBLES AND PROCEEDS	24
ARTICLE 9. CATASTROPHIC DAMAGE AND CONDEMNATION		24
9.1	CATASTROPHIC DAMAGE	24
	A. Determining Extent Of Damage	25
	B. Determining Availability Of Repair Funds	25
	C. Decision To Rebuild	25
	D. Repair Work	25
	E. Emergency Repair	25
	F. Certification Of Intention	26
	G. Revision Of Documents	26

9.2	CONDEMNATION	26
9.3	DISTRIBUTIONS	26
ARTICLE 10. NOTICE OF TRANSFER		27
10.1	NOTICE OF TRANSFER	27
ARTICLE 11. MORTGAGE PROTECTION		27
11.1	SUBORDINATION	27
11.2	FIRST REFUSAL INAPPLICABLE TO MORTGAGEE	27
11.3	MORTGAGEE RIGHT TO FURNISH INFORMATION	27
11.4	FORMER OWNER IN POSSESSION FOLLOWING FORECLOSURE	27
11.5	MORTGAGEE PRIORITY IN DISTRIBUTION OF PROCEEDS	27
11.6	MORTGAGEE APPROVAL REQUIREMENTS	28
11.7	MORTGAGEE NOTICE RIGHTS	28
11.8	MORTGAGEE INFORMATION RIGHTS	29
11.9	MORTGAGEE RIGHT TO APPEAR AT MEETINGS	29
ARTICLE 12. GENERAL PROVISIONS OF DECLARATION		29
12.1	AMENDMENT OF DECLARATION	29
12.2	CERTIFICATION OF APPROVAL AND RECORDATION	29
12.3	NOTICE	29
12.4	INTERPRETATION	29
12.5	SEVERABILITY	30
12.6	MEDIATION	30
12.7	ARBITRATION	30
12.8	DECLARATORY OR INJUNCTIVE RELIEF	30
12.9	DISPUTES EXCLUDED FROM ARBITRATION	31
12.10	POWER OF ATTORNEY	31
12.11	LIMITATION OF LIABILITY	31
12.12	OWNER'S ACCOUNTABILITY	31
12.13	INDEMNIFICATION	31
12.14	NO PUBLIC RIGHTS	32
12.15	COSTS AND ATTORNEY'S FEES	32
12.16	TERM OF RESTATED DECLARATION	32
12.17	STATUTORY REFERENCES	32
12.18	CERTIFICATE OF PRESIDENT	32

NOTICE

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

RECITALS

THIS FIRST RESTATED DECLARATION is made by THE GOLDMINE HILL HOMEOWNERS ASSOCIATION (the "Association") based on the following recitals:

- A. The Association is a nonprofit, mutual benefit corporation established for the purpose of managing and maintaining a common interest development (the "Property" located in the City and County of San Francisco, California. The physical boundaries of the Property and the individual ownership interests are shown on the Condominium Plan recorded in the Office of the County Recorder (the "County Recorder") of San Francisco County, California on August 30, 1982 at Book 20 of Condominium Maps, Pages 43 thru 55.
- B. This First Restated Declaration, once recorded with the County Recorder, will entirely replace and supersede the original Declaration of Covenants, Conditions and Restrictions previously recorded with the County Recorder on November 8, 1985 as Document D715963 at Reel D959, Image 1083, and all previously recorded amendments and supplements.
- C. This First Restated Declaration preserves the original uniform plan of property ownership for the Property except as modified herein. Each individual Owner holds title to a separate interest in a Unit and to an undivided interest in the Common Area.
- D. The entire common interest development is subject to the covenants, conditions, and restrictions in this First Restated Declaration. They are established for the purpose of protecting, preserving and enhancing the value and attractiveness of the Property for the mutual benefit of all Owners. The covenants, conditions and restrictions are enforceable as equitable servitudes, and legally bind and inure to the benefit of all present and future Owners.

ARTICLE 1. DEFINITIONS

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

1.1 "Assessments" means the proportionate costs of operating, maintaining and managing the Property assessed against each Owner. There are three types of assessments: Regular Annual Assessments, Special Assessments and Personal Reimbursement Assessments. The characteristics of each are described in Article 5. All such Assessments shall be collectively referred to as "Assessments."

1.2 "Association" means the THE GOLDMINE HILL HOMEOWNERS ASSOCIATION. In general, when the Governing Documents provide for a decision or an action by the "Association", the authority to make the decision, or to initiate and supervise the action, resides with the Board and not with the Owners as described in Section 3.14.

1.3 "Board" or "Board of Directors" means the Board of Directors of the

Association.

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

1.5 "Condominium Plan" means the parcel map and/or survey dividing the Property into Units, Exclusive Use Common Area and Common Area recorded with the County Recorder as described in the Recitals to this First Restated Declaration.

1.6 "Emergency" means an event or condition that threatens imminent peril to the health or welfare of persons, or damage to property, or an emergency situation as defined in Civil Code § 1366 (b).

1.7 "Governing Documents" means this First Restated Declaration, the First Restated Bylaws, Articles of Incorporation and Rules of the Association.

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

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

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

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

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

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

1.14 "Property" means the entirety of the common interest development described in the Recitals to this First Restated Declaration.

1.15 "Reasonable Entry Notice", under nonEmergency circumstances, means seventy-two (72) hours prior written notice to one of the Occupants of the area to be entered; no notice is required for entry in the case of an Emergency.

1.16 "Rules" means the rules adopted by the Board or the Association pursuant to this First Restated Declaration.

1.17 "Utilities" means services or systems related to electricity, water, sewer, heating, ventilation, air conditioning, communications, scavenger, recycling, elevator, and fire detection and suppression, and all incidental pipes, conduits, ducts, wiring, equipment and enclosures.

ARTICLE 2. OWNERS' PROPERTY RIGHTS

2.1 BOUNDARIES. The approximate location and physical boundaries of Units, Exclusive Use Common Areas and Common Area are shown on the Condominium Plan. The actual, as-built dimensions of the structures, either as originally constructed, or as reconstructed in accordance with the Governing Documents, shall be presumed the true boundaries and take priority over any legal description in a document, regardless of minor encroachments resulting from constructions, settlement, lateral movement or other causes.

2.2 DIVISION OF PROPERTY. The Property is divided as follows:

- A. Unit.** A Unit consists of the area bounded by the interior unfinished surfaces of its perimeter walls, bearing walls, floors, fireplaces, ceilings, windows and interior portions of window frames and trim, doors (including windows in doors) and interior portions of door frames and trim, and includes both the portions of the building so described and the airspace so encompassed. A Unit includes (i) the paint on all interior surfaces located or exposed within the Unit, (ii) window sashes or other elements that directly contact the glass portion of the window, (iii) door and window hardware and all mechanical elements of doors and windows, and (iv) outlets of the electrical, plumbing, HVAC, and other systems exposed within the Unit interior. A Unit does not include any portion of the frames of windows or exterior doors which is not exposed within a unit interior, or any structural component of walls, ceilings, and floors.
- B. Common Area.** The Common Area consists of the entire Property except for the Units.
- C. Exclusive Use Common Area.** Exclusive Use Common Area consists of balconies, patios, and parking spaces shown on the Condominium Plan for which an easement for exclusive use has been granted to a particular Condominium on the deed initially conveying the Condominium, and any other building component designed to serve only one Unit but located outside the interior boundaries of that Unit.
- D. Condominium.** A Condominium is a Unit together with an undivided interest in the Common Area.

2.3 SEVERANCE AND SUBDIVISION OF CONDOMINIUMS. There shall be no further subdivision of a Condominium into different interests than provided in this First Restated Declaration. This section prohibits timeshare ownership. No Owner shall transfer an ownership interest in a Condominium which does not include all associated rights, title and interests described in the Governing Documents. Any transfer in violation of this section is void.

2.4 OWNER'S EASEMENTS. The following are reserved for the benefit of each Owner and Unit: (i) a nonexclusive easement for ingress, egress and support through the Common Area, (ii) a nonexclusive easement for Utilities at reasonable places through the Common Area, (iii) a nonexclusive easement for the full use and enjoyment of those portions of any shared Utility which serves the Unit, and (iv) an easement for minor encroachments resulting from construction, repair, shifting, settlement or movement upon any portion of the Property.

ARTICLE 3. ASSOCIATION POWERS AND DUTIES

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

3.2 ENFORCEMENT.

- A.** The Association shall exercise prudent business judgment in determining whether, when and how to enforce the Governing Documents. A failure by the Association to enforce any provision of the Governing Documents on one or more occasions shall not be deemed a waiver or estoppel of the Association's right to enforce a similar or other violation of the Governing Documents.
- B.** The Association is authorized to impose fines, suspend voting rights, and impose any other disciplinary action for violation of the Governing Documents to the fullest extent permitted by California law. The Association may not impair an Owner's right to use and enjoy his/her Unit as part of any disciplinary action. Before a policy involving the imposition of monetary penalties takes effect, and any time such penalties are revised, the Association shall provide each Owner with a written schedule of penalties.
- C.** When the Board is to meet to consider discipline of an Owner, it shall so notify the Owner in a writing delivered personally or by first class mail at least fifteen (15) days before the meeting. The notice shall contain the date, time and place of the meeting, a description of the alleged violation, and a statement that the Owner may attend and address the Board either in open session or in executive session. If the Board imposes discipline, it shall so notify the Owner in a writing delivered personally or by first class mail within ten (10) days following the action. A disciplinary action shall not be effective against a member unless the Board fulfills the procedural requirements of this Section. No disciplinary action shall be imposed for a violation of a requirement which was not in effect or had not yet been enacted at the time of the violation.
- D.** Each Owner shall have a right of action against another Owner or the Association for failure to comply with the Governing Documents or with a decision of the Association.

- E. An Owner shall be responsible for ensuring the compliance with the Governing Documents by any renter residing in the Owner's Unit, and any invitees of such renter. In the event of a violation by a renter or renter's invitee, the Association may impose disciplinary action on the Owner to the same extent as it would if the Owner had committed the violation him/herself. The Association is not required to speak with, notify, or otherwise interact with the renter in any manner as a prerequisite to imposing disciplinary action on the Owner.

3.3 ADOPTION OF RULES. To the fullest extent permitted by law, the Association may adopt reasonable Rules to implement each and every provision of the Governing Documents. The Association shall furnish copies of the Rules to all Owners and Occupants as soon as possible after adoption and upon written request.

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

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

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

3.7 ASSOCIATION'S EASEMENT FOR ACCESS. The Association shall have an easement for access through every part of the Property, including the Units, after Reasonable Entry Notice, to perform its duties under the Governing Documents. Entry by the Association shall be made with as little inconvenience as possible to the Occupants. Any damage caused by the entry shall be promptly repaired at the expense of the Association.

3.8 QUARTERLY REVIEW OF FINANCIAL STATUS. Quarterly or more frequently the Association shall (i) review the latest bank statements and reconciliations for its operating and reserve accounts, (ii) review income and expense statements for its operating and reserve accounts, and (iii) compare the current year's actual operating and reserve revenues and expenses to the budget.

