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**800 NORTH 8TH STREET CONDOMINIUMS
ENABLING DECLARATION
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP**

THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. ARBITRATION INCLUDES A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY, YOU MUST READ THE ARBITRATION PROVISION CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

[ALT: Proximity to Airport: If the property is located within an airport influence area, add the following statement:

Notice of Airport in Vicinity: This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. An "airport influence area," also known as an "airport referral area," is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

04/15/04

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800 NORTH 8TH STREET CONDOMINIUMS

ENABLING DECLARATION

ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP

THIS DECLARATION, made on the date hereinafter set forth, by 800 North 8th Street, LLC, a Delaware limited liability company, hereinafter referred to as "Declarant," is made with reference to the following facts:

A. Location of Property. Declarant is the owner of a certain real property (the "Property") located in the City of San Jose ("City"), County of Santa Clara, State of California, more particularly described as Lot 1 of Tract 9470 on that certain Map filed for record in the Office of the Recorder of Santa Clara County, California, on June 16, 2003, in Book 761 of Maps, pages 38 and 39.

B. Intention. Declarant intends to improve said real property by constructing Condominiums thereon consisting of separate interests in Units and undivided interests in portions of the remaining property.

C. Owner's Interest. The development shall be referred to as the "Project" as defined in section 1.37 herein. The Project is expected to be developed in two (2) phases.

The Owner of a Condominium will receive a separate interest in an individual Unit and an undivided percentage interest in common in the Building Common Area of the Condominium Building in which the Unit is located. Each Condominium shall have appurtenant to it a membership in the 800 NORTH 8TH STREET HOMEOWNERS ASSOCIATION, a nonprofit mutual benefit corporation, which shall own the Association Common Area.

D. Mutually Beneficial Restrictions; Phases. Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Owners of Condominiums. Phase I of this Project will be subject to this Declaration upon its recordation. Each subsequent Phase will be subject to this Declaration upon the recording of a Declaration of Annexation applicable to each such Phase upon annexation by Declarant as provided in section 2.6.

NOW, THEREFORE, Declarant hereby declares that Phase I (and the property in each subsequent phase to the extent described in Recital D) shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part of it, in accordance with the plan for the improvements of the Project and its division into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants that run with the land and are binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project or the Property in the Project.

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**ARTICLE I
DEFINITIONS**

1.1 "Annexation": The process whereby Annexation Property is added to the Project as additional Phases pursuant to the provisions of section 2.6.

1.2 "Annexation Property": The real property described in Exhibit "B" attached to this Declaration which may be annexed to and become a part of the Project pursuant to section 2.6A of this Declaration.

1.3 "Articles": The Articles of Incorporation of the Association, as amended from time to time.

1.4 "Assessment": The cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association, and shall include Regular Assessments, Special Assessments and Reimbursement Charges.

1.5 "Assessment Lien": Defined in section 4.9D.

1.6 "Association": The 800 NORTH 8TH STREET HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation the Members of which shall be the Owners of Condominiums in the Project.

1.7 "Association Common Area": Lot 1 and Parcel A, as described on the Map, and any subsequently annexed Association Common Area parcels and all improvements thereon. The Condominium Buildings and the Units are not included in the Association Common Area.

1.8 "Board" or "Board of Directors": The governing body of the Association.

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

1.10 "Bylaws": The bylaws of the Association, as amended from time to time.

1.11 "Common Area(s)": The Building Common Area and Association Common Area.

1.12 "Common Expenses": The actual and estimated expenses of the Association incurred for maintaining, repairing, operating and replacing the Common Area and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Condominium Documents.

1.13 "Common Interest": The proportionate undivided interest in the Building Common Area that is a part of each Condominium as set forth in this Declaration.

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

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

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

1.17 "Condominium Plan": The recorded three-dimensional plan of the Condominiums built or to be built on the property in the Project which identifies the Association Common Area, the Building Common Area, and each separate interest pursuant to California Civil Code § 1351. A copy of this Plan is attached hereto as Exhibit "A" and incorporated by reference herein.

1.18 "Declarant": 800 NORTH 8TH STREET LLC, a Delaware limited liability company, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration, in a recorded written document.

1.19 "Declaration": This Declaration, as amended or supplemented from time to time.

1.20 "Eligible Mortgages": Mortgages held by "Eligible Mortgage Holders."

1.21 "Eligible Mortgage Holder": A First Lender who has requested notice of certain matters from the Association in accordance with section 9.6C.

1.22 "Eligible Insurer or Guarantor": An insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with section 9.6C.

1.23 "Exclusive Use Common Area": Those portions of the Common Area set aside for exclusive use of an Owner pursuant to section 2.2D, and shall constitute "Exclusive Use Common Area" within the meaning of California Civil Code section 1351(i).

1.24 "First Lender": Any bank, savings and loan association, insurance company, or other financial institution holding a recorded First Mortgage on any Condominium.

1.25 "First Mortgage": Any recorded Mortgage (made in good faith and for value) on a Condominium with first priority over other Mortgages encumbering the Condominium.

1.26 "Foreclosure": The legal process by which a Condominium owned by an Owner who is in default under a Mortgage is sold pursuant to California Civil Code § 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable laws.

1.27 "Map": The Map, described above in Recital paragraph A.

1.28 "Member": A person entitled to membership in the Association as provided herein.

1.29 "Mortgage": A mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Condominium, made in good faith and for value.

1.30 "Mortgagee": The holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.

1.31 "Mortgagor": A Person who encumbers his Condominium with a Mortgage including the trustor of a deed of trust that constitutes a Mortgage.

1.32 "Notice of Delinquent Assessment": A notice of delinquent assessment filed by the Association for a delinquent Assessment pursuant to section 4.9C.

1.33 "Owner" or "Owners": The record holder of fee simple title to a Condominium, expressly excluding Persons having any interest merely as security for the performance of an obligation until such person obtains fee title thereto, and those parties who have leasehold interests in a Condominium. If a Condominium is sold under a recorded contract of sale, the purchaser under the contract of sale, rather than the holder of the fee interest, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.34 "Person": A natural person, a corporation, a partnership, a limited liability company, a trust, or other legal entity.

1.35 "Phase": An increment of the Project that is subject to this Declaration, including, Phase I, and any subsequent Phase or Phases added to the Project by Annexation.

1.36 "Phase I": Units 101-111, 201-211 and 301-311 in Condominium Buildings 1 and 2, as shown on the Condominium Plan for Phase I, and the Common Area(s), including the podium garage, of Phase I shown on the Condominium Plan for Phase I.

1.37 "Project": All of the real property in Phase I and all improvements on that real property, and any subsequent Phase which may become annexed into the Project in accordance with section 2.6, and which, thereby, become subject to this Declaration.

1.38 "Public Report": The official document and permit issued pursuant to the Subdivided Lands Act [Business & Professions Code §§ 11000 et seq.] by the State of California Department of Real Estate for a Phase authorizing the offering of the Condominiums of that Phase for sale to the public.

1.39 "Regular Assessments": A Regular Assessment determined and levied pursuant to section 4.3A of this Declaration.

1.40 "Reimbursement Charge" shall mean and refer to a charge levied by the Board against an Owner to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Unit into compliance with the provisions of this Declaration, determined and levied pursuant to section 4.9 and 5.1A of this Declaration.

1.41 "Rules": The rules adopted from time to time by the Board or the Association pursuant to section 5.2D.

1.42 "Special Assessments": A special assessment levied by the Association pursuant to section 4.3B.

1.43 "Unit": The elements of the Condominium, as defined in section 2.2A, which are not owned in common with the Owners of other Condominiums in the Project. Each Unit is identified by separate number on the Condominium Plan.

1.44 "Utility Facilities": Defined in section 6.1.

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

2.1 **Description of Project:** The Project is a Condominium Project consisting of the land, the Condominiums and all other improvements located thereon. Phase I of the Project consists of thirty-three (33) Units in Buildings 1 and 2 and the Common Area[s] and the podium garage shown on the Condominium Plan for Phase I. Reference is made to the Condominium Plan for further details. Additional property may be annexed to and become part of the Project pursuant to section 2.6.

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

A. **Units:** Each of the Units as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each Unit, each of such spaces being defined and referred to herein as a "Unit." Areas within soffits, chases, and dropped ceilings, that contain Utility Facilities serving other Units are not included in the Units, but are Common Areas. Bearing walls located within the interior of a Unit are Common Area, not part of

the Unit, except for the finished surfaces thereof. Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of, including, without limitation; heating, ventilating and air-conditioning ("HVAC") equipment, lighting fixtures, cabinetry, appliances, and all associated wiring, ducting, piping, required rough-in, and associated soffit. Each Unit includes both the portions of the Condominium Building so described and the airspace so encompassed. The Unit does not include those areas and those things which are defined as "Building Common Area" in section 1.9. Each Unit is subject to such encroachments as are contained in the Condominium Building, whether the same now exist or may be later caused or created in any manner referred to in section 9.5. In interpreting deeds and plans, the then existing physical boundaries of a Unit, when the boundaries of the Unit are contained within a Condominium Building, or of a Unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the Condominium Building and regardless of minor variance between boundaries shown on the plan or deed, and those of the Condominium Building. Each Unit shall have appurtenant to it nonexclusive rights for ingress, egress and support through the Common Area subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Condominium.

B. Building Common Area: The Building Common Area consists of that portion of the Project defined in section 1.9. Each Owner shall have, as appurtenant to the Owner's Unit, an undivided interest in the Building Common Area of the Condominium Building in which the Unit is located as set forth in Exhibit "C" attached hereto. Each Condominium includes a Unit and such undivided interest in the Building Common Area. The Common Interest appurtenant to each Unit is permanent in character and cannot be altered without the consent of all of the Owners affected, as expressed in an amended Declaration. Such undivided Common Interest cannot be separated from the Unit to which it is appurtenant, and any conveyance or transfer of the Unit includes the undivided Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium. Subject to this Declaration and the Rules, each Owner may have access to and use of the Building Common Area and Recreational Common Area in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Condominium Owners subject further to the rights of each Owner in any Exclusive Use Common Area appurtenant to that Owner's Condominium.

C. Association Common Area: Association Common Area shall be conveyed to the Association prior to the close of escrow of the sale of the first Condominium in the Phase in which each of said parcels located. When the Association Common Area is conveyed by Declarant to the Association, an easement shall be deemed automatically reserved over the Association Common Area so conveyed in favor of Declarant, and for the benefit of the remaining Phases not yet annexed, for ingress and egress, and for the construction or completion of construction of utilities, landscaping, garage, and other amenities included in plans approved by the City and for construction of Condominium Buildings (and the Units therein) (and the utilities serving the same) which have not yet been annexed to the Project (as of the date of conveyance to the Association) and are part of a future Phase of the Project. The easement shall continue for a reasonable period of time to complete construction of said improvements. The easement shall automatically terminate five (5) years after the recordation of this Declaration, or the recordation of any Declaration of Annexation for a subsequent Phase of the Project, whichever occurs later.

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

- (1) garage space designated "P", followed by a number (garage spaces are assigned as designated on Exhibit "D" attached hereto);
- (2) stoop designated "St", followed by the number of the Unit;
- (3) deck designated "D", followed by the number of the Unit.

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

The heating, ventilating, air-conditioning equipment and ducting ("HVAC System") serving a Unit is part of the Unit, belongs to the Owner of that Unit, and shall be maintained by the Owner. The space occupied by the HVAC System, wherever located, shall be restricted to the exclusive use of the Owner whose HVAC System occupies such space.

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

E. Pedestrian Bridges: The Project is designed and will be built so that elevated pedestrian bridges will connect certain Condominium Buildings. These bridges are designated "Future Bridge" on the Condominium Plan. Such bridges will connect Condominium Buildings 1 and 2, 2 and 3, 1 and 3, 2 and 4, and 3 and 4. The bridges shall be part of and included within Association Common Area, owned by the Association.

2.3 Parking: In addition to the parking spaces assigned to Units on the Condominium Plan (Exclusive Use Common Areas) there are unassigned parking spaces, including motorcycle spaces. These may be used by all Owners, their tenants and guests, pursuant to Rules adopted by the Board. The Board may from time to time assign the exclusive right to use particular parking spaces to particular Units. Reassignment of said spaces shall be based upon mutual consent of Unit Owners whose assignments are to be changed, and failing such consent, shall follow notice to such Owners and hearing before the Board. Unassigned spaces and spaces not yet dedicated to Owners may also be used by Declarant for purposes of marketing and sales as well as construction purposes. Certain parking spaces are handicapped spaces and are designated as such on the Condominium Plan. Declarant may assign some or all of these spaces to Condominiums as Exclusive Use Common Area parking spaces. If the occupants of the Condominiums assigned a handicapped space are appropriately licensed to use a handicapped parking space by the State of California and the occupant of another Condominium assigned a parking space is appropriately licensed and the space assigned this Condominium is not a handicapped parking space (the "Licensed Occupant"), the Association, on receipt of written request from the Licensed Occupant, shall require the Owner of a Condominium assigned a handicapped space to exchange the handicapped space with the space assigned to the Condominium occupied by the Licensed Occupant. The exchange shall remain in effect as long as the Licensed Occupant occupies the Condominium and remains licensed to use a handicapped space

and shall terminate automatically on the date the Licensed Occupant ceases to occupy the Condominium or ceases to be appropriately licensed to use a handicapped parking space, whichever occurs first. The exchange shall be temporary and shall not alter the permanent parking space(s) assigned to any Condominium and appurtenant to that Condominium. The Owners of the Condominiums assigned the handicapped spaces covenant to cooperate with the Association and any Licensed Occupant in effecting any exchange required under this section 2.3.

If the handicapped spaces are assigned to Condominiums where the occupants are not licensed to use a handicapped space and the spaces have not been exchanged with the space of a licensed Occupant, the selection of the available handicapped space to be exchanged with the space of the Licensed Occupant shall be by agreement between the Owners of the Condominiums with the assigned handicapped spaces. If the Owners cannot reach agreement for any reason within ten days after receipt of written request from the Licensed Occupant to effect the exchange, the selection shall be made by lottery by the President of the Association. The selection resulting from the lottery shall be final and binding. The right to exchange a non-handicapped space for a handicapped space shall be available to any Licensed Occupant on a first-come, first-serve basis. The Board may adopt Rules regulating the exchange of non-handicapped spaces for handicapped spaces that are not inconsistent with the provisions of this section 2.3.

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

A. The non-exclusive rights of each Owner for ingress, egress and support through the Common Area, and use of the Common Area as provided in sections 2.2A and 2.2B.

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

C. The access rights of the Association or Declarant to maintain, repair or replace improvements or property located in the Common Area as described in section 5.2E.

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

E. The encroachment easements described in section 9.5.

F. The rights of the Declarant during the construction period as described in section 9.7.

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

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

2.6 Annexation of Additional Property: Additional property may be annexed to and become subject to this Declaration by any of the following methods set forth in this section. Upon annexation, the additional property shall become a portion of the Project, and be subject to this Declaration without the necessity of amending any of its individual sections.

A. Annexation Pursuant to Plan: The Annexation Property may be annexed to and become a part of the Project in Phases, subject to this Declaration, and subject to the jurisdiction of the Association, without the assent of the Association or its Members, or without the assent of the Condominium Owners, on condition that:

(1) Plan Approved: The annexation and development of additional Phases shall be in accordance with a plan of development approved by the Department of Real Estate of the State of California.

(2) Declaration of Annexation: A Declaration of Annexation shall be recorded covering the applicable portion of the property to be annexed. The Declaration of Annexation may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the scheme of this Declaration. The Declaration of Annexation shall require the payment by the Declarant to the Association, concurrently with the closing of the escrow for the first sale of a Condominium in an annexed phase, of appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in the annexed phase necessitated by or arising out of the use and occupancy of residential Condominiums under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of the escrow for the first sale of a Condominium in the annexed phase.

B. Annexation Pursuant to Approval: Property other than the Annexation Property may be annexed to the Project upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of its Members, excluding the Declarant, and the approval of Eligible Mortgage Holders as may be required under section 9.6D, and of all mortgagees of Condominiums. Upon such approval, the Owner of such property may file of record a Declaration of Annexation. Upon the recording of such Declaration of Annexation, the annexed property shall be subject to the jurisdiction of the Association.

C. Effect of Annexation: Assessments collected from Owners may be expended by the Association without regard to the particular Phase from which such Assessments came. All Owners shall have ingress and egress to all portions of the Common Area throughout the Project, subject to the provisions of this Declaration, the Bylaws of the Association and to the Rules of the Association in effect from time to time.

D. Quality of Construction: Future improvements to the Project will be consistent with initial improvements in terms of structure type and quality of construction.

E. Right of Successor Declarant to Annex: The right of unilateral Annexation provided for in section 2.6A constitutes a covenant running with the land, and is as such enforceable by any owner of the property described in Exhibit "B", or any part thereof, including the present owner or its successor or assignee, and Declarant or any successor or assignee of Declarant who acquires the property described in Exhibit "B", or any part thereof, and who assumes the role of Declarant with respect to the annexed property as provided in section 1.18.

2.7 Right to Deannex: Notwithstanding any other provisions of this Declaration or any declaration of Annexation, notice of addition of property or amendments or supplements to this Declaration as may be hereinafter filed of record to effect an Annexation of property under this Article, the Declarant shall have the right at any time after such Annexation but before the close of escrow on the sale under the authority of a Public Report to an Owner other than the Declarant of the first Unit within the property so annexed to deannex such property or any portion thereof by filing of record a notice of deannexation (or such other instrument as may be acceptable for recordation) describing the property to be so deannexed and stating that such deannexation is undertaken in accordance with the terms and conditions of this section 2.7. Any such deannexation shall be effective upon the recordation of such notice or other instrument and such notice or other instrument need only be executed by the Declarant. In any case where Declarant has sold and closed escrow on the sale of a Unit under authority of a Public Report, or Declarant has exercised any Association vote with respect to the Phase, or Assessments have commenced on any portion of the Phase, or the Association has made any expenditures or incurred any obligations with respect to any portion of the Phase, Declarant's right to deannex a portion of the Project shall be valid only with the approval, by vote or written consent, of a majority of the Owners other than Declarant, and the prior written consent of the Real Estate Commissioner if and as required under California Business and Professions Code § 11018.7. Such deannexation shall not in such case relieve Declarant from the obligation to continue to pay its equitable share of the cost of maintenance and repair of the Association Common Area. The intent and purpose of this deannexation clause is to permit the Declarant to revise the phasing schedule which is attached as Exhibit "B" hereto, as necessary to respond to construction and sales schedules, and to meet FNMA pre-closing requirements. Any property that is deannexed under this clause, shall be included in an amended phasing schedule, and shall be subsequently re-annexed pursuant to the revised phasing schedule.

2.8 Reservation of Easements: Upon annexation of Phases pursuant to section 2.6, such Phases shall be made subject to the terms of this Declaration and thereby become subject to the jurisdiction of the Association, and Declarant hereby reserves to itself, its successors and assigns, the right to, and agrees that it will, grant to the Owners of Condominiums in subsequently annexed Phases, nonexclusive easements for ingress and egress and construction activities over the Common Area of previously annexed Phases that are not a part of a Condominium Building. Declarant further agrees that it will reserve to itself, its successors and assigns, the right to grant, and covenants and agrees that it will grant, to the Owners of Condominiums in previously annexed Phases, nonexclusive easements for ingress and egress over the Common Areas of subsequently annexed Phases that are not a part of a Condominium Building upon annexation pursuant to section 2.6. Declarant reserves easements for access and for construction activities over Phase I for the purpose of constructing Phase II.

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

2.10 Reciprocal Easements: The Project is subject to "Agreement Regarding Reciprocal Easements to Construct and Maintain Roadway Improvements on Adjoining Properties" recorded November 5, 2002, Instrument No. 16595997, Official Records of Santa Clara County, California (see Exhibit B to Easement Agreement between Norsca and 800 North 8th Street LLC).

2.11 Easements: The Project is subject to "Easement Agreement" recorded July 14, 2003, Document No. 17181942, Official Records of Santa Clara County, California, which easement is for installation and maintenance of landscaping over an eight foot (8') portion of the contiguous property described in the Easement Agreement.

ARTICLE III ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

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

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

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

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

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

B. Special Assessments: The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Units in the same manner as Regular Assessments.

4.4 Restrictions on Increases in Regular Assessments or Special Assessments:

A. Except as provided in section 4.4B, without having first obtained the approval of such action by the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, the Board may not: (1) impose a Regular Assessment on any Condominium which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year; or (2) levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the voting power of the Association. Any meeting of the Association for purposes of complying with this section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The right of the Board to increase Regular Assessments by up to twenty percent (20%) over the Regular Assessment for the immediately preceding fiscal year is subject to the Board having complied with the provisions of California Civil Code § 1365(a), which provisions are set forth in section 12.1(1) of the Bylaws or having obtained the approval of such increase by the Members in the manner set forth above in this section 4.4.

B. Assessments - Emergency Situations. Notwithstanding the foregoing, the Board, without membership approval, may increase Regular Assessments or levy Special Assessments necessary for an emergency situation in amounts that exceed the provisions of section 4.4A, above. For purposes of this section, an emergency situation is one of the following:

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

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

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

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

4.5 Division of Assessments: Both Regular Assessments and Special Assessments shall be levied equally among the Condominiums, except as provided in section 4.3, and except for that portion of the Assessments allocated to meet the cost of insurance, painting and roof reserves, and any commonly metered domestic water, gas or electricity. These specially allocated items shall be levied among the Condominiums in the proportion that the square footage of living space of each Unit bears to the square footage of all the Units subject to the Declaration as determined by the plans prepared by Declarant and set forth in the budget submitted to the California Department of Real Estate. Regular Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

4.6 Date of Commencement of Regular Assessment; Due Dates: The Regular Assessments provided for in this Declaration shall commence as to all Condominiums in the Phase 1 on the first day of the month following the first conveyance of a Condominium to the Owner in Phase 1 under authority of a Public Report. In subsequent Phases, the Regular Assessments against all Condominiums in each Phase shall commence on the earlier to occur of (i) the first day of the month following the closing of the first conveyance to the Owner in that Phase, or (ii) upon the occupancy of a subdivision interest in the annexed Phase.

The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. The first Regular Assessment for each added Phase shall be adjusted according to the number of months remaining in the calendar year after the Annexation. Regular Assessments may be reduced or abated pursuant to a management agreement entered into between Declarant and Association.

