



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: April Miller,
Director of Public Works

City Manager Approval: _____

TOPIC: WEST END VILLAGE (1628 5TH AVE) – FINAL MAP 9-UNIT RESIDENTIAL CONDOMINIUM BUILDING

SUBJECT: RESOLUTION APPROVING THE FINAL SUBDIVISION MAP FOR THE WEST END VILLAGE FOR CONDOMINIUM PURPOSES

RECOMMENDED ACTION: Adopt a resolution approving the final subdivision map for the West End Village for Condominium Purposes.

BACKGROUND: The Planning Commission approved this project by Resolution No.19-02 on February 12, 2019 which granted the following approvals:

- Environmental and Design Review Permit (ED18-058);
- Lot Line Adjustment (LLA18-004); and
- Tentative Subdivision Map for a 9-unit residential condominium building (TS18-002).

The property owners/developers, Vincent and Joseph O'Flynn, have completed the lot line adjustment, frontage improvements, stormwater infrastructure, and stormwater treatment and have now applied for approval of the final subdivision map.

ANALYSIS: The Department of Public Works and BKF, the City's consultant surveyor, have reviewed the final subdivision map (Exhibit A to the Resolution) and the installed frontage improvements and have determined that the final subdivision map and completed improvements are in substantial conformance with the tentative map approval in Resolution No.19-02 and the requirements of the Subdivision Map Act.

Resolution No. 19-02 also required the developer to enter into a Stormwater Facilities Maintenance Agreement. The stormwater maintenance agreement has been reviewed and approved by the City Engineer and the City Attorney and is ready to be recorded. Section 15.12.050 of the San Rafael Municipal Code (SRMC) also requires recordation of the Articles of Incorporation, Declaration of Covenants, Conditions and Restrictions (CC&R's). These documents have been reviewed and approved by staff of the Community Development Department.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

Staff has prepared a resolution approving the final subdivision map and authorizing its recordation by the City Clerk.

FISCAL IMPACT: No fiscal impact is associated with this report. Staff costs for processing the application are covered by application fees paid by the developer.

OPTIONS: The City Council has the following options to consider in this matter:

1. Adopt the resolution.
2. Adopt the resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION: Adopt a resolution approving the final subdivision map for the West End Village for Condominium Purposes.

ATTACHMENTS:

1. Resolution, with Exhibit A - Final Map of West End Village for Condominium Purposes (TS18-002)
2. Declaration of Covenants, Conditions and Restrictions (CC&R's)
3. Articles of Incorporation
4. Stormwater Facilities Maintenance Agreement

RESOLUTION NO.

A RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING THE FINAL SUBDIVISION MAP FOR THE WEST END VILLAGE FOR CONDOMINIUM PURPOSES

WHEREAS, on February 12, 2019 the San Rafael Planning Commission adopted Resolution No. 19-02 granting the following approvals for development of a nine-unit residential condominium building at 1628 5th Avenue:

- A. Environmental and Design Review Permit (ED18-058);
- B. Lot Line Adjustment (LLA18-004); and
- C. Tentative Subdivision Map for a 9-unit residential condominium building (TS18-002).

WHEREAS, the property owners, Vincent O'Flynn and Joseph O'Flynn, have applied for approval of the final subdivision map for the subdivision, entitled "Final Map of West End Village for Condominium Purposes", attached hereto as Exhibit A, and supporting documents; and

WHEREAS, staff has found that the lot line adjustment, frontage improvements, storm drainage, stormwater treatment, utilities and all paving for the subdivision are complete and the City Engineer and the City's consultant surveyor have determined that the subdivision map and completed improvements are in substantial conformance with the approved tentative map and comply with the requirements of the California Subdivision Map Act, and the City Engineer has provided the appropriate certification on the final map.

NOW, THEREFORE, BE IT RESOLVED, by the City Council that the final subdivision map for the subdivision, entitled West End Village for Condominium Purposes, attached hereto as Exhibit A, is hereby approved and the City Clerk is authorized to record the map in the Official Records of the County of Marin, conditioned upon receipt of the fully signed Stormwater Facilities Maintenance Agreement and all other required documents and fees.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a special meeting of the Council of said City on 8th day of August 2022, by the following vote to wit:

AYES: **COUNCILMEMBERS:**
NOES: **COUNCILMEMBERS:**
ABSENT: **COUNCILMEMBERS:**

LINDSAY LARA, City Clerk

Exhibit A - Final Map of West End Village for Condominium Purposes

OWNER'S STATEMENT

WE THE UNDERSIGNED, HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY SHOWN ON THIS MAP ENTITLED "FINAL MAP OF WEST END VILLAGE FOR CONDOMINIUM PURPOSES, TS18-002"; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE TO SAID PROPERTY, AND THAT WE HEREBY CONSENT TO THE PREPARATION AND RECORDING OF SAID MAP.

OWNERS:

BY: _____ BY: _____
PRINT NAME: VINCENT O'FLYNN PRINT NAME: JOSEPH O'FLYNN

OWNERS' ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF _____)

ON _____ 20__ BEFORE ME, _____,

A NOTARY PUBLIC, PERSONALLY APPEARED VINCENT O'FLYNN AND JOSEPH O'FLYNN

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/ SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/ HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL

NOTARY PUBLIC SIGNATURE NOTARY PUBLIC PRINTED NAME

MY COMMISSION NO. _____ MY COMMISSION EXPIRES _____

COUNTY OF PRINCIPAL PLACE OF BUSINESS _____

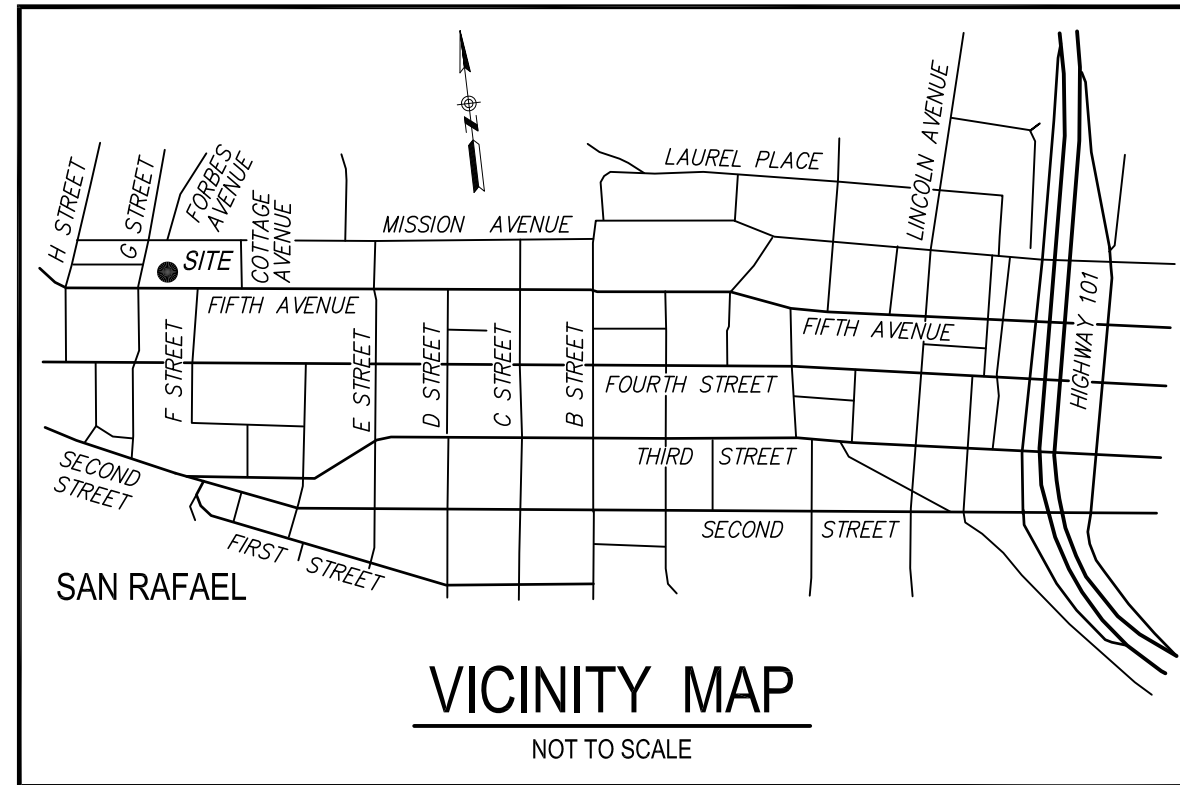
TRUSTEE: TRUST DEED INVESTMENTS, INC., A CALIFORNIA CORPORATION

BY: _____ BY: _____

PRINT NAME: _____ PRINT NAME: _____

PRINT CAPACITY: _____ PRINT CAPACITY: _____

FIRST AMERICAN TITLE COMPANY
ORDER NO. 3821-6520881 DATED APRIL 26, 2022



TRUSTEE ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF _____)

ON _____ 20__ BEFORE ME, _____,

A NOTARY PUBLIC, PERSONALLY APPEARED _____

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/ SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/ HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

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WITNESS MY HAND AND OFFICIAL SEAL

NOTARY PUBLIC SIGNATURE NOTARY PUBLIC PRINTED NAME

MY COMMISSION NO. _____ MY COMMISSION EXPIRES _____

COUNTY OF PRINCIPAL PLACE OF BUSINESS _____

CITY ENGINEER'S STATEMENT

I, THE UNDERSIGNED, CITY ENGINEER FOR THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP; THAT THE LAND DIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF, THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AS AMENDED AND ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF THE APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

SIGNED THIS _____ DAY OF _____, 20__

APRIL MILLER, RCE 70853
CITY ENGINEER, CITY OF SAN RAFAEL
STATE OF CALIFORNIA

ACTING CITY SURVEYOR'S STATEMENT

I, THE UNDERSIGNED, ACTING CITY SURVEYOR FOR THE CITY OF SAN RAFAEL, COUNTY OF MARIN, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

SIGNED THIS _____ DAY OF _____, 20__

JASON KIRCHMANN, PLS 8806
ACTING CITY SURVEYOR, CITY OF SAN RAFAEL

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF VINCENT O'FLYNN ON OCTOBER 2017. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY, AND THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATED: _____

SIGNED: _____
BARRY A. PIERCE, L.S. 6975



RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 20__, AT _____ M. IN BOOK

_____ OF MAPS, AT PAGES _____,

AT THE REQUEST OF THE CITY OF SAN RAFAEL.

SHELLEY SCOTT COUNTY RECORDER DEPUTY

FEE PAID _____

SERIAL NO. _____

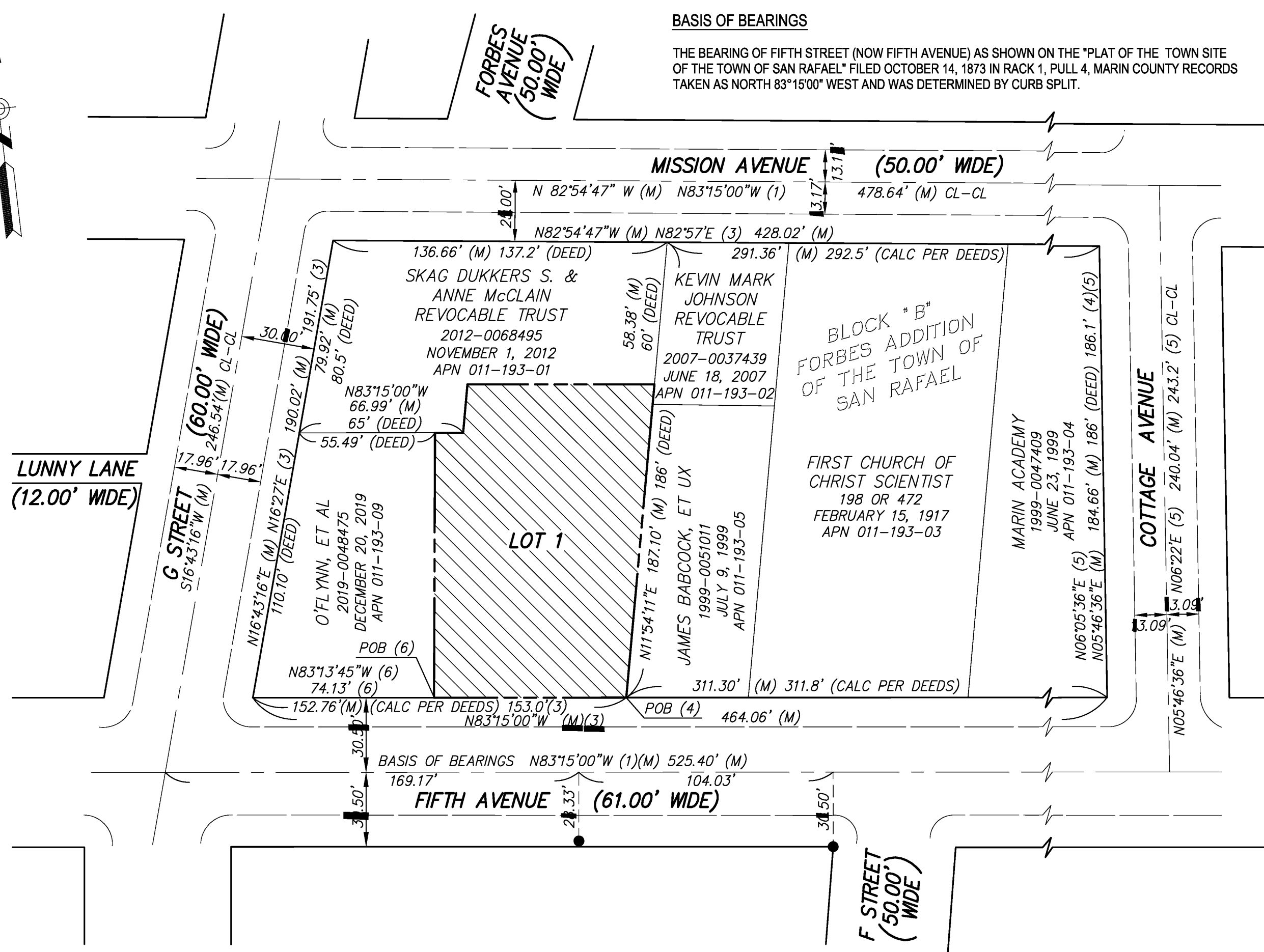
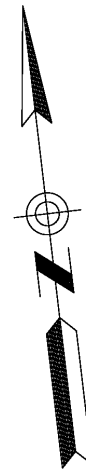
FINAL MAP OF WEST END VILLAGE FOR CONDOMINIUM PURPOSES

TS18-002

LANDS OF O'FLYNN, DESCRIBED IN THAT CERTAIN DEED RECORDED ON DECEMBER 20, 2019 AS DOCUMENT NUMBER 2019-0048474, OFFICIAL RECORDS OF MARIN COUNTY

CITY OF SAN RAFAEL COUNTY OF MARIN STATE OF CALIFORNIA
JULY 2022

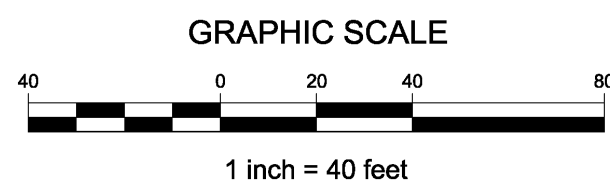
BARRY A. PIERCE
TRANSAMERICAN ENGINEERS & ASSOCIATES
Fox Plaza, 1390 Market Street Suite 201 San Francisco, CA 94102
tel. no. (415) 553-4092 email: info@transamericanengineers.com



BASIS OF BEARINGS

THE BEARING OF FIFTH STREET (NOW FIFTH AVENUE) AS SHOWN ON THE "PLAT OF THE TOWN SITE OF THE TOWN OF SAN RAFAEL" FILED OCTOBER 14, 1873 IN RACK 1, PULL 4, MARIN COUNTY RECORDS TAKEN AS NORTH 83°15'00" WEST AND WAS DETERMINED BY CURB SPLIT.