3.9 ANNUAL BUDGETING AND REPORTING.

- A. **Operating Budget.** Not less than forty-five (45) nor more than sixty (60) days before the beginning of each fiscal year, the Association shall prepare and distribute to each Owner a *pro forma* operating budget for the next fiscal year in compliance with Civil Code Section 1365.
- B. **Dispute Resolution Reminder.** Along with the operating budget, the Association shall distribute a copy of Section 12.8 of this First Restated Declaration (which incorporated the requirements of Civil Code Section 1354) along with the following statement: "Failure of any Owner to comply with the pre-filing requirements of Civil Code Section 1354 may result in the loss of your rights to sue the Association or another Owner regarding enforcement of the Governing Documents."
- C. **Insurance Summary.** Along with the operating budget, the Association shall distribute a summary of the information regarding the Association's insurance coverage for property damage, general liability, earthquake (if any) and flood (if any), in compliance with Civil Code Section 1365(e).
- D. **Assessment and Foreclosure Policy.** Along with the operating budget, the Association shall distribute the notices required by Civil Code Section 1365.1 relating to collections, foreclosures, payment plans, and Association meetings regarding these matters.
- E. **Annual Report.** Within one hundred and twenty (120) days after the close of the fiscal year, the Association shall prepare and distribute to each Owner an annual report for the previous year which includes an operating statement, a year-end balance sheet, a statement of changes in financial position from the close of the prior year, and any information required by Corporations Code §8322 relating to Association transactions in which a Director of the Association personally benefits. If the Association's gross income exceeds seventy-five thousand dollars (\$75,000.00), the annual report shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If the annual report is not prepared by an independent accountant, it shall be accompanied by the certificate of an Officer of the Association that the statements were prepared without audit from the books and records of the Association.

3.10 RESERVE STUDY. If the replacement cost of the major components of those portions of the Property which the Association is obligated to maintain exceeds one-half (1/2) of the Association's gross annual income excluding reserves, at least once every three (3) years the Association shall conduct a competent and diligent visual inspection of the accessible areas of such major components and obtain a study of its reserve requirements. The reserve study shall be conducted by a qualified individual or entity, and shall contain the following information:

- A. Identification of the major components of the Property which the Association is obligated to maintain and which have a remaining useful life of less than thirty (30) years;
- B. An estimate of the remaining useful life of such components;
- C. An estimate of the cost of repair or replacement of such components at the end

of their useful life; and

- D. An estimate of the total annual contribution necessary to defray such cost after subtracting currently available reserve funds.

The Association shall annually review the study and implement necessary adjustments to the reserve component of the Assessments.

3.11 RESERVE FUND ADMINISTRATION.

- A. **Reserve Fund Account.** The Association shall deposit operating funds and reserve funds in segregated accounts. Reserve funds shall be deposited in an interest-bearing account. Withdrawal of funds from the reserve account shall require the signatures of either two (2) Directors or one (1) Director and one (1) Officer.
- B. **Using Reserve Funds.** The Association shall not expend reserve funds for any purpose other than maintenance, repair or replacement, or litigation or arbitration involving maintenance, repair or replacement, of items which the Association is obligated to maintain, repair or replace. When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation or arbitration, the Association shall notify its members of the decision and the availability of an accounting with the next available mailing, and thereafter prepare an accounting of the litigation or arbitration-related expenses at least quarterly and make the accounting available for inspection by members at the Association office.
- C. **Borrowing Reserve Funds.** Reserve funds may be transferred to the operating account to meet short-term cash flow requirements or other expenses provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid. The transferred funds must be restored to the reserve account within one (1) year of the date of the initial transfer unless the Board makes a written finding, supported by documentation, that a temporary delay would be in the best interest of the Association. The Association shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the transferred funds within the time limits required by this Section.

3.12 DOCUMENTS PROVIDED AT OWNER REQUEST. Within ten (10) days of the mailing or personal delivery of a written request, the Association shall provide an Owner with a copy of the following:

- A. The First Restated Declaration, First Restated Bylaws, Articles of Incorporation, and Rules;
- B. A copy of the most recent documents distributed under Section 3.9;
- C. A statement of the current Regular and Special Assessments and fees, any change in such Assessments and fees which have been approved but not yet

become due and payable, and a Status Certificate regarding the requesting Owner's delinquencies as described in Article 5;

- D. A copy or summary of any notice previously sent to the requesting Owner regarding any alleged violation of the governing documents;
- E. If the Association is contemplating, or has commenced, construction defect litigation, a copy of the notices to Owners required by Civil Code Section 1375 and 1375.1; and
- F. A complete copy of each Association insurance policy.

The Association may charge a reasonable fee for these documents which shall not exceed the actual administrative cost.

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

ARTICLE 4. ASSOCIATION DECISIONMAKING

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

4.2 ACTIONS REQUIRING OWNER APPROVAL.

- A. The following actions require the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting of the Association:
 - (1) Except in an Emergency, (i) retroactively revising the Regular Annual Assessment for a particular year, (ii) increasing the Regular Annual Assessment more than twenty percent (20%), or (iii) decreasing the Regular Annual Assessment more than ten percent (10%); and
 - (2) Levying a Special Assessment which, when added to all other Special Assessments levied during the same fiscal year, exceeds five percent (5%) of the budgeted gross expenses for that fiscal year; however, Owner approval shall not be required if the Special Assessment is levied to address Emergency conditions or to pay for legal costs associated with

litigation or arbitration involving repair, restoration, replacement or maintenance of major components for which the Association is responsible.

B. The following actions require the approval of Owners constituting a majority of the total voting power of the Association:

- (1) Changing the allocation of responsibility for maintenance, repair or replacement between the Owners and the Association;
- (2) Transferring any Association property having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Property is sold;
- (3) Using the proceeds from an insurance claim or from a settlement or judgment of a legal dispute for any other purpose other than to restore the loss or damage for which the recovery was obtained;
- (4) Adding or annexing real estate to the Property;
- (5) Approving Association capital improvement projects (other than those for which reserves are maintained) for which the cost is anticipated to be over fifty thousand dollars (\$50,000) in 2003 dollars; and
- (6) Approving any change to the pricing of a previously Owner-approved Association capital improvement project which would increase the price by twenty five percent (25%) or more.

C. The following actions require the approval of Owners constituting a majority of the total voting power of the Association, and the approval of each Owner both directly and detrimentally affected by the action:

- (1) Changing the method of allocating Assessments or voting rights among Owners; and
- (2) Altering, or redefining the boundaries of a Unit or Exclusive Use Common Area.

D. The following actions require the approval of Owners constituting seventy-five percent (75%) of the total voting power of the Association:

- (1) Imposing any restriction of the free alienation or transferability of a Condominium, other than restrictions on the leasing of Units; and
- (2) Altering or amending the provisions of this First Restated Declaration regarding assessment liens, assessment lien priority, insurance, leasing of Units, or repair of the Property following Catastrophic Damage or condemnation.

- E. Except as otherwise provided in this First Restated Declaration, the Association may not abandon, partition, sell or transfer all or any portion of the Common Area without the approval of all Owners.

ARTICLE 5. ASSESSMENTS AND LIENS

5.1 TYPES OF ASSESSMENTS. There are three types of Assessments: Regular Annual Assessments, Special Assessments and Personal Reimbursement Assessments.

- A. **Regular Annual Assessments.** Regular Annual Assessments shall be levied against all Owners to fund the operating and reserve requirements of the Association as projected in the *pro forma* operating budget prepared in accordance with Civil Code §1365.5. If at any time during the fiscal year, the Association determines that the amount of the Regular Annual Assessments is inadequate or excessive, it may revise it for the balance of the fiscal year.
- B. **Special Assessments.** Special Assessments may be levied against all Owners to defray (i) the cost of construction, repair or replacement of capital improvements to portions of the Property which the Association is obligated to maintain, (ii) extraordinary expenses of the Association that were not anticipated in the *pro forma* operating budget, or (iii) any other purpose permitted by law.
- C. **Personal Reimbursement Assessments.** A Personal Reimbursement Assessment may be levied against any Owner to enforce the Owner's obligations and responsibilities under the Governing Documents.

5.2 USE OF ASSESSMENTS. Revenue raised by Assessments must be used to maintain, preserve and enhance the Property, or to promote the health, safety and general welfare of the Owners.

5.3 DIVISION OF ASSESSMENTS. Regular and Special Assessments levied to pay expenses associated with insurance, gas, water, sewer, electricity, painting, and roofing shall be allocated according to the percentages shown on Exhibit "A". All other portions of Regular and Special Assessments shall be allocated among all Condominiums equally.

5.4 PAYMENT OF ASSESSMENTS. Regular Annual Assessments shall be assessed against each Owner on the first day of the first month of the fiscal year, and shall be due and payable in equal monthly installments on the first day of each month of the fiscal year, unless the Association adopts some other basis for collection. The Association shall notify each Owner in writing of the amount of the Regular Annual Assessments for the upcoming fiscal year at the same time it distributes the *pro forma* operating budget. In addition, the Association shall notify each Owner in writing of any change in the Regular Annual Assessments or of the levy of any Special Assessment not less than thirty (30) nor more than sixty (60) days before the due date of such changed or Special Assessment. The due date for payment of a Personal Reimbursement Assessment shall be stated in the notice of the assessment and be at least thirty (30) days after notice is given. Assessments are due and payable on their due dates without deduction or offset for any claim an Owner may have against the Association. Each Assessment, together with authorized charges, is the joint and several personal obligation of all Owners of the Condominium against which it is levied. No

Owner may exempt him/herself from liability for payment of Assessments.

5.5 DELINQUENT ASSESSMENTS.

- A. Delinquency Timing and Charges.** An Assessment becomes delinquent if payment is not received by the Association within fifteen (15) days after its due date. The Association may impose a late charge of ten percent (10%) or \$10.00, whichever is greater, on delinquent payments as compensation for additional administrative costs. A late charge may be imposed on each delinquent payment, but may not be imposed more than once on any single delinquent payment. The Association may also recover reasonable costs incurred in collecting delinquent Assessments including reasonable attorney's fees. The Association may also charge interest on delinquent payments, late charges, collection costs, and attorney's fees, at the rate not to exceed twelve percent (12%) per annum beginning thirty (30) days after the due date and continuing until the date payment is received.
- B. Repeated Delinquency.** If a Regular Annual Assessment installment is not paid within fifteen (15) days of the due date more than three (3) times during a fiscal year, the Association may declare the entire remaining unpaid balance of the Regular Annual Assessment for that fiscal year immediately due and payable in full by written notice to the Owner.
- C. Assessment Liens.** A penalty, fine, charge or other financial obligation, including costs and expenses of collection, levied by the Association against an Owner as a Personal Reimbursement Assessment for a violation of the Governing Documents may be made a lien against the Condominium of such Owner, but may not be enforced by nonjudicial foreclosure under Civil Code §§2924, 2924(b) and 2924(c) except as allowed by law. The obligation may be enforced by judicial foreclosure or judicial execution once the obligation is reduced to judgment. A lien for delinquent Regular Assessments and Special Assessments, and a lien for delinquent Personal Reimbursement Assessments levied to reimburse the Association for costs associated with the repair of damage for which an Owner, Occupant or invitee is responsible, may be enforced by nonjudicial foreclosure conducted in accordance with the provisions of Civil Code §§2924, 2924(b) and 2924(c). A delinquent Assessment, regardless of type, plus any late charges, interest, costs of collection or related charges may be made a lien on the delinquent Owner's Condominium by recording a notice of delinquent Assessment with the County Recorder. The notice of delinquent Assessment shall contain the information and meet the other requirements of Civil Code §1367.1(d). Such a lien may be enforced in any manner permitted by law.
- D. Owner Rights and Remedies.** At least thirty (30) days prior to recording a lien against a Condominium, the Association shall provide to the Owner, by certified mail, a notice ("Owner Notice Of Delinquency") in compliance with Civil Code Section 1367.1(a).
- (1)** The Owner may dispute the debt by submitting to the Board a written explanation of the reasons for his/her dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the

postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Owner Notice Of Delinquency.