Subject to the provisions of section 4.3 hereof, the Board of Directors shall use its best efforts to fix the amount of Regular Assessment against each Condominium and send written notice thereof to every Owner at least forty-five (45) days in advance of each Regular Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. Regular Assessments may be prorated on a monthly basis. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Association stating that the Assessments on a specified Condominium have been paid. Such a certificate shall be conclusive evidence of such payment.

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

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

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

4.9 Priorities; Enforcement; Remedies: If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose an Assessment Lien on the Unit owned by Owner pursuant to the provisions of Civil Code §§ 1367 and 1367.1. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of Civil Code § 1365.1 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice is to be printed in at least 12-point type.

A. Statement of Charges. At least 30 days prior to the Association recording an Assessment Lien upon a Unit pursuant to Civil Code § 1367.1(a), the Association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount owed, a statement that the Owner has the right to inspect the Association's records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees (not to exceed \$425.00 per Civ. Code § 1366.3(a)), any late charges, and interest, if any.

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the Assessment was paid on time to the Association.

(4) The right to request a meeting with the Board as provided by Civil Code §1371.1(c).

Note: Any payments made by the Owner toward the debt shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. When an Owner makes a payment, the owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

B. Right to Request Meeting. An Owner may dispute the debt noticed pursuant to section 4.9A, above, submitting to the Board a written explanation of the reasons for his or her dispute. The Board shall respond in writing to the Owner within 15 days of the date of the postmark of the explanation, if the explanation is mailed within 15 days of the postmark of the notice. The Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to section 4.9A, above. The Board shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

C. Notice of Delinquent Assessment. After compliance with the provisions of Civil Code § 1367.1(a), the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Condominium of the delinquent Owner prior and superior to all other liens recorded subsequent to the Notice of Delinquent Assessment, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record recorded prior to the Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Condominium against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed in the manner set forth in Civil Code § 2924b to all record owners of the Unit no later than ten (10) days after recordation.

Within twenty-one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

D. Enforcement of Assessment Lien. Thirty (30) days following the recordation of the Notice of Delinquent Assessment, the Assessment Lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in Civil Code §§ 2924c and 2924d. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

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

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

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

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

4.10 Reimbursement Charges; Fines and Penalties: The Board may levy a Reimbursement Charge against a Member to reimburse the Association for costs incurred for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Member or the Member's guests or tenants were responsible and in bringing the Member and his Unit into compliance with the provisions of the Project Documents in the amount required to reimburse the Association for the actual costs and expenses incurred and the amounts incurred to enforce the Associations rights under this Declaration as are then permitted by law. Reimbursement Charges shall be payable when directed by the Board after written notice to the Owners, which notice shall in no event be less than thirty (30) days. If an Owner disputes a Reimbursement Charge, the Owner may request a hearing before the Board. Except as hereinafter provided, Reimbursement Charges, fines and penalties for violation of this Declaration or the Rules are not "Assessments," and are not enforceable by an Assessment Lien, but are enforceable by court proceedings. After such time as Declarant no longer owns

any Units in the Project that are subject to the jurisdiction of the Department of Real Estate under a Public Report, pursuant to Civil Code §1367.1(e), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner, or guests or tenants of an Owner, were responsible may become the subject of an Assessment Lien. If Civil Code section 1367.1(e) is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of Civil Code §§1367.1(e).

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

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

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

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

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

A. Maintenance: The Association shall maintain, repair, replace (when necessary), restore, operate and manage all of the Common Area and all facilities (including Utility Facilities to the extent described in section 6.3), improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association, provided that each Owner shall maintain the Exclusive Use Common Area appurtenant to that Owner's Condominium as required by section 7.21.

(1) Maintenance shall include, without limitation, painting, maintaining, cleaning, repairing and replacing of all Common Areas, including exterior doors, other than the hardware thereon, exterior glass surfaces, landscaping, including irrigation systems, (except for private patio areas which are to be maintained by Owners as per section 7.21), decks, garage, parking areas, common building systems, roofs, exterior building, plaster and paint.

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

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

(4) Landscaping shall include regular fertilization, irrigation, pruning, and other prudent garden management practice necessary to promote a healthy weed-free environment for optimum plant growth. The Association shall remove and replace all dying or dead vegetation. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

(5) The Association shall be responsible for the periodic maintenance, testing, repair and replacement of any built-in fire detection and protection equipment and devices wherever located on the Project (including any fire sprinklers and fire alarm systems, but excluding smoke detectors located inside the Units). Each Owner shall immediately notify the Association of any problems with any sprinkler heads located in the Owner's Unit. Maintenance shall include periodic testing of such equipment.

(6) In order to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold"), within the Common Area, the Association shall inspect the Common Area improvements not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected, the Association shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and shall periodically inspect the irrigation system to ensure proper watering, and to correct any leaks and/or misdirected or excessive

watering, and periodically inspect the ground surface around the foundations to ensure that no water is pooling around or within the foundations, and shall maintain rain gutters in a clean and proper operating condition at all times, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

(7) Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or occupant's Unit and Exclusive Use Common Area as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

(8) In the event of any water leak or overflow from any Unit that damages any Common Area or other Unit, the Owner and occupants of the Unit that is the source of the water leak or overflow (the "Responsible Owner") shall cooperate with the Association in the inspection and correction of the problem. Cooperation shall include access to the Unit to inspect and to correct the problem and/or repair any damage. The Responsible Owner shall reimburse the Association for its repair cost to the extent the cost is not paid through insurance maintained by the Association, and the Association may levy a Reimbursement Charge to recover the cost. If the damage may be covered by insurance maintained by the Association, the Association shall submit an appropriate claim. Any deductible amount shall be paid by the Responsible Owner.

(9) The Association shall be responsible for any maintenance required by the terms of the Easement Agreements referred to in sections 2.10 and 2.11.

B. Inspection and Maintenance Guidelines: The Declarant has provided the Association and each Owner with the inspection and maintenance guidelines and schedules including manufacturers' guidelines and schedules for the inspection and maintenance of the improvements within the Project ("Maintenance Guidelines"). When an Owner transfers a Unit, the Owner shall deliver complete copies of the Maintenance Guidelines to the transferee of the Unit on or before the date of the transfer of title. Replacement copies of the Maintenance Guidelines may be obtained from the Declarant at Declarant's principal place of business. Declarant may charge a reasonable fee for providing replacement copies of the Maintenance Guidelines. The Board shall comply with the Maintenance Guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping that the Association is required to maintain under this Declaration, and any other improvements outside of the Common Area, which the Association has the responsibility to maintain. The Board shall take all appropriate actions to implement and comply with the Maintenance Guidelines. The Board periodically and at least once every three (3) years shall review and update the Maintenance Guidelines.

(1) The Association shall cause professional inspections of all infrastructure to be routinely made. The inspectors shall include, at least, an Architect, a Civil Engineer and a Landscape Architect. Inspections shall be made at least yearly, and for appropriate items or events, more often. Inspections will include a review of all repair records since the previous inspection.

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(2) The inspections shall be reported at the annual membership meeting and in writing, and shall include recommendations for cleaning, maintenance, repair, replacement, etc. (if any), as well as opinions of the costs. The reports shall address any noted deterioration which may require future attention. The reports may also recommend supplemental specialized investigations (i.e., elevator, termite, mechanical and structural).

(3) The Association shall keep permanent records of all: (a) Complaints and potential problems, including description, date and by whom; (b) Reports, including inspections and recommendations; (c) Repairs, including description, location, date, by whom made and cost; and (d) Plans, including construction drawings, subsequent modifications, and repair plans.

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

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

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

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

G. Enforcement: The Association shall be responsible for the enforcement of this Declaration.

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

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

A. Utility Service: The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Condominiums, all water, gas and electric service, cable television service, phone service, wireless communications services, garbage and trash collection, and window cleaning service.

B. Easements: The Association shall have authority, by document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map or Condominium Plan and/or referred to in Article VI, where necessary for roads, utilities, communications services, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the Condominiums, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.

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

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

E. Access: For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that an Owner has failed to perform as provided in section 7.21, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to the Owner of the Unit in which maintenance work has not been performed, to enter any such Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused by such entry shall be repaired by the Board at the expense of the Association.

F. Assessments and Liens: The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof.

G. Fines and Disciplinary Action: The Board may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Condominium Documents and the Rules. Penalties may include, but are not limited to, fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to section 5.2D. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall

be imposed only after a hearing before the Board. The Board may extend that period for an additional thirty (30) day period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such assessments as appropriate under applicable law.

H. Enforcement: The Board shall have the authority to enforce this Declaration as per section 9.1 hereof.

I. Acquisition and Disposition of Property: The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association which shall include two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the Members of each class of Members.

J. Loans: The Board shall have the power to borrow money, and, only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members, 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.

K. Dedication: The Board shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed by two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members, agreeing to such dedication.

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

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

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

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

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(3) to make a decision to levy monetary fines, levy Reimbursement Charges, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) to make a decision to levy Regular Assessments or Special Assessments; or

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

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

(1) no right to vote shall be exercised on behalf of the Resident Manager Unit;

(2) no Assessment shall be assessed or levied on the Resident Manager Unit; and

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

O. Security: The Board shall have the power (but not the obligation) to contract for security service for the Common Area. Notwithstanding the foregoing, if the Association elects to provide any security services or systems, neither the Association nor the Board shall be deemed to have made any representation or warranty to any Owner, nor the tenants or invitees of any Owner, nor to any other Person using the facilities or Improvements within the Project regarding security or safety. Each Owner shall be responsible for the security and safety of Persons who occupy or use the Condominium owned by the respective Owner. The Association shall not be subject to any claims or liability in connection with the provision of any security service or security system, or the failure to provide any security service or security system, within any portion of the Project.

P. Appointment of Trustee: The Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in section 4.9 and California Civil Code § 1367(b).

Q. Litigation/Arbitration: The Board, subject to sections 9.12 (enforcement of common area improvement bond) and 9.13 (enforcement of assessment bond) and section 9.15 (dispute resolution) of this Declaration, shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association pursuant to Code of Civil Procedure § 383. The Board of Directors has authority to enter into a contingent fee contract with an attorney in a matter involving alleged design or construction defects in the Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, and then only after getting the vote at a duly noticed and properly held membership meeting, of a majority of a quorum of the Members other than Declarant.

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

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

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

5.3 Commencement of Association's Duties and Powers: Until incorporation of the Association, all duties and powers of the Association as described in this Declaration, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. After the date of incorporation of the Association, the Association shall assume all duties and powers, and Declarant shall be relieved of any further liability for those duties and powers.

ARTICLE VI UTILITIES

6.1 Owners' Rights and Duties: The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, storm sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, elevators, elevator shafts, meters, catch basins, storage tanks, wires, ducts, flues, pumps, boilers, and pipes, exhaust flues and heating and air conditioning facilities, collectively, "Utility Facilities") shall be as follows:

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

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

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

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

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

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

6.3 Association's Duties: The Association shall maintain all Utility Facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in section 7.21. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Condominiums.

ARTICLE VII USE RESTRICTIONS

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

7.1 Condominium Use: No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted in any Condominium, except that residential Condominiums may be used as a combined residence and executive or professional office by the Owner or occupant thereof, so long as such use does not interfere with the quiet enjoyment by other Owners and does not include visiting clients and except that Declarant,

its successors or assigns, may use any Condominium or Condominiums in the Project owned by Declarant for a model home site or sites and display and sales/construction office during construction and until the last Condominium is sold by Declarant, or until five (5) years from the date of closing of the first sale in the latest annexed Phase of the Project, whichever occurs first. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

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

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

No health care facilities operating as a business or charity shall be permitted in the Project, unless permitted by law or ordinance which preempts this restriction.

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

A. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;

B. Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care center;

C. Abide by and comply with all of the Association's Rules;

D. Supervise and be completely responsible for children at all times while they are within the project;

E. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

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

7.3 Permitted Vehicles and Parking: Except as otherwise permitted in this section 7.3, only Permitted Vehicles shall be parked, stored or operated within the Project.

A. Permitted Vehicles shall mean appropriately licensed passenger automobiles, sports utility vehicles, motorcycles, and trucks having carrying capacity of ½ ton or less, vans having seating capacity of eight (8) persons or less. Owners and their tenants and invitees shall park their Permitted Vehicles only in the garages or parking space appurtenant to or assigned to their Unit. Vehicles that are not Permitted Vehicles shall not be parked or stored in the Project. Except for commercial vehicles or construction equipment that are providing services to a Unit or the Association (but only during the period of time in which such services are being provided and subject to the Rules), Permitted Vehicles shall not include any commercial vehicle, construction equipment, trailer, camper, mobile home, recreational vehicle, truck having carrying capacity of greater than 1/2 ton, van having seating capacity in excess of eight (8) persons or any vehicle which is too large to fit within the Owner's garage, inoperable vehicles, boats or similar equipment. Vehicles that are otherwise Permitted Vehicles that are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No excessively noisy or smoky vehicles shall be operated on the Project. No Owner or other occupant of any Unit shall park more than two (2) Permitted Vehicles within the Project at any one time.

B. All designated guest parking areas shall be used in accordance with the Rules of the Association.

C. The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height.

D. The Association may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an occupant of a Unit. If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of the Association or his designee shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first-class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento, California and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored.

The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the Project or any Condominium, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

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

The provisions of this section 7.3 are intended to comply with Vehicle Code section 22658.2 in effect as of January 1, 2003. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect. Vehicle Code section 22658.2 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

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

7.5 Animals: Except as provided in this Declaration and permitted by the Rules, no animals of any kind shall be raised, bred, or kept in any Condominium, or on any other portion of the Project. Trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons may be kept by an occupant or invitee of an Owner. Owners, their tenants or other occupants of Units may keep no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, within a Unit, and may keep a reasonable number of other ordinary household pets and fish that are kept in cages or aquariums, provided that no such dogs, cats or other animal or fish may kept, bred, or maintained for any commercial purposes. All pets shall be kept under reasonable control at all times. No pets shall be allowed in the Common Area except as may be permitted by Rules of the Board. No Owner shall allow his dog to enter the Common Area except on a leash. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any pet found within the Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City of San Jose, or the County of Santa Clara, by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith,

repossess the pet. Owners shall prevent their pets from soiling all portions of the Common Area and shall promptly clean up any waste left by their pets. Owners shall be fully responsible for any damage caused by their pets.

Owner shall use reasonable efforts to prevent any animal within his Unit from making disturbing noises that can be heard from any other Unit between the hours of 10:00 PM to 7:00 AM. An Owner in violation of this section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner.

The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continue to violate the Rules regulating pets after receipt by the Owner of a written demand from the Board to comply with the Rules.

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

7.7 Radio and Television Antennas: No outside television antenna, microwave or satellite dish, aerial, or other such device (collectively "Antennas") with a diameter or diagonal measurement in excess of one (1) meter shall be erected, constructed or placed on any Common Area or Unit. Antennas with a diameter or diagonal measurement of one (1) meter or less may be installed only if they conform to the Rules and any Architectural Committee Standards and, if then required by the Architectural Committee Standards, any necessary approval is obtained in accordance with the provisions of section 7.9. Reasonable restrictions which do not significantly increase the cost of the Antenna system or significantly decrease its efficiency or performance may be imposed. Antennas may not be attached to the exterior surface of any Condominium Building or to any fence. The Architectural Review Committee shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with California Civil Code §1376 and FCC [Federal Communications Commission] regulations.

7.8 Right to Lease:

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

(1) all leases must be in writing;

(2) the lease must be for the entire Condominium and not merely parts of the Condominium, unless the Owner remains in occupancy;

(3) all leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules adopted by the Board;

(4) all Owners who lease their Condominiums shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Condominiums and shall provide the Secretary of the Association with a complete copy of the lease. All Owners leasing their Condominium shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached;

(5) no Owner shall lease his Unit for a period of less than thirty (30) days.

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

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

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

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

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

A. During the period of initial sales, through transition of control from Declarant to the Members of the Association, the emphasis shall be upon uniformity of appearance, and consistency in carrying out Declarant's original design and architectural scheme for the Project.

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

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

D. The Architectural Control Committee shall not restrict or prohibit the installation or use of a solar energy system except that it may adopt reasonable restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

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

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

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

H. The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final Public Report for the Phase 1. The Declarant reserves to itself the

power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Condominiums in the Project including subsequent Phases, if any, have been sold or until the fifth anniversary of the issuance of the final Public Report for the Phase 1, whichever occurs first. After one (1) year from the date of issuance of the original Public Report for the Phase 1, Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of all the Condominiums in the overall Project have been sold or until the fifth anniversary of the issuance of the final Public Report for the Phase 1, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. Members appointed to the Architectural Control Committee need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any member to the Committee, and thereafter the Board shall appoint such a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration.

I. In the event the Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee, the Board, the Association, and its members harmless from any and all liability arising out of such approval.

J. Governmental Approvals: All alterations, modifications, or other improvements on or within lots in the Project shall comply with all design requirements, approvals and procedures of the City. Before commencement of any alteration or improvements approved by the Architectural Review Committee or Board, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee or Board does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

K. Completion of Work; Review of Work: Upon approval of the Committee or Board, the Owner shall diligently proceed with the commencement and completion of all work so approved by the Committee in compliance with the approvals granted. The work must be commenced within six months from the date of approval unless the Committee or Board permits the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as the Committee or Board has granted, then the approval shall be deemed cancelled, and the Owner must reapply to the Committee or Board before undertaking any such work.

The Committee or Board shall inspect work within sixty days after a notice of completion has been delivered to the Committee or Board by the Owner. The Committee or Board may also inspect the work at any time prior to completion as it deems appropriate to determine that the Committee or Board approval is being followed. The Committee or Board is to inspect the work performed, and determine whether it was performed and completed in compliance of the approval granted in all material respects. If at any time during the construction of any work, the Committee or Board finds that the work was not performed or completed in compliance of the approval granted in all material respects, or if the Committee

or Board finds that the appropriate approval which was required for any work was not obtained, the Committee or Board shall notify the Owner in writing of the non-compliance. The notice shall specify in writing the particulars of non-compliance, and shall set forth the requirement of the Owner to remedy the non-compliance. The Committee or Board shall determine in its reasonable judgement whether an alteration, modification or improvement complies with the approval as granted in material respects. Minor changes, deviations or imperfections that do not negatively affect or impact the Project shall not be considered as non-compliance. The Board shall act under this section 7.9 only if the Board has undertaken the architectural review functions under this Article.

If the Committee or the Board has determined an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of 30 days from the date of such notification, if the Committee is undertaken the architectural review functions under this Article, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. If the Board is undertaken the architectural review functions under this Article, the Board shall act after expiration of 30 days from the date of such notification. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Project, or remove the same within a period of not more than 45 days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period, or within any extension of such period as the Board, in its discretion may grant, the Board may (1) remove the non-complying improvement, (2) remedy the non-compliance, (3) institute legal proceedings to enforce compliance or completion.

After ninety percent (90%) of the Units in the Project have been sold by the Declarant, an Owner who has submitted an application to the Committee may appeal a decision to deny or conditionally approve the Owner's application to the Board by written appeal to the Board. The Board shall notify the appealing Owner in writing of the date set for a hearing regarding the Owner's appeal within ten (10) days after receipt of the Owner's appeal. The hearing shall be held within thirty (30) days after receipt of the Owner's appeal by the Board. The Board shall make its determination on the appeal in writing delivered to the appealing Owner within ten (10) days after the hearing. The determination of the Board shall be final.

7.10 Structural Integrity: Nothing shall be done in or on any Unit or in or on the Common Area which will impair the structural integrity of any building.

7.11 Window Coverings: All drapes, curtains, shutters, blinds or other window coverings visible from the street or Common Areas shall be black, beige, white, or off-white in color or lined in black, beige, white, or off-white, or as the case may be, of colors, materials and patterns which are approved by the Board or the Architectural Control Committee. Owners are responsible for the purchase, use, and maintenance of window coverings. Window coverings are important to the overall performance of the Unit, its materials and systems.

7.12 Clothes Lines: There shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over exterior railings shall be allowed.

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

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

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

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

7.17 Flags, Pennants, Banners, Etc.: There shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the Project (except the Declarant's sales office and models) that would be visible from the street, Common Area, or the other Units, except in conformance with Rules adopted by the Board or the Architectural Control Committee, and for flags that are expressly permitted by statute.

7.18 Water Bed Restrictions: No water beds shall be permitted.

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

7.20 Common Area Use: Nothing shall be stored, grown, or displayed in the Common Area, including decks, balconies and patios, that is not approved in advance by the Architectural Control Committee.

7.21 Owner's Right and Obligation to Maintain and Repair: Except for those portions of the Project which the Association is required to maintain and repair, each Condominium Owner shall, at his sole cost and expense, maintain and repair the Unit, keeping the same in good condition. Each Owner shall be responsible for and bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including wood flooring, vinyl flooring, granite and other solid surfaces, carpeting, tile, wall paper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, light

fixtures, smoke detectors, and any and all other appliances of any nature whatsoever; heating, ventilating and air conditioning equipment servicing such Unit (although such equipment may be located in part outside such Unit); exterior door hardware, gaskets and seals, interior doors, including all hardware on the doors; cabinets, counters, light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, and any furniture and furnishings. Each Owner shall maintain, repair and replace any smoke detectors located in the Owner's Unit. The Association shall maintain any automatic fire sprinkler heads located in any Unit, provided that each Owner immediately shall notify the Association of any problems with any automatic sprinkler heads located in the Owner's Unit. In addition, each Owner shall be responsible for and bear the cost of maintenance, repair and replacement of the following items serving such Owner's Unit: patio, deck or stoop landscaping. Each Owner shall keep the Exclusive Use Common Area appurtenant to the Owner's Condominium in a clean and neat condition at all times and shall maintain the landscaping in any such areas. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his Unit. In the event an Owner fails to maintain the interior of his Unit or the landscaping within his private patio or deck area in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify Owner of the work required and request it be done within sixty (60) days from the giving of such notice.

Each Owner shall maintain the improvements within his or her Unit in accordance with the Maintenance Guidelines established by the Declarant. A copy of the Maintenance Guidelines shall be delivered by Declarant to each Owner when the Unit is sold to the Owner. Each Owner shall retain the Maintenance Guidelines and take all appropriate actions to comply with and implement the Maintenance Guidelines. When an Owner transfers a Unit, the Owner shall deliver a complete copy of the Maintenance Guidelines to the transferee of the Unit on or before the date the Unit is transferred.