CONTROL DIAGRAM



BOUNDARY NOTE

THE SUBJECT BLOCK WAS DETERMINED BY ESTABLISHING THE SURROUNDING STREET CENTER LINES BY CURB SPLIT.

LEGEND

- PROPERTY LINE
- ADJACENT PARCEL LINES
- RIGHT OF WAY LINE
- CENTERLINE LINE
- DIMENSION LINE
- (E) FACE OF CURB LINE
- (E) BUILDING LINE
- SUBJECT PROPERTY
- FOUND 3/4" IRON PIPE PER (2)
- SET TACK ON FENCE
- SET NAIL & 3/4" DIAMETER BRASS TAG LS 6975
- SET 1/2" DIA REBAR & PLASTIC CAP LS 6975

ABBREVIATIONS

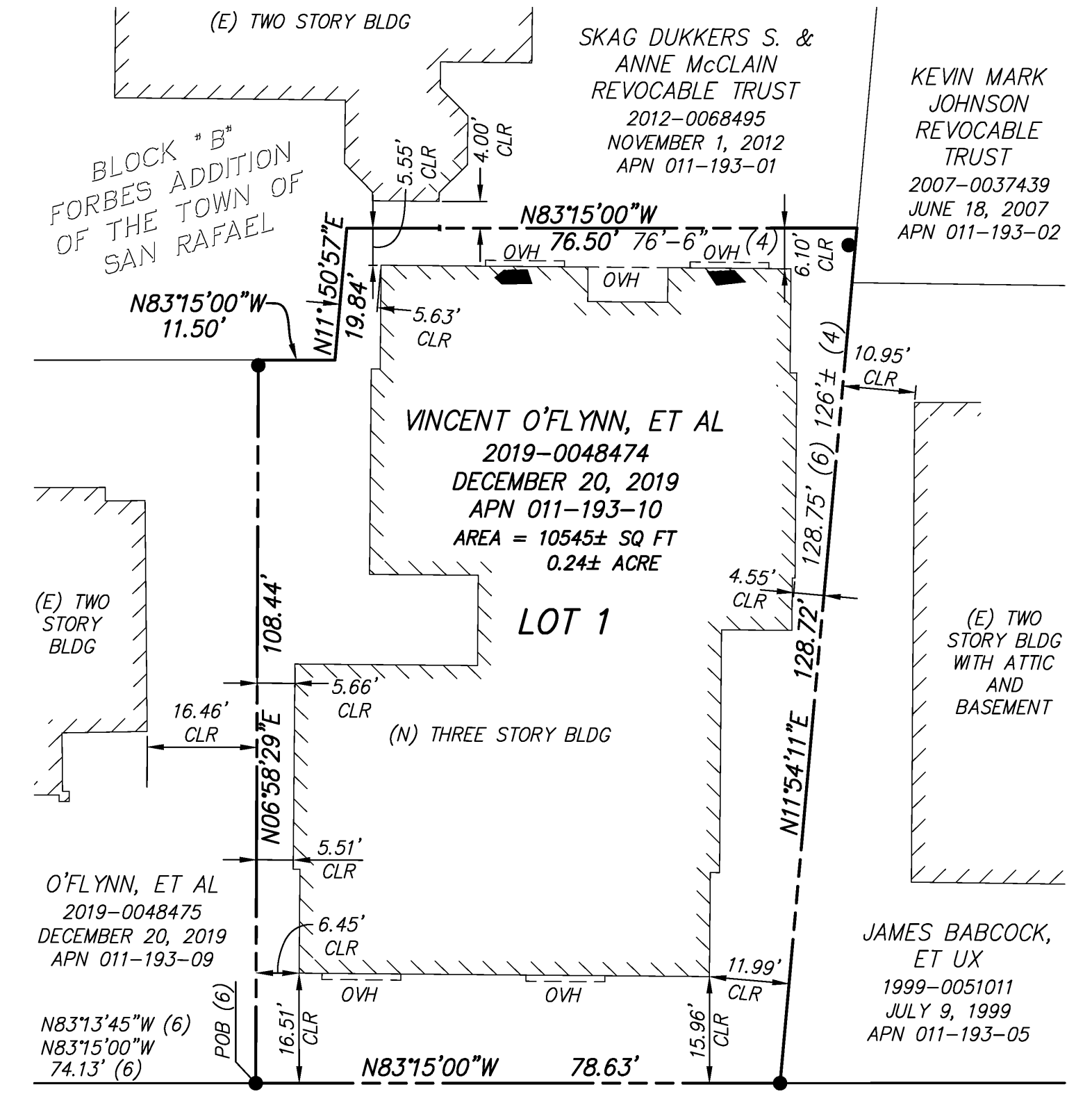
- | | |
|-------|--------------------------|
| APN | ASSESSOR'S PARCEL NUMBER |
| BLDG | BUILDING |
| CALC | CALCULATED |
| CL | CENTERLINE |
| CLR | CLEAR |
| DOC | DOCUMENT |
| (E) | EXISTING |
| LS | LAND SURVEYOR |
| (M) | MEASURED |
| (N) | NEW |
| OVH | OVERHEAD |
| PL | PROPERTY LINE |
| POB | POINT OF BEGINNING |
| (#) | REFERENCE NUMBER |
| SQ FT | SQUARE FEET |

NOTES

1. ALL DISTANCES AND DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
2. ALL DEFLECTION ANGLES ARE 90 OR 45 DEGREES UNLESS EXPRESSLY OTHERWISE INDICATED.
3. THIS MAP IS FOR THE CONSTRUCTION OF NINE NEW RESIDENTIAL CONDOMINIUM UNITS.

REFERENCES

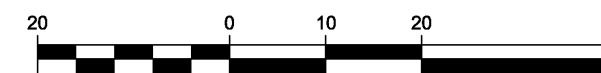
- (1) "PLAT OF THE TOWN SITE OF THE TOWN OF SAN RAFAEL, IN THE COUNTY OF MARIN, STATE OF CALIFORNIA", FILED OCTOBER 14, 1873 IN RACK 1, PULL 4, OFFICE OF THE COUNTY RECORDER
- (2) RECORD OF SURVEY, FILED DECEMBER 6, 2013 BOOK 2013 OF MAPS AT PAGE 171, OFFICE OF THE COUNTY RECORDER
- (3) JOSEPH GRIPPI NO. 285, DATED NOVEMBER 1975, ORIGINAL PLATS AND NOTES ON FILE WITH THE OGLESBY COLLECTION AT THE MARIN COUNTY LIBRARY (UNRECORDED).
- (4) J.C. OGLESBY SURVEY NO. 10084, DATED APRIL 1950, ORIGINAL PLATS AND NOTES ON FILE WITH THE OGLESBY COLLECTION AT THE MARIN COUNTY LIBRARY (UNRECORDED).
- (5) GMD S-78, GEORGE M. DODGE HARD COPY DATES 1889, ORIGINAL PLATS AND NOTES ON FILE WITH THE OGLESBY COLLECTION AT THE MARIN COUNTY LIBRARY (UNRECORDED).
- (6) DOCUMENT NO. 2019-0048474, RECORDED DECEMBER 20, 2019, OFFICE OF THE COUNTY RECORDER



FIFTH AVENUE (61.00' WIDE)

SITE DETAIL

GRAPHIC SCALE



1 inch = 20 feet

FINAL MAP OF WEST END VILLAGE FOR CONDOMINIUM PURPOSES

TS18-002

LANDS OF O'FLYNN, DESCRIBED IN THAT CERTAIN DEED RECORDED ON DECEMBER 20, 2019 AS DOCUMENT NUMBER 2019-0048474, OFFICIAL RECORDS OF MARIN COUNTY

CITY OF SAN RAFAEL
SCALE: AS SHOWN

COUNTY OF MARIN

STATE OF CALIFORNIA
JULY 2022

BARRY A. PIERCE
TRANSAMERICAN ENGINEERS & ASSOCIATES
Fox Plaza, 1390 Market Street Suite 201 San Francisco, CA 94102
tel. no. (415) 553-4092 email: info@transamericanengineers.com

**Recording Requested By and
When Recorded Return To:**

**Herzig & Berlese
414 Gough Street, Suite 5
San Francisco, CA 94102**

**Situs: 1628 Fifth Avenue, San Rafael, CA 94901
APN: 011-193-10, formerly 011-193-006 and a portion of 011-193-007**

**DECLARATION OF RESTRICTIONS
AND CONDOMINIUM PLAN**

FOR

**1628 Fifth Avenue
San Rafael, California**

**West End Village
a Condominium Project**

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON AGE, RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, VETERAN OR MILITARY STATUS, GENETIC INFORMATION, 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 BY SUBMITTING A "RESTRICTIVE COVENANT MODIFICATION" FORM, TOGETHER WITH A COPY OF THE ATTACHED DOCUMENT WITH THE UNLAWFUL PROVISION REDACTED TO THE COUNTY RECORDER'S OFFICE. THE "RESTRICTIVE COVENANT MODIFICATION" FORM CAN BE OBTAINED FROM THE COUNTY RECORDER'S OFFICE AND MAY BE AVAILABLE ON ITS INTERNET WEBSITE. THE FORM MAY ALSO BE AVAILABLE FROM THE PARTY THAT PROVIDED YOU WITH THIS DOCUMENT. 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.

Vincent O'Flynn and Joseph O'Flynn

Declarant

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**DECLARATION OF RESTRICTIONS
FOR
1628 FIFTH AVENUE**

**WEST END VILLAGE
a Condominium Project**

Recitals

THIS DECLARATION is made by Vincent O'Flynn and Joseph O'Flynn, "Declarant," with reference to the following:

A. Declarant is the Owner of a tract of land more particularly described as follows:

All that real property as shown on that certain map entitled "Final Map TS18-002", which map was filed for record on _____, Book of Maps _____, pages _____ to _____, inclusive, Marin County Records.

B. The land has been improved with a building containing nine residential condominiums.

C. ARTICLE 13 OF THIS DECLARATION REFERS TO MANDATORY PROCEDURES FOR THE RESOLUTION OF CONSTRUCTION DEFECT DISPUTES, INCLUDING THE WAIVER OF THE RIGHT TO A JURY TRIAL FOR SUCH DISPUTES.

D. By this Declaration, Declarant establishes a condominium project under the provisions of the Davis-Stirling Common Interest Development Act, Division 4, Part 5 of the Civil Code (beginning at Section 4000), and imposes upon the real property mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums and Owners of Condominiums.

Declarant declares that the real property is held, conveyed, encumbered, leased, occupied and improved subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project, in accordance with the plan for the improvement of the real property and the division of it into Condominiums. All of the limitations, covenants, conditions, restrictions and easements constitute equitable servitudes and covenants that run with the land and are binding upon Declarant and all parties having or acquiring any right, title or interest in or to any part of the Project.

**ARTICLE 1
Definitions**

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

1.2 "Association" means the West End Village Homeowners' Association, a California nonprofit mutual benefit corporation.

1.3 "Board" or "Board of Directors" means the governing body of the Association.

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

1.5 "Common Area" means the entire Project except for the Units as defined in this Declaration and as shown on the Condominium Plan, and includes Exclusive Use Common Area. Common Area includes, but is not limited to, all of the following elements if located at the Project: the land, driveway, parking areas, light wells, (except light wells within a Unit), elevator, entrance, bearing walls, stairways (except stairs within a Unit), columns, girders, subfloors, unfinished floors, roofs and foundations, central HVAC system, equipment, tanks, pumps, motors, ducts, flues and chutes, conduits, pipes, plumbing, wires, and other utility installations (except the outlets located within a Unit), required to provide power, light, telephone, gas, water, sewerage, drainage, and air-conditioning, sprinkler pipes and sprinkler heads which protrude into the Unit.

1.6 "Condominium" means an estate in real property consisting of an undivided interest in common in a portion of real property coupled with a separate interest in space called a Unit, the boundaries of which are described on the Condominium Plan. A Condominium includes a Unit, the Exclusive Use Common Areas appurtenant to the Unit, if any, and an undivided interest in the Common Area.

1.7 "Condominium Plan" means the three dimensional description of the Project in sufficient detail to identify the Common Area and the Units described in Civil Code Section 4285, and any amendments and corrections to it. The Condominium Plan is attached to this Declaration as Exhibit A and incorporated into it by this reference.

1.8 "County" means Marin County, California.

1.9 "Declarant" means Vincent O'Flynn and Joseph O'Flynn, and any successors and assigns who acquire Declarant's interest in the Project and expressly assume the rights and duties of the Declarant for purposes of this Declaration by a written instrument recorded in the County Recorder's office, or who is a Mortgagee that acquired Declarant's interest in the Project through foreclosure or deed in lieu of foreclosure.

1.10 "Declaration" means this Declaration of Restrictions and any amendments and supplements to it.

1.11 "Exclusive Use Common Areas" mean those portions of the Common Area designated for the exclusive use of one or more, but fewer than all, of the Owners and which are appurtenant to the Units.

1.12 "Governing Documents" means this Declaration, the Condominium Plan, the Articles, Bylaws and operating rules of the Association, all as amended from time to time.

1.13 "Map" means the subdivision map referred to in Recital A and any amendments and corrections to it.

1.14 "May", "Must", "May Not". As used in the Governing Documents, the word "may" means an action is permitted, but not required, to be taken or performed; the word "must" means that an action is required to be taken or performed; and the words "may not" mean an action is not permitted and cannot be taken or performed.

1.15 "Member" means a person who is a member of the Association.

1.16 "Mortgage, Mortgagee, Mortgagor" are defined in Section 11.1.

1.17 "Owner" means the record holder of title to a Condominium in the Project. If a Condominium is sold under a recorded contract of sale to a purchaser, the purchaser rather than the seller is considered the Owner. "Owner" does not include a person who has an interest that is merely security for the performance of an obligation.

1.18 "Person" means a natural person, a corporation, a partnership, a limited liability company, a trustee, or other legal entity.

1.19 "Project" means the real property described in Recital A, all structures and improvements erected or to be erected on it, and all easements and rights appurtenant to it.

1.20 "Unit" means the elements of a Condominium that are not owned in common with other Owners or by the Association. Each Unit as separately shown, numbered and designated on the Condominium Plan consists of the space bounded by and contained within the interior unfinished perimeter walls, floors and ceilings, and the windows, window frames, doors and doorframes of the Unit. Each Unit includes all of the following items, if located within it: electrical, heating and plumbing fixtures, appliances, wall board, sheet rock, interior nonstructural walls (except for water and other pipes, electrical wires, conduits, vents and similar improvements within the walls that serve more than one Unit), staircases connecting levels within a Unit, cabinets, interior doors, ventilation fans, and wall, floor and ceiling finishes (as, for example, paint, wall paper, paneling, carpet, hardwood, or tile). Each Unit also includes all of the following items, if any, whether located within the Unit or the Common Area that serve only the Unit: air heating, air conditioning, water heating equipment, ventilation systems, alarm systems, and similar fixtures and systems. A Unit does not include any structural elements.

1.21 "Vote of a Quorum of Members" means a majority of votes cast by Owners entitled to vote either at a meeting of the Members at which a quorum is present or by written ballot, as provided in the Bylaws. However, if a vote greater than a majority is required on any matter, a Vote of a Quorum of Members means that higher percentage of votes.

ARTICLE 2
Easements and Property Rights

2.1 CONDOMINIUM. Each Condominium consists of a Unit, the Exclusive Use Common Areas appurtenant to the Unit, if any, an undivided interest in the Common Area, and any other easements and rights provided for in this Declaration.

A. Units. Each Unit includes the elements defined in Section 1.20. A Unit does not include those areas and things defined as Common Area in Section 1.5. Each Unit is subject to encroachments that now exist or that may be later caused or created in any manner referred to in Section 2.3D. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans, are conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the Plan or deed and those of the building.