- (2) Notwithstanding anything to the contrary in Section 12.8, an Owner may use the alternative dispute resolution process described in that Section to resolve a dispute regarding Assessments provided such Owner has not used alternative dispute resolution to resolve an Assessment dispute more than two (2) times in a single calendar year or more than three (3) times in five (5) calendar years. An Owner wishing to use alternative dispute resolution to resolve an Assessment dispute must (i) first pay to the Association the full amount of the disputed Assessment plus reasonable interest, late charges and lien expenses, plus reasonable attorney's fees up to four hundred twenty five dollars (\$425), and (ii) notify the Association in writing by certified mail that the amount is paid under protest within thirty (30) days after a notice of delinquent assessment is recorded. If an Owner follows the procedures set forth in this Section, the Association shall notify the Owner that he/she may resolve the dispute as described in Section 12.8, through a civil action, or through any other dispute resolution procedure available through the Association. Interest may be awarded to an Owner for Assessments paid under protest and later found not to be due at the rate charged by the Association.
- (3) An owner may submit a written request to meet with the Board to discuss a payment plan for the debt. The Association shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Owner Notice Of Delinquency, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more directors to meet with the Owner.

E. Homestead Waiver. Each Owner waives the benefit of statutory debtor protection, including homestead and exemption rights, to the full extent permitted by California and Federal law with respect to enforcement of Assessment liens.

F. Payment of Delinquent Assessments. Payment toward a delinquent Assessment shall be credited first to satisfying the Assessment, and then to late charges, collection costs, attorney's fees and interest. Upon payment of the sums specified in the notice, the Association shall promptly record a notice acknowledging satisfaction and releasing the lien. The lien shall not be affected by the sale or transfer (other than through foreclosure) of the affected Condominium.

5.6 STATUS CERTIFICATE. Upon written request of an Owner, the Association shall provide an Owner with a written statement, signed by an authorized representative of the Association, stating the amount of all unpaid Assessments, fines, penalties, charges and other financial obligations owed to the Association by the Owner as of the date of the statement. The statement shall be conclusively presumed accurate as of its date in favor of any good faith purchaser of a Condominium who relies on it. The Association may charge a reasonable fee for the statement which shall not exceed the actual administrative cost.

ARTICLE 6. MAINTENANCE AND ALTERATION

6.1 OWNER MAINTENANCE RESPONSIBILITY.

- A. **Owner's Unit.** Each Owner shall maintain all elements of his/her Unit in a condition which does not impair the value or desirability of other Condominiums. The Owner is responsible for repair, replacement, and maintenance of all aspects of the windows, window sashes, and window frames and trim, including caulking, glass and all associated hardware, unless the repair or replacement of the windows, window sashes, and window frames are covered by the Association's insurance, in which case such work shall be the responsibility of the Association.
- B. **Owner's Exclusive Use Common Area.** Each Owner shall keep his/her assigned Exclusive Use Common Area neat and clean such that its appearance does not impair the value or desirability of other Condominiums.
- C. **Damage To Other Units Or Common Area.** Each Owner is responsible for maintenance to all areas of the Property necessitated by the acts or omissions of his/her guests and invitees (including independent contractors and employees), of the Occupants of his/her Unit, and of the guests and invitees of such Occupants. Each Owner is also responsible for maintenance to all areas of the Property necessitated as a consequence of the malfunction of any element which the Owner is responsible to maintain. The provisions of this Subsection C are intended to supersede any conflicting provisions of Subsections of 6.1A or B or 6.2A or B.
- D. **Consequences Of Owner's Failure To Maintain.** If an Owner fails to satisfy his/her maintenance requirements, the Association may do so and assess any associated expense as a Personal Reimbursement Assessment.

6.2 ASSOCIATION MAINTENANCE RESPONSIBILITY.

- A. **Common Area.** The Association shall maintain all Common Area which is not Exclusive Use Common Area in good condition and repair.
- B. **Exclusive Use Common Area.** The Association shall maintain all elements of Exclusive Use Common Area in good condition and repair.
- C. **Consequential Damages.** The Association is responsible for damage caused by, or maintenance necessitated by, the conduct and behavior of its invitees (including independent contractors and employees), and for maintenance necessitated as a consequence of the malfunction of any element which the Association is responsible to maintain. The provisions of this Subsection C are intended to supersede any conflicting provisions of Section 6.1A or B.
- D. **Tree Maintenance and View Preservation.** Notwithstanding anything to the contrary in this Declaration, no trees on the Property shall be removed in an effort to enhance or preserve a view. The Association shall trim trees to maintain the best possible view without harming any tree or any building.

6.3 ALTERATION OF UNITS. Without Association approval, an Owner may make alterations within the boundaries of his/her Unit that do not impair the structural integrity or mechanical systems, or impair the value or desirability of other Condominiums. All other improvements, including window replacement, and placement and installation of exterior antennas and satellite dishes shall require Association approval. Without limiting the generality of the preceding sentences, it is specifically noted that no plumbing or electrical work within any common or bearing walls is permitted without Association approval. Hard flooring is prohibited in all locations on the second and third floors except for the kitchens and bathrooms. Those second and third floor Units that already have hard flooring at the time this First Restated Declaration is recorded will not be required to remove it. Owners wishing to install hard flooring in first floor Units, and Owners with medical conditions that require installation of hard flooring to replace carpets in other Units, must obtain Association approval. Regardless of whether Association approval is required, prior to making any alteration, an Owner shall (i) obtain all required governmental permits and approvals and (ii) in cases where a building permit is required, provide a copy of the building permit application to the Association at least ten (10) calendar days before commencing work.

6.4 ALTERATION OF COMMON AREA. In general, Common Area, including Exclusive Use Common Area, may be physically altered only with Association approval. Plumbing or electrical work outside the boundary of a Unit, including within any bearing wall, common wall or perimeter wall, requires Association approval. The following alterations of Exclusive Use Common Area ("EUCA") are permitted without approval:

- A. Permitted Alterations Of Interior EUCA.** Alterations of indoor Exclusive Use Common Area that do not impair the structural integrity or mechanical systems of the Property, impair the value or desirability of other Condominiums, alter the exterior appearance of the Property, or substantially change the usage of the space; and
- B. Permitted Alterations Of Exterior EUCA.** Alterations of Exclusive Use Common Area which is not indoors that do not impair the value or desirability of any portion of the Property, substantially change the usage of the space, or involve the installation or attachment of anything to the Property such as a screen, cover, awning, hot tub, spa, fence, or flagpole.
- C. Signs.** "For Sale" or "For Rent" signs that do not exceed nine (9) square feet in size may be displayed on portions of the Common Area designated by the Association. All other signs require Association approval.

Before making any alteration, regardless of whether approval is required, an Owner shall (i) obtain all required governmental permits and approvals and (ii) in cases where a building permit is required, provide a copy of the building permit application to the Association at least ten (10) calendar days before commencing work.

6.5 ASSOCIATION APPROVAL PROCEDURES.

- A. Application For Alteration Approval.** Owners wishing to make alterations requiring Association approval shall submit "Plans and Specifications" to the Association. "Plans and Specifications," as used in this Article, shall include the following:

- (1)** A description of the proposed alteration, including, as appropriate, its

shape, height, width, elevation, materials, color, location and such further information as may be necessary to allow the Association to evaluate it fully;

- (2) Upon request of the Association, a certificate by an architect or engineer licensed by the State of California stating that the alteration (i) will not impair the structural integrity of any part of the Property, and (ii) will not interfere with any Utility; and
- (3) Upon request of the Association, a set of construction drawings prepared by an architect and/or engineer licensed by the State of California.

The Association may require as much detail in the Plans and Specifications as it deems appropriate, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and samples of exterior material and colors. The Association may postpone review of any application until receipt of all required information and materials. Upon submittal of all required information and documentation, the Association shall give the Owner a written, dated receipt. The date of the receipt shall be the commencement date for computing the time within which the Association must approve or disapprove the application. The Association may charge a reasonable fee for reviewing an application.

- B. **Time Limit For Association Decision.** Within forty-five (45) days after receipt of all materials required or requested by the Association, it shall notify the applicant in writing of its decision. If the Association fails to notify the applicant in writing of its decision within this time frame, the application shall be deemed denied.
- C. **Standards For Association Decision.** The Association has sole and complete discretion to approve or disapprove an alteration requiring approval. The Association shall approve an alteration only if it makes an affirmative finding that the alteration (i) will not impair the structural integrity of any part of the Property, (ii) will not interfere with any Utility, (iii) is consistent with the Condominium Plan and the Governing Documents, (iv) will not detract from the appearance, harmony, attractiveness and enjoyability of the Property, and (v) will not impose an unreasonable maintenance burden on the Association. The approval or disapproval of an alteration shall not be deemed a waiver of the Association's subsequent right to approve or disapprove a similar alteration or any other matter.
- D. **Architectural Rules.** The Association shall enact rules (the "Architectural Rules") to govern alteration approvals. The Architectural Rules shall be consistent with the Governing Documents.
- E. **Decisionmaking Body.** The Board shall act on behalf of the Association with regard to Architectural Rules and alteration approvals. The Board shall establish a committee (the "Architectural Committee") to make recommendations to the Board regarding Architectural Rules and alteration approvals. The Architectural Committee shall consist of three (3) or five (5) Owners appointed to serve by and at the pleasure of the Board. Members of the

Architectural Committee shall be appointed each year within thirty (30) days of election of the Board and shall serve until they resign or are replaced.

- F. Proceeding With Approved Work.** Upon approval of an alteration, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Subsection, the approval given shall be deemed revoked unless the Association extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Association finds that there has been no change in the circumstances under which the original approval was granted.
- G. Liability.** Neither the Architectural Committee nor any members thereof shall be liable to the Association, or to any Owner or other person entity for any damage, loss or prejudice suffered or claimed on account of (i) the approval of any plans, drawings and specifications whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (iii) the development or manner of development of any property within the Property; provided, however, that such Committee member has, with the actual knowledge possessed by him/her, acted in good faith.