In order to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold") within the Unit, the Owners shall inspect the interior of their Units not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected within the Unit, the Owner shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

In the event the Owner fails to carry out such maintenance within said period, the Board may, following notice and hearing as provided in the Bylaws, cause such work to be done and the cost of the work shall immediately be paid by such Owner to the Association as a Reimbursement Charge, and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

7.22 Floor Coverings: No change in the floor covering materials originally installed in the Units shall be permitted except with the consent of the Board. To reduce sound transmission, all Units which are above other Units shall have all floor areas except kitchens, dining room, living room, and bathrooms covered with carpet or other material which provides equivalent insulation against sound transmission to the Unit below. At least seventy percent (70%) of all "hard surface" flooring shall be covered with area rugs within each Unit. Each homeowner is responsible for such flooring.

ARTICLE VIII
INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

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

(1) a master hazard policy insuring all improvements, equipment and fixtures in the Project (including the Units as originally constructed) with policy limits of either: [a] full replacement value of the covered improvements or [b] no less than 80% of replacement cost of the covered improvements, excluding foundations and footings in either instances, unless otherwise required by FNMA or FHLMC requirements as set forth in subparagraph 8.1A, below. The following endorsements should be included in any such master hazard policy, if commercially reasonable to obtain:

- (a) changes in building codes ("ordinance or law endorsement");
- (b) inflation guard coverage;
- (c) demolition coverage;
- (d) "agreed-amount" endorsement (to eliminate a coinsurance problem);
- (e) replacement cost endorsement; and
- (f) primary coverage endorsement.;

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

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

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

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

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

(7) insurance against water damage, and liability for non-owned and hired automobiles, such other insurance as the Board in its discretion considers necessary or advisable; and

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

A. Amount, Term and Coverage. The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company

rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which shall be within the discretion of the Board, as provided in § 8.1(8) above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with sections 4.3B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

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

C. Waiver of Subrogation. Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

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

D. Review of Policies. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

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

F. Copies of Policies; Notice to Members: The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in section 8.1(1). The Association shall distribute annually to the Members a summary of the Association's insurance policies as required by Civil Code section 1365(e) and as provided in the Bylaws. The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed, as described in Civil Code §1365(e), is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

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

H. Policies and Procedures Regarding the Filing and Processing of Claims: The Board shall adopt policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area improvements or any other matters covered by insurance maintained by the Association.

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

A. Process For Repair or Reconstruction: If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

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

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

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

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

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

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

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

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

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

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

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

8.3 Condemnation: The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or part of the Common Area(s). In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear. In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking and, after acceptance of the award, he and his Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in section 8.2.

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

ARTICLE IX GENERAL PROVISIONS

9.1 Enforcement: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

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

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

9.4 Amendments: Prior to close of escrow on the sale of the first Condominium, Declarant may amend this Declaration. After sale of the first Condominium, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership and, if required, the consent of the California Department of Real Estate. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County of Santa Clara. Notwithstanding anything in this Declaration to the contrary, any amendment to the Condominium Plan shall satisfy the requirements of California Civil Code § 1351(e) or any successor statute.

9.4.1. Amendments Regarding Initiation of Construction Defect Claims: Notwithstanding anything to the contrary contained in this Declaration, this section 9.4.1 and section 9.15 of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

9.5 Encroachment Rights: If any portion of the Common Area encroaches on any Unit or any part of a Unit, or any portion of a Unit encroaches on any Common Area due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by that encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if that encroachment occurred due to the intentional conduct of such Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of those encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining lot, or into a required setback area, a correcting modification may be made in the subdivision map and/or Condominium Plan. Such modification may be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole owner of the Project) and by Declarant's engineer (in the case of a condominium plan) and, in addition, by the city engineer (in the case of a subdivision map or parcel map). If the correction occurs after title to the Association Common Area has been conveyed to the Association, the Association shall also execute the

certificate of correction. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction. The modification may also be made by lot line adjustment, if more appropriate.

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

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

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

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

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

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

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

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

The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required by this Declaration to such parties, at the address given on the current request for notice, in the manner prescribed by section 9.10.

D. Consent to Action:

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

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

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

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

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

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

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

(c) partition or subdivide any Condominium;

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

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

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

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

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

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

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

J. Termination of Professional Management: When professional management has been previously required by the Condominium Documents or by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages.

So long as any Mortgage which is a lien on a Condominium is insured or guaranteed by the Federal Housing Administration, any termination or change in professional management shall require the prior written approval of the Federal Housing Administration.

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

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

9.7 Limitation of Restrictions on Declarant: Declarant is undertaking the work of construction of residential Condominiums and incidental improvements upon the Project. The completion of that work and the sale, rental, and other disposal of those Condominiums is essential to the establishment and welfare of the Project as a residential community. In order that the work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Condominium whatever is reasonably necessary or advisable in connection with the completion of the work, including the construction of Phase II (the Annexation Property); or

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on the Project (except upon Units owned by others), such structures as may be reasonable and necessary for the conduct of its business of completing the work and establishing said Project as a residential community and disposing of the Project in parcels by sale, lease or otherwise; or

C. Prevent Declarant from conducting on the Project (except upon Units owned by others) its business of completing the work and of establishing a plan of Condominium ownership and of disposing of the Project as Condominiums by sale, lease or otherwise (including use of one (1) or more Condominiums as a sales office or model); or

D. Prevent Declarant from maintaining or displaying such sign(s), pennants and flag(s) on the Project (except upon Units owned by others) as may be necessary for the sale, lease or disposition thereof;

E. Subject Declarant to the architectural control provisions of section 7.9 for construction of any Condominium or other improvements on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project.

So long as Declarant, its successors and assigns, owns one (1) or more of the Condominiums established and described in this Declaration, Declarant, and its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Condominiums (and the Common Area) by Owners, while completing any work necessary to those Condominiums or Common Area.

9.8 Termination of Any Responsibility of Declarant: In the event Declarant shall convey all of its right, title and interest in and to the Project to any successor Declarant, then and only in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant shall thereafter be obligated to perform all such duties and obligations of the Declarant. The obligations of Declarant to the City contained in the conditions of approval for the Project, which obligations are intended to be on going after Declarant has sold its interest in the Project, shall become the obligations of the Association, and the Association shall indemnify Declarant against any liability arising out of the performance or non-performance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association.

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

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

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

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

9.11 Inspection and Acceptance of Common Area Improvements: The Association's inspection and acceptance of the Common Area Improvements shall be resolved in accordance with the following procedures:

A. Walk-Through Inspection: On completion of all or any portion of the Common Area Improvements in a Phase of the Project ("Common Improvements"), Declarant shall notify the Association in writing. Within five (5) business days of the notice or such later date as is agreeable to the parties, representatives of the Association and Declarant shall meet for the purpose of inspecting and approving the Common Improvements and identifying any uncompleted or incorrectly completed items. With respect to those items that the parties agree need to be completed or corrected, Declarant shall have a reasonable time thereafter to complete or correct the items. No later than five (5) days after Declarant notifies the Association that it has completed or corrected the items, the items shall be reinspected.

B. Neutral Expert: If Declarant disagrees with any claim by the Association that a Common Improvement is not completed or is not completed correctly, Declarant may present the Association with a list of at least two qualified independent neutral experts to inspect the claim. The list shall contain a description of each expert's qualifications. If the Association will not accept any of the experts on the list, the Association shall notify the Declarant within five (5) days of receipt of the list and shall include in the notice a list of at least two experts from which Declarant may choose. The list shall contain a description of each expert's qualifications. If the Association fails to give the notice within the time required, Declarant may select one expert from Declarant's list. If the Association gives a timely response, Declarant shall have five (5) days to select an expert from the Association's list. If Declarant fails to respond in a timely manner, the Association may select an expert from Association's list. If the Declarant responds in a timely manner and will not accept any expert from the Association's list, either party immediately may request that a Special Master as defined herein make the selection. The request shall include both lists, and the Special Master may select from either list or select an expert from outside the list. Any fees charged by the Special Master for this service shall be paid by the requesting party. For purposes herein, a "Special Master" shall be any person with at least three years' experience in construction defect litigation as a Special Master for a superior court in any county in California. The selection by the Special Master shall be binding on the parties.

(1) The reasonable fees of the neutral expert shall be paid by Declarant. Once a neutral expert has been selected, the expert shall be given immediate access to the Common Improvements to inspect the Common Improvements. The expert need only inspect the areas that are readily accessible and shall have no responsibility for inaccessible areas or any problems that are not

readily apparent upon a visual inspection of accessible areas. Variations from strict adherence to plans and specifications as modified by any change orders shall not be characterized as defects if the variations are considered minor, are of no consequence, and reflect good workmanship and standard construction practices. The expert shall submit a report within thirty (30) days of completion of the inspection. The report shall constitute conclusive and binding evidence that, except as otherwise provided therein, and except for latent defects and building code violations, if any, the Common Improvements have been constructed in accordance with the plans and specifications as modified by any change orders. Declarant shall have a reasonable time thereafter to complete or correct any items noted in the report.

(2) On written request by either party, the expert shall reinspect such Common Improvements within thirty (30) days after the request to determine if such Common Improvements reasonably conform to the plans and specifications. Such reinspection shall be performed in the same manner as provided for in the first inspection and shall be limited only to those items contained in the report. Promptly after the reinspection is completed, the expert shall submit another written report (the "Reinspection Report") to Declarant and the Board specifying the defects specified in the report which have not been reasonably corrected, if any. If all such defects have been corrected, the Reinspection Report shall state that the Common Improvements reasonably conform to the plans and specifications described herein. The Reinspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein, the Common Improvements have been constructed in accordance with the plans and specifications described herein. Thereafter, Declarant shall have no further liability, duty or obligation with respect to such Common Improvements except to remedy any defects specified in the Reinspection Report. Additional inspections and Reinspection Reports may be made, if necessary, all in accordance with and with the same effect as provided hereinabove.

C. Acceptance and Release: Within ten (10) days after completion of the inspection described in subparagraph A, and no material items need to be corrected or completed or within ten days after all material items have been corrected and completed as evidenced by a report or Reinspection Report, the Board shall accept the Common Improvements, or the portion thereof covered by the report, in writing and, if applicable, shall release in writing any and all rights under any and all payments and performance, labor and material and completion bonds or other security arrangements (individually and collectively the "Bonds") pertaining to the Common Improvements, or portion thereof. For purposes herein, items shall be considered material items if the cost to correct or complete the items exceeds \$5000.

D. Bond Release Disputes: Any disputes regarding the release of the Bonds shall be resolved in accordance with the Bond escrow instructions or, if the instructions are not operative for any reason, in accordance with the provisions of section 9.15.

9.12 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements: Where the Project includes Common Area improvements which have not been completed prior to the close of escrow on the sale of the first Condominium, and where the Association is obligee under a bond or other arrangement (hereafter "Bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for those improvement in the planned construction statement appended to the

Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of: (i) voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond; or (ii) to consider the failure of the Board to consider and vote on the question, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents as may be necessary to effect the release of the Bond. The Association shall not condition its approval of the release of the Bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to section 9.15 of this Declaration.

9.13 Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments: Where the Association is obligee under a Bond or other arrangement (hereafter "Bond") to secure performance of the commitment of Declarant to pay Assessments on Units owned by Declarant, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any of Declarant's Assessments which are delinquent for thirty (30) days. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or such a meeting to consider the failure of the Board to consider and vote on the question shall be held not less than ten (10) days nor more than twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to assure the availability of funds to pay Assessments upon unsold Units as set forth in Title 10 Cal Code of Regs § 2792.9, the escrow holder holding the Bond shall return the Bond to Declarant, after delivery to said escrow holder of Declarant's written request for release of the Bond, and Declarant's written statement that [1] Declarant has paid, as and when due, all Regular Assessments and Special Assessments levied by the Association against Units owned by the Declarant and that [2] 80% of the Units in the Project have been conveyed by Declarant, unless pursuant to Title 10 Cal Code of Regs § 2792.9, the Association delivers to said escrow holder its written objection to the return of the Bond to Declarant within forty (40) days after delivery of notice of

Declarant's request from release and the statement to the Association. The Association shall not condition its approval of the release of the Bond on the satisfaction of any condition other than the payment of Assessments.

If the Association delivers to the escrow holder of the Bond a demand for remittance of the Bond or a portion thereof, or the proceeds thereof to the escrow holder of the Bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of Regular Assessments or Special Assessments which have been levied by the Association against Units owned by the Declarant, then all of some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the subdivider's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow depository of the Bond, which shall be in the form approved by the Department of Real Estate, with respect to the holding of the Bond, the return or remittance of the Bond and other disposition of matters set forth in said escrow instructions with respect to the Bond. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to Arbitration as provided in section 9.15E hereof.

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

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

A. Claims for Declaratory Relief or Enforcement of Project Documents: Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents, or for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code Section 1354(b). The Board shall comply with the requirements of California Civil Code Section 1354(i) by providing Members of the Association annually with a summary of the provisions of California Civil Code Section 1354, including the following language: "Failure by any Member of the Association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the governing documents."

B. Design or Construction Defect Claims:

Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined

in Civil Code sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with Civil Code sections 895 through 945.5, and Civil Code sections 1375 and 1375.05, as such sections may be amended, revised or superseded, from time to time.

If a Claim is subject to pre-litigation procedures in Civil Code sections 910 through 938, or any successor statutes, each Owner, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the prelitigation procedures of Civil Code sections 910 through 938. Notices of Claims shall specify all of the matters as set forth in Civil Code section 1368.4 and/or Civil Code sections 910 through 938, as applicable, and any successor statutes or laws.

The Association and not the individual Members shall have the power to pursue any Claims for alleged construction defects in the Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration. Any recovery by the Association with respect to any damage to or defect in the Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

If the Claim is not resolved by and pursuant to the prelitigation procedures of under Civil Code sections 910 through 938, subject to the provisions of Civil Code section 1375 and 1375.05, then notwithstanding the provisions of California Code of Civil Procedure Section 1298.7, the Claim shall be resolved in accordance with the provisions of section 9.15D of this Declaration.

C. Notices to Members of Legal Proceedings Against Declarant. In accordance with Civil Code Section 1368.4, at least 30 days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to (i) the Common Area, (ii) all or portions of Units which the Association is required to maintain, or (iii) the Units which arises from or is integrally related to alleged damage to the Common Area or all or portions of the Units which the Association is required to maintain, the Board shall provide written notice to each Member specifying each of the following:

- (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
- (2) The options, including civil actions, that are available to address the problems; and
- (3) The time and place of the meeting.

If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the meeting and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

D. Judicial Reference for Certain Disputes: For any action by the Association or any Owner against the Declarant, any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), subject to the provisions of Civil Code sections 895 through 938, Civil Code section 1375 and Civil Code section 1375.05, or any other action by the Association or any Owner against the Declarant, except as otherwise provided herein, such claim shall be submitted to Judicial Reference as hereinafter provided:

(1) The dispute shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) through 645.1, or any successor statutes thereto pertaining to proceedings under judicial reference ("Judicial Reference"). The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the Judicial Reference proceeding. Declarant shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the Referee for the Judicial Reference proceeding as determined by the Referee.

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

(a) If the Declarant is a party to the Judicial Reference, then any fee to initiate the Judicial Reference shall be paid by Declarant, provided however, that the cost of the judicial reference shall ultimately be borne as determined by the Referee;

(b) The proceedings shall be heard in Santa Clara County, California;

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

(d) Any dispute regarding the selection of the Referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

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

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

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

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

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

(j) The Referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Judicial Reference; and

(k) The statement of decision of the Referee upon all of the issues considered by the Referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the Referee shall be appealable as if rendered by the court.

(l) If submission of a disputed matter referenced in this section 9.15D to Judicial Reference is not permitted under the then applicable law, then notwithstanding California Code of Civil Procedure Section 1298.7, if the dispute is not resolved through mediation, each Owner, the Association and Declarant shall resolve such dispute exclusively through binding arbitration conducted in accordance with the Rules of the Judicial Arbitration and Mediation Services ("JAMS") pursuant to section 9.15E of this Declaration.

(2) Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code section 1354 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code section 1354, as same may be amended from time to time.

(3) Notwithstanding the foregoing, any dispute under sections 9.12 and 9.13 of this Declaration between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to section 9.15E of this Declaration.

E. Arbitration of Disputes: If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

(1) costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator; provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator;

(2) a neutral and impartial individual shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by JAMS. In selecting the arbitrator, the provisions of §1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the Code of Civil Procedure;

(3) venue of the arbitration to be in Santa Clara County, California;

(4) the arbitration shall commence in a prompt and timely manner in accordance with (i) the Commercial Rules of JAMS, or if the rules do not specify a date by which arbitration is to commence, then (ii) by a date agreed upon by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award;

(5) the arbitration shall be conducted in accordance with the Commercial Rules of JAMS;

(6) the arbitration shall be conducted and concluded in a prompt and timely manner;

(7) the arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration;

(8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable.

(9) Preliminary Procedures. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claim or Disputes pursuant to California Civil Code Section 895 et seq., as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1;

(10) Participation by Other Parties. An Owner, the Association and Declarant, to such extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration;

(11) Federal Arbitration Act. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein;

(12) AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL.

a. **ARBITRATION OF DISPUTES.** BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY 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, AND DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF DECLARANT, THE ASSOCIATION OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, DECLARANT, THE ASSOCIATION OR SUCH OWNER MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

b. **WAIVER OF JURY TRIAL.** IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY AND THE ASSOCIATION, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, THE ASSOCIATION OR ANY OWNER AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

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

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration this 3rd day of May, 2004, and hereby certifies that Declarant consents to the recordation of the Condominium Plan attached hereto as Exhibit "A" and incorporated in this Declaration pursuant to the requirements of California Civil Code §§ 1350-1372.

800 NORTH 8TH STREET LLC
a Delaware limited liability company

By: See Attached

Its: _____

STATE OF CALIFORNIA

)
) ss.

COUNTY OF

On this _____ day of _____, 2004, before me, _____, a notary public for the state, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

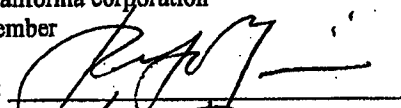
Notary Public, State of California

Document: Enabling Declaration Establishing A Plan For Condominium Ownership
800 NORTH 8TH STREET LLC

800 NORTH 8 TH STREET LLC,
a Delaware limited liability company

By: RCNC 800 North 8th, LLC
a California limited liability company
Its: Managing Member

By: Regis Homes of Northern California, Inc.
a California corporation
Its: Member

By: 
Name: Tom Regis
Title: Authorized Representative

Address:

C/o Regis Homes of Northern California
901 Mariner's Island Blvd. Ste 700
San Mateo, CA. 94404

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Mateo } ss.

On May 3, 2004 before me, Marlene Tyler, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Todd A. Regonini
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Marlene Tyler
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: CC + R's (800 N. 8th Street Condominiums)

Document Date: _____ Number of Pages: _____

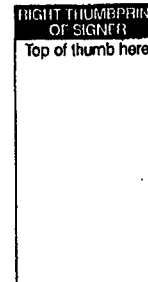
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



CONDOMINIUM PLAN
800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA
LOT 1 OF TRACT 9470
BOOK 761 OF MAPS, PAGES 38 -39
CONSISTING OF 26 SHEETS
APRIL, 2004



PHASE 1
EXHIBIT A

DESCRIPTION	SHEET
INDEX	1
SURVEYOR'S STATEMENT	2
NOTES	3
LEGEND	4
UNIT AND EXCLUSIVE USE COMMON AREA SCHEDULE	5 & 6
UNIT ELEVATION TABLES	7
BUILDING ELEVATIONS	8
SITE PLAN	9 & 10
GARAGE LEVEL PLAN	11 & 12
BUILDING 1 FLOOR PLANS	13, 14, 15 & 16
BUILDING 2 FLOOR PLANS	17 & 18
UNIT PLANS: 101, 106, 206, 306, 111, 211, 311	19
UNIT PLANS: 103, 203, 303, 107, 207, 307	20
UNIT PLANS: 109, 209, 309	21
UNIT PLANS: 201, 301	22
UNIT PLANS: 102, 202, 302, 108, 208, 308	23
UNIT PLANS: 104, 204, 304, 110, 210, 310	24
UNIT PLANS: 105, 205, 305	25 & 26

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800 NORTH EIGHTH STREET CONDOMINIUMS
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PHASE 1
SURVEYOR'S STATEMENT

SURVEYOR'S STATEMENT

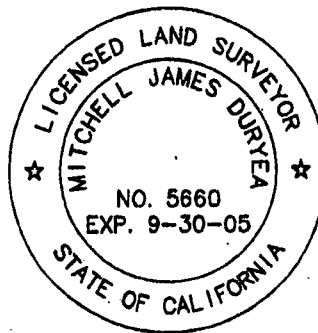
I, Mitchell Duryea, hereby state that I am a Licensed Land Surveyor, LS Number 5660, of the State of California, that a survey was made under my direction and that the survey is a true and complete as shown on this plan; that the monuments and benchmarks are of the character and occupy or will occupy the positions indicated on the within plan and that they are sufficient to enable this survey to be retraced, and that the Condominium Plan consists of the description or survey map of a condominium project which refers to or shows monumentation on the ground and a three dimensional description of the project in sufficient detail to identify the common areas and each separate interest pursuant to the requirements of California Civil Code 1351(e).