B. Common Area. Each Owner owns, as appurtenant to his or her Unit, an undivided interest in the Common Area as shown on the Condominium Plan. Each Owner may use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of, or encroaching upon the rights of any other Owners.

C. Exclusive Use Common Area. Portions of the Common Area, referred to as Exclusive Use Common Areas, are set aside and allocated for the exclusive use of one or more, but fewer than all, of the Owners. The Exclusive Use Common Areas consist of the parking areas, disabled parking area, rear yard, decks and roof decks as designated on the Condominium Plan. The common roof deck located on the roof of the Project is an Exclusive Use Common Area appurtenant to Units 101 and Units 201 through 204, inclusive. An easement for the use of each of these Exclusive Use Common Areas is assigned to the correspondingly numbered Unit(s) as shown on the Condominium Plan or, if no correspondingly numbered Unit is shown on the Condominium Plan, is assigned as provided in the deeds to the Units. The Exclusive Use Common Areas also consist of internal and external wiring designed to serve a single Unit, fireplaces, windows, window frames, window boxes, screens, shutters, awnings, doorsteps, stoops, exterior doors, door frames and hardware.

2.2 NO SEPARATE CONVEYANCE OF COMMON AREA. The undivided interest in Common Area appurtenant to each Unit is permanent in character and cannot be altered without the consent of all the Owners affected and their first Mortgagees as expressed in an amended Declaration. The undivided interest in Common Area cannot be separated from the Unit to which it is appurtenant, and is conveyed or encumbered with its respective Unit even though the instrument of conveyance or encumbrance may refer only to the Unit. The foregoing does not prohibit the transfer between Owners of Exclusive Use Common Area that does not directly abut the Unit to which it is appurtenant (as, by way of example, parking spaces).

2.3 EASEMENTS AND USE RIGHTS. The following easements, reservations and use rights affect the Project.

A. Owners' Nonexclusive Easements; Association Rights. Each Owner has the unrestricted right of ingress and egress to his or her Condominium. Each Owner has, appurtenant to his or her Unit, nonexclusive easements of use, enjoyment, ingress, egress, and support in, to, and throughout the Common Area and any improvements or facilities on the Common Area. The nonexclusive easements are subject to all of the rights and powers of the Association as described in this Declaration. However, the nonexclusive easements are subordinate to and may not interfere with the right to use Exclusive Use Common Areas.

B. Entry or Use Rights. Each Condominium is subject to the following rights of entry and use:

(1) The right of Declarant, or its agents, to enter any portion of the Project to construct the improvements Declarant intends to construct, to conduct sales activities, and to make repairs and to remedy construction defects, provided that the entry does not interfere with the use or occupancy of any occupied Unit unless authorized by its Owner, which authorization must not be unreasonably withheld.

(2) The right of the Association, or its agents, to enter any Unit or Exclusive Use Common Area to cure any violation or breach of any of the Governing Documents, provided that the Owner has been given notice and the opportunity to be heard as provided in the Bylaws. The Association may levy a reimbursement assessment against the Owner for its costs in effecting a cure. The rights of entry and cure are immediate in case of an emergency originating within or threatening any Unit, whether or not its Owner is present.

(3) The right of the Association, or its agents, to enter any Unit or Exclusive Use Common Area to perform its responsibilities under this Declaration, including responsibilities with respect to window washing, construction, maintenance, or repair of the Common Area, or for the benefit of the Owners in common. The rights are immediate in case of an emergency originating within or threatening any Unit, whether or not its Owner is present.

(4) The right of any Owner, or Owner's agents, to enter the Unit or Exclusive Use Common Area of any other Owner for purposes of performing installations, alterations or repairs to mechanical, electrical, telecommunication and electronic communication services that are reasonably necessary for the use and enjoyment of his or her Unit, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Unit is being entered. In case of emergency, the right of entry is immediate.

C. Power to Grant Easements and Exercise Other Property Rights.

(1) The Association or Declarant (as long as Declarant owns 25% or more of the Condominiums in the Project) has the authority and power in the name of the Association and all of the Owners to convey or otherwise transfer to a third party fee title, easements, leasehold estates, rights-of-way and other interests in the Common Area for the purposes of (a) constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, power, telecommunications, electronic communications, public sewers, storm water drains and pipes, water systems, sprinkling systems, heating and gas lines or pipes, and similar public or quasi-public improvements or facilities, (b) accommodating encroachments that do not unreasonably interfere with the use and enjoyment of the Common Area, and (c) accomplishing any other reasonable purpose that the Board or Declarant determines is in the interest of the Association and the Owners.

(2) The Association or Declarant (as long as Declarant owns 25% or more of the Condominiums in the Project) has the authority and power in the name of the Association and all of the Owners to convey or otherwise transfer to any Owner fee title, easements, Exclusive Use Common Areas, leasehold estates, rights-of-way and other interests in the Common Area for any of the reasons provided in subsection (1) above provided that it has first obtained the consent of 51% of the Owners for the conveyance or transfer. However, the consent of the Owners is not required for a conveyance or transfer to an Owner for any of the purposes specified in Civil Code Section 4600(b).

(3) Each Owner, in accepting a deed to a Condominium, expressly consents to the foregoing actions and authorizes and appoints the Association and Declarant (as long as Declarant owns 25% or more of the Condominiums in the Project) as attorney-in-fact of the Owner to execute instruments conveying or creating the easements or other rights, and to execute subdivision maps, lot line adjustments, condominium plans, deeds and similar documents in connection with the conveyance.

(4) An easement or other property right may not be granted if it would substantially interfere with the use, occupancy, or enjoyment by an Owner of his or her Unit or Exclusive Use Common Area appurtenant to that Unit without the consent of the affected Owner.

(5) Conveyance of fee title to any portion of the Project is subject to obtaining the necessary approval of first Mortgagees and Owners as provided in Article 11.

D. Encroachment Easements. Each Unit has an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause as long as the encroachment exists. However, a valid encroachment is not created in

favor of an Owner if it occurred due to the Owner's willful misconduct. If a structure is repaired or rebuilt, minor encroachments over adjoining Units and the Common Area are permitted and there are valid easements for the maintenance of these encroachments as long as they exist.

E. Utility Easements. “Utility Easements” means easements for the installation, maintenance, repair and replacement of utility shafts, vents, ducts, conduit, lines and equipment. Each Unit is burdened by Utility Easements in favor of each other Unit as necessary, along with easements for ingress and egress as necessary to maintain and repair those elements. The location of Utility Easements is the location, when installed as part of the original construction of the Project or as subsequently installed with the consent of the Owner of the burdened Unit, of the elements for which the Utility Easements are required.

2.4 PARTITION; POWER OF ATTORNEY. Except as provided by Civil Code Section 4610, judicial partition of the Project or any part of it is prohibited. Judicial partition by sale of a single Condominium owned by two or more persons and division of the sale proceeds is not prohibited, but partition of title to a single Condominium is prohibited.

If partition is authorized under Civil Code Section 4610, and subject to obtaining the necessary approval of first Mortgagees and Owners as provided in this Declaration, the Association may sell the entire Project, in one or more transactions, for the benefit of all Owners. Each Owner irrevocably appoints the Association as his or her attorney-in-fact to sell the Project under this section.

2.5 FURTHER SUBDIVISION PROHIBITED. An Owner may not further subdivide his or her Condominium except with the approval of the Board. An Owner may not convey time-share interests in his or her Condominium.

ARTICLE 3

Association, Administration, Membership and Voting Rights

3.1 ASSOCIATION TO MANAGE PROJECT. The Project is managed and operated by the Association. Before the Association begins operating the Project, Declarant is responsible to operate the Project.

3.2 MEMBERSHIP. Each Owner of a Condominium is automatically a Member of the Association, and remains a Member until that Member's ownership of a Condominium ceases, at which time his or her membership in the Association automatically ceases. If a Condominium is owned by more than one person, each person is a Member. An Owner may not resign, transfer, pledge or alienate his or her membership in any way except by sale of the Condominium to which it is appurtenant and then only to the purchaser. Any prohibited transfer is void.

3.3 MEMBERSHIP CLASSES. The Association has two classes of voting membership.

A. CLASS A. Each Owner is a Class A Member. Each Class A Member has one vote for each Condominium owned. If a Condominium is owned by more than one Member, the vote for the Condominium will be exercised as those Members determine, but not more than one vote may be cast for any Condominium. If a Member disputes the vote cast for his or her Condominium by a co-owner of the Condominium, the vote for that Condominium will not be counted. Declarant becomes a Class A Member when Class B membership ends.

B. CLASS B. Declarant is the Class B Member. The Class B Member has three votes for each Condominium owned. Class B membership ends when the total outstanding votes held by Class A Members equal the total outstanding votes held by the Class B Member or on the second anniversary date of the first conveyance of a Condominium in the Project, whichever occurs first.

3.4 VOTING RIGHTS. Unless otherwise provided in the Governing Documents, any action that requires a Vote of a Quorum of Members requires the prescribed number of votes cast by Owners entitled to vote either at a meeting of the Owners at which a quorum is present or by written ballot, as provided in the Bylaws. The prescribed number of votes is a majority of votes, unless a vote greater than a majority is required elsewhere in the Governing Documents, in which case action on that matter requires a vote of that prescribed percentage.

Any provision in the Governing Documents that requires a Vote of a Quorum of Members requires:

A. where the two-class voting structure is in effect, a vote of a majority of a quorum of the Class A Members and a vote of the Class B Member; or

B. after Class B membership has been converted to Class A membership, a vote of a majority of a quorum of Members and a vote of a majority of a quorum of Members other than Declarant.

ARTICLE 4

Assessments

4.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Each Owner agrees to pay to the Association assessments that are levied under this Declaration. Assessments are payable without deduction or offset for any claim the Owner may have against the Association. Each assessment, together with interest, costs and reasonable attorneys' fees, is the personal obligation of the Owner of the Condominium at the time when the assessment is levied. If more than one person is the Owner, the personal obligation to pay the assessment is joint and several. No Owner may exempt himself or herself from liability for payment of assessments by waiver of use or enjoyment of any of the Common Area or abandonment of his or her Condominium.

4.2 PURPOSE OF ASSESSMENTS. The Association must levy regular and special assessments sufficient to perform its obligations. The Association may not levy an assessment that exceeds the amount necessary to defray the costs for which it is levied. Assessments levied by the Association must be used exclusively to promote the health, safety, and welfare of all residents of the Project, for the improvement and maintenance of the Common Area, and for the common good of the Project.

4.3 REGULAR ASSESSMENTS. The regular assessment is the total amount of funds necessary to defray the expenses attributable to the ownership and operation of the Common Area for the fiscal year. It must include adequate reserve funds for contingencies and for maintenance, repairs, and replacement of Common Area improvements that must be replaced on a periodic basis, sufficient to satisfy the reasonable requirements of any first Mortgagee and to maintain the Common Area in first-class condition and repair.

At least 30 days and not more than 90 days before the beginning of each fiscal year, the Board must establish the regular assessment for that fiscal year. If at any time during the year the Board decides that the amount of the regular assessment is inadequate or excessive, it may revise the assessment for the balance of the fiscal year, effective on the first day of the month following the date of the revision. If the Board fails to establish the regular assessment for any fiscal year, the regular assessment will be the same as that of the prior fiscal year.

The Board must obtain a Vote of a Quorum of Members (1) to increase the regular assessment in an amount that is more than 20 percent greater than the regular assessment for the immediately preceding fiscal year, and (2) to increase the regular assessment in any amount if the Board has not prepared and distributed to the Owners the annual budget report described in Civil Code Section 5300(b) and Section 5.2 of the Bylaws. For purposes of this section, the quorum requirement for a Vote of a Quorum of Members is more than 50 percent.

4.4 SPECIAL ASSESSMENTS. In any fiscal year, the Board may levy a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of Common Area, including fixtures and personal property, and for extraordinary expenses incurred by the Association. A special assessment in excess of 5 percent of the budgeted gross expenses of the Association for the fiscal year in which the assessment is levied requires a Vote of a Quorum of Members. "Budgeted gross expenses of the Association" does not include any expense paid from the Association's reserve account. For purposes of this section, the quorum requirement for a Vote of a Quorum of Members is more than 50%.

4.5 ASSESSMENTS FOR EMERGENCY PURPOSES. The Board may increase the regular assessment and impose special assessments without a Vote of a Quorum of Members if necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- A. An extraordinary expense required by an order of a court;

B. An extraordinary expense necessary to repair or maintain the Common Area where a threat to personal safety is discovered at the Project; or

C. An extraordinary expense necessary to repair or maintain the Common Area that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget described in the Bylaws. Before imposing or collecting an assessment under this section, the Board must pass a resolution containing written findings as to why the extraordinary expense is necessary and why the expense was not or could not have been reasonably foreseen in the budgeting process.

4.6 REIMBURSEMENT ASSESSMENTS. The Board may impose a reimbursement assessment to collect a charge levied to reimburse the Association for costs incurred by it on behalf of an Owner, or in the repair of damage to the Common Area caused by an Owner or occupant of the Owner's Unit, or to collect a fine or penalty levied to bring an Owner and his or her Condominium into compliance with the Governing Documents. The Board may impose a reimbursement assessment on an Owner only after giving the Owner notice and the opportunity to be heard, as provided in the Bylaws. A reimbursement assessment becomes a lien upon a Unit upon the recording of a Notice of Delinquent Assessment as provided in Civil Code Section 5675(a); however, the lien created thereby may not be enforced by sale of the Condominium pursuant to Civil Code Sections 2924, 2924b and 2924c.

4.7 DIVISION OF ASSESSMENTS. The expenses for regular assessments are divided among the Owners equally.

Declarant has installed one domestic water meter for the Units. Submeters have been installed that measure hot and cold water use for each Unit and in regard to Unit 101, water used in the yard. There is a sewer charge for each Unit that is calculated from water usage. There also is a meter charge for each Unit that is the same as that of the local water company. The Association will be billed for water by the local water company, and the HOA will bill each Owner for his or her share of the water bill. Each Owner must timely pay the bill. If an Owner does not pay for his or her water expenses, a late fee and other charges will be added to the bill. Additionally, if an Owner does not pay for his or her water expenses, and if the Association pays for the expenses on behalf of an Owner, the Association may levy a Reimbursement Assessment against the Owner for the expenses paid, and also a late charge and interest under section 4.9.

Special assessments also are divided among the Owners equally, except where the special assessment is levied to raise funds for the rebuilding or major repair of structural Common Area that houses the Units. In that case, the special assessment is divided upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units. For purposes of this section, the square footage of the Units is the approximate square footage for the Units shown on the Condominium Plan.

Each Unit must have appurtenant to it at least one parking space. Each Owner must pay an additional monthly fee for parking expenses for each parking space appurtenant to his or her Unit, as shown in the Garage Cost Center Budget. The parking expenses include, but are not limited to: insurance,

custodial services for the garage; concrete cleaning and repairs and accounting and administrative costs for the Garage Cost Center Budget; and reserves for the garage door, garage door operator, light fixtures and exhaust fan.

Each of Units 301 through 304, inclusive, which have an appurtenant roof deck, must pay an additional monthly fee for deck expenses as shown in the Deck Cost Center Budget. The deck expenses include, but are not limited to reserves for flooring, planters and railings.

The Board annually must review the expenses, income and reserves attributable to and follow the requirements and procedures set forth this Declaration and the Bylaws in regard to the Association's operating and reserve accounts in the preparation and distribution of the two Cost Center Budgets. All provisions of the Declaration and Bylaws which pertain to regular assessments and special assessment pertain to the components of the two Cost Center Budgets. The Board may increase either of the Cost Center Budgets, except that a Vote of a Quorum of Members with a parking space (based on one vote per parking space) or a roof deck (based on one vote for each Owner with an appurtenant deck) is required to increase the a Cost Center Budget component of the regular assessment under the circumstances set forth in Section 4.3. Documents prepared by the Board in regard to the Garage Cost Center Budget must be distributed only to Owners with parking spaces, and documents prepared by the Board in regard to the Deck Cost Center Budget must be distributed only to Owners with decks, but the Board may distribute the documents to other Owners if it wishes to do so. Commingling of either Budget Cost Center funds with other funds of the Association is not permitted. Cost Center Budget funds may not be used for any purpose other than those for which they are collected.