6.6 INSPECTION AND NONCOMPLIANCE. The Association or its authorized agent, following Reasonable Entry Notice, may inspect any work performed on the Property to ensure it is done in accordance with this Article. If, as a result of an inspection, the Board finds a violation of this Article, it may notify the Owner in writing of the violation. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy it. If the Owner fails to remedy the non-compliance in accordance with the provisions of the notice, then, after the expiration of thirty (30) days from the date of the notice, the Board shall provide notice of a hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall require the Owner to remedy it within a period of not more than forty-five (45) days from the date of the Board's ruling. At any time within such period, or within any extension of such period as the Board, in its discretion, may grant, the Board may choose not to wait for the Owner to act, and instead the Board may act to remedy the non-compliance, and assess any associated costs against the Owner as a Personal Reimbursement Assessment. The Association may also cause a notice of nonresponsibility for mechanics' liens to be recorded and posted as specified in Civil Code §3094. Any officer, director, or Architectural Committee member shall promptly notify the Association upon learning of any violation of this Article.

6.7 BIDDING AND CONTRACTOR SELECTION FOR ASSOCIATION WORK. The Association shall obtain at least three (3) bids for any repair or improvement work expected to cost in excess of fifty thousand dollars (\$50,000) (in 2003 dollars) and shall accept what it, in its sole discretion, deems to be the most responsible bid from a qualified and reputable contractor based in California. Where the work is expected to cost in excess of one hundred thousand dollars (\$100,000) (in 2003 dollars), the Association shall (i) retain a licensed architect or engineer to solicit and/or review the bids, and (ii) a project manager (who may, in the Association's discretion, be a licensed architect or engineer) to manage a project involving more than one contractor.

ARTICLE 7. USE RESTRICTIONS

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

7.2 PARKING AND USE OF MOTOR VEHICLES. Parking spaces shall be used solely for parking of automobiles, station wagons, pickup trucks, motorcycles, bicycles, and light vans. No commercial vehicle or recreation vehicle (including camper unit, motor home, trailer, bus or boat) shall be parked or stored on the Property. The parking area shall not be used for living, recreational or business purposes. Repair of a motor vehicle, other than changing a tire, is not permitted anywhere on the Property. No one shall park in a parking space assigned to an Owner without the Owner's express approval. Each Owner shall keep his/her designated parking spaces neat and clean and shall remove any oil, grease or other waste. Each Owner and Occupant shall indemnify, defend and hold harmless the Association and its Board, officers, manager, employees, and other Owners and Occupants against any and all loss, cost or liability including attorney's fees, arising out of claims related to his/her ownership, maintenance or use of motor vehicles on the Property.

7.3 REMOVAL OF MOTOR VEHICLES. The Association may remove any motor vehicle wrongfully parked on the Property at the vehicle owner's expense. Following the removal, the Association shall notify (i) the local traffic law enforcement agency and (ii) if his/her identity is known by the Association, the owner. The notice shall include a description of the vehicle, the license number and the address from where the vehicle is removed. If the identity of the owner is not known by the Association and the vehicle has not been returned to the owner within one hundred and twenty (120) hours after removal, the Association shall promptly notify the California Department of Justice and file a copy of the notice with the proprietor of the garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage where the vehicle is stored. The Association shall not be liable for any damages or loss suffered by the owner as a consequence of removal unless such damage or loss resulted from negligence of the Association.

7.4 NUISANCE. No person shall use any part of the Property in a way that unreasonably interferes with the quiet enjoyment of an Occupant, or which is noxious, illegal, seriously annoying or offensive to a person of reasonable and normal sensitivity. The Association shall have wide discretion to determine what constitutes a nuisance, and the duty to order those responsible to cease or abate such nuisance immediately. No activity may be carried on that adversely affects insurance coverage or rates on the Property. No Owner shall do or permit anything to be done which is in violation of a Governmental Regulation or which will or may decrease the attractiveness, desirability or value of another Unit or the Property as a whole.

7.5 ANIMALS. An Occupant may keep a reasonable number of domesticated birds, cats, dogs, aquatic animals kept within an aquarium, or other animals as agreed between the Association and the Owner, provided he/she (i) does not keep his/her animal(s) for commercial purposes, (ii) maintains reasonable control over his/her animals at all times, (iii) keeps his/her dog(s) on a hand-held leash when outside a Unit if required to do so by the Association, (iv) immediately cleans up after his/her animal(s), (v) becomes liable to the

Association and all persons for any damage caused by his/her animal(s), and (vi) agrees to indemnify, defend and hold harmless the Association and its Board, officers, manager, employees, and other Owners and Occupants against any and all loss, cost or liability including attorney's fees, arising out of claims related to his/her pet. All pets must spend the vast majority of their time within a Unit interior. Any Occupant who wishes to keep a dog or cat, more than two (2) birds or any bird outside a cage, or a fish tank exceeding 25 gallon capacity, must register with the Association. The length of time that a pet may be left in a Unit shall be appropriate in light of the needs of the individual pet. In general, a dog should not be left alone for more than nine (9) hours, and other pets should not be left alone for more than twenty four (24) hours. Occupants are responsible for ensuring that their pets do not disturb other Occupants. The Association can prohibit the keeping of any animal that it determines to be a nuisance or danger to any person of reasonable and normal sensitivity.

7.6 GARBAGE DISPOSAL. Occupants shall keep (i) all waste in proper containers, (ii) all waste containers in portions of the Common Area designated by the Association, and (iii) all waste containers and adjacent portions of Common Area in a neat, clean and sanitary condition.

7.7 RIGHT TO LEASE. An Owner or Occupant may lease or sublease his/her Condominium provided that (i) the lease or sublease is in writing, (ii) the lease or sublease is for a minimum term of thirty (30) days, (iii) the lease or sublease is made subject to the Governing Documents, (iv) the lessee or sublessee agrees to abide by all provisions of the Governing Documents, and (v) an executed copy of the lease or sublease is delivered to the Association prior to the lessee taking possession of the Condominium. An Owner shall be responsible for ensuring the compliance with the Governing Documents by everyone residing in the Owner's Unit. Each Owner hereby grants the Association an irrevocable power of attorney to commence and pursue injunctive relief or an unlawful detainer action against a lessee or sublessee who is in violation of the Governing Documents.

7.8 CLOTHES LINE. There shall be no exterior clothes lines or outside laundering or drying of clothes.

7.9 WINDOW COVERINGS. Unless otherwise approved by the Association, all window coverings visible from the street or Common Area shall be white or off-white in color on the portion visible from the street or Common Area. Window screens in conformity with the Architectural Rules are permitted.

7.10 STORAGE. Within interior Exclusive Use Common Area designated for storage, Occupants may store any non-hazardous material provided it is organized in a manner which does not create a fire hazard or impair the value or desirability of any Unit. No one may store any item in other Common Area without prior written Association approval.

7.11 DELEGATION OF RIGHTS. Any Occupant of an Owner's Unit shall be entitled to all of that Owner's rights to use and enjoy the Property. During any period when a tenant is in possession of an Owner's Unit, the Owner shall not be entitled to use and enjoy the recreational facilities of the Property.

7.12 USE OF BALCONIES. Balconies on the second and third floors are for decorative purposes only. No person shall be permitted on any balcony at any time for any purpose. The cost of repairing any damage caused by misuse of a balcony shall be charged to the Owner.

7.13 RESTRICTED AREAS. The Association has the right to restrict access to any portion of the Common Area which is not Exclusive Use Common Area, including roofs, balconies and maintenance areas.

7.14 BARBEQUING. Barbecues are permitted on first floor patios, as long as appropriate metal containers are used, and appropriate safety precautions are observed. Safety precautions include the presence of a fire extinguisher and no barbecue may be left unattended. There shall be no barbecues permitted on the second and third floor decorative balconies. Barbecuing is not allowed in the Common Area except at events sponsored by the Association.

ARTICLE 8. INSURANCE

8.1 GENERAL LIABILITY INSURANCE. The Association shall maintain an insurance policy insuring the Association, its directors, officers and the Owners against public liability incident to ownership and use of the Property. The limits of coverage shall not be less than three million dollars (\$3,000,000) per incident of injury, death and property damage. The policy shall contain a severability of interest endorsement precluding the insurer from denying coverage to a named insured because his/her act or omission created liability in favor of another insured. The policy shall also contain a contractual liability endorsement.

8.2 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE. The Association shall maintain an insurance policy insuring the Association, its directors and officers against liability arising out of acts or omissions in their capacity as agents of the Association. The limits of coverage shall not be less than one million dollars (\$1,000,000) per incident. The policy shall provide prior acts coverage.

8.3 FIRE AND CASUALTY INSURANCE. The Association shall maintain multi-peril casualty insurance coverage for all portions of the Property and fixtures (other than the personal property of Owners and Occupants). The limits of coverage shall not be less than full current replacement cost including required building code upgrades. The policy shall contain an agreed amount endorsement.

8.4 OTHER INSURANCE. The Association may acquire such additional insurance, coverages or limits as it deems advisable. The Association may maintain a fidelity bond or equivalent insurance on all individuals handling Association funds. If the Association has employees, it shall maintain workers' compensation insurance as required by law.

8.5 GENERAL POLICY PROVISIONS. Each Association insurance policy shall (i) name the Association as trustee for policy benefits payable to the Owners, (ii) provide a waiver of subrogation rights against the Association, its directors, officers and Owners, (iii) state that coverage be primary and not affected by any other insurance held by an Owner, and (iv) require that at least thirty (30) days prior written notice be given to the Association by the insurer before cancellation.

8.6 INSURER RATING. The Association's insurance shall be written by an insurance company qualified to do business in California with a rating of at least an "A" by Best's Insurance Reports or equivalent.

8.7 REVIEW OF INSURANCE POLICIES. The Board shall review all Association insurance policies at least once a year to ensure that they are adequate to meet the current needs of the Association.

8.8 NOTICE OF CHANGE IN INSURANCE COVERAGE. The Association shall notify the Owners by first-class mail as soon as reasonably practical if any of its insurance policies: (i) lapses or is canceled and is not immediately renewed, restored or replaced; (ii) will undergo significant change such as a reduction in coverage or limits, or an increase in the deductible; or (iii) is subject to a notice of nonrenewal and replacement coverage will not be in effect at the time the existing coverage will lapse.

8.9 INABILITY TO OBTAIN INSURANCE. If the insurance required by the Governing Documents is difficult, impractical or unduly expensive to obtain, the Association shall obtain insurance as nearly equivalent to the required insurance as is reasonably available.

8.10 OWNER'S INSURANCE. Each Owner shall have the responsibility for obtaining and maintaining a policy of fire and casualty insurance providing multi-peril coverage for the Owner's personal property. The policy shall contain a waiver of subrogation rights against the Association and other Owners. Each Owner shall also have the responsibility for obtaining and maintaining insurance covering his/her personal liability.