Date

4/23/04



Mitchell J. Duryea
L.S. 5660



CONDOMINIUM PLAN
800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA
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**PHASE 1
NOTES**

1. All dimensions shown are in feet and decimals thereof.
2. All building and unit lines are parallel or perpendicular to each other, unless shown otherwise on the plans. See site plan on sheets 9 and 10 for orientation bearing for each building.
3. Basis of Bearings: The bearing North 30°39'01" West between the monuments along the monument line of Eighth Street, as shown on the Map of Tract 9740, filed for record in Book 761 of Maps at pages 38 and 39, Santa Clara County Records and as found monumented was taken as the basis for all bearings shown hereon.
4. See sheets 11 and 12 for building and garage locations, and building and garage designations.
5. See building plans on sheets 13 thru 18 for unit locations and designations, deck and stoop locations.
6. See typical unit plans on sheets 19 thru 26 for unit dimensions and deck and stoop dimensions.
7. See Elevation Table on sheet 7 for unit unfinished floor elevations and nominal ceiling elevations. The units include any vaulted ceiling area or dropped ceiling area located within the dimensions of the unit unless the dropped area contains utility line or equipment that services another unit, in which case the area is common area and not a part of the unit.
8. Dimensions shown on the building plans are to the outside face of stud.
9. Outside dimensions shown on the typical floor plans are to the outside face of studs unless noted otherwise. Inside dimensions are to the inside face of sheet rock.
10. The following described portions of the common area, referred to as "Exclusive use Common Areas" are set aside and allocated for the exclusive use of the owner of the condominium to which they are attached or assigned as shown on the Condominium Plan, and are appurtenant to the condominium unit; Deck designated 'D' followed by the unit designation. Stoop designated 'ST', followed by the unit designation.
11. Garage spaces designated 'P', and followed by a number are referred to as "Exclusive use Common Area" the exclusive use of which is assigned to particular units as indicated on Exhibit D attached to the Declaration.
12. The boundary lines for each stoop or deck are the exterior finished surfaces of the railings thereof, the exterior face of stud of the perimeter walls abutting said stoop or deck, the finished surface of the floor and the projection of the finished surface of the ceiling of the adjacent condominium unit and all the airspace encompassed therein.
13. In interpreting deeds and other documents in connection with this subdivision and plan, the existing physical boundaries of a unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of minor variance between boundaries shown on the plan or deed, and those of the buildings
14. The "Association Common Area" is all of Lot 1, except for the Building Common Area (buildings 1 and 2), the units, and Parcel A (future buildings).
15. BENCHMARK: U.S. Coast and Geodetic Survey disk stamped "C-1121" set vertically in the southeast concrete foundation wall of Legacy Transportation Co. office building, at 1045 10th Street, 100.5 feet southeast of northwest property line, 0.5 feet southwest of the east corner of the building, on 10th Street, 0.1 mile northwest of the junction of Horning Street.

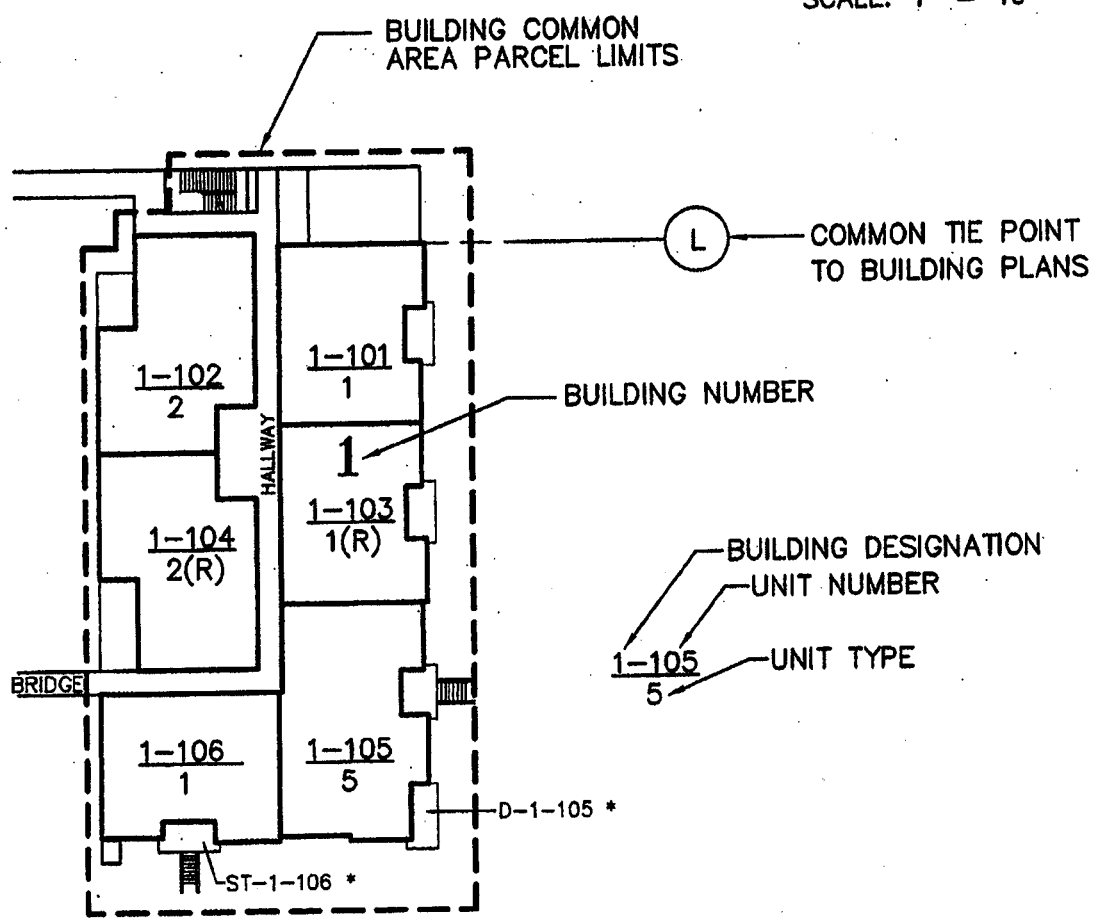
CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
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PHASE 1 LEGEND

SCALE: 1" = 40'



* EXCLUSIVE USE COMMON AREA
 USE OF THE OWNER CORRESPONDING UNIT

D= DECK
 ST= STOOP

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
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PHASE 1
BUILDING 1
 UNIT AND EXCLUSIVE USE
 COMMON AREA SCHEDULE

UNIT NUMBER	UNIT TYPE 1st FLOOR	UNIT TYPE 2nd FLOOR	UNIT TYPE 3rd FLOOR	DECK	STOOP
1-101	1			D-1-101	
1-102	2			D-1-102	
1-103	1(R)			D-1-103	
1-104	2(R)			D-1-104	
1-105	5			D-1-105	ST-1-105
1-106	1				ST-1-106
1-201		1B		D-1-201	
1-202		2		D-1-202	
1-203		1(R)		D-1-203	
1-204		2(R)		D-1-204	
1-205		5		D-1-205	
1-206		1		D-1-206	
1-301			1B W/MEZZ.	D-1-301	
1-302			2 W/MEZZ.	D-1-302	
1-303			1(R) W/MEZZ.	D-1-303	
1-304			2(R) W/MEZZ.	D-1-304	
1-305			5 W/MEZZ.	D-1-305	
1-306			1 W/MEZZ.	D-1-306	

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS

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PHASE 1 BUILDING 2

UNIT AND EXCLUSIVE USE
COMMON AREA SCHEDULE

UNIT NUMBER	UNIT TYPE 1st FLOOR	UNIT TYPE 2nd FLOOR	UNIT TYPE 3rd FLOOR	DECK	STOOP
2-107	1(R)				ST-2-107
2-108	2			D-2-108	
2-109	1A				ST-2-109
2-110	2(R)			D-2-110	
2-111	1				ST-2-111
2-207		1(R)		D-2-207	
2-208		2		D-2-208	
2-209		1A		D-2-209	
2-210		2(R)		D-2-210	
2-211		1		D-2-211	
2-307			1(R) W/MEZZ.	D-2-307	
2-308			2 W/MEZZ.	D-2-308	
2-309			1A	D-2-309	
2-310			2(R) W/MEZZ.	D-2-310	
2-311			1 W/MEZZ.	D-2-311	

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
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PHASE 1
BUILDINGS 1 AND 2
 UNIT ELEVATION TABLES

BUILDING 1

UNIT NUMBER	UNFINISHED FLOOR ELEVATION	NOMINAL CEILING ELEVATION
1-101	65.80	74.86
1-102	65.80	74.86
1-103	65.80	74.86
1-104	65.80	74.86
1-105	65.80	74.86
1-106	65.80	74.86
1-201	76.02	84.98
1-202	76.02	84.98
1-203	76.02	84.98
1-204	76.02	84.98
1-205	76.02	84.98
1-206	76.02	84.98
1-301	86.13	104.20
1-302	86.13	104.20
1-303	86.13	104.20
1-304	86.13	104.20
1-305	86.13	104.20
1-306	86.13	104.20

BUILDING 2

UNIT NUMBER	UNFINISHED FLOOR ELEVATION	NOMINAL CEILING ELEVATION
2-107	65.80	74.86
2-108	65.80	74.86
2-109	65.80	74.86
2-110	65.80	74.86
2-111	65.80	74.86
2-207	76.02	84.98
2-208	76.02	84.98
2-209	76.02	84.98
2-210	76.02	84.98
2-211	76.02	84.98
2-307	86.13	104.20
2-308	86.13	104.20
2-309	86.13	95.20
2-310	86.13	104.20
2-311	86.13	104.20

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS
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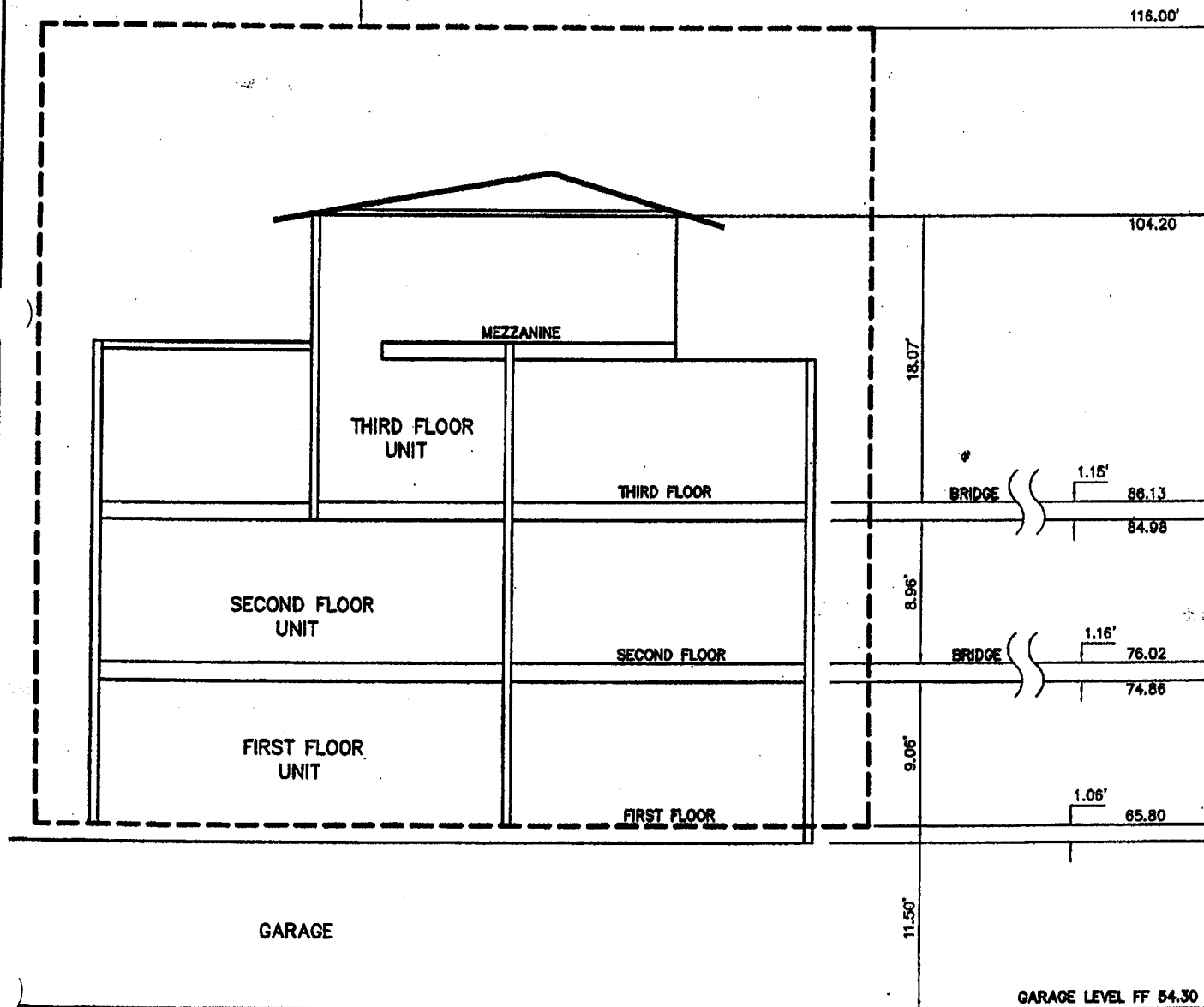


PHASE 1 BUILDING ELEVATIONS

TYPICAL ALL BUILDINGS

SCALE: 1" = 10'

BUILDING COMMON
AREA PARCEL LIMITS



CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA

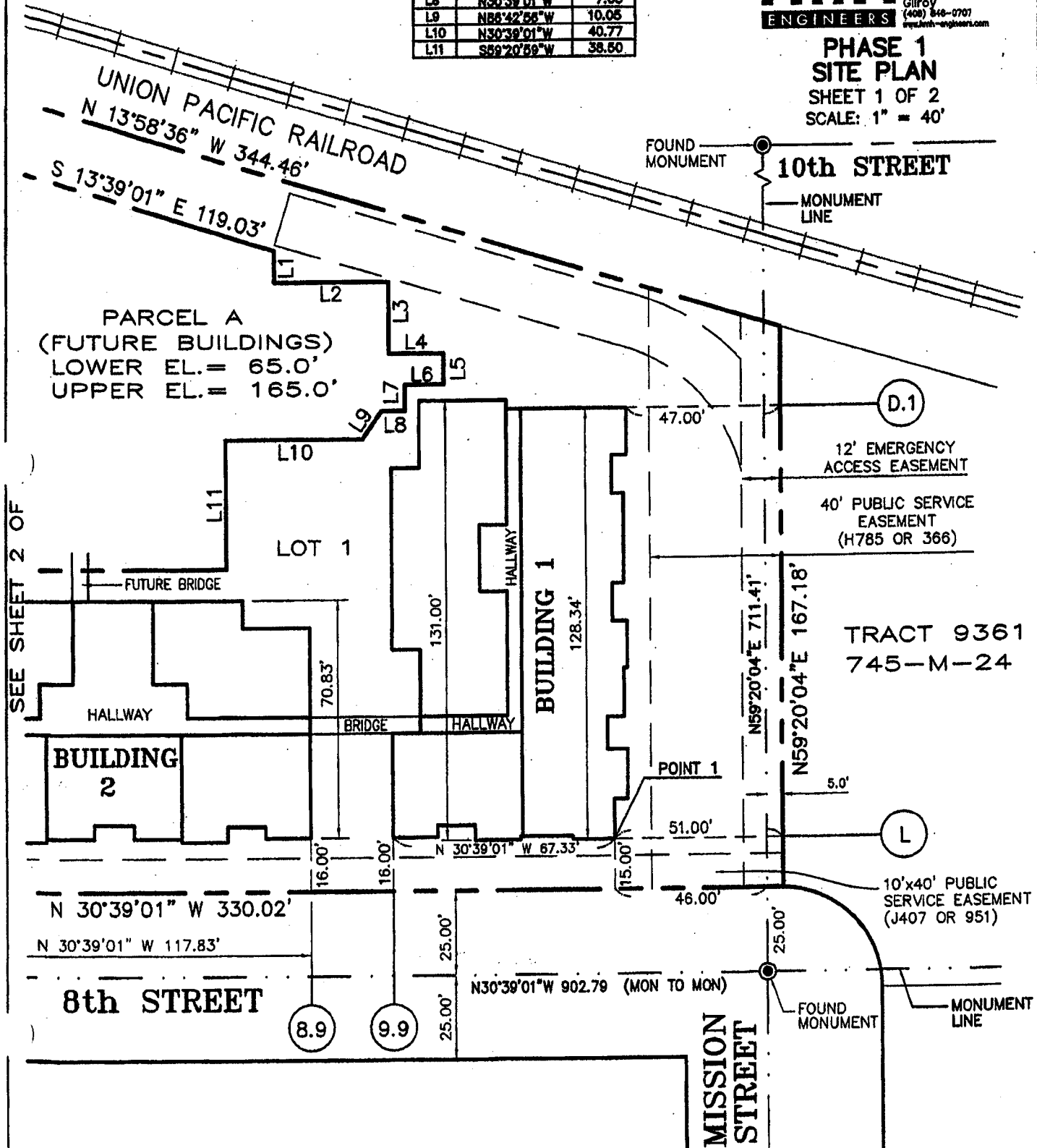
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**PHASE 1
SITE PLAN**
SHEET 1 OF 2
SCALE: 1" = 40'

LINE	BEARING	LENGTH
L1	S59°20'59"W	9.66
L2	S30°39'01"E	34.00
L3	S59°20'59"W	21.54
L4	S30°39'01"E	18.50
L5	S59°20'59"W	9.34
L6	N30°39'01"W	11.79
L7	S59°20'59"W	7.82
L8	N30°39'01"W	7.03
L9	N86°42'58"W	10.05
L10	N30°39'01"W	40.77
L11	S59°20'59"W	38.50



SEE SHEET 2 OF

LINE TABLE		
LINE	BEARING	LENGTH
L1	S59°20'59"W	9.88
L2	S30°39'01"E	34.00
L3	S59°20'59"W	21.54
L4	S30°39'01"E	18.50
L5	S59°20'59"W	9.34
L6	N30°39'01"W	11.79
L7	S59°20'59"W	7.82
L8	N30°39'01"W	7.03
L9	N88°42'58"W	10.05
L10	N30°39'01"W	40.77
L11	S59°20'59"W	38.80

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS

SAN JOSE, CALIFORNIA

LOT 1 OF TRACT 9470

BOOK 761 OF MAPS, PAGES 38 -39

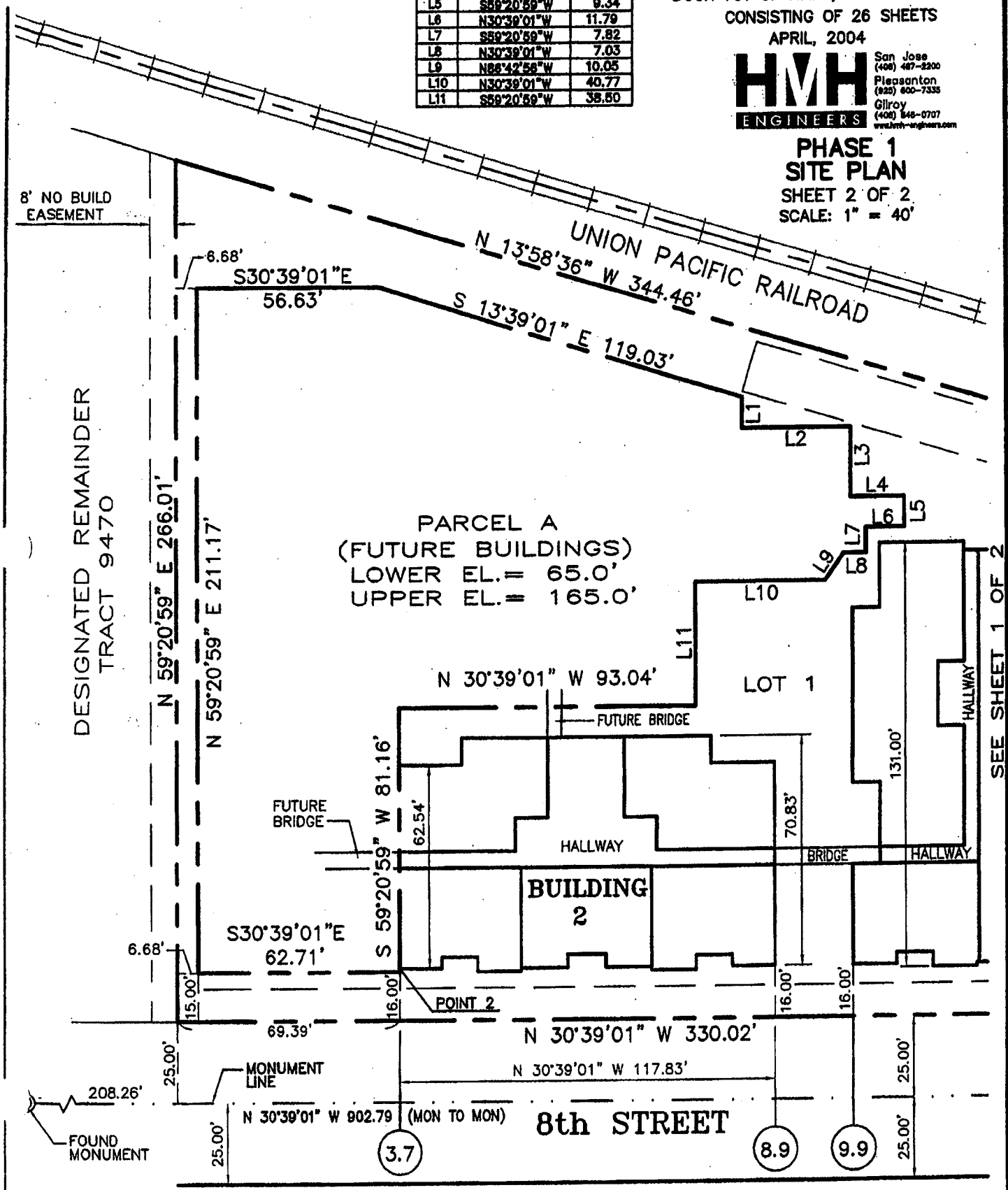
CONSISTING OF 26 SHEETS

APRIL, 2004



San Jose
(408) 487-8200
Pleasanton
(925) 600-7335
Gilroy
(408) 848-0707
www.hmh-engineers.com

**PHASE 1
SITE PLAN**
SHEET 2 OF 2
SCALE: 1" = 40'



CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 26 SHEETS

APRIL, 2004



**PHASE 1
 GARAGE LOCATIONS**

SHEET 1 OF 2
 SCALE: 1" = 30'

N 13°58'36" W 344.46'

S 13°39'01" E 118.44'