4.8 DATE OF COMMENCEMENT AND DUE DATES OF ASSESSMENTS; NOTICE TO OWNERS. Regular assessments begin for all Units on the first day of the month following the conveyance of the first Condominium from Declarant to an Owner. The regular assessment is payable in equal monthly installments due on the first day of each month, unless the Board adopts some other basis for collection or due date. The due date for payment of a special assessment or a reimbursement assessment is the date specified in the notice of the assessment. The Association must send each Owner notice of an increase in the regular assessment, any special assessment, and any reimbursement assessment not less than 30 and not more than 60 days before the due date of the assessment. If an assessment for emergency purposes is levied under section 4.5, a copy of the resolution required under that section must be distributed with the notice of assessment.

4.9 EFFECT OF NONPAYMENT OF ASSESSMENT. An assessment or installment that is not received by the Association within 15 days after its due date is a delinquent payment. A delinquent payment is subject to a late charge of 10 percent of the delinquent assessment or installment or \$10.00, whichever is greater, on all delinquent payments. A late charge may not be imposed more than once on any delinquent payment, does not eliminate or supersede any charges imposed on prior delinquent payments, and constitutes full compensation to the Association for additional bookkeeping, billing, or other administrative costs resulting from the delinquent payment.

Interest accrues on a delinquent payment at the rate of 12 percent per annum, beginning 30 days after the due date of the assessment or installment through and including the date full payment is received by the Association.

4.10 REMEDIES ON DEFAULT. In the event of a default in payment of any assessment or installment, and in addition to any other remedies provided by law, the Association may enforce payment of the assessment or installment in any of the following ways.

A. Personal Obligation. The Association may bring legal action against the delinquent Owner for the amount of delinquent assessments or installments, the fees and reasonable costs of collection, reasonable attorney's fees, and late charges and interest, if any. A legal action may be maintained without foreclosing or waiving lien rights.

B. Judicial Foreclosure or Power of Sale. The Association may bring an action for judicial or nonjudicial foreclosure provided that the amount of delinquent assessments, the duration of the delinquency, or both comply with the requirements of Civil Code section 5720.

C. Alternative Dispute Resolution. An assessment dispute may be resolved through alternative dispute resolution as provided in Civil Code sections 5660(f) and 5705(b), and according to the procedures set forth in the Bylaws or otherwise adopted by the Association.

4.11 PRIORITIES. A Notice of Delinquent Assessment constitutes a lien on the Condominium against which it is recorded prior to all other liens except taxes, bonds, assessments and other liens which by law would be superior to it, and the lien of any first Mortgage of record that was recorded before the delinquent assessment became due. The lien is not affected by the sale or transfer of the Condominium against which it is recorded.

4.12 MORTGAGEE'S LIABILITY FOR UNPAID ASSESSMENTS. The holder of a first Mortgage that obtains title to a Condominium pursuant to a foreclosure proceeding is not liable for unpaid assessments and charges that accrued prior to its acquisition of the Condominium. A first Mortgagee is liable for any assessments becoming due after the date of the transfer.

4.13 SEGREGATION OF FUNDS. All proceeds paid for reserves or for any special assessment must be segregated and deposited in a special account and, except for a transfer made under Section 9.3 of the Bylaws, must be used solely for the purpose for which levied.

4.14 WAIVER OF EXEMPTIONS; EXEMPTION FROM EXECUTION. Each Owner waives the benefit of any homestead or exemption laws of the State of California as to any assessment lien created under this Article.

Regular assessments are exempt from execution by a judgment creditor of the Association only to the extent necessary for the Association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this section 4.14 and Civil Code section 5620. The exemption shall not

apply to any consensual pledges, liens or encumbrances that have been approved by a Vote of the Owners pursuant to Civil Code section 4070, at a Member meeting or election, or to any state tax lien, or to any lien for labor or materials supplied to the Common Area.

4.15 UNSEGREGATED REAL PROPERTY TAX BILL. If real property taxes have not been segregated by the County Assessor, each Owner must pay a proportionate share of the unsegregated tax bill. An Owner's proportionate share of the unsegregated tax bill is calculated by multiplying the amount of the bill by a fraction, the numerator of which is the approximate square footage of the Owner's Unit and the denominator of which is the total approximate square footage of all Units in the Project. Square footage will be determined as shown on the Condominium Plan.

ARTICLE 5

Duties and Powers of the Association

5.1 APPLICABILITY OF THE DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT AND THE NONPROFIT MUTUAL BENEFIT CORPORATION LAW.

A. Davis-Stirling Common Interest Development Act. The Association must comply with the requirements of the Davis-Stirling Common Interest Development Act (the "Act"). The Act includes comprehensive regulations concerning the management of the affairs of the Association including, without limitation, election procedures, conduct of meetings, enforcement of assessments, resolution of disputes, preparation and distribution of financial documents, notices required to be sent to Members, calculation and maintenance of reserve funds, retention and inspection of Association records, adoption of operating rules, and Board approval of physical improvements to the Project made by Members. The Association must adopt provisions in the Governing Documents as reasonably necessary to implement the Act, and each Owner takes his or her interest in the Project subject to the provisions of the Bylaws, operating rules and policies of the Board in addition to the provisions of this Declaration.

B. Non-Profit Mutual Benefit Corporation Law. The Association has all of the powers of a corporation organized under the California Non-Profit Mutual Benefit Corporation law, subject only to the limitations on those powers set forth in the Act and in the Governing Documents. The Association has the power to do any lawful thing required or permitted to be done under the Act and 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. The affairs of the Association must be conducted by a Board of Directors or committees appointed by the Board, and by the officers of the Association.

5.2 DUTIES AND POWERS. The duties and powers of the Association include, but are not limited to, the following.

A. Maintenance. The Association must maintain the Project as provided in Article 8.

B. Insurance. The Association must maintain the policies of insurance required by Section 9.1 of this Declaration. The Association is authorized to negotiate on behalf of the Owners with any insurer, and to settle, enforce by legal action, and execute releases on claims filed with respect to insurance policies obtained by the Association.

C. Discharge of Liens. The Association must discharge any lien against the Common Area and levy a reimbursement assessment against the Owner responsible for the existence of the lien, including attorneys' fees and costs incurred by the Association in the payment and discharge of the lien.

D. Payment of Expenses and Taxes. The Association must promptly pay all expenses and obligations incurred by it in the conduct of its business. The Association must pay all real and personal property taxes and assessments levied against the Common Area and any property owned by the Association that is not included in the annual property tax bills of the Owners.

E. Enforcement. The Association must enforce the Governing Documents as provided in this Declaration, the Bylaws and any operating rules adopted by the Association. The right to enforce the Governing Documents includes, without limitation, the right to impose fines and penalties, and to suspend voting rights.

Notwithstanding anything to the contrary contained in this Declaration, the Board may not cause a forfeiture or abridgement of an Owner's rights to the full use and enjoyment of his or her Unit except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments levied by the Association.

F. Assessments. The Association must levy against the Owners and collect assessments in the amount necessary to pay for the cost of maintaining, improving, repairing, rebuilding, operating and managing the Project.

G. Utility Service. The Association has the authority to obtain, for the benefit of all of the Condominiums, utility services such as common water, gas and electric service, telephone, television and other telecommunications and electronic access and services, and refuse collection. The Association must maintain all utility installations located in the Common Area, except those installations maintained by utility companies. The Association must pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

H. Easements. The Association has the authority to grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Units, as provided in Article 2.

I. Manager. The Association has the authority to employ a manager or other persons, and to contract with independent contractors or managing agents to perform the duties and responsibilities of the Association. A contract with a firm or person appointed as a manager or managing agent cannot exceed a one year term, and must provide for the right of the Association to terminate the contract at the first annual meeting of the Members of the Association, and to terminate the contract for cause on 30 days' written notice or, without cause or payment of a termination fee, on 90 days' written notice.

J. Operating Rules. The Association has the authority to adopt reasonable operating rules consistent with this Declaration relating to the use of the Project by the Owners, their tenants, guests and invitees. An operating rule is valid and enforceable only if it is reasonable, in writing, within the authority of the Board conferred by law or by the Declaration, consistent with the Governing Documents, and adopted, amended, or repealed in good faith and in substantial compliance with the provisions of Civil Code Sections 4340 through 4370.

K. Access. In order to perform maintenance, repairs, or any other of its responsibilities, the Association, its agents and employees may enter any Unit or any portion of the Common Area as provided in Article 2. Entry must be made at reasonable hours and with as little inconvenience to the occupant as possible, and any damage caused must be repaired at the expense of the Association. Except in case of an emergency, 24 hours' advance notice must be given to the occupant prior to entry.

L. Acquisition and Disposition of Property. The Association has the power to acquire, own, improve, operate, maintain, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with its affairs.

M. Loans. The Association has the authority to borrow money and, with a vote of a a majority of Members entitled to vote, other than Declarant, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

N. Contracts. The Association has the authority to contract for goods and services for the Common Area or the Association.

O. Delegation. The Association has the authority to delegate its authority and powers to committees, officers, or employees of the Association, except for the powers to:

- (1) make a decision to commence proceedings for mediation and arbitration or to file litigation when permitted under the Governing Documents or applicable law, record a lien, or foreclose upon a lien for default in payment of assessments;
- (2) make a decision to levy assessments;

- (3) make capital expenditures;
- (4) impose discipline and levy fines for violations of the Governing Documents; or
- (5) hold hearings required under the Governing Documents.

P. Fees. The Association has the authority to impose fees for special costs incurred by the Association as result of actions taken by Owners, as for example, move-in/move-out fees and excess costs for garbage collection.

Q. Reporting Requirements. The Association must prepare and distribute the documents and notices required under the Act, as more fully provided in Articles 5 and 6 of the Bylaws.

5.3 LIMITATION ON POWERS OF THE BOARD - PROHIBITED ACTS. The Board may not take any of the following actions without a Vote of a Quorum of Members other than Declarant. For purposes of this section, the quorum requirement for a vote is more than 50% of the Members.

A. enter into a contract with a third person for goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:

- (1) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;
- (2) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided however, that the term of the contract cannot exceed the shortest term for which the supplier will contract at the regulated rate;
- (3) prepaid casualty and/or liability insurance policies not to exceed three years duration provided that the policy permits short rate cancellation by the insured;
- (4) lease agreements for laundry room fixtures and equipment not to exceed five years duration provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect ownership interest of 10 percent or more;
- (5) agreements for cable television services and equipment or satellite dish television services and equipment not to exceed five years duration provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of 10 percent or more;
- (6) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five years duration provided that the supplier or suppliers are not entities in which Declarant has a direct or indirect ownership interest of 10 percent or more.

(7) a contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon 90 days' written notice of termination to the other party.

B. incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of 5 percent of the budgeted gross expenses of the Association for that fiscal year;

C. sell during any fiscal year property of the Association having an aggregate fair market value greater than 5 percent of the budgeted gross expenses of the Association for that fiscal year; or

D. pay compensation to directors or to the officers of the Association for services performed in the conduct of the Association's business. However, the Board may reimburse a director or officer for reasonable expenses incurred in carrying on the business of the Association.

ARTICLE 6

Architectural Control

6.1 APPROVAL REQUIRED. The prior written approval of the Board obtained in accordance with the procedures set forth in the Bylaws is required before an Owner may make any improvements or modifications ("improvement") to any portion of the Common Area (which includes Exclusive Use Common Area) appurtenant to the Owner's Unit, or make any improvements within his or her Unit that may affect structural Common Area, increase the burden on common building systems, result in an increase in sound transmission between Units, install an antenna or satellite dish, or otherwise adversely affect the Common Area or other Units.

A decision to grant or deny permission to make an improvement is within the discretion of the Board, provided that it is made in good faith and is not unreasonable, arbitrary or capricious. In making its decision, the Board may take into account subjective factors such as the quality of workmanship, design, harmony of external design with existing structures, and location in relation to surrounding structures.

6.2 PROCEDURES. The Board must establish procedures that comply with the requirements of Civil Code Section 4765(a) regarding application for and review of improvements.

6.3 IMPROVEMENTS TO FACILITATE ACCESS FOR PHYSICALLY DISABLED PERSONS. The Board may not deny approval of any improvement to a Unit to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons, without good cause. The requested improvement may include modifications of the route from the public way to the door of the Unit if the Unit is already accessible by an existing ramp or elevator. The Board may condition its approval of the improvement

in accordance with the provisions of Civil Code Section 4760. The cost of the improvement must be paid by the requesting Owner.

6.4 ANTENNAS. Installation and use of a satellite dish, video or television antenna with a diameter or diagonal measurement of one meter or less is subject to the provisions of federal law, Civil Code Section 4725 and any standards set forth in the Bylaws or in operating rules. Approval of the installation or use of any other satellite dish, video or television antenna, or an electric vehicle charging station is within the discretion of the Board.

6.5 ELECTRIC VEHICLE CHARGING STATIONS; GUEST PARKING. There are two electric vehicle charging stations (“EVCS”) at the Project. The EVCS are located in the two guest parking spaces. Each Owner or resident who charges a vehicle must pay for the cost of electricity to charge his or her vehicle. A vehicle may be parked in a guest/EVCS parking space only for the time required to charge the vehicle. After that time the vehicle immediately must be moved out of the guest/EVCS space. Each Owner or resident who uses a guest/EVCS parking space is subject to any standards set forth in the Bylaws or in operating rules.

6.6 DECLARANT EXEMPT. Declarant is exempt from the approval requirements of this Article for a period of three years from the date of issuance of the most recent final subdivision public report for the Project.

ARTICLE 7 Use Restrictions

The Project and the Condominiums are subject to the following restrictions on use. The Board may promulgate operating rules interpreting the use restrictions set forth in this Article and imposing additional use restrictions that, in its judgement, are appropriate to providing for the peace, health, comfort, safety and general welfare of the Owners.

7.1 CONDOMINIUM USE. All Condominiums must be used for residential purposes. No trade or business may be conducted in any Condominium except for administrative and professional practices allowed by local ordinance.

7.2 SALES ACTIVITIES. Declarant may use any Units in the Project owned by Declarant to conduct sales activities and as sales models until all Units have been sold. Declarant may maintain displays and conduct activities within the Common Area related to sales of Condominiums so long as the displays and activities do not materially or unreasonably interfere with the use of the Common Area by the Owners.

7.3 USE OF PARKING SPACES. Use of parking spaces is subject to the following.

- A. All parking spaces other than parking space P-13 may be used for parking of non-commercial passenger motor vehicles -- such as automobiles, moderate sized station

wagons, pickup trucks and SUVs, motorcycles and light vans -- that fit entirely within the boundaries of the Owner's designated parking space and allow space to enter and exit the vehicle and for no other purpose. Each Owner is responsible for determining if his or her motor vehicle fits within the Owner's assigned parking space. The Association has no liability to an Owner whose vehicle does not fit within the space.

B. No person may park a motor vehicle anywhere on the Project other than his or her designated parking space, or in one of the two guest/ EVCS parking spaces solely during the time it takes to charge a vehicle, as set forth in section 6.5. An Owner may not lease a parking space to any person who is not an Owner or a resident at the Project.

C. Repair or washing of a motor vehicle is not permitted anywhere on the Project. Each Owner must keep his or her designated parking space neat and clean and immediately remove any oil, grease or other waste emitted from his or her vehicle. Vehicles that emit excessive levels of exhaust pollution, oil, grease or noise, as such levels are determined by the Board, may not be operated at the Project. The Association may cause any vehicle that is in violation of this section to be towed and stored at the Owner's expense in compliance with Vehicle Code Section 22658. Each Owner, on his or her own behalf and on behalf of each resident in the Owner's Unit and each invitee of Owner, agrees to indemnify, defend and hold the Association, its Board members, officers, manager and employees harmless for any damage to person or property that may result from the towing.