8.11 CASUALTY INSURANCE DEDUCTIBLES AND PROCEEDS.

- A.** If an Owner is responsible for the cost of a repair under Section 6.1, but all or a portion of such cost may be recoverable under an Association insurance policy, the decision of whether to make a claim under the policy shall be made by the Association in its sole discretion. No Owner shall take any action which would bring the claim to the attention of an Association insurer without the advance written authorization of the Association. If the Association chooses not to make a claim, the Owner shall be responsible for the entirety of the cost.
- B.** Should the Association choose to make a claim for a loss, and less than the full amount of the loss is covered as a result of a deductible or for any other reason, the uncovered portion of the loss shall be paid by the person(s) or entity responsible for maintenance at the point of origin of the physical damage. The person(s) or entity who pays the deductible shall have the right to recover such amount from any party responsible for the loss. Proceeds from Association insurance received as a consequence of damage or loss to a portion of the Property which an Owner must maintain shall be distributed to that Owner.

ARTICLE 9. CATASTROPHIC DAMAGE AND CONDEMNATION

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

- A. Determining Extent Of Damage.** As soon as possible after the occurrence of Catastrophic Damage, the Association shall obtain two (2) or more written bids from separate licensed contractors to restore the damaged elements to substantially the same condition as existed before the damage occurred. The Association will rebuild to the original specifications, replacing permanent fixtures such as cabinets, sinks, tub etc. The Association will not be responsible for remodeling changes, upgrades, or capital improvements to individual Units. Freestanding appliances such as stoves, dishwasher, and refrigerators are the responsibility of the Owner. Repair bids shall include at a minimum a detailed scope of work, fixed or not-to-exceed contract price, completion date and provision for adequate insurance coverage by the contractor.
- B. Determining Availability Of Repair Funds.** After obtaining repair bids, the Association shall promptly determine the amount of funds available for the repair from insurance, reserves, loans, and any other source. In making this determination, the Association shall consider as available any insurance proceeds payable to any Owner for repair or replacement of any of the damaged elements.
- C. Decision To Rebuild.** Provided that repairing the damaged areas of the Property would not necessitate a Special Assessment of more than two hundred thousand dollars (\$200,000) (in 2003 dollars), the Association shall repair, and any difference between the total funds available and the actual repair cost shall be imposed as a Special Assessment. Any Owner who receives insurance proceeds for repair or replacement of any portions of the Property which the Association is obligated to maintain shall provide such proceeds to the Association in addition to his/her portion of the Special Assessment. If repair would necessitate a Special Assessment of more than two hundred thousand dollars (\$200,000) (in 2003 dollars), the Association shall not repair unless a majority of Units, vote to do so. If the Association does not repair, it shall sell the entire Property in its then existing condition on the best available terms. Each Owner hereby grants the Association an irrevocable power of attorney to represent the Owner in any negotiations or agreements related to sale or other liquidation following Catastrophic Damage. The sale proceeds together with any insurance proceeds, net of any expenses associated with necessary stabilization of the Property and fees associated with disposition of the Property, shall then be distributed as provided in Section 9.3 of this First Restated Declaration. The Association shall then be dissolved and the entire common interest development terminated as provided by law. If the Association fails to sell the Property within a reasonable period of time, it may bring an action for judicial partition.
- D. Repair Work.** All individuals or entities performing repairs for the Association shall (i) hold all licenses legally required for such repairs and (ii) enter into a written contract with the Association which satisfies all of the requirements for repair bids specified in Subsection A. Payment and performance bonds shall be required in repair contracts exceeding one hundred thousand dollars (\$100,000). The Association shall use its best efforts to ensure that repairs are diligently pursued to completion in accordance with best construction practices prevailing in the locale at the time the work is done.
- E. Emergency Repair.** The Association may make repairs or take any other necessary action in an Emergency without first complying with the provisions of this Article.

- F. Certification Of Intention.** If the Association decides, by affirmative act or failure to act, to sell the Property rather than repair Catastrophic Damage, it shall promptly notify all Owners in writing of the decision and record a certificate reciting that fact with the County Recorder.
- G. Revision Of Documents.** If the Association decides, by affirmative act or failure to act, not to repair Catastrophic Damage, the Association shall have the power and authority to execute and record, on behalf of itself and the individual Owners, all necessary documents to show the altered status of the Property, including but not limited to a revised Condominium Plan.

9.2 CONDEMNATION. Each Owner hereby grants the Association an irrevocable power of attorney to represent the Owner in any condemnation or eminent domain negotiation or proceeding, whether or not a civil action has been started. The proceeds from a taking of two or more Condominiums or of the Common Area by eminent domain shall be distributed as provided in Section 9.3 of this First Restated Declaration.

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

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

- C. Upon receiving the valuations of all appraisers, the Association shall disregard the lowest and highest appraisal for each Condominium. The Association shall then use the remaining appraisal(s) for each Condominium to determine the relative values.

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

ARTICLE 10. NOTICE OF TRANSFER

10.1 NOTICE OF TRANSFER. An Owner who transfers any ownership interest in a Condominium, whether by sale, lease, gift, exchange or otherwise, shall promptly notify the Association in writing of the name and address of the transferee, the type of transfer, the date of transfer and any other information about the transfer that the Association may reasonably request.

ARTICLE 11. MORTGAGE PROTECTION

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

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

11.3 MORTGAGEE RIGHT TO FURNISH INFORMATION. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

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

11.5 MORTGAGEE PRIORITY IN DISTRIBUTION OF PROCEEDS. Each Mortgagee shall have priority over the rights of the Owner of the mortgaged property in case of a distribution to the respective Owner of insurance proceeds or condemnation awards for losses to or a taking of such Owner's interest in the Property. Any provision to the contrary

in the Governing Documents is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees, naming such Mortgagees as their interests may appear.

11.6 MORTGAGEE APPROVAL REQUIREMENTS. The prior written consent (or deemed consent as provided below) of Mortgagees holding first (1st) mortgages on at least two thirds (2/3) of all separate interests encumbered by Mortgages shall be required to take any of the following actions:

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

Any Mortgagee who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request.

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

- A. The occurrence of loss, casualty, condemnation or eminent domain which decreases the value of the property encumbered by its Mortgage by more than fifty percent (50%) of its fair market value immediately prior to the occurrence;
- B. Any 60-day delinquency in the payment of Assessments by, or Association commencement of judicial or nonjudicial foreclosure proceedings to enforce payment of delinquent obligations owed under the Governing Documents against, the Owner of its encumbered property; and

- C. Any lapse or cancellation of any Association insurance policy.

Failure of a Mortgagee to receive the notice required by this Section shall not be construed to benefit an Owner or to impede the Association in enforcing the Governing Documents.

11.8 MORTGAGEE INFORMATION RIGHTS. A Mortgagee is entitled to obtain the same information as an Owner from the Association upon written request and payment of required fees.

11.9 MORTGAGEE RIGHT TO APPEAR AT MEETINGS. Because of its financial interest in the Property, any Mortgagee may appear (but cannot vote, except as otherwise provided hereunder), at meetings of Owners and the Board to draw attention to violations of this First Restated Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.

ARTICLE 12. GENERAL PROVISIONS OF DECLARATION

12.1 AMENDMENT OF DECLARATION. In general, provisions of this Declaration may be amended with the approval of a majority of Units. Notwithstanding the preceding sentence, however, provisions of this First Restated Declaration requiring approval of more than a majority of Units for action may be amended only with the approval of the number of Units required for action under the provision, and provisions requiring approval of Eligible Mortgagees for action may be amended only with the approval of the percentage of Eligible Mortgagees required for action under the provision.

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

12.3 NOTICE. A notice or notification permitted or required by the Governing Documents shall be in writing and deemed received by the person to whom it is given upon either (i) personal delivery or (ii) expiration of forty-eight (48) hours after deposit in the United States mail, postage prepaid and addressed to the current or, if unavailable, to the last known address of the person to be notified. It does not matter whether a notice is sent by first-class, registered or certified mail. Notice to the Association shall be given to its President. When Co-Owners own a Unit, notice to any of them shall be deemed notice to all of them. When several Occupants share a Unit, notice to any of them shall be deemed notice to all of them.

12.4 INTERPRETATION. Any uncertainty or ambiguity in the Governing Documents shall be resolved by reference to the following rules of interpretation: (i) the provisions of the Governing Documents shall be liberally interpreted to facilitate the operation of a common interest development and liberally interpreted to preserve and protect the general plan established for mutual and common benefit of all Owners, and (ii) a more specific provision shall prevail over a more general one. In the event of an inconsistency between this First Restated Declaration and the Condominium Plan, the Condominium Plan shall control. In the event of an inconsistency between this First Restated Declaration and the First Restated Bylaws, this First Restated Declaration shall control. Both this First Restated

Declaration and the First Restated Bylaws shall control over an inconsistent provision in the Rules.

12.5 SEVERABILITY. Each provision of the Governing Documents is independent and severable, and may be enforced even though another provision may be unenforceable.

12.6 MEDIATION. Mediation is a voluntary informal attempt to resolve a dispute with the help of a neutral individual who has no decision-making authority. The Association encourages mediation and shall participate in mediation in an effort to resolve disputes related to the Governing Documents, unless the Association determines that immediate action is necessary or that mediation under the circumstances would not be in its best interest. The Association shall establish appropriate procedures for commencing mediation. Mediation may occur before, during, or after arbitration or litigation. Unless otherwise agreed, mediation costs shall be shared equally by the participants.

12.7 ARBITRATION. Arbitration is a voluntary or mandatory method of resolving a dispute by delegating decision making authority to a neutral individual or panel. Except as provided by Sections 12.8 and 12.9, any dispute relating to the Governing Documents shall be resolved through mandatory arbitration by the American Arbitration Association or another private arbitration service or individual acceptable to all parties. Any party affected by a dispute may initiate arbitration by written demand. All parties shall pursue arbitration to a conclusion as quickly as possible and conclude every case within six (6) months from the date of the initial written demand for arbitration. Arbitrators shall have discretion to allow the parties reasonable and necessary discovery in accordance with Code of Civil Procedure §1283.05, but shall exercise that discretion mindful of the need to promptly and inexpensively resolve the dispute. If a party subject to the Governing Documents refuses to proceed with or unduly delays the arbitration process, any other party may petition a court for an order compelling arbitration or other related act, and shall recover all related expenses, including attorney's fees, unless the court finds that the party against whom the petition is filed acted with substantial justification or that other circumstances make the recovery of such expenses unjust. An arbitration award may be entered as a court judgment and enforced accordingly. The arbitration award shall be binding (i) unless the award declares a provision of this First Restated Declaration unenforceable or (ii) unless the award is in excess of ten thousand dollars (\$10,000), in which cases any party may obtain a trial *de novo* in court of appropriate jurisdiction provided he/she files a civil complaint within sixty (60) days of the entry of a final judgment on the arbitration award. The pendency of arbitration shall suspend all applicable statutes of limitation.

12.8 DECLARATORY OR INJUNCTIVE RELIEF. Actions seeking only declaratory or injunctive relief, and actions seeking these remedies along with monetary relief (other than collection of Assessments) of five thousand dollars (\$5,000) or less, shall be exempt from the requirements of the preceding Section, but the following provisions shall apply.