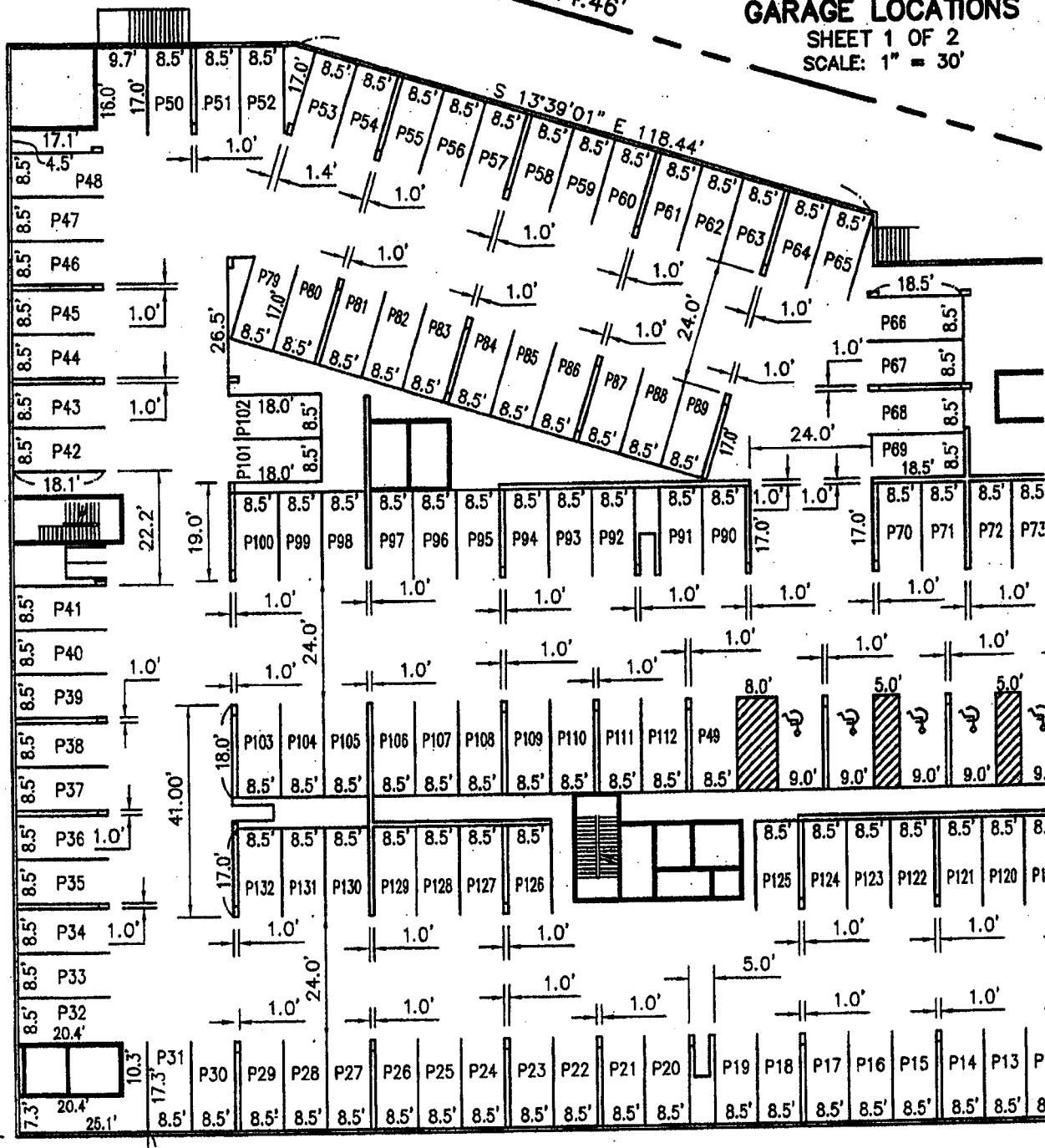
N 59°20'59" E 266.01'

211.2

15.0'

32.5'

N 30°39'01" W 330.02'



SEE SHEET 2 OF 2

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA

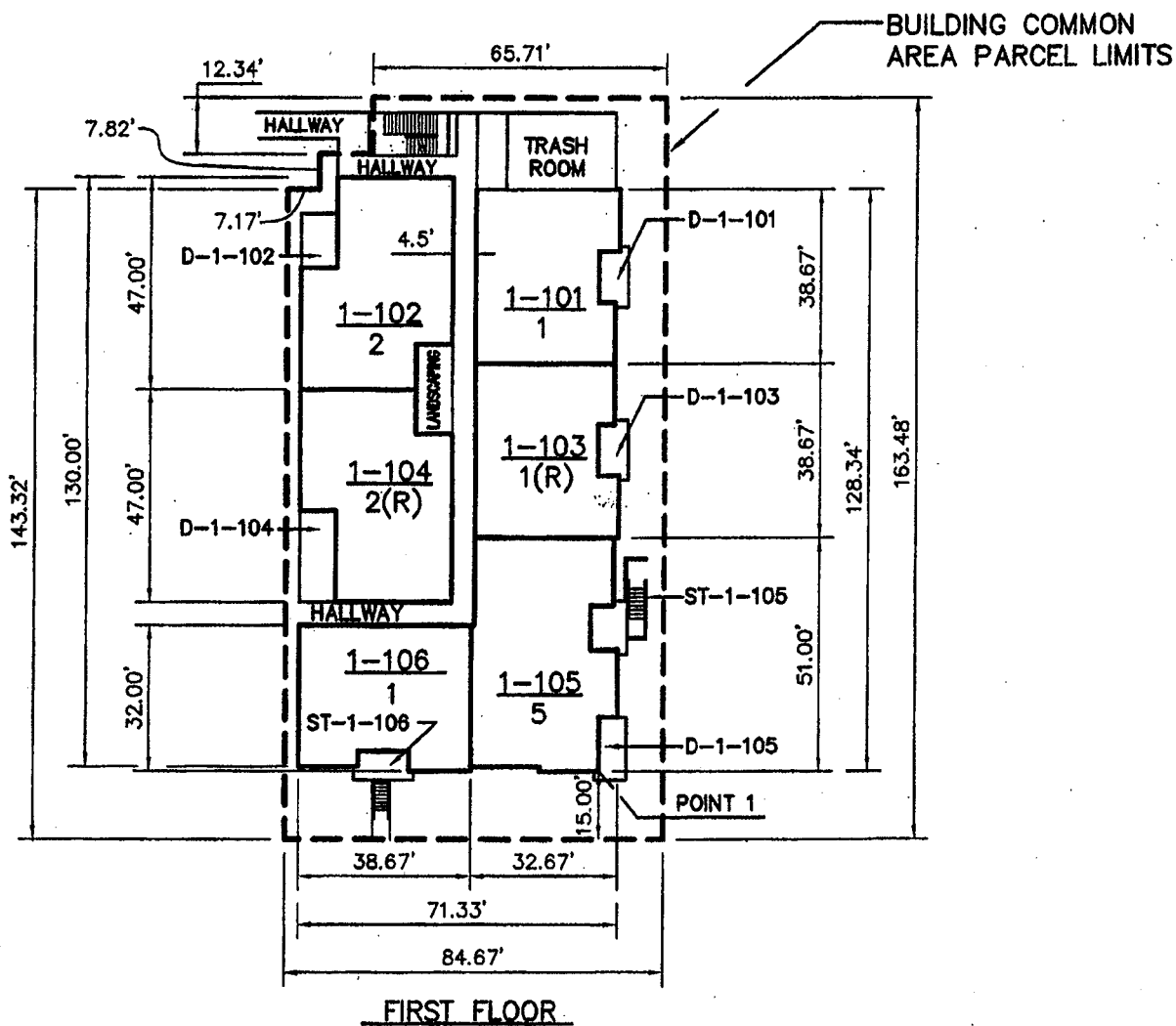
LOT 1 OF TRACT 9470
BOOK 761 OF MAPS, PAGES 38 -39

CONSISTING OF 26 SHEETS
APRIL, 2004



PHASE 1 BUILDING 1 PLAN

SHEET 1 OF 4
SCALE: 1" = 40'



CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA

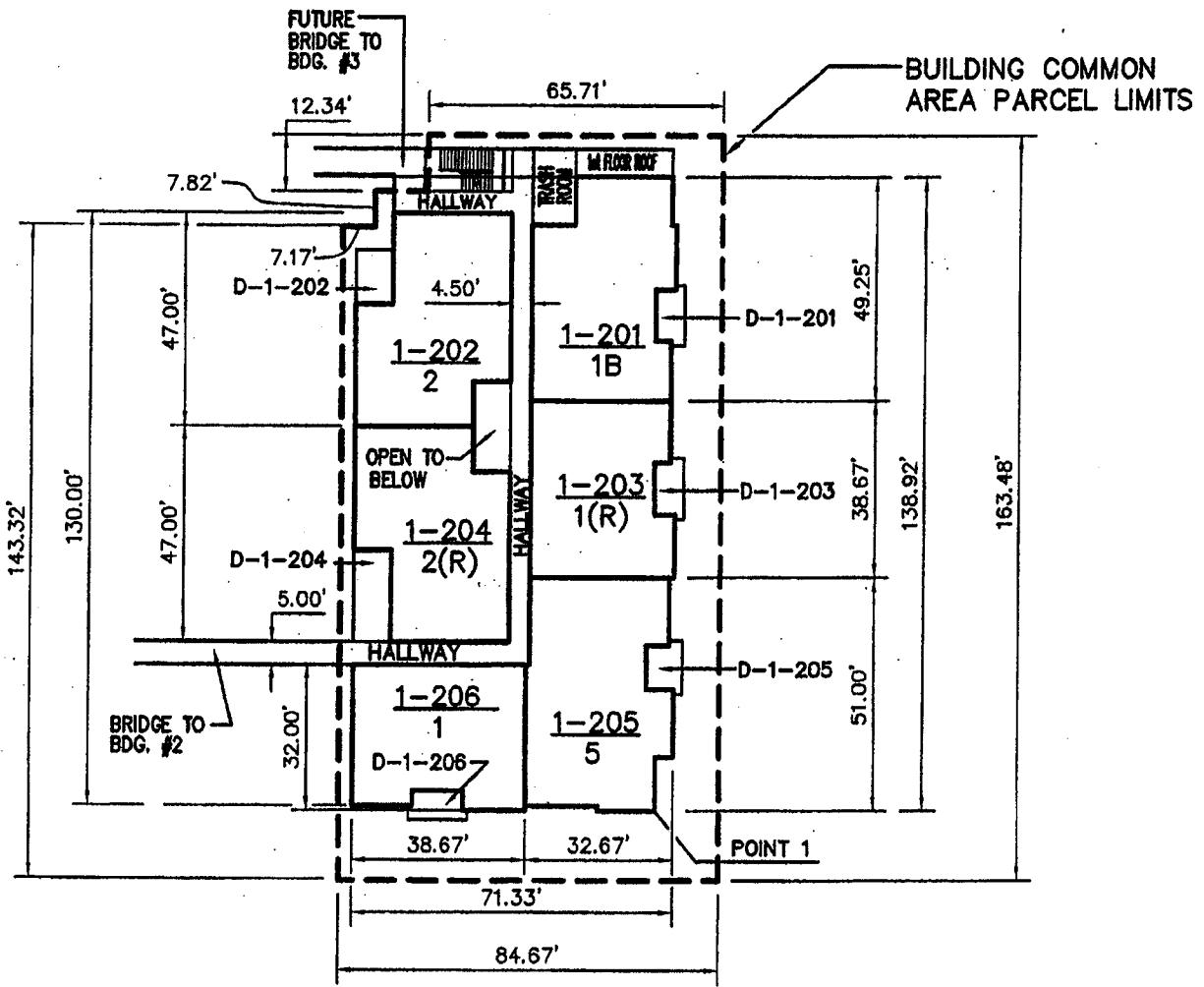
LOT 1 OF TRACT 9470
BOOK 761 OF MAPS, PAGES 38 -39

CONSISTING OF 26 SHEETS
APRIL, 2004



PHASE 1 BUILDING 1 PLAN

SHEET 2 OF 4
SCALE: 1" = 40'

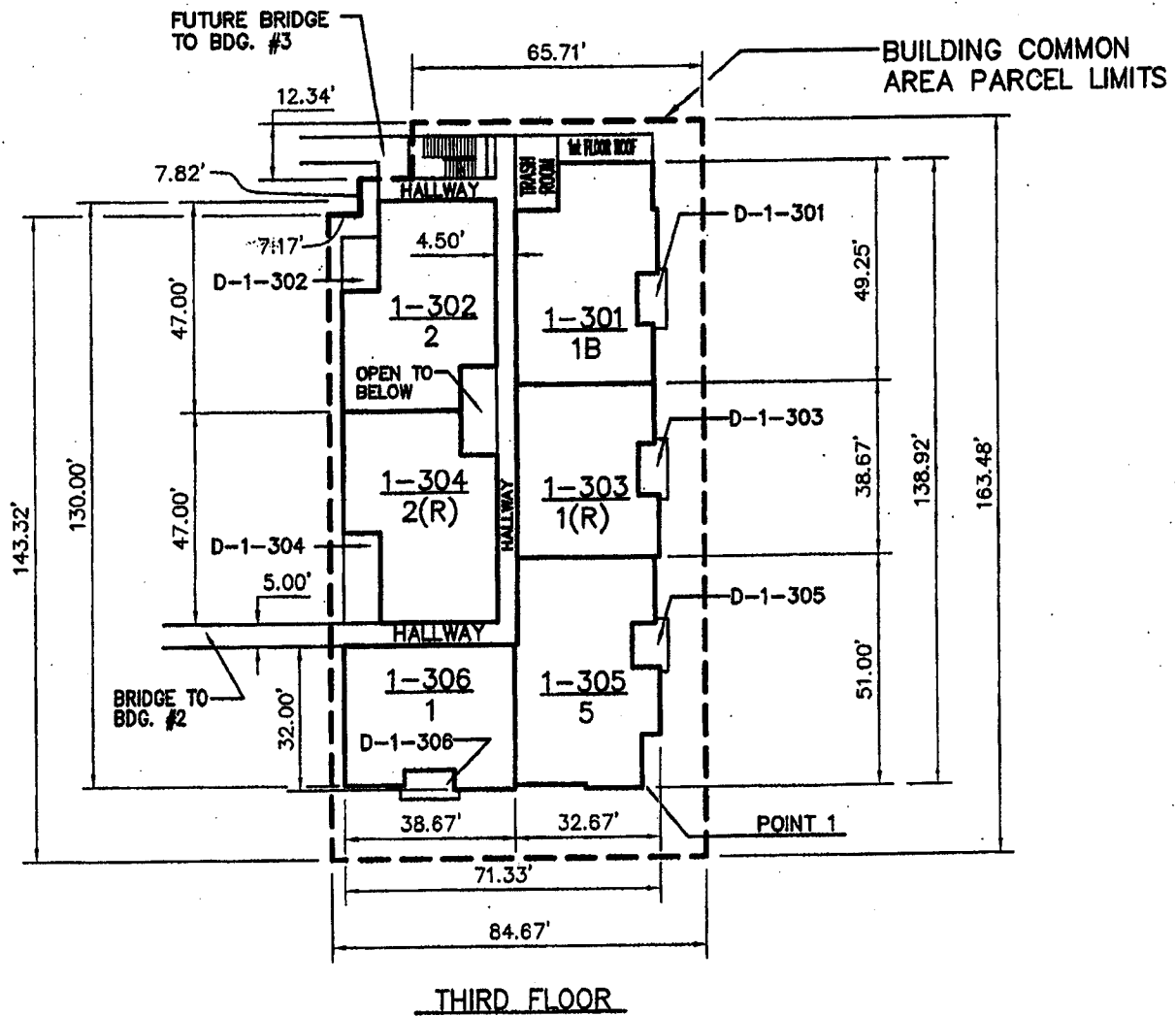


SECOND FLOOR

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 26 SHEETS
 APRIL, 2004

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PHASE 1
BUILDING 1 PLAN
 SHEET 3 OF 4
 SCALE: 1" = 40'



CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA

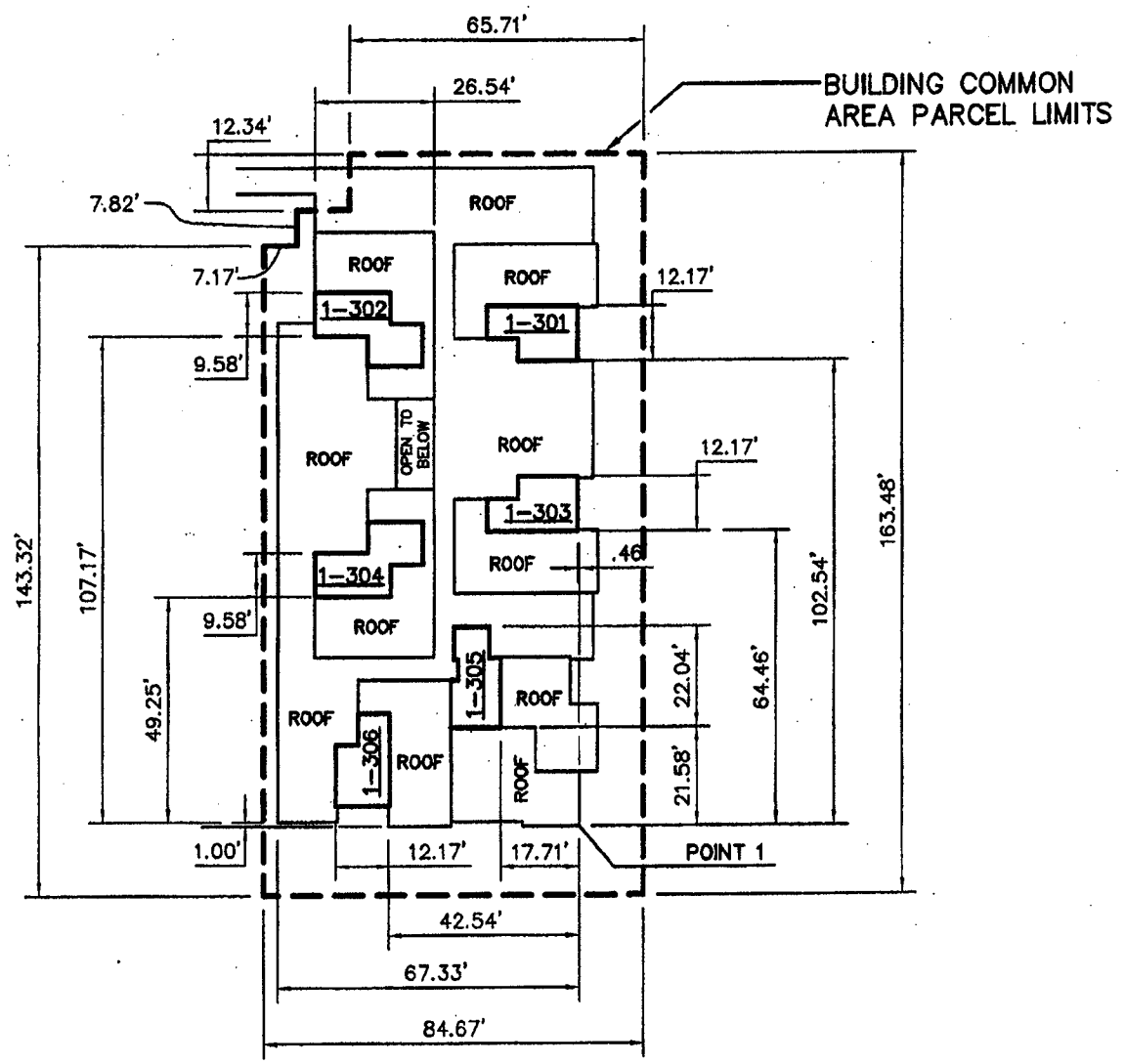
LOT 1 OF TRACT 9470
BOOK 761 OF MAPS, PAGES 38 -39

CONSISTING OF 26 SHEETS
APRIL, 2004



PHASE 1 BUILDING 1 PLAN

SHEET 4 OF 4
SCALE: 1" = 40'



MEZZAINE LEVEL

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS

SAN JOSE, CALIFORNIA

LOT 1 OF TRACT 9470

BOOK 761 OF MAPS, PAGES 38 -39

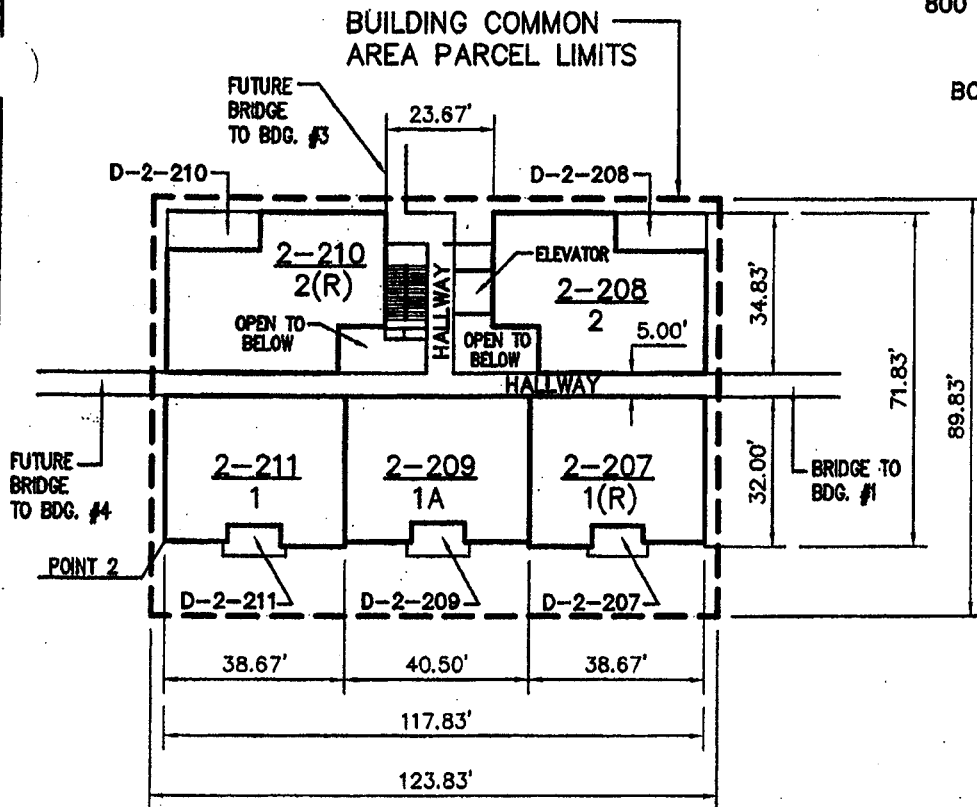
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APRIL, 2004