D. Parking space P-13 (the "disabled parking space") is a parking space designated for use by a disabled person. If the Owner of a Unit to which the parking space P-13 is appurtenant ("the affected Owner") is not disabled, then, at the written request of a disabled Owner and provided the disabled Owner can demonstrate, to the reasonable satisfaction of the Board, that he or she is legally entitled to use the disabled parking space, the Board temporarily must reassign the disabled parking space to the Owner who becomes disabled or to a new Owner who is disabled ("the disabled Owner"). The affected Owner will be reassigned the parking space the disabled Owner has the right to use. The right of the disabled Owner to use the disabled parking space terminates when the disabled Owner ceases to be disabled or when the disabled Owner ceases to occupy a Condominium at the Project. In either of these events, the affected Owner may reoccupy the disabled parking space. Evidence of disabled status must be by license plate or placard issued by the California Department of Motor Vehicles and other pertinent evidence.

The Board may adopt rules with respect to the disabled parking space, including such matters as the right of a disabled Owner to displace a non-disabled Owner from the disabled parking space, exchange of parking spaces, the right of the affected Owner to a hearing regarding any fees the disabled Owner should pay the affected Owner, review of the evidence of disability, and any other relevant issues. The right to exchange a non-disabled parking space for the disabled parking space is available to any disabled Owner on a first-come, first-served basis. A van customized for a disabled driver may be parked in the disabled parking space.

7.4 NUISANCE. No person may interfere with the quiet enjoyment of any other resident of the Project, or carry on any activity in any part of the Project that is noxious, illegal, seriously annoying or offensive to a person of reasonable sensibility, that is detrimental to the health, safety or welfare of the residents, or that interferes with their peaceful possession or proper use of their Units. No activity may be carried on that increases the rate of insurance for the Project, or causes any insurance policy to be canceled or not renewed, or that will impair the structural integrity of any building. No use is allowed which creates conditions that are hazardous, noxious or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste or excessive noise.

7.5 SIGNS. The following signs may be posted within the Common Area: (1) project identification signs and other signs approved by the Board, (2) signs maintained by Declarant in connection with Declarant's sales activities, and (3) "For Sale" or "For Rent" signs provided they do not exceed five square feet in size. "For Sale" or "For Rent" signs may be posted only on those parts of the Common Area easily viewed by the general public and designated by the Board. All other signs are prohibited in the Common Area.

An Owner may post non-commercial signs, posters, flags and banners made of paper, cardboard, cloth, plastic, or fabric, within his or her Unit. Signs and posters may not exceed 9 square feet in size and banners and flags may not exceed 15 square feet in size. An Owner may display a flag of the United States of any size made of fabric, cloth or paper on or in the Owner's Unit or Exclusive Use Common Area appurtenant to the Unit. All other signs, posters, flags and banners are prohibited.

7.6 ANIMALS. Animals may not be kept in any Unit or Common Area except for domestic dogs or cats (not to exceed a total of two per Unit), domestic rodents in cages (for example, hamsters and mice), and a reasonable number of fish and turtles in aquariums and birds inside bird cages. Pure or mixed breed dogs from the following breeds may not be kept at the Project: Pit Bull, Presa Canaria, Rottweiler, Doberman Pinscher, Mastiff, and any other fighting breed. Permitted animals may not be kept, bred, or raised for commercial purposes.

Any dog in the Common Area (other than an Exclusive Use Common Area deck, roof deck or yard area appurtenant to its Owner's Unit) must be leashed. After making a reasonable attempt to notify the dog's owner, the Board or an Owner may cause an unleashed animal found within the Common Area to be removed to a pound or animal shelter by calling the appropriate authorities. The dog's owner may, upon payment of all expenses, repossess the animal. Residents must clean up after their pets immediately.

Owners must comply with all operating rules for the keeping and control of pets in the Units and Common Area. The Board may prohibit the keeping of any animal that it determines, after notice to the Owner of the Unit in which the pet is kept and the opportunity to be heard according to the procedures set forth in the Bylaws, is a nuisance or danger to any other Owner, occupant or person coming onto the Property, or interferes with the quiet enjoyment of the resident of any Condominium. Each person bringing or keeping a pet upon the Project is liable for damage to persons or property proximately caused by the pet.

7.7 GARBAGE DISPOSAL. All garbage, recycling and other waste must be kept in sanitary containers and regularly removed from the Project. Equipment for the storage or disposal of waste must be kept in a clean and sanitary condition and must be kept only on those portions of the Project designated by the Board.

7.8 RIGHT TO LEASE. An Owner may not rent his or her Unit for transient or hotel purposes, which are defined as rental for any period less than 30 days, or any rental if the occupants are provided customary hotel services such as room service for food and beverage, maid service, or or furnishing laundry and linen. No Owner may rent his or her Unit on AirBNB or any similar website. Subject to these restrictions, an Owner may lease his or her Unit provided the lease is in writing, is made subject to the Governing Documents, and a copy of the lease is sent to the Board. An Owner is responsible for a tenant's compliance with the Governing Documents. An Owner who does not reside in his or her Unit must provide the Association with the Owner's contact information, including telephone number, as well as contact information for the tenant occupying the Unit, if any, including telephone number.

7.9 CLOTHES LINES. Outside laundering or drying of clothes is not permitted except in the Exclusive Use Common Area RY-101 as provided in operating rules established by the Association in accordance with the Civil Code.

7.10 STORAGE. Any obstruction of the Common Area is prohibited. Nothing may be kept or stored in the Common Area without the prior consent of the Board, except in designated storage areas.

7.11 WINDOW COVERING. All window coverings visible from the street or Common Area must be in a neutral color, unless otherwise approved by the Board.

7.12 OUTDOOR COMMON AREA. Unless otherwise approved by the Board, the use of outdoor Common Area (such as decks and the yard) is subject to the following restrictions. Nothing may be stored in those areas. Clothing, towels and other items may not be left on rails. Sharp objects and other items that may penetrate or damage any waterproof membrane may not be used or placed within those areas. Any modification to the surface material or railings of a deck requires the approval of the Board as provided in Article 6. Charcoal barbecues may not be used in any outdoor Common Area. Gas barbecues may be used if permitted by the Association's insurance carrier. The Board may adopt operating rules regulating such items such as the type of furniture, plants and other items that may be maintained with any outdoor Common Area, the number of people who may use an area at any given time, and the hours of permitted use of the areas. The rules may vary depending on the location of the area and its visibility from other Condominiums, Common Area or the street.

7.13 SOUND TRANSMISSION.

A. Floor Covering. Each hallway and room (other than the kitchen and bathrooms) in a Unit must have carpet and pad or other noise deadening materials approved by the Board in 80 percent of its square footage. Except for replacing existing flooring with materials of equal

or greater acoustical insulation value as that being removed, an Owner must obtain the prior approval of the Board, according to the procedures set forth in the Bylaws or otherwise established by the Board for review of improvements, before removing or replacing carpet and pad or other existing flooring materials

B. Audio Equipment. Speakers and other audio equipment may not be attached to any wall or ceiling, or placed on the floor, in a manner that would cause or increase sound transmission between the Units or cause vibrations to be felt in an adjacent Unit.

C. Wheeled Recreational Vehicles. Wheeled recreational vehicles such as bicycles, tricycles, scooters, wagons, roller skates and roller blades, may not be used within any Unit or interior Common Area. The Board may promulgate operating rules limiting or prohibiting use of those items in exterior Common Areas.

7.14 HAZARDOUS MATERIALS. No flammable or hazardous materials may be stored in the Common Area or any Unit, except those materials necessary for the maintenance, care and operation of the Common Area or Unit, and then only in such quantities and containers as allowed by law. To the extent storage of hazardous materials is permitted, such storage must be in accordance with building, fire, health and safety requirements as set forth by governmental authorities and insurance carriers.

7.15 SMOKING. This is a smoke-free Project. No smoking is permitted in any Unit or Common Area, including Exclusive Use Common Areas.

ARTICLE 8 Maintenance and Repair Obligations

8.1 OWNER'S MAINTENANCE AND REPAIR OBLIGATIONS.

A. Unit. Each Owner must maintain his or her Unit in good condition and repair at his or her own expense. Each Owner must perform commonly accepted homeowner's maintenance and repair responsibilities within his or her Unit. Each Owner must comply with maintenance standards and guidelines provided by the Association or by Declarant upon initial sale of the Unit, and with manufacturers' instructions for all improvements and fixtures that are part of the Unit, such as appliances, countertops, cabinets, and wall and floor coverings. Maintenance and repair obligations also include the obligation to perform regular inspections for the portions of the Unit and the Common Area for which the Owner is responsible.

B. Exclusive Use Common Areas. Each Owner must keep all Exclusive Use Common Areas appurtenant to his or her Unit clean and neat. Each Owner must repair and replace window glass in the windows of the Owner's Unit. The Owner of Unit 101 to which the yard area is appurtenant must maintain, irrigate and landscape the area at his or her sole expense.

Except for plants, all improvements or additions to the yard area that will be more than 18" above grade are not considered to be landscaping and require prior approval of the Association according to Section 6.1.

C. Obligation to Inspect and Notify. Each Owner must promptly report to the Association any evidence of water intrusion and any other defective condition the Association is responsible to maintain that is evident from within the Owner's Unit or from an Exclusive Use Common Area appurtenant to the Owner's Unit. An Owner is responsible for the cost of any work required because of his or her delay in reporting the evidence of water intrusion or other defective condition. An Owner must reimburse the Association for the cost of work that is not covered by insurance, or, if repair of the condition is covered by insurance, that portion of the cost that is not paid by the Association's insurance carrier, including the insurance deductible. The Association may levy a reimbursement assessment against the Owner if the Owner fails to reimburse the Association for any amount owed by the Owner to the Association under this section.

D. Failure to Maintain and Repair. If an Owner fails to maintain his or her Unit or the Exclusive Use Common Areas appurtenant to his or her Unit as required by the Governing Documents, the Association may, after notice and the opportunity to be heard according to the procedures set forth in the Bylaws or otherwise adopted by the Board, enter the Unit and perform the necessary work. The Owner must reimburse the Association for the cost of work that is not covered by insurance, or, if repair of the condition is covered by insurance, that portion of the cost that is not paid by the Association's insurance carrier, including the insurance deductible. The Association may levy a reimbursement assessment against the Owner if the Owner fails to reimburse the Association for any amount owed by the Owner to the Association under this section.

E. Maintenance Recommendations. Each Owner is subject to all maintenance recommendations provided by Declarant, including all guides and other documents and maintenance schedules as they pertain to the Owner's Unit and those portions of the Common Area, if any, that an Owner is required to maintain and repair. Civil Code Sections 907 and 945.5 provide that Owners and the Association have an affirmative duty to maintain the Project pursuant to written maintenance recommendations.

8.2 ASSOCIATION'S MAINTENANCE AND REPAIR OBLIGATIONS. The Association must maintain all portions of the Project that are not maintained by the Owners.

A. In General. The Association must maintain in good condition, repair and replace the Common Area, including all Exclusive Use Common Areas except for those to be maintained by Owners under Section 8.1B. Specific portions of Common Area that must be maintained by the Association include the driveway, all landscaping and irrigation systems (except for those contained in the Exclusive Use Common Area yard and the planters on the Exclusive Use Common Area roof decks), the fences, storm water and sanitary sewer facilities, the roof (including the roof underneath decks and planters), exterior painting and

all exterior building improvements and all lighting in the Common Area. Association maintenance and repair obligations include the obligation to perform regular inspections of those portions of the Project for which the Association is responsible. The Association shall be responsible for center lane modifications that may be required in the future to coordinate with Caltrans street improvements proposed along the portion of Lincoln Avenue near the Project.

B. Wood-Destroying Pests. The Association is responsible for the repair and maintenance of Common Area occasioned by the presence of wood-destroying pests and organisms in accordance with the procedure set forth in Civil Code Section 4785.

C. Water Intrusion and Defective Conditions. The Association has the authority to inspect the Common Area and the Units for evidence of water intrusion or other defective conditions that the Association is required to repair. The Association must repair any water damage or other defective condition found during an inspection.

D. Utility Installations. The Association must maintain all utility installations except those maintained by utility companies. If a utility installation exclusively serves one Unit but is located in the Common Area, the Association is responsible for maintenance, repair and replacement of the installation, but any portion of the cost of the work not covered by insurance must be paid by the Owner of the Unit of which that installation is a part. The Board may require that before it performs the work, the Owner pay to the Association the cost of the work, or that portion of the cost that will not be paid by the Association's insurance carrier if the condition is covered by insurance, unless delay in performing the work would be detrimental to the health, safety or welfare of the Owners or result in damage to the Common Area or any Unit. The Association may levy a reimbursement assessment against the Owner if the Owner fails to reimburse the Association for any amount owed by the Owner to the Association under this section.

E. Common Area Damages Caused by an Owner. If damage to the Common Area is caused by the willful or negligent act or omission of an Owner, or his or her guests or tenants, the Association must repair the damage and may levy a reimbursement assessment against the Owner for the cost of the work that is not covered by insurance, or that is not paid by the Association's insurance carrier if the condition is covered by insurance, including the insurance deductible.

F. Maintenance Recommendations. The Association is subject to all maintenance recommendations provided by Declarant, including all guides and other documents and maintenance schedules, as they pertain to the Common Area and those portions of the Units, if any, that the Association is required to maintain and repair. Civil Code Sections 907 and 945.5 provide that Owners and the Association have an affirmative duty to maintain the Project pursuant to written maintenance recommendations.

G. Inspection Obligations. The Association must perform regular inspections of those

portions of the Project for which the Association is responsible and to maintain copies of inspection reports and maintenance and repair recommendations. The Association must provide copies of inspection reports and maintenance and repair recommendations to Declarant within 15 days of Declarant's written request.

8.3 MAINTENANCE RESPONSIBILITY LIST. The types of items to be maintained by the Association and the individual Owners are set forth on the Maintenance List attached to this Declaration as Exhibit B. The Board has the sole authority to determine whether the Association or the Owners are responsible for maintenance of any item not included on the Maintenance List taking into account whether the item is used by one Owner only, by one but not all of the Owners, or by all of the Owners. The Board may amend the Maintenance List without the approval of the Owners by recording an amended Maintenance List in the San Francisco County Records.

ARTICLE 9 Insurance Coverage

9.1 REQUIRED COVERAGE. The Association must acquire and maintain the following insurance coverage:

A. Fire and Casualty. The Association must maintain a master policy of fire and casualty insurance.

(1) The policy must include coverage for:

a. all Common Area improvements described in Section 1.5 and landscaping located within the Common Area, but excluding land, foundations, excavations and other items typically excluded from property insurance coverage, and

b. standard components of the Unit as defined in Section 1.20 that were installed when the Project was originally constructed, and any equivalent replacements to them. However, any upgrades installed by an Owner are excluded to the extent the replacement cost of the upgraded improvements exceeds the insurable replacement value of the original Unit improvements, as determined on the date that immediately precedes the date of the damage or destruction. Personal property located in a Unit is also excluded.

(2) The policy must provide coverage against losses due to fire and other casualties normally covered by a "special form" policy or its equivalent. Coverage must be in an amount equal to the full insurable replacement cost of the covered property and include an agreed amount endorsement or its equivalent and a building laws endorsement or its equivalent.

(3) The policy must be in a form and from an insurance carrier satisfactory to the

Board and to any first Mortgagee that inquires of the Association as to the terms of the policy. The policy must be primary and noncontributing with any other insurance policy covering the same loss. The policy must waive all subrogation rights against any Owner or occupant and his or her family members and invitees and provide that coverage may not be canceled or substantially changed without at least thirty days' prior written notice to the Association, each Owner, and his or her first Mortgagee.