- A. Any party may serve on any other party a "Request for Resolution" which includes (i) a brief description of the dispute, (ii) a request for mediation or arbitration, and (iii) a statement that the party receiving the Request must respond within thirty (30) days or the Request will be deemed rejected. If the Request is accepted within the thirty (30) day period, the mediation or arbitration shall be completed within ninety (90) days of receipt of the acceptance by the party who first served the Request unless both parties agree to an extension.

- B. Any party filing a lawsuit must also file a certificate stating that (i) mediation or arbitration has been completed in compliance with the preceding Subsection, (ii) another party rejected the Request for Resolution, (iii) the time limit for bringing the action would have lapsed within one hundred twenty (120) days, or (iv) preliminary or temporary injunctive relief is necessary. Failure to file this certificate could result in dismissal of the case.

12.9 DISPUTES EXCLUDED FROM ARBITRATION. The following types of lawsuits shall be exempt from the requirements of Section 12.7:

- A. Unlawful detainer;
- B. Enforcement of an obligation to pay Regular and Special Assessments under the Governing Documents, including a judicial or nonjudicial foreclosure to enforce an assessment lien;
- C. Partition pursuant to Civil Code §1359;
- D. Small Claims Act (Code of Civil Procedure §§116.110-116.950) proceedings;
- E. Condemnation or eminent domain;
- F. Bodily injury or wrongful death;
- G. Latent or patent defects in Association property;
- H. Probate or domestic relations proceedings; and
- I. Recordation of a notice of pending action, or an order of attachment, receivership, injunction or other provisional remedy which may provide interim protection during the pendency of an arbitration proceeding.

12.10 POWER OF ATTORNEY. Each Owner grants an irrevocable power of attorney to the Association to carry out the provisions of this First Restated Declaration.

12.11 LIMITATION OF LIABILITY. A volunteer officer or volunteer director, as defined in Civil Code §1365.7, shall not be personally liable for any loss, damage or injury claimed to be the result of a wrongful act or omission in the scope of his/her duties on behalf of the Association absent gross negligence, intentional misconduct or fraud shown by clear and convincing evidence.

12.12 OWNER'S ACCOUNTABILITY. Each Owner is responsible to the Association for the conduct and behavior of Occupants of the Owner's Unit, including but not limited to violations of the Governing Documents.

12.13 INDEMNIFICATION. Absent gross negligence, intentional misconduct or fraud, the Association shall indemnify its directors, officers and committee members to the fullest extent permitted by law against all liability and expenses, including reasonable attorney's fees, arising out of a claim based upon a wrongful act or omission in the scope of their duties on

behalf of the Association. The Association shall approve or disapprove the indemnity, and may advance expenses, in accordance with Corporations Code §7237.

12.14 NO PUBLIC RIGHTS. There shall be no entitlement to public use of, public access to, or other public rights in the Property. The Association reserves the right to prohibit entry on the Property by any person whose presence is not authorized by the Governing Documents.

12.15 COSTS AND ATTORNEY'S FEES. The party who prevails in an arbitration, civil action or other proceeding to enforce or interpret the Governing Documents shall be entitled to recover all costs and expenses, including reasonable attorney's fees, but the arbitrator, judge or other decision maker shall have final discretion to allocate such costs and expenses between the parties in a manner that will accomplish substantial justice.

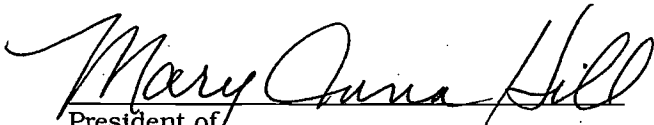
12.16 TERM OF RESTATED DECLARATION. This First Restated Declaration shall continue for a term of twenty (20) years from the date it is recorded unless superseded or terminated sooner. The term shall be automatically extended for successive periods of ten (10) years, unless the Association is terminated, and it records with the County Recorder a notice of termination prior to the commencement of the next period.

12.17 STATUTORY REFERENCES. References to codes and statutes mean those of the State of California.

12.18 CERTIFICATE OF PRESIDENT. Pursuant to Civil Code §1355(a), I, the undersigned, declare under penalty of perjury that the following facts are true and correct of my own personal knowledge:

- A. I am the duly elected President of the THE GOLDMINE HILL HOMEOWNERS ASSOCIATION.
- B. The required percentage of Owners have given their approval to amend the currently effective Declaration of Covenants, Conditions and Restrictions by adopting this First Restated Declaration of Covenants, Conditions and Restrictions.

Executed in San Francisco County, California on 3/15/04



President of
THE GOLDMINE HILL HOMEOWNERS ASSOCIATION

H675819

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Francisco

} ss.

On March 15, 2004 before me,

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Mary Anna Hill

Name(s) of Signer(s)

☐ personally known to me☒ proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

Description of Attached DocumentTitle or Type of Document: CC & R's (CONDO)

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

GOLDMINE HILL

Gold Mine Drive

YOU ARE HERE

Ora Way

H675819



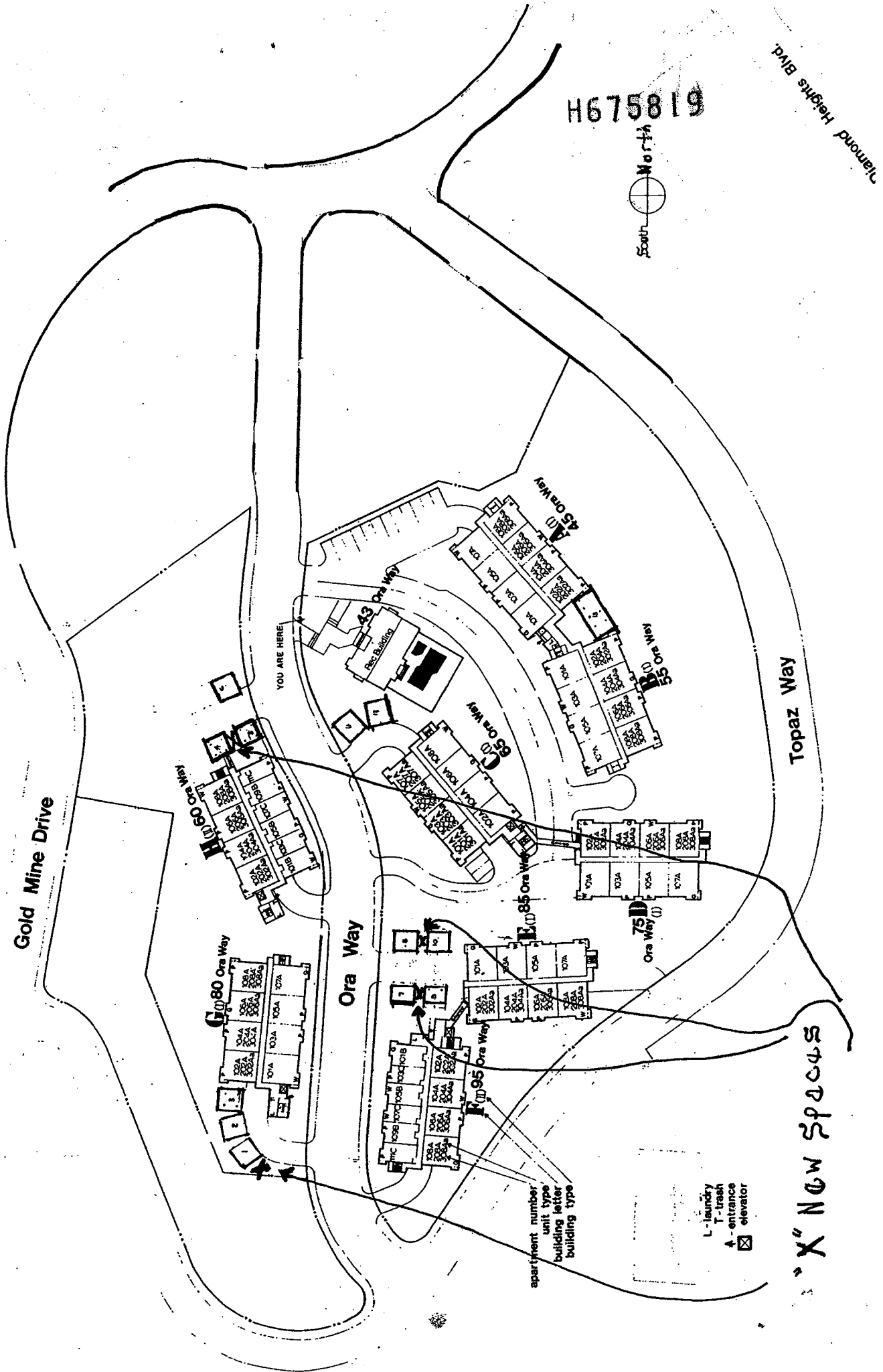
Diamond Heights Blvd

Topaz Way

L - laundry
T - trash
A - entrance
E - elevator

"X" New Spaces

apartment number
unit type
building letter
building type



**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Bickel & Associates
1375 Grand Ave., Suite 200
Piedmont, CA 94610
(510) 595-8200


San Francisco Assessor-Recorder
Mabel S. Teng, Assessor-Recorder
DOC- 2005-H897860-00
Wednesday, FEB 02, 2005 15:01:38
Ttl Pd \$22.00 Nbr-0002678092
REEL 1818 IMAGE 0536
ojl/JL/1-6

GOLDMINE HILL HOMEOWNERS ASSOCIATION

**FIRST AMENDMENT TO THE FIRST RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

This first amendment (the "First Amendment") to the First Restated Declaration of Covenants, Conditions and Restrictions (the "First Restated Declaration") is made by GOLDMINE HILL HOMEOWNERS ASSOCIATION (the "Association") based on the following recitals:

RECITALS

- A. The Association is a non-profit, mutual benefit corporation established for the purpose of managing and maintaining a common interest development located in the City and County of San Francisco, California (the "Property"). The physical boundaries of the Property and the individual ownership interests are shown on the Condominium Plan recorded in the Office of the County Recorder (the "County Recorder") of San Francisco County, California on August 30, 1982 at Book 20 of Condominium Maps, Pages 43 thru 55.
- B. This First Amendment, once recorded in the official records of San Francisco County, California, will amend the First Restated Declaration recorded May 28, 2004 at Document No. 2004-H730729-00.
- C. This First Amendment preserves the original uniform plan of property ownership for the Property, as stated in the First Restated Declaration, except as modified herein.

NOW, THEREFORE, the First Restated Declaration of the Association is amended as follows:

The Goldmine Hill "X" New Spaces" carport plan attached as part of Exhibit A of the First Restated Declaration is replaced with the attached 3 page carport plan dated

July 14, 2004 and depicting the revision of parking at "Building E", "Building G", and "Building H", respectively.