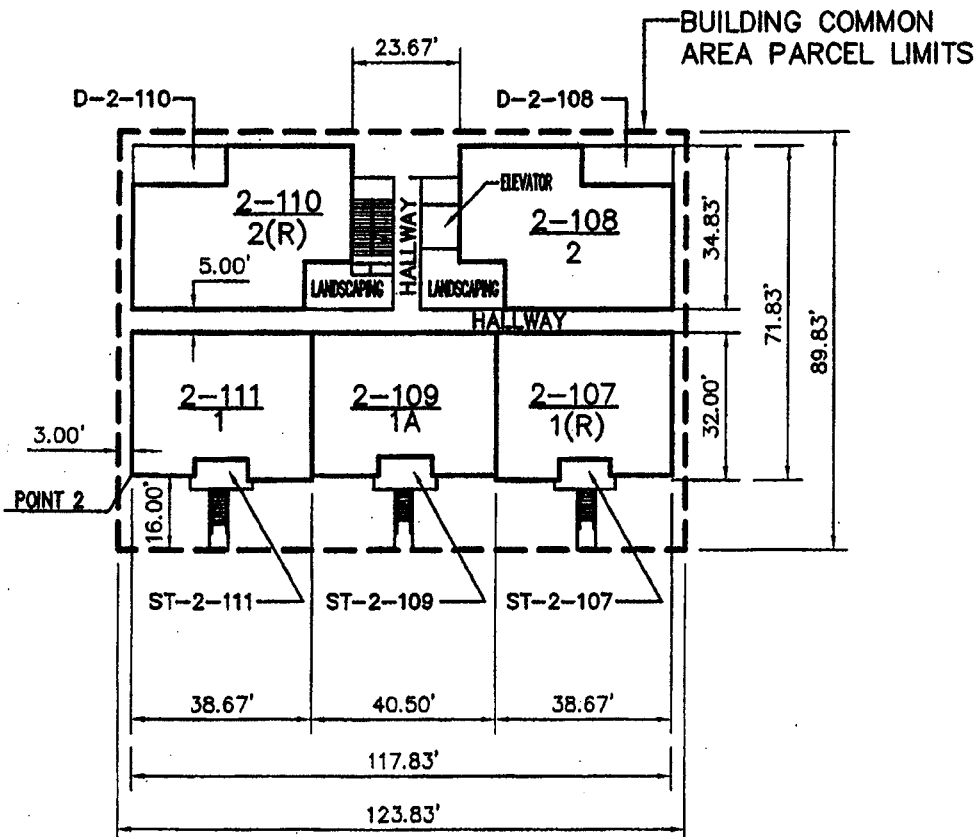


PHASE 1 BUILDING 2 PLAN

SHEET 1 OF 2
SCALE: 1" = 40'



SECOND FLOOR



FIRST FLOOR

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA

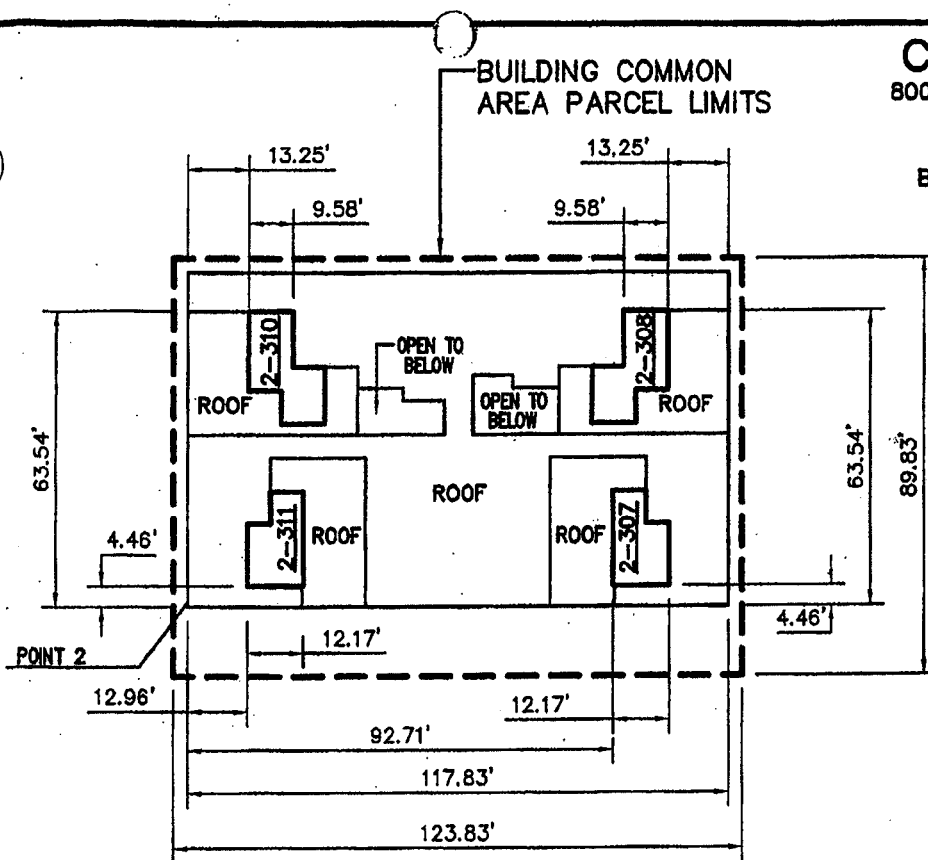
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APRIL, 2004

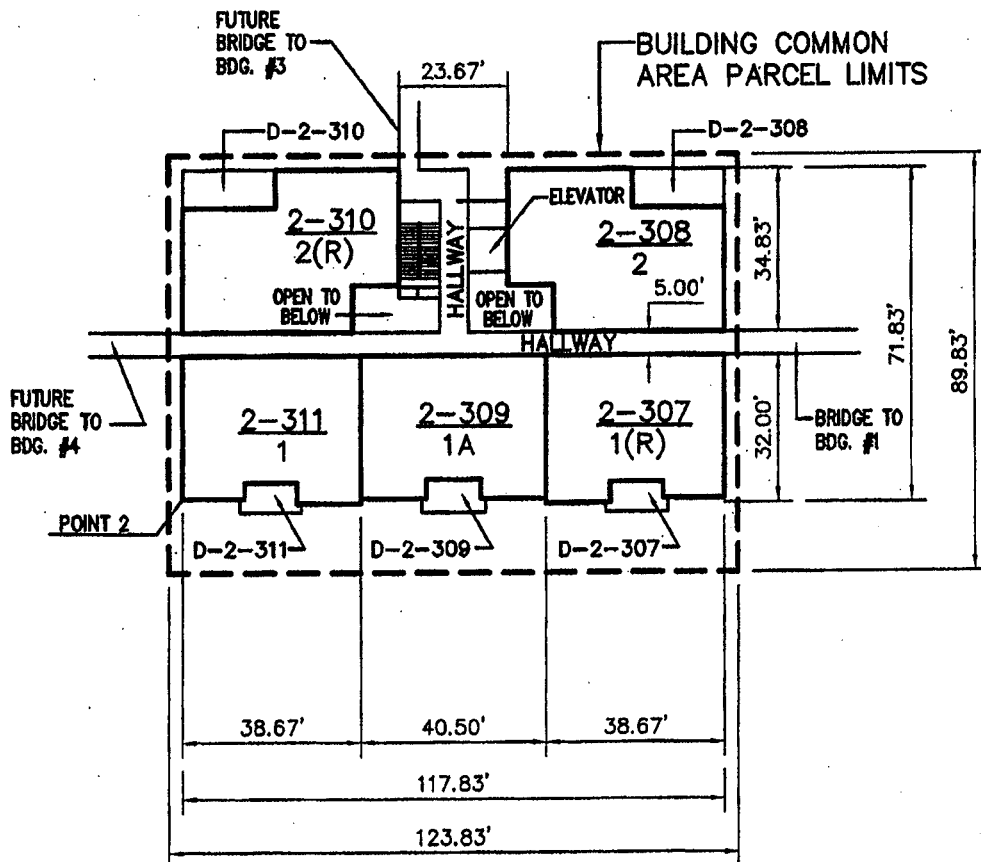


PHASE 1 BUILDING 2 PLAN

SHEET 2 OF 2
SCALE: 1" = 40'



MEZZANINE LEVEL



THIRD FLOOR

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA

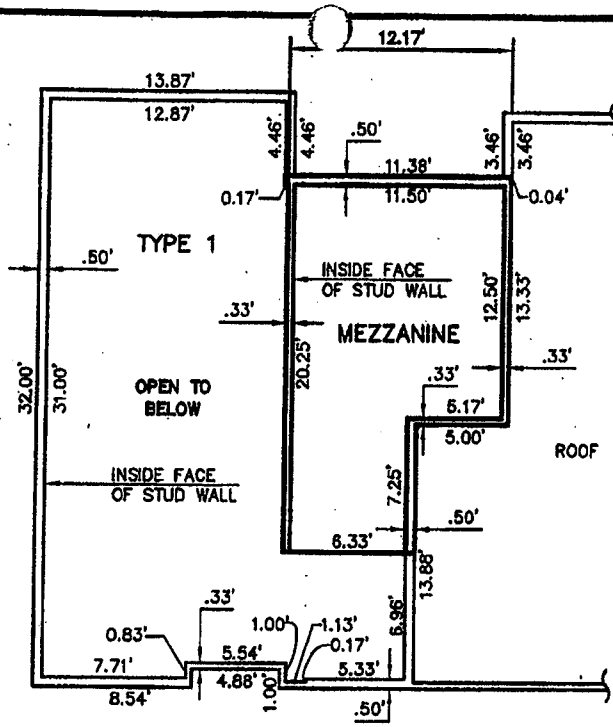
LOT 1 OF TRACT 9470
BOOK 761 OF MAPS, PAGES 38 -39

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APRIL, 2004

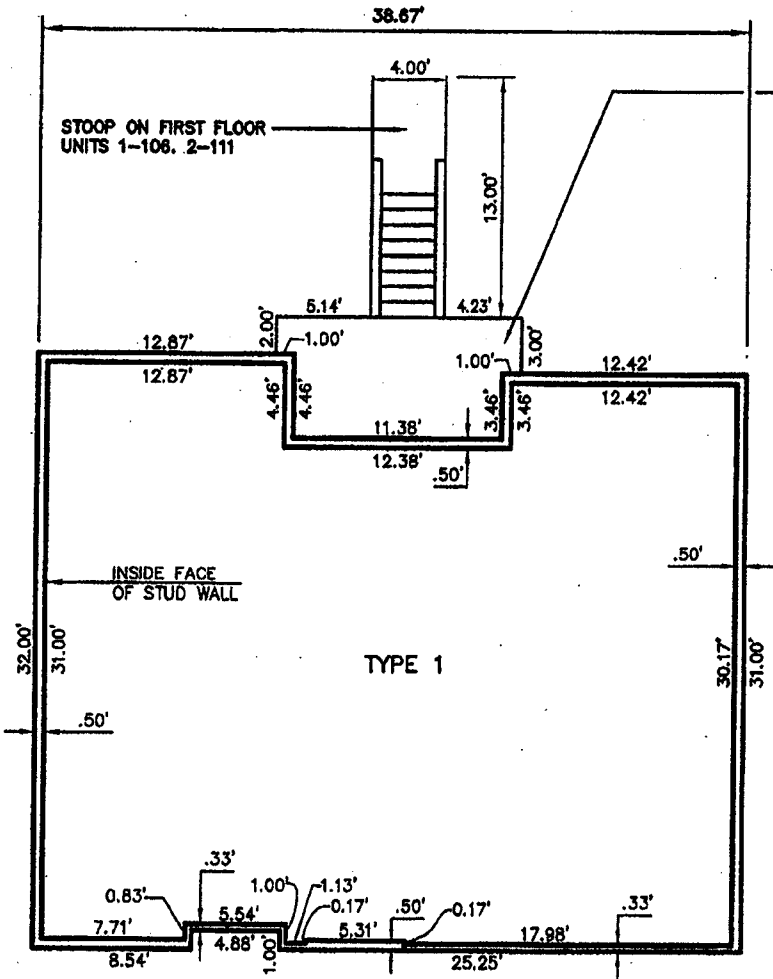


PHASE 1 UNIT PLANS

TYPE 1
SCALE 1" = 10'



UNITS: 306, 311



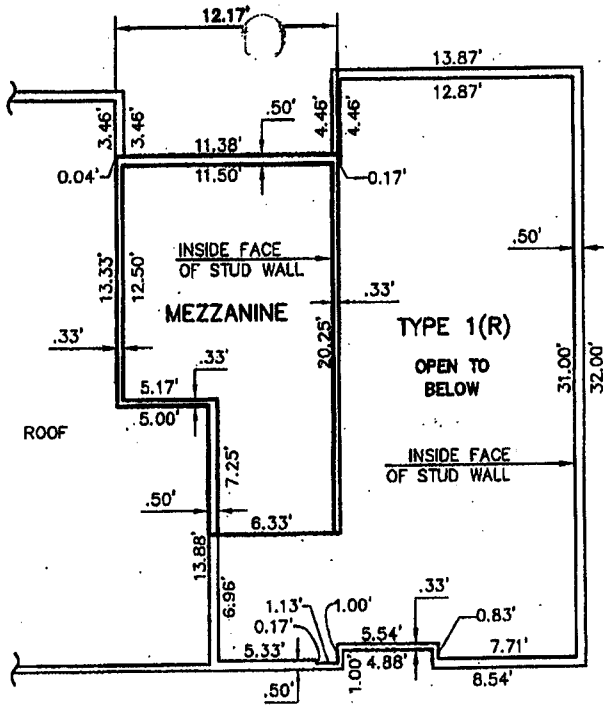
DECKS ON FIRST FLOOR
UNIT 1-101
DECKS ON SECOND FLOOR
UNITS 1-206, 2-211
DECKS ON THIRD FLOOR
UNITS 1-306, 2-311

UNITS: 101, 106, 206, 306, 111, 211, 311

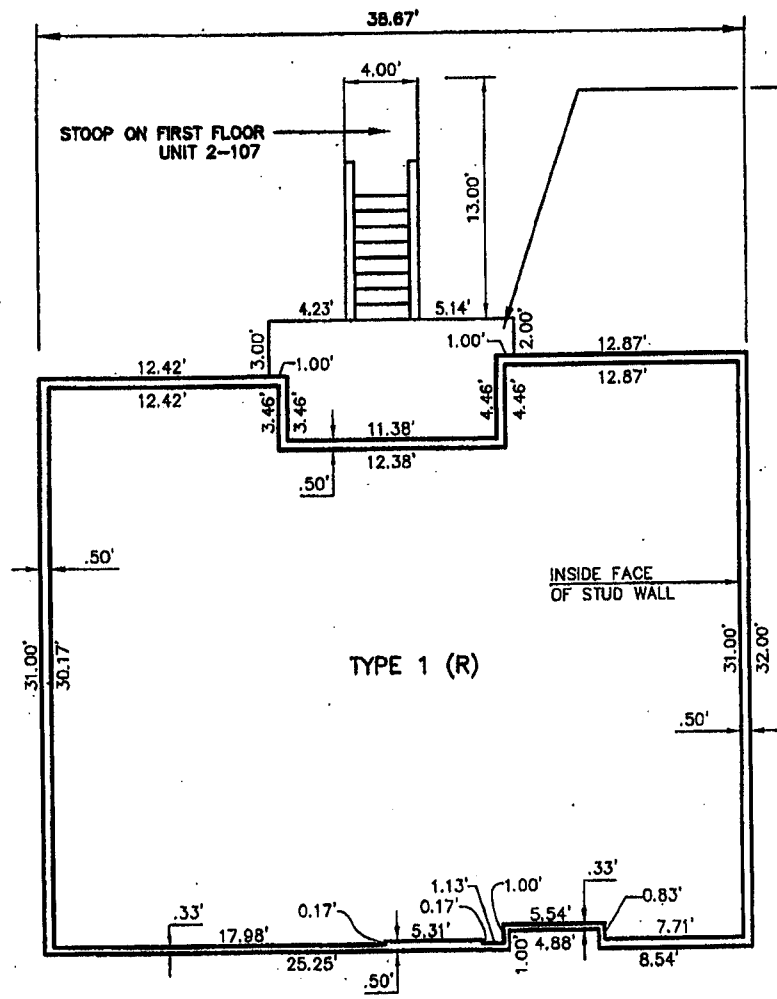
CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
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 APRIL, 2004

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PHASE 1
UNIT PLANS
 TYPE 1(R)
 SCALE 1" = 10'



UNITS 303, 307



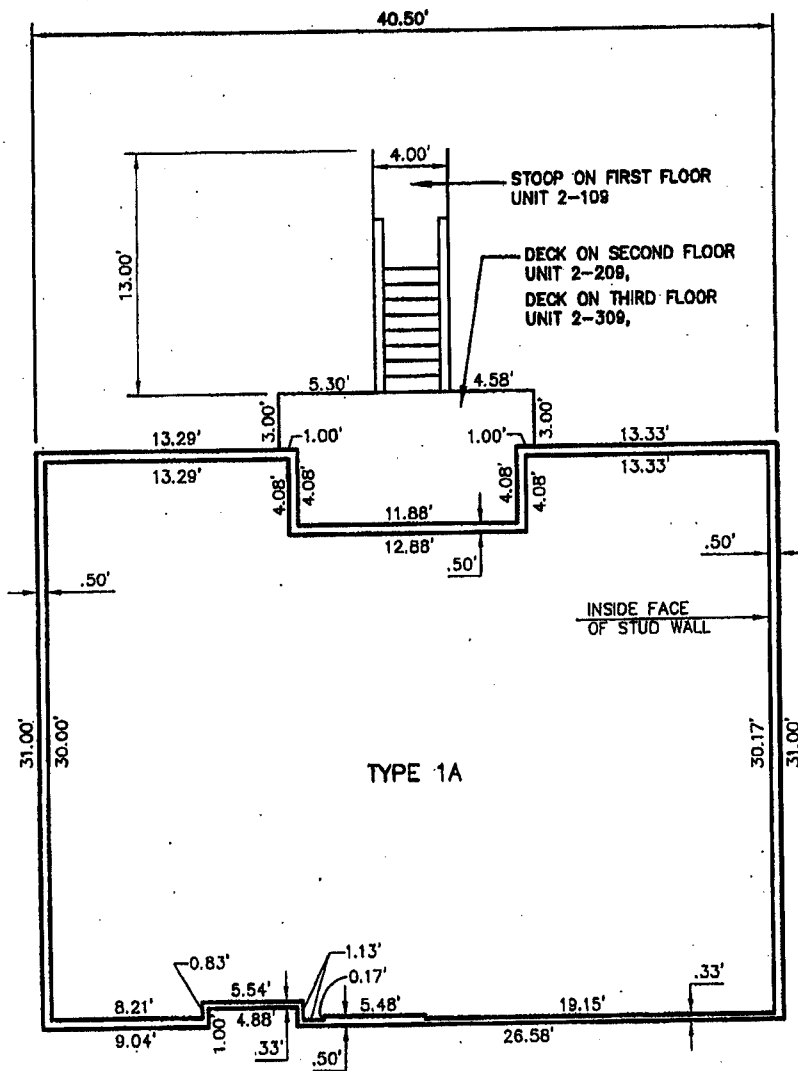
DECKS ON FIRST FLOOR
 UNIT 1-103
 DECKS ON SECOND FLOOR
 UNIT 1-203, 2-207
 DECKS ON THIRD FLOOR
 UNIT 1-303, 2-307

UNITS 103, 203, 303, 107, 207, 307

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
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PHASE 1
UNIT PLANS
 TYPE 1A
 SCALE 1" = 10'



UNITS: 109, 209, 309

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA

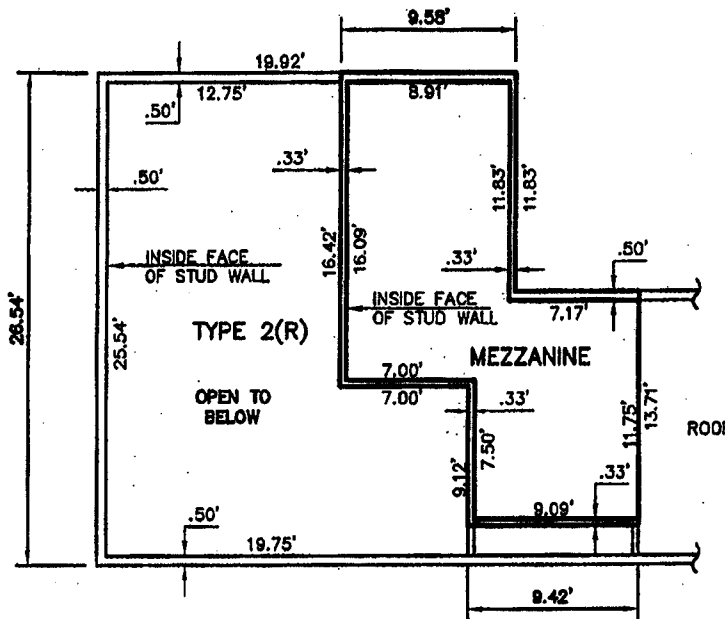
LOT 1 OF TRACT 9470
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APRIL, 2004



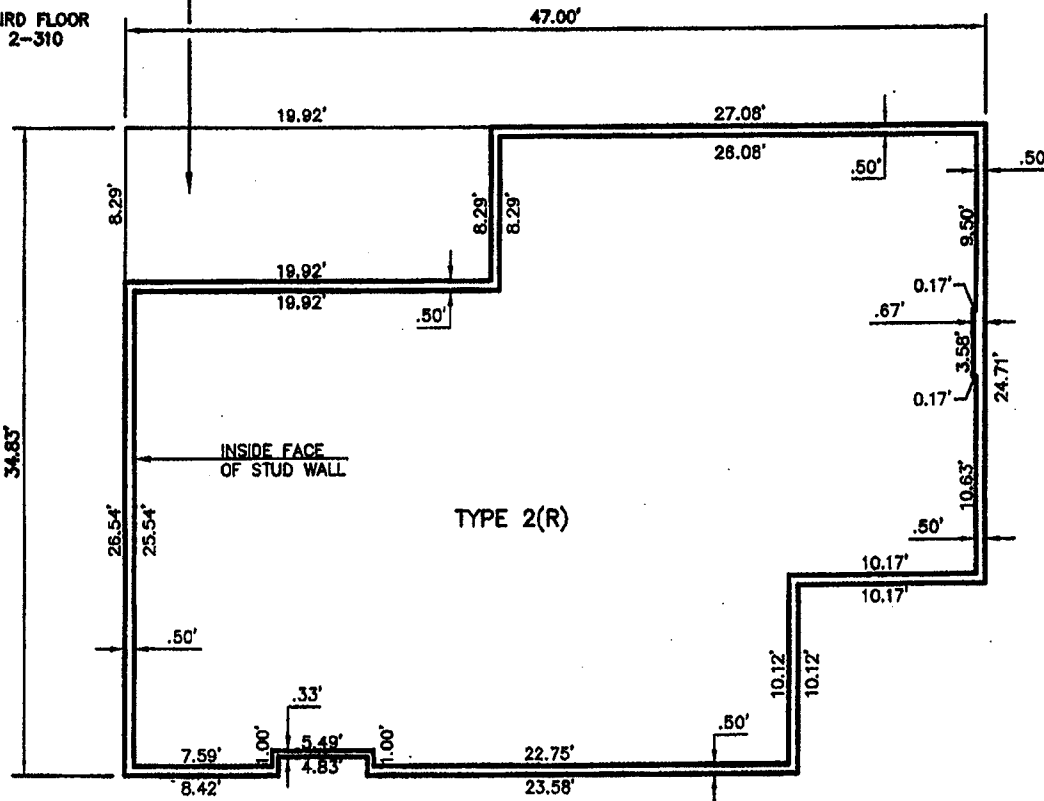
PHASE 1 UNIT PLANS

TYPE 2(R)
SCALE 1" = 10'