B. Commercial General Liability. The Association must obtain and maintain commercial general liability insurance insuring the Association, any managing agent, and the Owners and occupants of the Condominiums, and their respective family members, guests, invitees, and the agents and employees of each of them, against any liability incident to the ownership or use of the Common Area or any other real or personal property owned or maintained by the Association, and including, if obtainable on commercially reasonable terms, a cross-liability or severability-of-interest clause or endorsement insuring the liability of each insured against claims by each other insured. The limits of the insurance may not be less than \$2,000,000, or any greater amount required by Civil Code Section 5805, covering all claims for death, personal injury, and property damage arising from a single occurrence. This insurance must include coverage against water damage liability, liability for non-owned and hired automobiles, liability for the property of others, and any other liability or risk customarily covered with respect to developments similar in construction, location and use.

C. Director and Officer Liability Insurance. The Association must purchase and maintain insurance on behalf of any director, officer or member of a committee of the Association against any liability asserted against or incurred by any of these persons in their capacity or arising out of their status as agents of the Association, regardless of whether the Association has the power to indemnify these persons against liability under applicable law. The insurance must be in an amount of not less than \$1,000,000, or any greater amount required by Civil Code Section 5800 and must include a "duty to defend" provision and a "pay on behalf of" clause.

D. Fidelity Bond. The Association must purchase and maintain a fidelity bond covering its directors, officers, and employees in an amount that is equal to or more than the combined amount of the reserves of the association and total assessments for three months. The bond coverage also must include computer fraud and funds transfer fraud. If the association uses a managing agent or management company, the fidelity bond coverage must include dishonest acts by that person or entity and its employees.

E. Worker's Compensation Insurance. Worker's compensation insurance to the extent necessary to comply with any applicable law.

9.2 INSURANCE REQUIRED BY CERTAIN LENDERS. When FNMA or FHLMC is a Mortgagee, an insurer or guarantor of a Mortgage, or an Owner of a Condominium within the Project, a policy required under this Declaration must satisfy the minimum requirements imposed for this type of Project by FNMA or FHLMC with respect to amount, term coverage, deductible,

named insureds, loss payees, standard mortgage clauses, notices of change and cancellation, and insurance company rating. However, to the extent that coverage is not available upon reasonable terms and at a reasonable cost, or has been modified or waived in writing by FNMA or FHLMC, it need not be obtained.

9.3 REVIEW OF POLICIES; ADDITIONAL INSURANCE. All policies of insurance must be reviewed at least annually and adjusted, if necessary, to provide coverage and protection as the Board deems prudent or as reasonably required by any first Mortgagee. The Board may obtain additional policies of insurance other than those required by this article as it deems necessary or prudent.

9.4 OWNER'S INSURANCE. Each Owner must maintain property insurance insuring against losses to the Owner's personal property located within the Unit and Exclusive Use Common Area appurtenant to the Unit, and to upgrades and fixtures installed by the Owner that are part of the Unit and are not covered by the Association's property insurance described in Section 9.1. Each Owner must maintain liability insurance insuring against any liability to persons or property arising from any act or omission occurring within the Owner's Unit. The Board may establish reasonable minimum liability insurance amounts for the Units.

All individually owned insurance must contain a waiver of subrogation, and all Owners are deemed to have waived subrogation rights as to the Association and other Owners and occupants and their family members and invitees whether or not their policies so provide. An Owner may not separately insure any property covered by the Association's property insurance, and is liable to the Association to the extent of any diminution in insurance proceeds payable to the Association resulting from doing so. The Association is not liable for damages incurred by an Owner on account of injuries to person or property where the Owner fails to carry the required insurance.

9.5 INSURANCE PREMIUMS. The cost of the Association's insurance premiums must be included in the regular assessment levied by the Association.

9.6 NOTICE OF LAPSE, CANCELLATION OR NONRENEWAL OF INSURANCE POLICIES. The Association must, as soon as reasonably practical, notify the Owners by first-class mail if any of the insurance policies required to be maintained by it have lapsed or been canceled and not immediately replaced, or if there is a significant change in the terms of any insurance policy, such as a reduction in coverage or limits or an increase in the deductible. If the Association receives any notice of nonrenewal of an insurance policy, it must immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

9.7 SETTLEMENT OF INSURANCE CLAIMS. The Association is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association. The Association is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise, and to execute releases in favor of any insurer on behalf of the Owners and itself with respect to any policy carried by the Association.

ARTICLE 10
Damage or Destruction; Condemnation

10.1 DAMAGE TO A SINGLE UNIT. If a single Unit within the Project is damaged by a casualty that is covered by insurance, the insurance proceeds must be paid to the Owner of the Unit and his or her Mortgagee according to their respective interests in the Condominium. The insurance proceeds must be used to rebuild and repair the Unit. If the proceeds are insufficient to complete the work, the Owner must pay all additional sums necessary to complete the rebuilding and repair. If a single Unit within the Project is damaged by a casualty that is not covered by insurance, the entire cost of repairing and rebuilding the Unit must be paid by the Owner.

10.2 DAMAGE TO TWO OR MORE UNITS OR COMMON AREA. If the damage extends to two or more Units or any part of the Common Area, the following apply:

A. Insurance Proceeds. All insurance proceeds and proceeds from a special assessment levied to provide sufficient funds to complete the repair and rebuilding of damaged improvements must be held by the Association for the benefit of the Owners and their Mortgagees according to their respective interests in the Condominiums, and must be deposited with a third-party depository that supervises disbursement of funds, such as an insurance trustee or a commercial lending institution experienced in the disbursement of construction loan funds. However, if the Board determines that the amount of proceeds required to complete the repair and rebuilding is so small that the cost of a third-party depository is excessive in relation to that amount, the proceeds may be deposited into an Association bank account established for the sole purpose of holding monies for the repair and rebuilding and disbursed by the Board.

B. Bids for Reconstruction. The Board must retain a construction consultant, who is a licensed general contractor, architect, or engineer with at least five years' experience in repair and rebuilding of property damaged through fire or other casualty. In consultation with the consultant, the Board must obtain firm bids from two or more responsible contractors to rebuild the Project, and may also obtain an estimate from the insurance carrier of the work it will perform for the amount of available insurance proceeds. The Board must accept the bid or insurance estimate it considers most favorable, conditional upon the levy of a special assessment if funds in excess of available insurance proceeds plus Association reserve funds are required to complete the reconstruction. If the Board determines that the amount of proceeds required to complete the repair and rebuilding is so small that the cost of a construction consultant is excessive in relation to the cost of the work, the Board may waive the requirement.

C. Obligation to Rebuild; Special Assessment. The Board must contract to repair and rebuild the damaged portions of all Units and the Common Area if:

- (1) the insurance carrier offers the full amount required to repair and restore all of the damage;

(2) the difference between (a) total insurance proceeds plus the amount of Association reserves and (b) the cost of the repairs or rebuilding does not require a special assessment approved by a Vote of a Quorum of Members under Section 4.4; or,

(3) the difference between (a) total insurance proceeds plus the amount of Association reserves and (b) the cost of the repairs or rebuilding requires a special assessment approved by a Vote of a Quorum of Members under Section 4.4 and the Board has obtained the vote. Failure of the Owners to approve the special assessment will be deemed an election not to repair and rebuild.

D. Election Not to Rebuild. Upon an election not to rebuild, the Association, as agent for the Owners, must promptly sell the entire Project, in its then condition, on terms satisfactory to the Board. For the purpose of effecting a sale under this section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. The net proceeds and all funds held by the third party depository described in subsection A. must be distributed to the Owners and their respective Mortgagees proportionately, according to the respective fair market values of the Units at the time of the destruction as determined by a qualified independent appraiser, with an M.A.I. certificate or the equivalent, selected by the Board. The Association must pay the cost of the appraisal. If the Association fails to sell the Project promptly and subject to the requirements of Civil Code Section 4610, any Owner may bring an action for judicial partition of the tenancy in common ownership of the Project.

Upon distribution of proceeds from the sale of the Project, this Declaration terminates.

E. Standards for Rebuilding and Repair. The Project must be rebuilt to substantially the same or better condition than existed immediately prior to the damage, modified to comply with building codes and construction standards in effect at the time of the rebuilding.

F. Emergency Repairs. Without waiting to obtain insurance settlements or bids, the Board may undertake emergency repair work as it deems necessary.

G. Notice of Damage or Destruction. Within 60 days after damage or destruction occurs, the Board must, and if it does not, any Owner, Mortgagee, the insurer or the third party depository described in subsection A. may record in the County Recorder's Office a sworn declaration setting forth a description of the damage or destruction, the name of the insurer against whom the claim is made, the name of the third party depository and a statement that the sworn declaration is recorded pursuant to this section of the Declaration.

10.3 CONDEMNATION. The Association is the representative of the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or part of the Common Area. In the event of a taking or acquisition of all or part of the Common Area by a condemning authority, the award or proceeds of settlement is payable to the Association, or a trustee appointed by the Association, for the use and benefit of the Owners and

their mortgagees as their interests may appear. In the event of a taking of any Condominium in the Project by eminent domain, the Owner is entitled to receive the award. An award for a taking that extends to two or more Condominiums or the Common Area must be apportioned among the Owners according to a court judgment or agreement between the condemning authority and each of the Owners. In the absence of such an apportionment, the award must be distributed among the Owners and their respective Mortgagees according to the relative values of the Condominiums affected as determined by independent appraisal in accordance with the procedure set forth in Section 10.2D.

ARTICLE 11

Mortgage Protection Provisions

11.1 "MORTGAGE, MORTGAGEE, MORTGAGOR" DEFINED. "Mortgage" includes a deed of trust as well as a mortgage, and means a conveyance of a security interest in real property made in good faith and for value. "Mortgagee" includes a beneficiary or a holder of a deed of trust as well as a mortgagee. "Mortgagor" includes the trustor of a deed of trust as well as a mortgagor.

11.2 MORTGAGE PERMITTED; VALIDITY OF MORTGAGE LIEN. Any Owner may encumber his or her Condominium with a Mortgage. A breach of any of the provisions of this Declaration does not invalidate the lien of a first Mortgage made in good faith and for value. This Declaration is binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

11.3 REQUIRED CONSENT OF ELIGIBLE MORTGAGE HOLDERS.

A. Eligible Mortgage Holder. As used in this Section 11.3, "eligible mortgage holder" means a first Mortgagee, or the insurer or governmental guarantor of a first Mortgage.

B. Amendments of a Material Nature. Amendments to the provisions of the Governing Documents of a material adverse nature to Mortgagees require the approval of eligible mortgage holders that represent at least 51% of the votes of Units that are subject to mortgages held by eligible mortgage holders. Some examples of amendments that are of a material adverse nature to Mortgagees are:

(1) Except as otherwise provided in this Declaration for cases of major damage, the use of hazard insurance proceeds for a purpose other than the repair, replacement, or reconstruction of the Property; to abandon the Property; or to terminate the Association;

(2) A 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;

(3) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs or for other reasons;

(4) Any action to 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); or

(5) Failure to maintain fire and any extended coverage insurance on insurable property owned by the Association, including any Common Area improvements, in an amount not less than 100% insurable value based on current replacement cost.

C. Implied Consent. An eligible mortgage holder is assumed to have approved a written proposal to amend a provision of the Governing Documents if it fails to submit a response to the proposal within 60 days after it has received proper notice of the proposal, provided the notice was delivered by certified or registered mail, "return receipt" requested.

11.4 NOTICE TO MORTGAGE HOLDERS, INSURERS AND GUARANTORS. A mortgage holder, insurer or guarantor is entitled to timely written notice of the following:

A. Any condemnation loss or any casualty loss that affects a material portion of the Project or the Unit securing its mortgage;

B. Any 60 day delinquency in the payment of assessments owed by the Owner of any Unit on which it holds the mortgage;

C. Any lapse, cancellation or material modification of an insurance policy maintained by the Association; or

D. Any proposed action that requires the consent of eligible mortgage holders, as specified in Section 11.3.

11.5 RIGHTS TO INSPECT, RECEIVE STATEMENTS, ATTEND MEETINGS.

A. All Owners and lenders, and all holders, insurers or guarantors of any first Mortgage are entitled to inspect current copies of the Declaration, Bylaws, the Association rules and any other rules concerning the Project and the books, records and financial statements of the Association. Inspection may be made upon request, during normal business hours or under other reasonable circumstances.

B. If the Association has not prepared an audited financial statement, the holder, insurer or guarantor of any first Mortgage may have an audited financial statement for the immediately preceding fiscal year prepared at its own expense.

C. Upon written request to the Association, a first Mortgagee is entitled to receive written notice of, and may appear (but not vote) at meetings of the Owners and the Board.

11.6 LIMITATION ON RIGHT OF FIRST REFUSAL. The Governing Documents contain no provision creating a “right of first refusal,” but if any of these rights is created in the future, they must not impair the rights of any first Mortgagee to foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage, accept a deed (or assignment) in lieu of foreclosure in the event of a default by the Mortgagor, or sell or lease a Condominium acquired by the Mortgagee.

11.7 PRIORITY AS TO PROCEEDS AND AWARDS. No Owner or other party has priority over the rights of a Mortgagee pursuant to its Mortgage in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or the Common Area.

11.8 SUBORDINATION. Any lien created or claimed under the provisions of this Declaration is subject and subordinate to the rights of any first Mortgagee with a first Mortgage that encumbers a Condominium, and will not defeat, invalidate or impair the obligation or priority of a first Mortgage unless the Mortgagee expressly subordinates its interest in writing.

11.9 LIEN ON INDIVIDUAL UNIT. All taxes, assessments and charges which may become liens prior to a first Mortgage under local law relate only to the individual Units and not to the Project as a whole.

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

11.11 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 or she remains in possession, but shall have no obligation to pay assessments accruing after the date title is transferred.

ARTICLE 12 General Provisions

12.1 ENFORCEMENT. The Association or any Owner may enforce the Governing Documents. An Owner may not seek to enforce this Declaration until the Owner has delivered a written request to the Association for enforcement and the Association fails to respond to the request within 60 days from the date of delivery of the request. If the Association declines the enforcement request in response to the Owner's notice, the response must include the reasons that the request is denied.

The parties to a dispute between the Association and an Owner arising under this Declaration must use good faith efforts to resolve the dispute through alternative dispute resolution according to the procedures set forth in the Bylaws or operating rules adopted by the Board. The Association may not file a civil action regarding a dispute in which a Member has requested internal dispute resolution

under Section 9.2 of the Bylaws unless the Association has engaged in good faith with those procedures. In addition, neither the Association nor an Owner may file an action in the superior court for enforcement of the Governing Documents that includes a request for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional amount of the small claims court unless the parties have endeavored to submit their dispute to alternative dispute resolution as required by Sections 5925 through 5960 of the Civil Code and according to the procedures set forth in the Bylaws or operating rules adopted by the Board. The foregoing does not apply to a small claims action for an assessment dispute.

This section applies to a dispute between the Association or an Owner and Declarant acting in its capacity as an Owner of a Unit only. Any dispute between the Association or an Owner and Declarant arising out of defects in design or construction of the Project must be resolved in accordance with Article 13.

12.2 TERM. The initial term of this Declaration is 50 years from the date it is recorded, unless it is terminated earlier because of damage and destruction or condemnation as provided in Sections 10.2 and 10.3 or by partition as permitted by Civil Code Section 4610. After that 50 year period, this Declaration will extend automatically for successive periods of 10 years, unless by a vote of 67% of all Owners, the Owners vote to terminate it, and an instrument in writing to that effect is recorded within the year preceding the beginning of the next period of 10 years.

12.3 AMENDMENTS. Prior to close of escrow on the sale of the first Condominium, this Declaration may be amended by Declarant. Thereafter, this Declaration may be amended by an instrument in writing signed and acknowledged by the president or the secretary of the Association certifying under penalty of perjury that the amendment was adopted with the consent of Owners as provided in this section.