Pursuant to Civil Code § 1355(a), I, the undersigned, declare under penalty of perjury that the following facts are true and correct of my own personal knowledge:

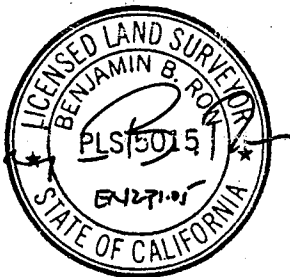
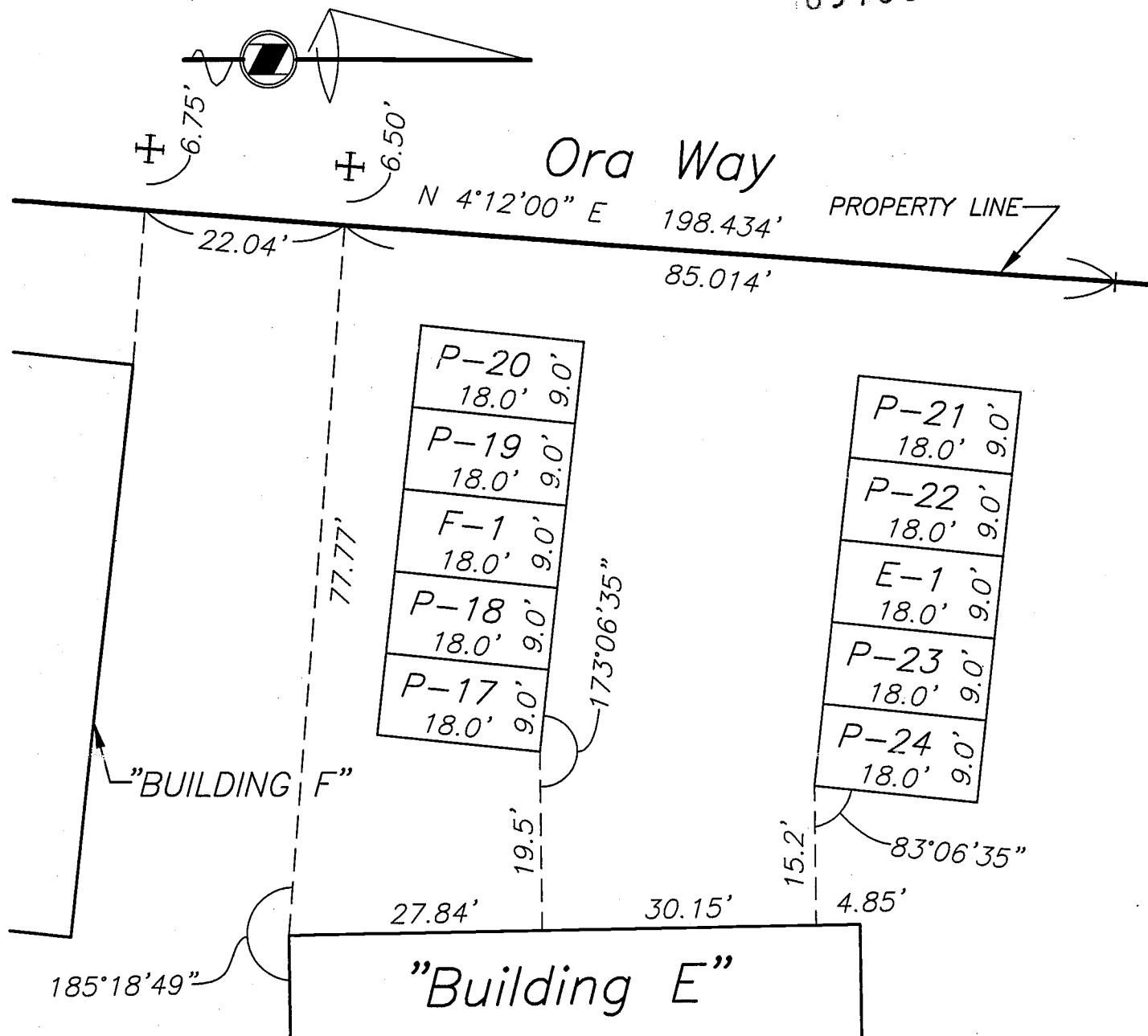
- A. I am the duly elected President of the **GOLDMINE HILL HOMEOWNERS ASSOCIATION**.
- B. The required percentage of owners have given their approval to amend the currently effective declaration by adopting this First Amendment.

Executed in San Francisco, California on February 2, ²⁰⁰⁵~~2004~~.

Mary Anna Hill - President
President of Goldmine Hills Homeowners Association

Mary Anna Hill
Print Name

897860

**LEGEND**

⊕ SET SCRIBE IN CURB

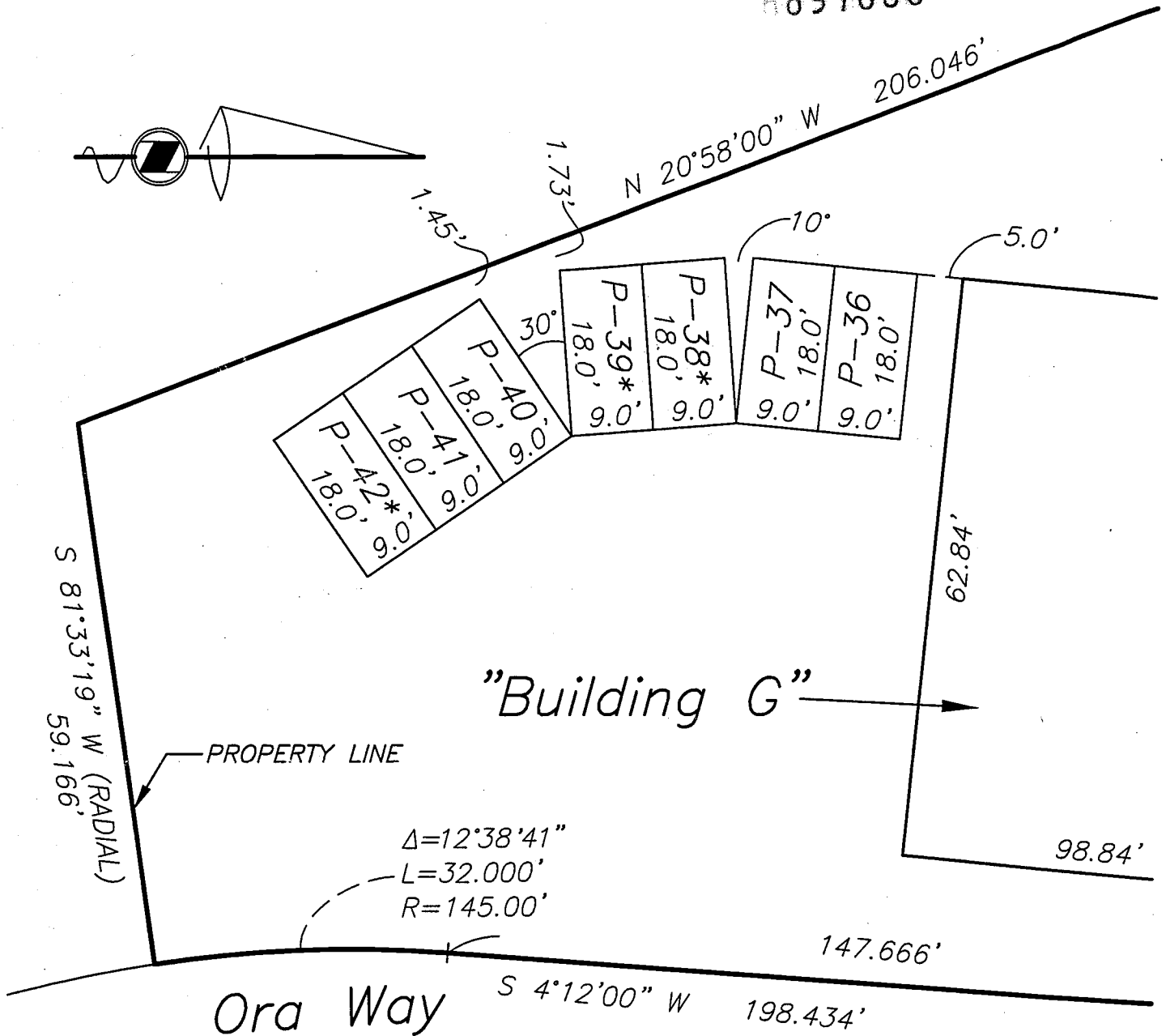
REVISION OF PARKING AT "BUILDING E", 85 ORA WAY, AS ORIGINALLY SHOWN ON SHEET 2 OF 13, IN "MAP OF GOLDMINE HILL CONDOMINIUMS, 45-95 AND 60-80 ORA WAY, A CONDOMINIUM PROJECT, ASSESSOR'S BLOCK 7530, LOT 101 SAN FRANCISCO, CALIFORNIA, ASSESSOR'S BLOCK 7531, LOT 102 SAN FRANCISCO, CALIFORNIA", RECORDED AUGUST 30, 1982, IN BOOK 20 OF CONDOMINIUM MAPS, AT PAGES 43 THROUGH 55 INCLUSIVE, SAN FRANCISCO COUNTY RECORDS.

BY RW CHKD. BR DATE 7-14-04 SCALE 1"=16' SHEET 1 OF 3 JOB NO. S-5667

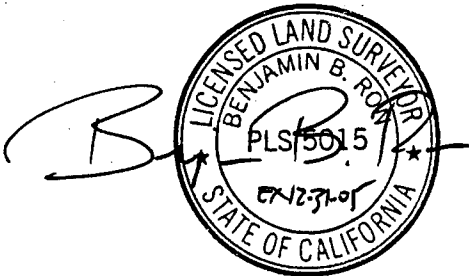
MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

897860



*P-38 IS ALSO MARKED AS "G-2"
 P-39 IS ALSO MARKED AS "G-3"
 P-42 IS ALSO MARKED AS "G-1"