UNITS 304, 310

- DECKS ON FIRST FLOOR
UNITS 1-104, 2-110
- DECKS ON SECOND FLOOR
UNITS 1-204, 2-210
- DECKS ON THIRD FLOOR
UNITS 1-304, 2-310



UNITS: 104, 204, 304, 110, 210, 310

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS

SAN JOSE, CALIFORNIA

LOT 1 OF TRACT 9470

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CONSISTING OF 26 SHEETS

APRIL, 2004

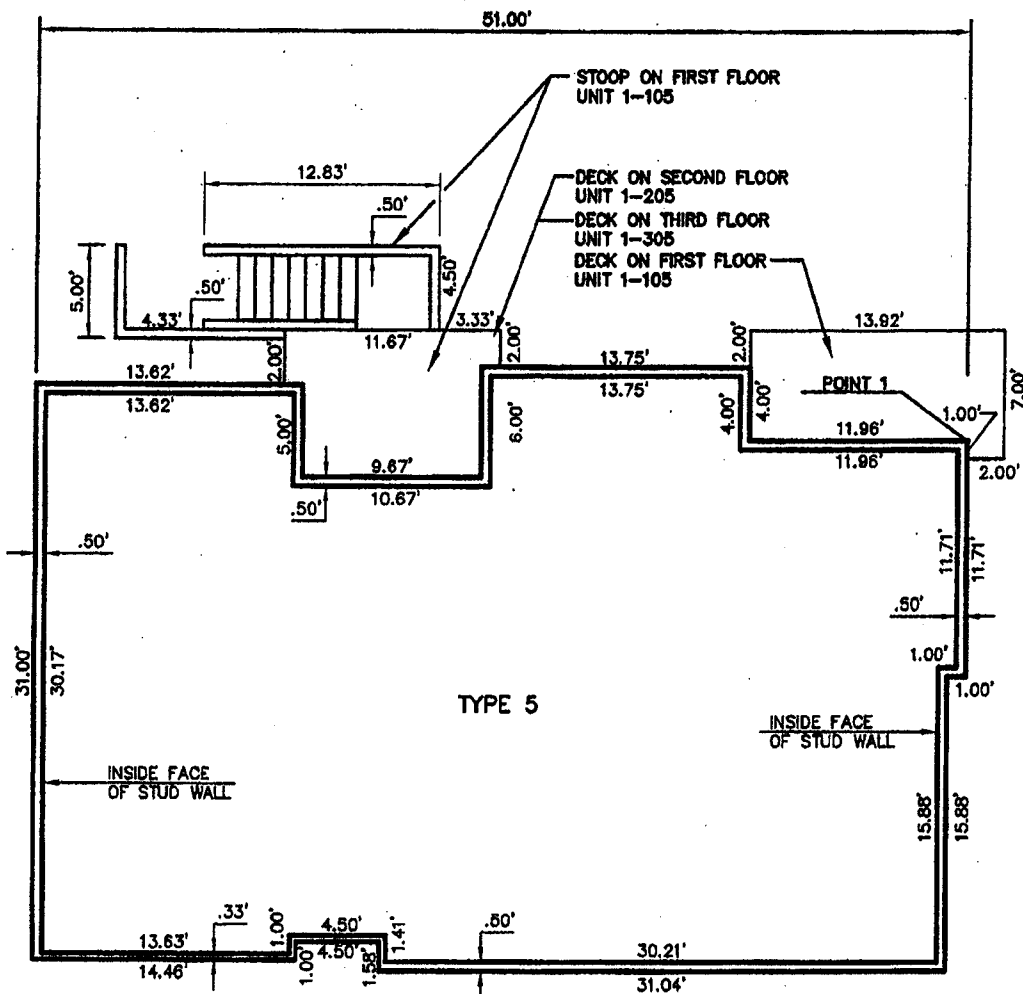


PHASE 1 UNIT PLANS

TYPE 5

SHEET 1 OF 2

SCALE 1" = 10'



UNITS: 105, 205, 305

800 North 8th Street Condominiums

Exhibit "B"

Annexation Property

<u>Phase</u>	<u>Association Common Area</u>	<u>Condominium Building</u>	<u>Units</u>	<u>Total Units Annexed</u>
I	Lot 1	1	101-106 201-206 301-306	
		2	107-111 207-211 307-311	33
II	Parcel A	3	112-118 212-218 312-318	
		4	119-122 219-222 319-322	66

800 North 8th Street Condominiums

Exhibit "C"

Owner's Percentage Undivided Interest in Building Common Area

<u>Building #</u>	<u>Unit #</u>	<u>Address #</u>	<u>Percentage Undivided Interest In Building Common Area</u>
1	101	113	4.66%
	102	114	5.45%
	103	111	4.66%
	104	110	5.45%
	105	109	6.02%
	106	107	4.66%
	201	213	5.57%
	202	214	5.45%
	203	211	4.66%
	204	210	5.45%
	205	209	6.02%
	206	207	4.66%
	301	313	6.47%
	302	314	6.50%
	303	311	5.56%
	304	310	6.50%
	305	309	6.70%
	306	307	5.56%
Total			100.00%

<u>Building #</u>	<u>Unit #</u>	<u>Address #</u>	<u>Percentage Undivided Interest In Building Common Area</u>
2	107	105	5.85%
	108	106	6.82%
	109	103	5.98%
	110	100	6.82%
	111	101	5.85%
	207	205	5.85%
	208	206	6.82%
	209	203	5.98%
	210	200	6.82%
	211	201	5.85%
	307	305	6.97%
	308	306	8.15%
	309	303	7.11%
	310	300	8.15%
311	301	6.98%	
Total			100.00%

800 North 8th Street Condominiums

Exhibit "D"

Assignment of Exclusive Use Common Area Garages

Building #	Unit #	Address #	Garage Space #
1	101	113	76 & 77
1	102	114	68 & 69
1	103	111	1 & 2
1	104	110	108 & 109
1	105	109	49 & 112
1	106	107	110 & 111
1	201	213	74 & 75
1	202	214	66 & 67
1	203	211	78 & 115
1	204	210	116 & 117
1	205	209	5 & 6
1	206	207	7 & 8
1	301	313	72 & 73
1	302	314	70 & 71
1	303	311	113 & 114
1	304	310	118 & 119
1	305	309	3 & 4
1	306	307	9 & 10

Building #	Unit #	Address #	Garage Space #
2	107	105	11 & 12
2	108	106	120 & 121
2	109	103	17 & 18
2	110	100	94 & 95
2	111	101	23 & 24
2	207	205	13 & 14
2	208	206	122 & 123
2	209	203	19 & 20
2	210	200	92 & 93
2	211	201	25 & 26
2	307	305	15 & 16
2	308	306	124 & 125
2	309	303	21 & 22
2	310	300	90 & 91
2	311	301	126 & 127

CONSENT AND SUBORDINATION

To undersigned, beneficiary under that certain Deed of Trust dated July 11, 2003 and recorded on July 14, 2003, as Document No. 17181941, Official Records, Santa Clara County, California, executed by 800 NORTH 8th STREET LLC, a Delaware limited liability company, does hereby consent to the execution and recordation, and does hereby subordinate said Deed of Trust to the 800 NORTH 8th STREET CONDOMINIUMS ENABLING DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP and the Condominium Plan attached thereto as an exhibit, with the same force and effect as if said Declaration and Condominium Plan had been executed and recorded prior to the execution and recordation of said Deed of Trust.

COMERICA BANK

By: _____



State of California)
)ss.
County of Santa Clara)

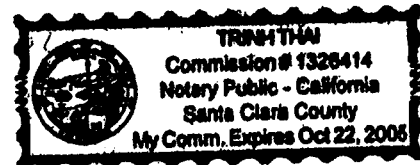
On May 5th, 2004 before me, the undersigned, personally appeared James Raggio personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in hi/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument of the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____



(seal)



800 NORTH 8TH STREET

Supplemental Declaration

TO

**800 North 8th Street Condominiums Enabling Declaration
Establishing a Plan for Condominium Ownership**

(Acknowledgement of Receipt and Agreement to Read and Understand)

I /we hereby certify that on this date, I have received a signed copy of the Supplemental Declaration to 800 North 8th Street Condominiums Enabling Declaration Establishing a Plan for Condominium Ownership (CC&R's).

Upon recording, a copy of the Recorded Supplemental Declaration will be forwarded to the Buyer by the Seller.

ACKNOWLEDGED, AGREED, AND UNDERSTOOD:

Signature of Home Buyer

Date

Signature of Home Buyer

Date

Signature of Home Buyer

Date

When Recorded Return To:

**Hanna & Van Atta
525 University Avenue, Suite 705
Palo Alto, California 94301**

**SUPPLEMENTAL DECLARATION
800 N. 8TH STREET CONDOMINIUMS ENABLING DECLARATION
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP**

This constitutes a Supplemental Declaration to the "800 N. 8th Street Condominiums Enabling Declaration Establishing a Plan for Condominium Ownership" ("Declaration"), which Declaration was recorded on the 10th day of May, 2004, Document No. 17775876, Santa Clara County Records.

Declarant, as the sole owner of the entire project described in the Declaration, hereby executes and causes to be recorded this Supplemental Declaration to revise certain provisions dealing with Senate Bill 800 (the "Right to Repair Law") issues.

The Declaration is hereby amended as follows:

1. Section 9.15B is amended to read as follows:

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

A. Claims for Declaratory Relief or Enforcement of Project Documents:

Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents, or for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code Section 1354(b). The Board shall comply with the requirements of California Civil Code Section 1354(l) by providing Members of the Association annually with a summary of the provisions of California Civil Code Section 1354, including the following language: "Failure by any Member of the Association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the governing documents."

B. Design or Construction Defect Claims:

Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined in Civil Code sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with Civil Code sections 895 through 945.5, and Civil

Code sections 1375 and 1375.05, as such sections may be amended, revised or superseded, from time to time.

For any Claim that is subject to pre-litigation procedures in Civil Code Sections 910-938, or any successor statutes, Declarant has elected to use an alternative non-adversarial procedure as described in section 914 of the Civil Code. Each Owner and the Association shall first comply with the provisions of the alternative non-adversarial procedures established and elected by Declaration under section 914 of the Civil Code. For any Claim that is not resolved by such alternative non-adversarial procedures, then notwithstanding the provisions of the California Code of Civil Procedure section 1298.7, or the provisions of Civil Code Section 1375, or successor statutes, each Owner, the Association and Declarant shall resolve such dispute exclusively through binding arbitration conducted in accordance with the Construction Arbitration Rules of the Commercial Arbitration Services, Inc. ("CAS"), pursuant to section 9.15D of this Declaration.

The Association and not the individual Members shall have the power to pursue any Claims for alleged construction defects in the Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration. Any recovery by the Association with respect to any damage to or defect in the Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

C. Notices to Members of Legal Proceedings Against Declarant. In accordance with Civil Code Section 1368.4, at least 30 days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to (i) the Common Area, (ii) all or portions of Units which the Association is required to maintain, or (iii) the Units which arises from or is integrally related to alleged damage to the Common Area or all or portions of the Units which the Association is required to maintain, the Board shall provide written notice to each Member specifying each of the following:

- (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
- (2) The options, including civil actions, that are available to address the problems; and
- (3) The time and place of the meeting.

If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the meeting and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

D. Arbitration of Disputes: If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

(1) costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator; provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator;

(2) a neutral and impartial individual shall be appointed to serve as arbitrator,

with the arbitrator to be selected by mutual agreement of the parties.

(3) venue of the arbitration to be in Santa Clara County, California;

(4) the arbitration shall commence in a prompt and timely manner in accordance with (i) the Construction Arbitration Rules of CAS, or if the rules do not specify a date by which arbitration is to commence, then (ii) by a date agreed upon by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award;

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

(6) the arbitration shall be conducted and concluded in a prompt and timely manner;

(7) the arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration;

(8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable.

(9) Preliminary Procedures. Before commencing an action in arbitration, the Owner, or the Association, must take such steps and/or follow such procedures as are set forth in the Home Builder's Limited Warranty Agreement entered into by and between Declarant and the original purchasers of Units, which Warranty Agreement binds Owners and the Association.

(10) Participation by Other Parties. An Owner, the Association and Declarant, to such extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration;

(11) Federal Arbitration Act. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein;

(12) AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL

a. **ARBITRATION OF DISPUTES. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY 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, AND DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF DECLARANT, THE ASSOCIATION OR ANY OWNER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, DECLARANT, THE ASSOCIATION OR SUCH OWNER MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.**

b. **WAIVER OF JURY TRIAL. IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY AND THE ASSOCIATION, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, THE ASSOCIATION OR ANY OWNER AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS."**

IN WITNESS WHEREOF, the undersigned being the Declarant and sole owner of the property subject to the Declaration has executed this Supplemental Declaration this 1st day of November, 2004.

800 NORTH 8TH STREET LLC
a Delaware limited liability company

By: RCNC 800 North 8th, LLC

a California limited liability company
Its: Managing Member

By: Regis Homes of Northern California, Inc.
a California corporation

Its: Member

By: [Signature]

Name: Todd P. Regonini

Title: S.V.P.

Address: c/o Regis Homes of Northern California
901 Mariner's Island Blvd., Suite 700
San Mateo, CA 94404

STATE OF CALIFORNIA)

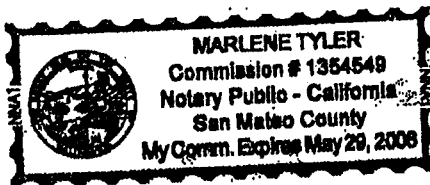
) ss.

COUNTY OF

On this 29th day of October, 2004, before me, Marlene Tyler, a notary public for the state, personally appeared Todd P. Regonini, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Notary Public, State of California



CONFORMED COPY: This document has not been compared with the original.
SANTA CLARA COUNTY CLERK-RECORDER

754595
When Recorded Return To:

Hanna & Van Atta
525 University Avenue, Suite 705
Palo Alto, CA 94301

Doc#: 17971955
8/25/2004 1:33 PM

**DECLARATION OF ANNEXATION
800 NORTH 8TH STREET
PHASE II**

THIS DECLARATION OF ANNEXATION is made this 22 day of August, 2004, by 800 NORTH 8TH STREET LLC, a Delaware limited liability company (the "Declarant"), with reference to the following facts:

A. Declarant executed the "800 North 8th Street Enabling Declaration Establishing a Plan for Condominium Ownership" which was filed for record on May 10, 2004, as Document No. 17775876, in the Official Records of Santa Clara County, California (the "Declaration") to which a condominium plan was attached as Exhibit "A" (the "Plan"), covering a portion of that real property located in the City of San Jose, County of Santa Clara, State of California, as described on the Subdivision Map ("Map") entitled "Tract No. 9470", filed for record June 16, 2003, in Book 761 of Maps, pages 38 through 39, in the Recorder's Office of Santa Clara County, California.

B. Section 2.6 of the Declaration provides that Declarant may annex Phase II as described in Exhibit "B" thereto to the Project described in the Declaration and thereby make Phase II subject to the Declaration.

DECLARANT DECLARES AS FOLLOWS:

1. Pursuant to the terms of the Declaration, Declarant, as owner of the real property in Phase II, declares that:

<u>Condominium Building</u>	<u>Units</u>	<u>Association Common Area</u>
3	112-118, 212-218, 312-318	Parcel A
4	119-122, 219-222, 319-322	

as described on the condominium plan attached hereto as Exhibit "A" are annexed to and made a part of the project described in the Declaration. The annexed property shall hereafter be held, sold, leased, transferred, occupied and conveyed subject to the terms, provisions, covenants, conditions, restrictions and easements of the Declaration, including subsequent amendments thereto.

2. The owner of a Condominium will receive a separate interest in a Unit and an

undivided percentage interest as tenant in common of the Building Common Area of the Condominium Building in which the Unit is located. The percentage interest shall be as indicated on Exhibit "B" attached hereto and incorporated by reference herein.

Each unit shall include a membership in the 800 NORTH 8TH STREET HOMEOWNERS ASSOCIATION, which membership is appurtenant to the member's condominium.

3. Garage spaces are allocated for the exclusive use of the Owner of the Condominium to which they are assigned as designated on Exhibit "C" hereto.

4. Declarant shall convey the Association Common Area, Parcel A, to the Association, prior to the close of escrow on the sale of the first Condominium in Phase II, to be held for the benefit of all Members of the Association.

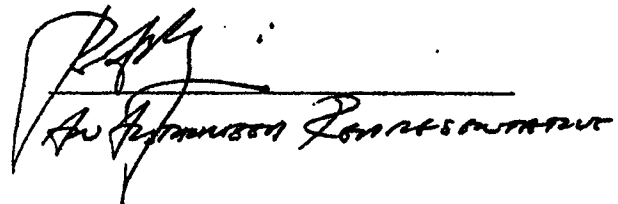
5. If the Condominiums in Phase II have been used and occupied under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of the escrow for the first sale of a Condominium in Phase II, Declarant shall, concurrently with this closing, pay to the Association appropriate amounts for reserves for replacement or deferred maintenance of common area improvements in Phase II.

6. Declarant consents to the recordation of the Plan attached hereto as Exhibit "A" and incorporated by reference herein pursuant to California Civil Code §§ 1350-1372.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Annexation on the date set forth above.

800 NORTH 8TH STREET LLC
a Delaware limited liability company,

By:



STATE OF CALIFORNIA

COUNTY OF San Mateo

)
) ss.
)

On this 11th day of August, 2004, before me, Ellie Cahill, a notary public for the state, personally appeared Todd Regonini, known to me or proved to me on the basis of satisfactory evidence to be the person(x) whose name(x) ~~is~~ 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(x) on the instrument the person(x), or the entity upon behalf of which the person(x) acted, executed the instrument.

WITNESS my hand and official seal.

Ellie Cahill

Notary Public, State of California



CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
 AUGUST, 2004



PHASE 2
EXHIBIT A

DESCRIPTION	SHEET
INDEX	1
SURVEYOR'S STATEMENT	2
NOTES	3
LEGEND	4
UNIT AND EXCLUSIVE USE COMMON AREA SCHEDULE	5
UNIT ELEVATION TABLES	6
BUILDING ELEVATIONS	7
SITE PLAN	8 & 9
GARAGE LEVEL PLAN	10 & 11
BUILDING 3 FLOOR PLANS	12, 13, 14 & 15
BUILDING 4 FLOOR PLANS	16 & 17
UNIT PLANS: 112, 212, 312	18
UNIT PLANS: 120, 220, 320, 121, 221, 321	19
UNIT PLANS: 119, 219, 319	20
UNIT PLANS: 113, 213, 313, 116, 216, 316	21
UNIT PLANS: 114, 214, 314, 118, 218, 318, 122, 222, 322	22
UNIT PLANS: 115, 215, 315	23
UNIT PLANS: 117, 217	24
UNIT PLAN: 317	25

CONDOMINIUM PLAN
800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA
LOT 1 OF TRACT 9470
BOOK 761 OF MAPS, PAGES 38 -39
CONSISTING OF 25 SHEETS
AUGUST, 2004

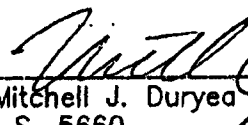


PHASE 2
SURVEYOR'S STATEMENT

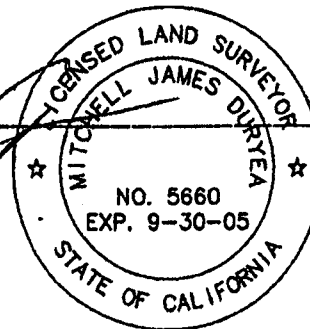
SURVEYOR'S STATEMENT

I, Mitchell Duryea, hereby state that I am a Licensed Land Surveyor, LS Number 5660, of the State of California, that a survey was made under my direction and that the survey is a true and complete as shown on this plan; that the monuments and benchmarks are of the character and occupy or will occupy the positions indicated on the within plan and that they are sufficient to enable this survey to be retraced, and that the Condominium Plan consists of the description or survey map of a condominium project which refers to or shows monumentation on the ground and a three dimensional description of the project in sufficient detail to identify the common areas and each separate interest pursuant to the requirements of California Civil Code 1351(e).