A. The Declaration may be amended only by a vote of more than 50% of all of the Owners entitled to vote and the vote of more than 50% of all of the Owners entitled to vote other than Declarant. Where a greater percentage than a majority is required to amend any provision of this Declaration, amendment of that provision requires the approval of the prescribed percentage of all of the Owners entitled to vote, and the prescribed percentage of all of the Owners entitled to vote other than Declarant. This Declaration may also be amended in accordance with the provisions of Civil Code Section 4275.

B. Any provision of this Declaration that confers rights and benefits on Declarant specifically may not be amended or rescinded without the prior written consent of Declarant, except as permitted by Civil Code Section 4230.

C. An amendment must be recorded and becomes effective only upon being recorded in the County Recorder's Office. An amendment does not adversely affect the rights of the holder of any Mortgage of record recorded prior to the amendment.

12.4 OWNER'S COMPLIANCE. Each Owner must comply with the provisions of this Declaration, the Articles, the Bylaws, the operating rules, and the decisions and resolutions of the Board. All agreements and determinations lawfully made by the Board in accordance with the voting percentages established in this Declaration or the Bylaws are binding on Declarant, all Owners, their successors and assigns.

12.5 POWER OF ATTORNEY. Any power of attorney exercisable by the Board on behalf of the Owners under this Declaration may be exercised only after the recording with the County Recorder of a certificate, executed by a majority of the Board, that the power of attorney is being exercised under the authority of this Declaration. The certificate is conclusive evidence of proper exercise in favor of any person relying on it in good faith.

12.6 NOTICES. Any notice permitted or required by the Governing Documents must be in writing and given in compliance with the requirements of the Act.

A. Any notice required to be given to an Owner by the Association must be given by individual delivery by either of the following means:

(1) first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document must be addressed to the recipient at the address last shown on the books of the Association; or

(2) e-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery. The consent may be revoked, in writing, by the recipient.

If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail. If a document is delivered by electronic means, delivery is complete at the time of transmission.

B. At least annually, each Owner must provide the Association with the following information:

(1) The address or addresses to which notices from the Association are to be delivered;

(2) An alternate or secondary address to which notices from the Association are to be delivered;

(3) The name and address of a legal representative who can be contacted in the event of the Owner's extended absence; and

(4) Whether the Unit is occupied by the Owner, rented, or vacant.

If the Owner fails to provide above information, the address of the Unit is the address to which notices are to be delivered.

12.7 INDEMNIFICATION. Each Owner is liable to the Association for damage to the Common Area caused by the willful misconduct or negligence of the Owner, members of the Owners' family, and a contract purchaser, tenant, guest or invitee of the Owner, to the extent that the damage is not covered by insurance. Each Owner must indemnify and defend each other Owner and the Association against any claim of personal injury or property damage that occurred in the Owner's Unit (including damage from water leaking from the responsible Owner's Unit) and was caused by the willful or negligent act or omission of the Owner, his or her family members, contract purchasers, tenants, guests and invitees to the extent the injury or damage is not covered by insurance.

12.8 STANDING OF ASSOCIATION. The Association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual Owners in matters pertaining to the following: (a) enforcement of the Governing Documents; (b) damage to the Common Area; (c) damage to a Unit that the Association is obligated to maintain or repair, and (d) damage to a Unit that arises out of, or is integrally related to, damage to the Common Area or a Unit that the Association is obligated to maintain or repair.

12.9 NOTICE OF NEW OWNERSHIP. No later than five days after close of escrow on the purchase of a Condominium, the new Owner must give written notice to the Association of the new Owner's mailing address, telephone number and email address. Any notice required under the Governing Documents delivered to the selling Owner constitutes valid notice to an Owner from the Association until the Association receives notice of new ownership from the new Owner.

12.10 CORRECTIONS. Notwithstanding anything in this Declaration to the contrary, Declarant reserves the right as the attorney-in-fact for each Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration or any exhibits to it, including the Condominium Plan, and the consent of neither the Association nor any Owner is required, provided that if the correction affects the size, location or access or use rights to any Unit or any Exclusive Use Common Area appurtenant to a Unit, the consent of the affected Owner is required.

12.11 FAIR HOUSING. No Owner may, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or occupancy of his or her Unit to any person of a specified race, color, religion, ancestry, national origin, sex, marital status, sexual orientation or physical disability.

12.12 SINGULAR AND PLURAL. The singular and plural number and masculine, feminine and neuter gender each include the other where the context requires.

12.13 STATUTORY REFERENCES. References to particular statutes of the State of California include any amendment of the statute. If a particular statute is repealed, reference to the statute will include any other statute that thereafter governs the same subject.

12.14 SEVERABILITY OF PROVISIONS. The provisions of this Declaration are independent and severable, and the invalidity or unenforceability of one does not affect the validity or enforceability of the others.

12.15 CONSTRUCTION OF PROVISIONS. The provisions of this Declaration must be construed liberally and in conjunction with the Bylaws and operating rules established by the Board to effect its purpose of creating a uniform plan for the development and operation of a condominium project pursuant to the provisions of Section 4000 et seq. of the California Civil Code.

12.16 CONFLICTS IN DOCUMENTS. Conflicts between laws and documents that apply to the Project will be resolved as follows.

A. To the extent of any conflict between the Governing Documents and the law, the law controls. In the event of a conflict between the Act and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of the Act prevail.

B. To the extent of any conflict between the Articles of Incorporation and the Declaration, the Declaration controls. To the extent of any conflict between the Bylaws and the Articles of Incorporation or Declaration, the Articles of Incorporation or Declaration control. To the extent of any conflict between the operating rules and the Bylaws, Articles of Incorporation, or Declaration, the Bylaws, Articles of Incorporation, or Declaration control.

C. If there are any conflicts in the definitions contained in the Declaration and any notes on the Map or the Condominium Plan, the definitions contained in the Declaration control.

12.17 NO WAIVER. The failure of the Association or an Owner to enforce any rights under the Governing Documents does not constitute a waiver of the right during the term of this Declaration or the waiver of any other right.

ARTICLE 13

DISPUTES REGARDING DEFECTS IN DESIGN OR CONSTRUCTION OR ARISING OUT OF SALE, INCLUDING MANDATORY BINDING ARBITRATION

13.1 NOTICE OF STANDARDS AND PROCEDURES. The Association and the Owners are advised of the existence of standards and procedures codified at Title 7 of Part 2 of Division 2 of the Civil Code (Civil Code sections 895 through 945.5). These standards and procedures impact the legal rights of the Association and the Owners with respect to design and construction defect disputes and related claims arising out of, or related to deficiencies in construction, design, and other aspects of residential construction, including, in Civil Code Sections 896 and 897, functionality standards that describe how the improvements and landscaping within the Project should function during certain applicable time periods (the “Functionality Standards”).

13.2 APPLICABILITY. Any claim, dispute or other controversy between (i) the Association and/or any Owner(s) and (ii) the Declarant or any general contractor or affiliated contractor who is a “builder” within the meaning of Civil Code Section 911, or any director, officer, member, shareholder, partner, employee or agent of any of them (individually and collectively the “Declarant” for purposes of this Article) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or services to the Project on behalf of Declarant ("other Responding Party"), relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation and/or operation of the Project including any claims made under Civil Code Sections 896 and 897 (individually and collectively the “Claim”), must be resolved in accordance with this section.

13.3 NOTICE OF SIGNIFICANT LEGAL PROCEEDINGS. Not later than 30 days prior to the filing of any civil action against the Declarant or other Responding Party for alleged damage to the Common Area or portions of the Units that the Association is obligated to maintain or repair, or alleged damage to the Units that arises out of, or is integrally related to, damage to the Common Area or portions of the Units the Association is obligated to maintain or repair, the Board must provide written notice to each Member of the Association. The notice must (1) state the date and location of the meeting, (2) that the meeting will take place to discuss problems that may lead to the filing of a civil action and the potential impacts of filing a civil action, including any financial impacts, and (3) describe the options, including civil actions, that are available to address the problems. If the Board in good faith determines that there is insufficient time to provide 30 days' notice to the Members, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board must provide the Members with the required notice.

13.4 INITIATION OF CIVIL CODE SECTIONS 896 AND 897 CLAIMS. This section becomes effective automatically on the date that the first director is elected to the Board without the vote of Declarant.

A. Meeting. Any director who was not appointed by Declarant or elected by votes cast by Declarant ("Non-Declarant Director") may at any time request a meeting for the purpose of discussing, inspecting, investigating and/or initiating any claims under Civil Code Sections 896 or 897. Notice of the meeting must be sent in the same manner as notice for special meetings of the Board. Any director appointed by Declarant or elected by votes cast by Declarant is entitled to attend the meeting but may not participate or vote. The meeting must be open to all Members unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. If funds are requested by the Non-Declarant Directors to inspect, investigate and/or initiate the claim on behalf of the Association, the Board may levy a special assessment for this purpose in accordance with Section 4.4.

B. Authority of Non-Declarant Directors Only. The Non-Declarant Directors have the sole and exclusive authority to initiate claims on behalf of the Association in connection with

the portions of the Project maintained by the Association for violations of the Functionality Standards. It is Declarant's intent to relinquish control over the Association's ability to decide whether to initiate a claim for violation of the Functionality Standards from and after the date of substantial completion of the Project. Therefore, a director appointed by Declarant or elected by votes cast by Declarant has no power or authority to participate in or vote on any action taken by the Association to initiate a claim for violation of the functionality standards.

13.5 BOARD MEMBER ATTENDANCE. In order to facilitate the resolution of any Claim in the best interests of the Association, at least one member of the Board with the authority to settle the Claim must be in attendance at all times to participate in any meeting, conference, proceeding, hearing or other similar situation in which settlement discussions may occur concerning the Claim.

13.6 ELECTION TO USE ALTERNATIVE NONADVERSARIAL PROCEDURES. Civil Code Sections 910 through 938 contain prelitigation procedures for resolution of a claim for violation of the Functionality Standards. As authorized by Civil Code Section 914, Declarant may elect to use those prelitigation procedures or use alternative procedures. Declarant elects to use the alternative nonadversarial prelitigation procedures. Declarant's election is made on behalf of Declarant and other Responding Parties.

13.7 MANDATORY BINDING ARBITRATION. If the parties are unable to settle a claim among themselves the matter must be resolved through binding arbitration. The Federal Arbitration Act governs the interpretation and enforcement of the arbitration provisions of this Article. The decision of the arbitrator shall be final and binding, except to the extent it may be vacated, modified or corrected as permitted by the Federal Arbitration Act. The arbitration proceedings must be conducted by and in accordance with the Streamlined or Comprehensive Rules and Regulations of the American Arbitration Association (AAA), or any successor to it, subject to the following:

A. Any fee to initiate the arbitration must be paid by Declarant, but the arbitration costs and fees, including any initiation fee, ultimately must be borne as determined by the arbitrator.

B. The venue of the arbitration proceedings must be in the County, unless the parties agree to a different location.

C. The arbitrator must be appointed within 60 days of the receipt of a written request to arbitrate the Claim by AAA. In selecting the arbitrator, the provisions of Section 1297.121 of the Code of Civil Procedure must apply. The arbitrator must be a retired judge or an attorney with at least ten years' real estate and construction law experience. An arbitrator may be challenged for any of the grounds listed in that Sections 1297.121 or 1297.124 of the Code of Civil Procedure.

D. The arbitrator is authorized to provide all recognized remedies available in law or equity in resolution of any Claim between the parties.

E. The arbitrator must follow California substantive law (but may receive hearsay evidence). The arbitrator is authorized to provide all recognized remedies available at law or in equity for any cause of action.

F. The arbitrator must issue a written decision within thirty (30) days after the hearing is closed. If any of the parties so requests, the arbitrator must also issue a reasoned award.

G. Each party must bear its own attorneys' fees and costs, including expert witness costs.

H. A petition to confirm an award may be filed in any court of competent jurisdiction in the County.

13.8 WAIVER OF JURY TRIAL AND RIGHT TO APPEAL. DECLARANT, AND BY ACCEPTING A DEED FOR ANY PORTION OF PROPERTY, THE ASSOCIATION AND EACH OWNER, AGREE (a) TO HAVE ANY CONSTRUCTION DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT; (b) TO GIVE UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE CONSTRUCTION DISPUTE LITIGATED IN A COURT OR JURY TRIAL; (c) TO GIVE UP THEIR RESPECTIVE RIGHTS TO APPEAL. IF ANY PARTY REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

13.9 NO AMENDMENT WITHOUT DECLARANT'S CONSENT. This Article 13 may be amended only with the written consent of Declarant.

13.10 CONFLICTS. In the event of a conflict between this Article and any other alternative dispute resolution procedures provided for by the Governing Documents or adopted by the Board, this section prevails.

Execution of Declaration and Consent to Condominium Plan

In executing this Declaration, the undersigned, who constitute all of the record owners of fee title to the property included in the condominium project subject to this Declaration, give their consent as required by Civil Code section 4290 to the recording of the Condominium Plan attached as an exhibit to this Declaration.

Declarant has executed this Declaration on _____, 20__.

Vincent O'Flynn

Joseph O'Flynn

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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

STATE OF)
COUNTY OF)

On _____, 20____ before me, _____, a
Notary Public, personally appeared

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

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

WITNESS my hand and official seal.

Signature

This area for official notarial seal.

EXHIBIT A - ATTACH CONDO PLAN

EXHIBIT B

Maintenance Responsibilities

This Exhibit describes the respective maintenance responsibilities of the Owners and the Association. It may include some improvements not found at the Project, and may omit some improvements found at the Project. It is the sole responsibility of the Board to determine whether maintenance of an improvement not mentioned below is the responsibility of the Owner or the Association.

If there is a conflict between this Exhibit and the Declaration, the provisions of the Declaration control.

Owner maintenance responsibilities include:

Appliances

Cabinets and other fixtures

Drains in the Exclusive Use Common Area decks, roof decks and yard -- the Owner should maintain and clean all drains before the beginning of each rainy season.

Drywall and sheet rock

Exclusive Use Common Areas specified in Section 8.1B

Exterior Doors - see below

Exterior light fixtures at entry, deck and yard, and other fixtures and bulbs where fixture is connected to Unit's electrical system

Heating system

Hot water heater

Interior Doors and hardware

Interior Light fixtures

Outlets and plugs for electrical and telecommunications wiring

Keys and garage door openers required for entry into the Project or the Owner's Unit

Partition walls within a Unit

Plumbing fixtures (sinks, toilets, etc.)

Smoke detectors - battery operated

Wall, floor and ceiling surfaces (e.g. paint, wallpaper, carpet and other flooring materials)

Window coverings

Windows - see below

Owners are reminded that they are obligated to notify the Association of any evidence of leaks or other defective condition that it is the responsibility of the Association to repair.

Association maintenance responsibilities include:

Drains in the Common Area roof deck - the Association should maintain and clean all drains in the deck before the beginning of each rainy season.

Electrical fixtures and outlets serving the Common Area (except those maintained by an Owner)

Elevator

Exclusive Use Common Areas specified in Section 8.2A

Fences

Floor, wall and ceiling surfaces in common areas - clean, paint, repair, replace

Irrigation System (other than in yard RY-101)

Landscaping (other than in yard RY-101)

Life Safety Systems - fire sprinkler system, including sprinkler heads within a Unit, hard-wired smoke alarms, fire alarm

Mailboxes

Retaining walls

Structural elements

Water proofing - roof, exterior paint, siding, waterproof membrane beneath decks

Exterior Doors and Windows: Responsibility for maintenance of exterior doors is assigned as follows. Exterior doors include front doors, and doors to decks and the yard, screen doors, and the garage door.