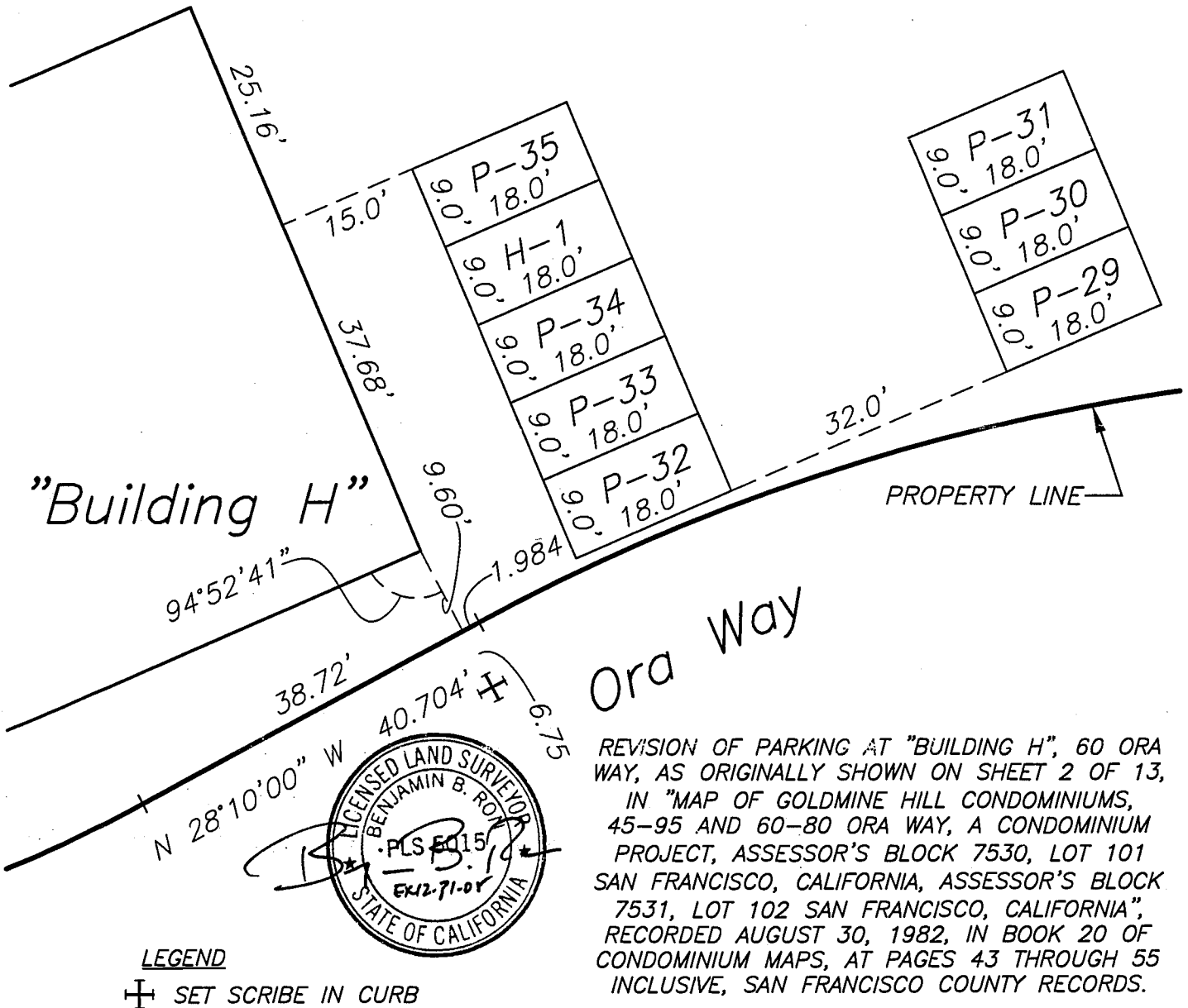
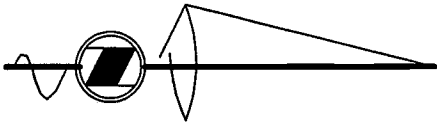
REVISION OF PARKING AT "BUILDING G", 80 ORA WAY, AS ORIGINALLY SHOWN ON SHEET 2 OF 13, IN "MAP OF GOLDMINE HILL CONDOMINIUMS, 45-95 AND 60-80 ORA WAY, A CONDOMINIUM PROJECT, ASSESSOR'S BLOCK 7530, LOT 101 SAN FRANCISCO, CALIFORNIA, ASSESSOR'S BLOCK 7531, LOT 102 SAN FRANCISCO, CALIFORNIA", RECORDED AUGUST 30, 1982, IN BOOK 20 OF CONDOMINIUM MAPS, AT PAGES 43 THROUGH 55 INCLUSIVE, SAN FRANCISCO COUNTY RECORDS.

BY RW CHKD. BR DATE 7-14-04 SCALE 1"=16' SHEET 2 OF 3 JOB NO. S-5667

MARTIN M. RON ASSOCIATES, INC.
 LAND SURVEYORS

859 HARRISON STREET
 SAN FRANCISCO, CA. 94107
 (415) 543-4500

897860



BY RW CHKD. BR DATE 7-14-04 SCALE 1"=16' SHEET 3 OF 3 JOB NO. S-5667

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Francisco

} ss.

On

FEB. 2 2005

Date

before me,

Lee Hartgrave
Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

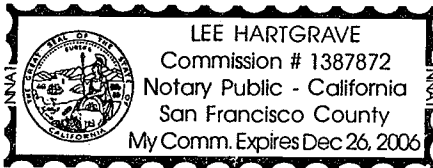
personally appeared

or Mary Anna Hill

Name(s) of Signer(s)

☐ personally known to me☒ proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal:

Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document:

CC & R's

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**

Top of thumb here



San Francisco Assessor-Recorder

Phil Ting, Assessor-Recorder

DOC- 2007-1374849-00

Check Number 9828

Monday, APR 23, 2007 14:56:31

Ttl Pd \$19.00

Nbr-0003218267

REEL J375 IMAGE 0651

ofa/FT/1-5

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

THE GOLDMINE HILL HOMEOWNERS

c/o BERDING & WEIL LLP
3240 Stone Valley Road West
Alamo, CA 94507
(925) 838-2090

**AMENDMENT TO BYLAW PROVISIONS IN THE
FIRST RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS & FIRST RESTATED
BYLAWS OF THE GOLDMINE HILL
HOMEOWNERS ASSOCIATION**

This Amendment to Bylaw Provisions in the First Restated Declaration of Covenants, Conditions and Restrictions & First Restated Bylaws ("Amendment") is made on the date hereinafter set forth by The Goldmine Hill Homeowners Association, a California nonprofit mutual benefit corporation (hereinafter referred to as the "Association").

WHEREAS, this Amendment is made in reference to and amends the First Restated Declaration of Covenants, Conditions and Restrictions & First Restated Bylaws recorded on March 15, 2004 as Instrument Number 20044H675819 in the Official Records of San Francisco County, California and any amendments thereto which have heretofore been recorded (collectively, the "Declaration"); and

WHEREAS, the Declaration governs that certain improved real property located in the City and County of San Francisco, California, described as follows:

The physical boundaries of the Property and the individual ownership interests are shown on the Condominium Plan recorded in the Office of the County Recorder (the "County Recorder") of San Francisco County, California on August 30, 1982 at Book 20 of Condominium Maps, Pages 43 thru 55; and

WHEREAS, the Members of the Association, constituting at least a majority of the Units desire to amend the First Restated Bylaws pursuant to Article 17, Section 17.4 of the Declaration;

NOW, THEREFORE, it is hereby declared that the First Restated Bylaws be, and they hereby are, AMENDED by adding the following:

"Notwithstanding any provisions in this First Restated Declaration of Covenants, Conditions and Restrictions & First Restated Bylaws to the contrary, the following shall apply:

"1. Proxies. "Proxy" shall mean a written authorization signed by a member or a Member's attorney in fact giving another person or persons power to vote for such member, as defined in Corporations Code section 5069. Use of proxies in connection with membership meetings and membership votes is expressly prohibited.

"2. Voting by Members; Voting pursuant to Corporations Code 7513. All membership votes shall be by "secret ballot" pursuant to Civil Code section 1363.03. Voting by the method described in Corporations Code section 7513 shall not be permitted.

"3. Quorum for Member Votes. The quorum for any vote or election by the members shall be 1/3 of the total voting power of the association, unless a higher number or percentage is expressly required by law, such as in Civil Code section 1366, which requires a quorum of more than fifty percent of the members for certain votes concerning assessments.

"4. Annual Meeting. The annual meeting of the members shall be for the purpose of opening, counting, and tabulating the ballots for the annual election of directors and any other matters being voted on by the members. No business other than tabulation of the ballots by the inspector(s) of election shall be conducted and there shall be no quorum requirement for member attendance for any such meeting of the members.

"5. Nomination of Candidates for Election to the Board of Directors.

"5.1 Nomination Procedures. Nominations of candidates for election to the Board of Directors may be made by a Nominating Committee or by self nomination. The Board may recruit qualified candidates and/or may appoint a Nominating Committee prior to any election of directors. On or before the deadline for nominations, the Nominating Committee, if one is appointed, shall nominate as many candidates for election to the board as it shall in its discretion determine, but shall endeavor to nominate not less than the number of positions on the board that are to be filled in the election. All nominations shall be made from among members in good standing who satisfy the qualifications set forth in the Voting and Election Rules. Any member in good standing who satisfies the qualifications set forth in the Voting and Election Rules may place his or her name in nomination for election to the Board by giving written notice to the President or Secretary of the Association. Notice of self nomination must be received prior to the deadline for nominations.

"5.2 Deadline for Nominations. The deadline for nominations shall be set by the board and shall be not less than thirty-five (35) and not more than forty-five (45) days prior to the date for mailing ballots for the election of directors. All nominations must be received by the published deadline.

"5.3 Publication of Deadline for Nominations. The date and time of the deadline for nominations shall be published at least thirty (30) days in advance of the deadline in an association newsletter, or if there is no such newsletter, notice shall be given in one or more of the following manners: (i) by posting a notice in one or more prominent places within the project, (ii) by mailing or delivering a notice to each Unit, or (iii) by other means reasonably designed to provide actual notice to the members.

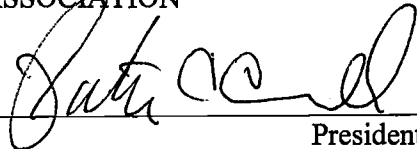
"5.4 Notice of Known Candidate Names. The names of all individuals known by the board to be qualified candidates for election to the board as of the published deadline for nominations shall be set forth on the ballot for election of directors.

"5.5 Election by Acclamation. If, as of the published deadline for nominations, the number of qualified candidates nominated is not more than the number of directors to be elected, then the individuals nominated and qualified to be elected shall be declared elected and written notice of the election shall be given to the members.

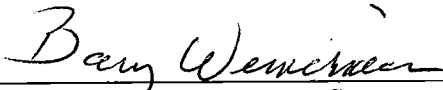
IN WITNESS WHEREOF, we, the Members of The Goldmine Hill Homeowners Association, constituting at least a majority of the Units of the Association, hereby affirm, approve, and adopt the foregoing Amendment in accordance with Article 17, Section 17.4 of the First Restated Bylaws, by means of the signatures of the President and the Secretary of the Association, which Amendment shall be recorded with the Recorder of San Francisco County, California.

DATED: 2-16-09

THE GOLDMINE HILL HOMEOWNERS
ASSOCIATION



President



Secretary

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF S-F.

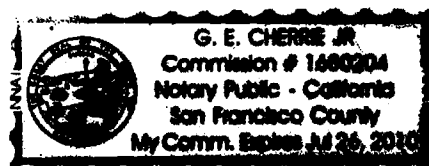
)
) ss.
)

On 2-16-07, before me, G. E. CHERRIE, JR., a Notary Public,
personally appeared PATRICK C. CARROLL,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

G. E. Cherie Jr. (Seal)



CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

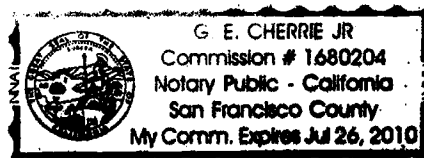
COUNTY OF S.F.

)
) ss.
)

On 2-16-07, before me, G.E. CHERRIE, JR., a Notary Public,
personally appeared BARRY WEINERMAN,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature G. E. Cherie Jr. (Seal)



O:\WDOCS\2934\01\form\00426054.DOC