Exterior Doors. The Association is responsible for maintenance, repair and replacement of the door frame, door casing and door, and repair, refinishing and painting of door exterior. The Owner is responsible for repair and replacement of those portions of the door accessible from inside the Unit, including, repairing and painting the interior of the door, hardware, seals, weather stripping, and any other portion of the door assembly accessible from inside the Unit. The Association is responsible for maintenance, repair and replacement of the interior and exterior of the garage door.

Windows. The Association is responsible for maintenance, repair and replacement of the window frame, exterior trim, and repair, refinishing and painting of the exterior window frame. The Owner is responsible for repair and replacement of those portions of the window accessible from inside the Unit, including, repairing and painting the interior of the window frame and interior window trim, hardware, seals, weather stripping, window glass and any other portion of the window assembly accessible from inside the Unit.

Window Washing. Each Owner is responsible for washing the interiors of windows and those exterior windows that are accessible from a deck or yard or the interior of the Unit. The Association is responsible to wash exterior windows not accessible as just described.



Secretary of State
ARTS-CID
Articles of Incorporation of a
Common Interest Development Association

IMPORTANT — Read Instructions before completing this form.

Filing Fee – \$30.00

Copy Fees – First page \$1.00; each attachment page \$0.50;
 Certification Fee - \$5.00

Note: A separate California Franchise Tax Board application is required to obtain tax exempt status. For more information, go to <https://www.ftb.ca.gov>.

This Space For Office Use Only

1. Corporate Name (Go to www.sos.ca.gov/business/be/name-availability for general corporate name requirements and restrictions.)

The name of the corporation is West End Village Homeowners' Association

2. Business Addresses (Enter the **complete** business addresses. Item 2a cannot be a P.O.Box or "in care of" an individual or entity.)

a. Initial Street Address of Corporation - Do not enter a P.O. Box 1628 Fifth Avenue	City (no abbreviations) San Rafael	State CA	Zip Code 94901
b. Initial Mailing Address of Corporation, if different than item 2a	City (no abbreviations)	State	Zip Code
c. Business or Corporate Office of Common Interest Development, if any	City (no abbreviations)	State	Zip Code
d. Front street and nearest cross street for the physical location of the common interest development, if Item 2c is not physically on site Fifth Avenue and G Street			

3. Service of Process (Must provide either Individual **OR** Corporation.)

INDIVIDUAL – Complete Items 3a and 3b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) Joseph	Middle Name	Last Name O'Flynn	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 90 Magellan Avenue	City (no abbreviations) San Francisco	State CA	Zip Code 94116

CORPORATION – Complete Item 3c. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete Item 3a or 3b

4. Managing Agent, if any

a. First Name of Managing Agent Joseph	Middle Name	Last Name O'Flynn	Suffix
b. Address of Managing Agent 90 Magellan Avenue	City (no abbreviations) San Francisco	State CA	Zip Code 94116

5. Purpose Statement (Check the applicable box. Only **one box** may be checked.)

This corporation is a nonprofit **Mutual Benefit Corporation** organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law. This corporation is an association formed to manage a common interest development under the:

- DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT (CALIFORNIA CIVIL CODE SECTION 4000 ET SEQ.).
 COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENT ACT (CALIFORNIA CIVIL CODE SECTION 6500 ET SEQ.).

6. Additional Statements (The following statements are for tax-exempt status in California. **See Instructions and Filing Tips.**)

- a. The specific purpose of this corporation is to manage a common interest development.
 b. Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.

7. Read and Sign Below (This form must be signed by each incorporator. **See Instructions.** Do not include a title.)

Margaret Berlese
 Signature

Margaret J. Berlese
 Type or Print Name

**RECORDING REQUESTED, AND
WHEN RECORDED RETURN TO:**

Stormwater Coordinator/Administrator
Public Works Department
City of San Rafael
111 Morphew Street
San Rafael, CA 94901

SPACE ABOVE THIS LINE FOR RECORDERS USE

Record without Fee per GC 27383

STORMWATER MANAGEMENT FACILITIES AGREEMENT

CITY OF SAN RAFAEL

**STORMWATER MANAGEMENT FACILITIES OPERATIONS AND
MAINTENANCE AGREEMENT**

PROJECT: West End Village

OWNER'S NAME: Joseph O' Flynn and Vincent O' Flynn

ASSESSOR'S PARCEL NUMBER: 011-193-10

**STORMWATER MANAGEMENT FACILITIES
OPERATION AND MAINTENANCE AGREEMENT**

THIS STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into this 25 day of July, 2022 by and between **Joseph O' Flynn and Vincent O' Flynn** (hereinafter referred to as "Property Owner") and the City of San Rafael ("CITY").

RECITALS:

This Agreement is made and entered into with reference to the following facts:

WHEREAS, stormwater management facilities (hereinafter referred to as "Facilities") have been installed in and must be maintained for the development called **West End Village**, located at **1628 Fifth Avenue, San Rafael CA 94901**, Marin County, State of California and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property Owner is the owner of the Property; and

WHEREAS, the Property Owner remains fully responsible for assuring that the Facilities were designed, constructed and installed in full compliance with all applicable laws, regulations and ordinances, all requirements applicable to the development of the Property, and all Best Management Practices, in accordance with the Erosion and Sediment Control Plan; and

WHEREAS, the CITY Urban Runoff Pollution Prevention Ordinance, City of San Rafael Municipal Code chapter 9.30 ("CITY Ordinance") requires proper operation and maintenance of the Facilities constructed on this Property; and

WHEREAS, the CITY has approved the Stormwater Control Plan prepared by **LTD Engineering, Inc.** on the day of **September 3, 2021**, as this Plan is on file at 111 Morphew Street, San Rafael 94901 and may be subsequently modified from time to time with CITY approval; and

WHEREAS, the development conditions of approval require that Facilities, as shown on the approved Stormwater Control Plan, be constructed and properly operated and maintained by the Property Owner; and

WHEREAS, the Stormwater Control Operation and Maintenance Plan (together with the Stormwater Control Plan, hereinafter the "Plans") includes an annual inspection form for the Facilities constructed on this Property, and

WHEREAS, this Agreement memorializes the Property Owner's maintenance, operations, and inspection obligations under the CITY Ordinance and the approved Plans.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

SECTION 1

Responsibility for Operation and Maintenance: The Property Owner will maintain printed copies of the approved Plans at the Property. The Property Owner must maintain the Facilities in good working condition acceptable to the CITY for the life of the project, and in compliance with the CITY Ordinance and the approved Plans. If significant changes to the operation and maintenance of the Facilities are proposed, the Property Owner is responsible for submitting a revised Stormwater Control Operation and Maintenance Plan to the CITY for approval. Upon transfer of the Property, the Property Owner shall provide the new owner with the current Plans and shall set forth in any transfer agreement a requirement that the new owner assume responsibilities set forth in the Plans and this Agreement.

SECTION 2

Inspection by Property Owner: The Property Owner, at its own expense, shall conduct annual inspections to ensure the Facilities are in good working order. The Property Owner may elect to use a qualified independent inspector to inspect the Facilities. The Property Owner shall send a report of the annual inspection to the Department of Public Works Stormwater Division at the addresses shown in Section 8 below. The annual inspection report shall include completion and certification of the form described in the approved Stormwater Control Operation and Maintenance Plan. If the Property Owner fails to submit the annual inspection report by December 31st, the CITY or its agents may (but without any obligation to do so) perform the inspection and invoice the Property Owner for the cost in accordance with Sections 3 and 4 below. If the inspection reveals that Facilities are not in good working order, Property Owner, at its own expense, shall undertake necessary action to restore Facilities to good working order.

SECTION 3

Right of Entry and Facility Inspection: The Property Owner hereby grants permission to the CITY, its employees and authorized agents to enter the Property, and to inspect the Facilities whenever any of the CITY or its agents deem it necessary in order to enforce provisions of the CITY Ordinance. The CITY its employees or authorized agents may enter the Property at any reasonable time to inspect the premises and Facilities operation, to inspect and copy records related to stormwater compliance, and to collect samples and take measurements. Whenever possible, these entities will provide notice prior to entry. The CITY may charge a fee to cover the costs of the inspection.

SECTION 4

Failure to Perform Required Facility Inspections, Repairs or Maintenance by the Property Owner: If the Property Owner fails to inspect and maintain the Facilities in good working order and in accordance with the approved Plans and the CITY Ordinance, the CITY, with prior notice and pursuant to the abatement procedures of San Rafael Municipal Code Chapters 1.40, 1.42, 1.44, and/or 1.46, may enter the Property to inspect or to return the Facilities to good working order and thereafter recover its costs in accordance with the abatement procedures of San Rafael Municipal Code Chapters 1.40, 1.42,

1.44, and/or 1.46. The CITY is under no obligation to maintain or repair the Facilities, and this Agreement shall not be construed to impose any such obligation on the CITY. If the CITY under this section takes any action to inspect the Facilities or to return the Facilities to good working order, the Property Owner shall reimburse the CITY for all the costs incurred by the CITY. The CITY will provide the Property Owner with an itemized invoice of the costs and the Property Owner will have 30 days to pay the invoice. If the Property Owner fails to pay the invoice within 30 days, the CITY may secure a lien against the Property of the Property Owner in the amount of such costs. In addition, the CITY may make the cost of abatement of the nuisance caused by the failure to maintain the Facilities a special assessment against the Property that may be collected at the same time and in the same manner as ordinary taxes are collected as provided in the abatement procedures of San Rafael Municipal Code Chapters 1.40, 1.42, 1.44, and/or 1.46. This Section 4 does not prohibit the CITY from pursuing other legal recourse against the Property Owner.

SECTION 5

Indemnity: The Property Owner shall defend, indemnify and hold harmless the CITY, its officials, employees and its authorized agents from any and all costs, losses, damages, accidents, casualties, occurrences or claims which might arise or be asserted against the CITY and which are in any way connected with the construction, operation, presence, existence or maintenance of the Facilities by the Property Owner, or from any personal injury or property damage that may result from the CITY or other public entities entering the Property under Section 3 or 4 herein above.

SECTION 6

Successors and Assigns: This Agreement shall be recorded in the Office of the Recorder, Marin County, California, at the expense of the Property Owner. This Agreement and the covenants of the Property Owner set forth in numbered Sections 1 through 5 above shall run with the land, and the burdens thereof shall be binding upon each and every part of the Property and upon the Property Owner, its successors and assigns in ownership (or any interest therein), and said covenants shall inure to the benefit of and be enforceable by the CITY, its successors and assigns in ownership of each and every part of the street and storm drains.

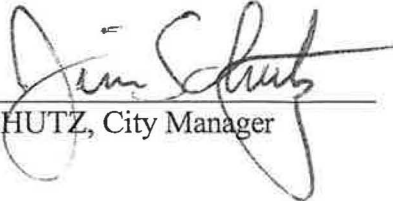


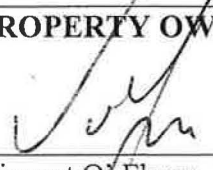
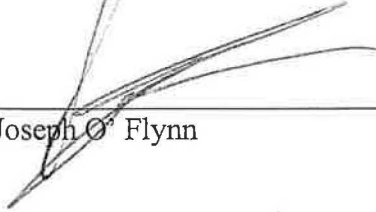
SECTION 7

Severability: The provisions of this Agreement shall be severable and if any one of the provisions of this Agreement is adjudicated invalid by a court of competent jurisdiction it shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

SECTION 8

Notices: All notices and other communications required or permitted to be given under this Agreement, including any notice of change of ownership, address or significant changes to the Facilities or Stormwater Control Operations and Maintenance Plan, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice must be given to the Property Owner, its successors and

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

<p>CITY OF SAN RAFAEL</p> <p> _____ JIM SCHUTZ, City Manager</p> <p>APPROVED AS TO CONTENT:</p> <p> _____ APRIL MILLER, Director of Public Works</p> <p>APPROVED AS TO FORM:</p> <p> _____ ROBERT F. EPSTEIN, City Attorney for</p>	<p>PROPERTY OWNER</p> <p> _____ Vincent O' Flynn</p> <p> _____ Joseph O' Flynn</p> <p>If Property Owner is an entity, Property Owner hereby represents and warrants that the persons executing this Agreement on behalf of Property Owner have full authority to do so and to bind Property Owner to each and every term of this Agreement.</p>
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Attachments: Acknowledgements
Exhibit A

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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

STATE OF California)SS
COUNTY OF Marin)

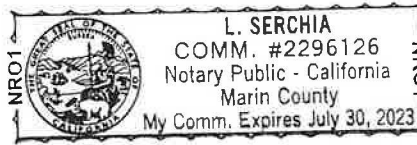
On July 21, 2022 before me, L. Serchia , Notary Public, personally appeared Vincent O'Flynn and Joseph O'Flynn

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

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

WITNESS my hand and official seal.

Signature *L. Serchia*



This area for official notarial seal.

**OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT
CAPACITY CLAIMED BY SIGNER**

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- INDIVIDUAL
- CORPORATE OFFICER(S) TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: _____

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

ACKNOWLEDGMENT

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

State of California
County of Marin)

On July 25, 2022 before me, Brenna Kathleen Nurmi, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature B. Nurmi (Seal)



EXHIBIT "A"
Property Description

Nine unit condominium building located at 1628 Fifth Avenue, San Rafael, CA 94901

Real property in the City of San Rafael , County of Marin, State of California, described as follows:

BEING ALL OF PARCEL TWO AND A PORTION OF PARCEL ONE AS SAID PARCELS ARE DESCRIBED IN THAT CERTAIN GRANT DEED FROM BRIAN TAYLOR PEARCE, AN UNMARRIED MAN AND BRIAN TAYLOR PEARCE, SUCCESSOR TRUSTEE OF THE ROBERT PEARCE LIVING TRUST TO VINCENT O'FLYNN, AN UNMARRIED MAN AND JOSEPH O'FLYNN, A MARRIED MAN, AS HIS SOLE AND SEPARATE PROPERTY, AS JOINT TENANTS RECORDED AUGUST 8, 2017 AS DOCUMENT 2017-0031709 IN THE OFFICE OF THE RECORDER OF THE COUNTY OF MARIN, STATE OF CALIFORNIA, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT ON THE NORTHERLY LINE OF FIFTH AVENUE, SAID POINT BEING SOUTH 83°13'45" EAST 74.13 FEET FROM THE INTERSECTION OF SAID NORTHERLY LINE OF FIFTH AVENUE AND THE EASTERLY LINE OF "G" STREET, SAID POINT ALSO BEING NORTH 83°13'45" WEST 2.25 FEET FROM THE SOUTHEASTERLY CORNER OF SAID PARCEL ONE; THENCE FROM SAID POINT OF BEGINNING, LEAVING SAID NORTHERLY LINE, NORTH 06°58'29" EAST 108.44 FEET TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL ONE, SAID POINT BEING SOUTH 83°15'00" EAST 55.49 FEET FROM THE NORTHWESTERLY CORNER OF SAID PARCEL ONE; THENCE EASTERLY ALONG LAST SAID NORTHERLY LINE SOUTH 83°15'00" EAST 11.50 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL ONE, SAID POINT ALSO BEING ON THE WESTERLY LINE OF SAID PARCEL TWO; THENCE NORTHERLY ALONG LAST SAID WESTERLY LINE NORTH 11°50'57" EAST 19.84 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL TWO; THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL TWO SOUTH 83°15'00" EAST 76.50 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL TWO; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID PARCEL TWO SOUTH 11°54'11" WEST 128.75 FEET TO THE SOUTHEASTERLY CORNER OF SAID PARCEL TWO, SAID POINT BEING ON THE SAID NORTHERLY LINE OF SAID FIFTH AVENUE; THENCE WESTERLY ALONG SAID NORTHERLY LINE, NORTH 83°13'45" WEST 78.63 FEET TO THE POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE APPROVING A LOT LINE ADJUSTMENT, CERTIFICATE NO. LLA18-002, RECORDED DECEMBER 20, 2019, AS INSTRUMENT NO. 2019-0048474 OF OFFICIAL RECORDS.

APN: 011-193-10