Date 8/16/09



Mitchell J. Duryea
L.S. 5660



CONDOMINIUM PLAN
800 NORTH EIGHTH STREET CONDOMINIUMS
SAN JOSE, CALIFORNIA
LOT 1 OF TRACT 9470
BOOK 761 OF MAPS, PAGES 38 -39
CONSISTING OF 25 SHEETS
AUGUST, 2004



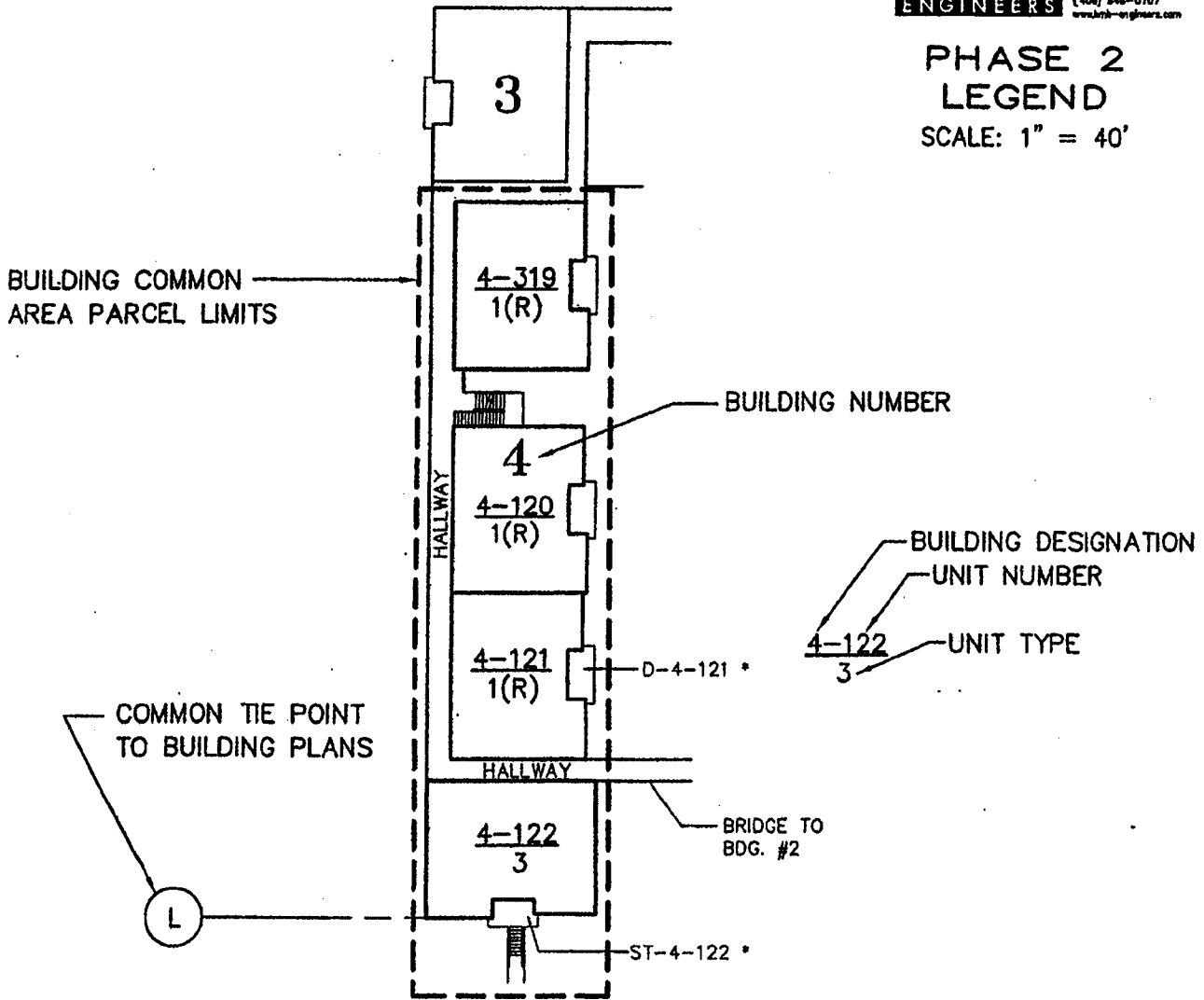
**PHASE 2
NOTES**

1. All dimensions shown are in feet and decimals thereof.
2. All building and unit lines are parallel or perpendicular to each other, unless shown otherwise on the plans. See site plan on sheets 8 and 9 for orientation bearing for each building.
3. **Basis of Bearings:** The bearing North 30°39'01" West between the monuments along the monument line of Eighth Street, as shown on the Map of Tract 9740, filed for record in Book 761 of Maps at pages 38 and 39, Santa Clara County Records and as found monumented was taken as the basis for all bearings shown hereon.
4. See sheets 10 and 11 for building and garage locations, and building and garage designations.
5. See building plans on sheets 12 thru 17 for unit locations and designations, deck and stoop locations.
6. See typical unit plans on sheets 18 thru 25 for unit dimensions and deck and stoop dimensions.
7. See Elevation Table on sheet 6 for unit unfinished floor elevations and nominal ceiling elevations. The units include any vaulted ceiling area or dropped ceiling area located within the dimensions of the unit unless the dropped area contains utility line or equipment that services another unit, in which case the area is common area and not a part of the unit.
8. Dimensions shown on the building plans are to the outside face of stud.
9. Outside dimensions shown on the typical floor plans are to the outside face of studs unless noted otherwise. Inside dimensions are to the inside face of sheet rock.
10. The following described portions of the common area, referred to as "Exclusive use Common Areas" are set aside and allocated for the exclusive use of the owner of the condominium to which they are attached or assigned as shown on the Condominium Plan, and are appurtenant to the condominium unit; Deck designated 'D' followed by the unit designation. Stoop designated 'ST', followed by the unit designation.
11. Garage spaces designated 'P', and followed by a number are referred to as "Exclusive use Common Area" the exclusive use of which is assigned to particular units as indicated on Exhibit D attached to the Declaration.
12. The boundary lines for each stoop or deck are the exterior finished surfaces of the railings thereof, the exterior face of stud of the perimeter walls abutting said stoop or deck, the finished surface of the floor and the projection of the finished surface of the ceiling of the adjacent condominium unit and all the airspace encompassed therein.
13. In interpreting deeds and other documents in connection with this subdivision and plan, the existing physical boundaries of a unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of minor variance between boundaries shown on the plan or deed, and those of the buildings
14. The "Association Common Area" is all of Parcel A, except for the Building Common Area Parcels (buildings 3 and 4) and except the units.
15. **BENCHMARK:** U.S. Coast and Geodetic Survey disk stamped "C-1121" set vertically in the southeast concrete foundation wall of Legacy Transportation Co. office building, at 1045 10th Street, 100.5 feet southeast of northwest property line, 0.5 feet southwest of the east corner of the building, on 10th Street, 0.1 mile northwest of the junction of Horning Street.

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
 AUGUST, 2004



**PHASE 2
 LEGEND**
 SCALE: 1" = 40'



* EXCLUSIVE USE COMMON AREA
 USE OF THE OWNER CORRESPONDING UNIT

D= DECK
 ST= STOOP

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS

SAN JOSE, CALIFORNIA

LOT 1 OF TRACT 9470

BOOK 761 OF MAPS, PAGES 38 -39

CONSISTING OF 25 SHEETS

AUGUST, 2004



PHASE 2 BUILDINGS 3 AND 4 UNIT AND EXCLUSIVE USE COMMON AREA SCHEDULE

BUILDING 3

UNIT NUMBER	UNIT TYPE 1st FLOOR	UNIT TYPE 2nd FLOOR	UNIT TYPE 3rd FLOOR	DECK
3-112	1			D-3-112
3-113	2(R)			D-3-113
3-114	3			D-3-114
3-115	3(R)			D-3-115
3-116	2(R)			D-3-116
3-117	4			D-3-117
3-118	3			D-3-118
3-212		1		D-3-212
3-213		2(R)		D-3-213
3-214		3		D-3-214
3-215		3(R)		D-3-215
3-216		2(R)		D-3-216
3-217		4		D-3-217
3-218		3		D-3-218
3-312			1 W/MEZZ.	D-3-312
3-313			2(R) W/MEZZ.	D-3-313
3-314			3 W/MEZZ.	D-3-314
3-315			3(R) W/MEZZ.	D-3-315
3-316			2(R) W/MEZZ.	D-3-316
3-317			4 W/MEZZ.	D-3-317
3-318			3 W/MEZZ.	D-3-318

BUILDING 4

UNIT NUMBER	UNIT TYPE 1st FLOOR	UNIT TYPE 2nd FLOOR	UNIT TYPE 3rd FLOOR	DECK	STOOP
4-119	1(R)			D-4-119	
4-120	1(R)			D-4-120	
4-121	1(R)			D-4-121	
4-122	3				ST-4-122
4-219		1(R)		D-4-219	
4-220		1(R)		D-4-220	
4-221		1(R)		D-4-221	
4-222		3		D-4-222	
4-319			1(R) W/MEZZ.	D-4-319	
4-320			1R) W/MEZZ.	D-4-320	
4-321			1(R) W/MEZZ.	D-4-321	
4-322			3 W/MEZZ.	D-4-322	

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
 AUGUST, 2004



PHASE 2
BUILDINGS 3 AND 4
 UNIT ELEVATION TABLES

BUILDING 3

UNIT NUMBER	UNFINISHED FLOOR ELEVATION	NOMINAL CEILING ELEVATION
3-112	65.80	74.86
3-113	65.80	74.86
3-114	65.80	74.86
3-115	65.80	74.86
3-116	65.80	74.86
3-117	65.80	74.86
3-118	65.80	74.86
3-212	76.02	84.98
3-213	76.02	84.98
3-214	76.02	84.98
3-215	76.02	84.98
3-216	76.02	84.98
3-217	76.02	84.98
3-218	76.02	84.98
3-312	86.13	104.20
3-313	86.13	104.20
3-314	86.13	104.20
3-315	86.13	104.20
3-316	86.13	104.20
3-317	86.13	104.20
3-318	86.13	104.20

BUILDING 4

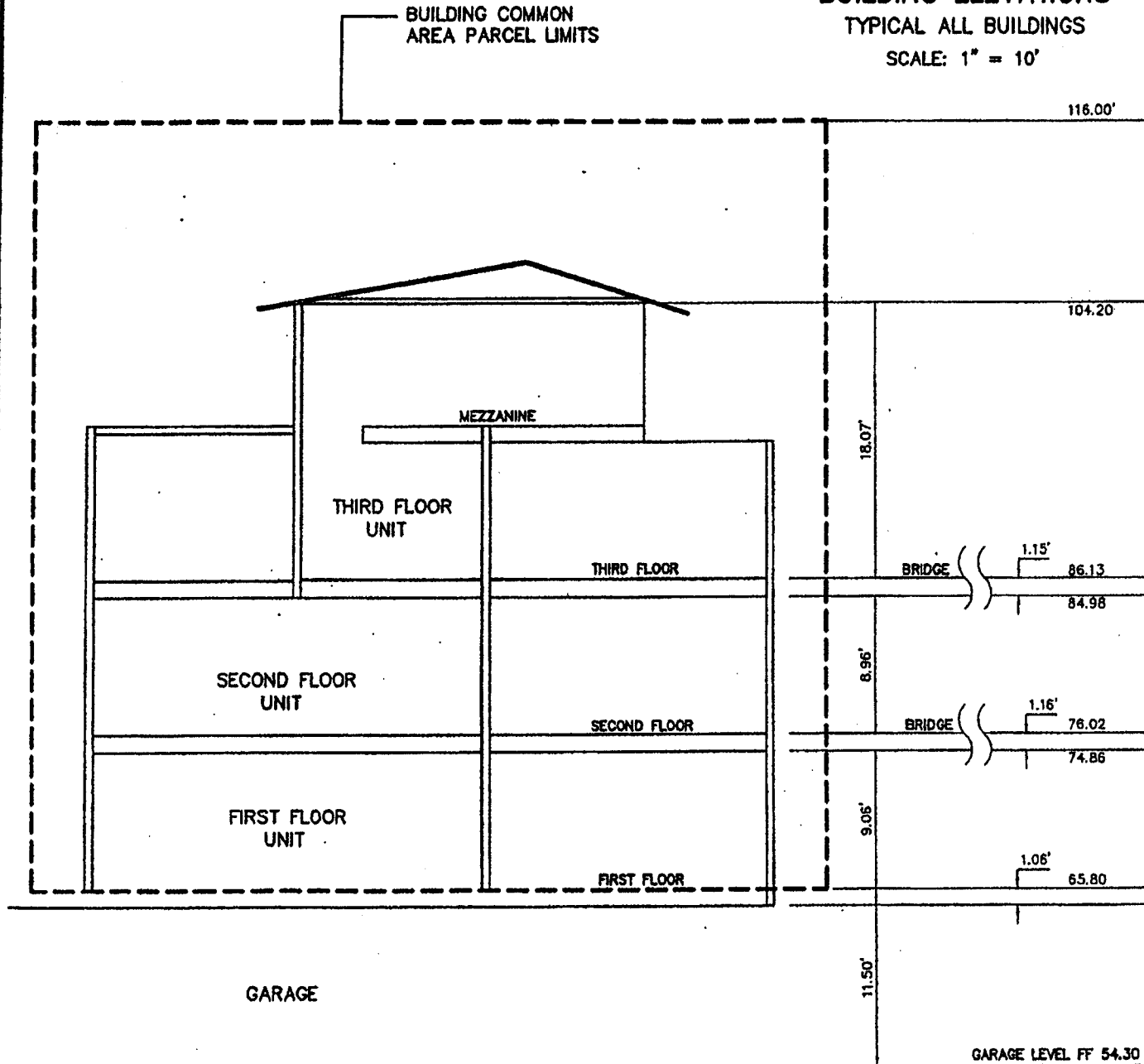
UNIT NUMBER	UNFINISHED FLOOR ELEVATION	NOMINAL CEILING ELEVATION
4-119	65.80	74.86
4-120	65.80	74.86
4-121	65.80	74.86
4-122	65.80	74.86
4-219	76.02	84.98
4-220	76.02	84.98
4-221	76.02	84.98
4-222	76.02	84.98
4-319	86.13	104.20
4-320	86.13	104.20
4-321	86.13	104.20
4-322	86.13	104.20

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
 AUGUST, 2004



PHASE 2
BUILDING ELEVATIONS
 TYPICAL ALL BUILDINGS
 SCALE: 1" = 10'

BUILDING COMMON
 AREA PARCEL LIMITS

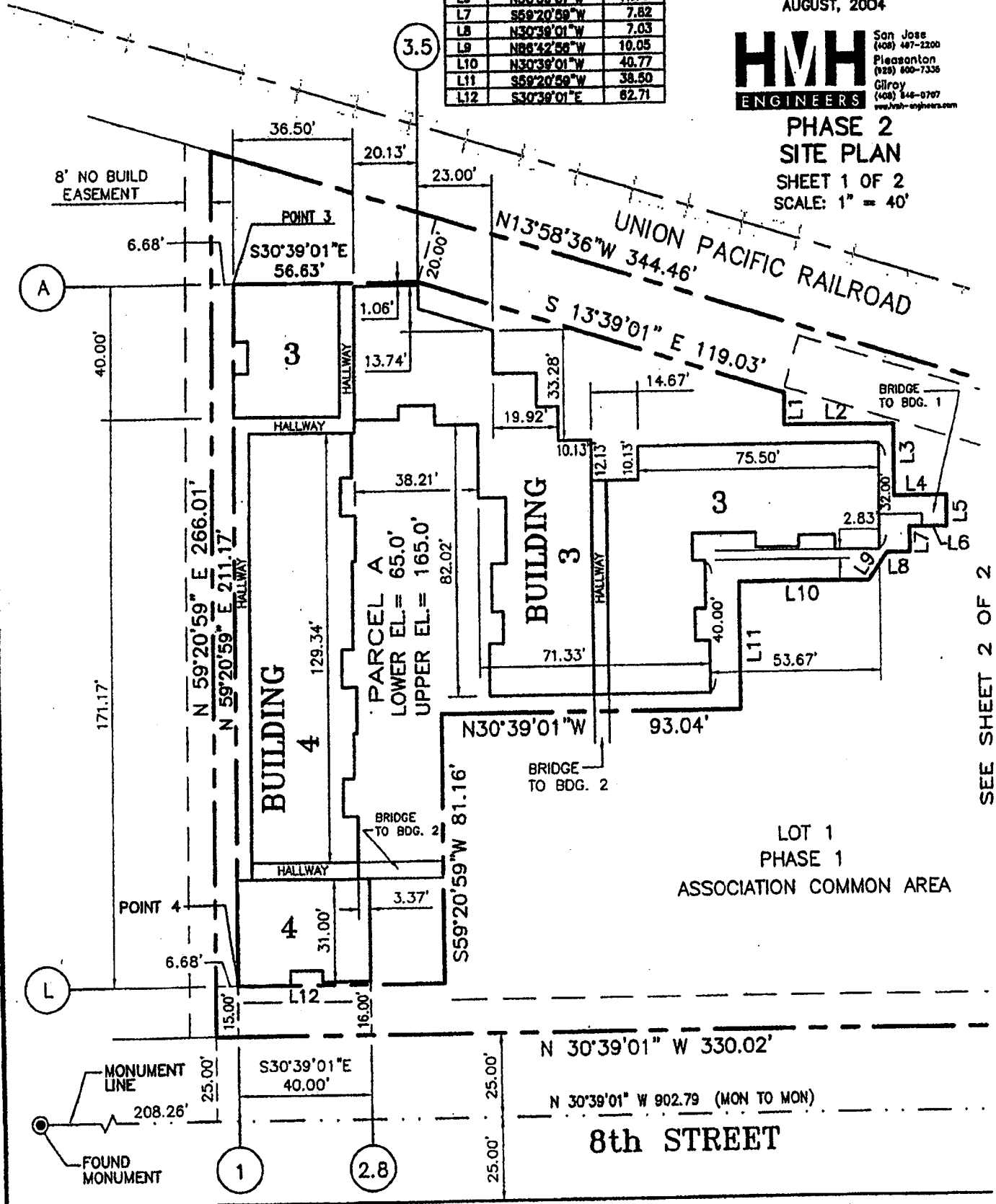


LINE TABLE		
LINE	BEARING	LENGTH
L1	S59°20'59"W	9.68
L2	S30°39'01"E	34.00
L3	S59°20'59"W	21.54
L4	S30°39'01"E	16.50
L5	S59°20'59"W	9.34
L6	N30°39'01"W	11.79
L7	S59°20'59"W	7.82
L8	N30°39'01"W	7.03
L9	N88°42'58"W	10.05
L10	N30°39'01"W	40.77
L11	S59°20'59"W	38.50
L12	S30°39'01"E	82.71

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
 AUGUST, 2004



**PHASE 2
 SITE PLAN**
 SHEET 1 OF 2
 SCALE: 1" = 40'



SEE SHEET 2 OF 2

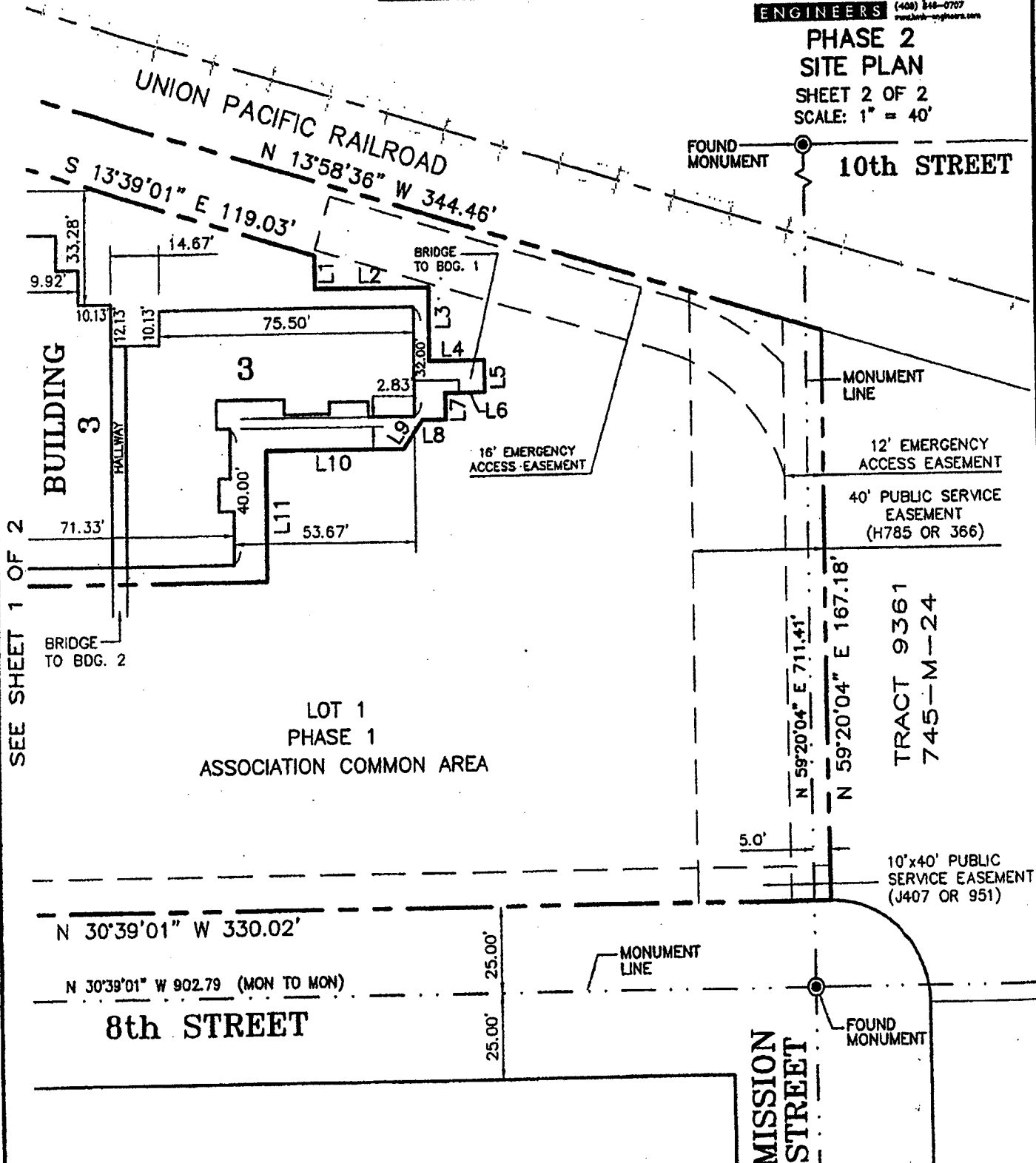
LOT 1
 PHASE 1
 ASSOCIATION COMMON AREA

LINE TABLE		
LINE	BEARING	LENGTH
L1	S59°20'59"W	8.88
L2	S30°39'01"E	34.00
L3	S59°20'59"W	21.84
L4	S30°39'01"E	18.90
L5	S59°20'59"W	8.34
L6	N30°39'01"W	11.79
L7	S59°20'59"W	7.82
L8	N30°39'01"W	7.03
L9	N88°42'56"W	10.05
L10	N30°39'01"W	40.77
L11	S59°20'59"W	38.90

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 781 OF MAPS, PAGES 38 -39
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 AUGUST, 2004

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**PHASE 2
 SITE PLAN**
 SHEET 2 OF 2
 SCALE: 1" = 40'



SEE SHEET 1 OF 2

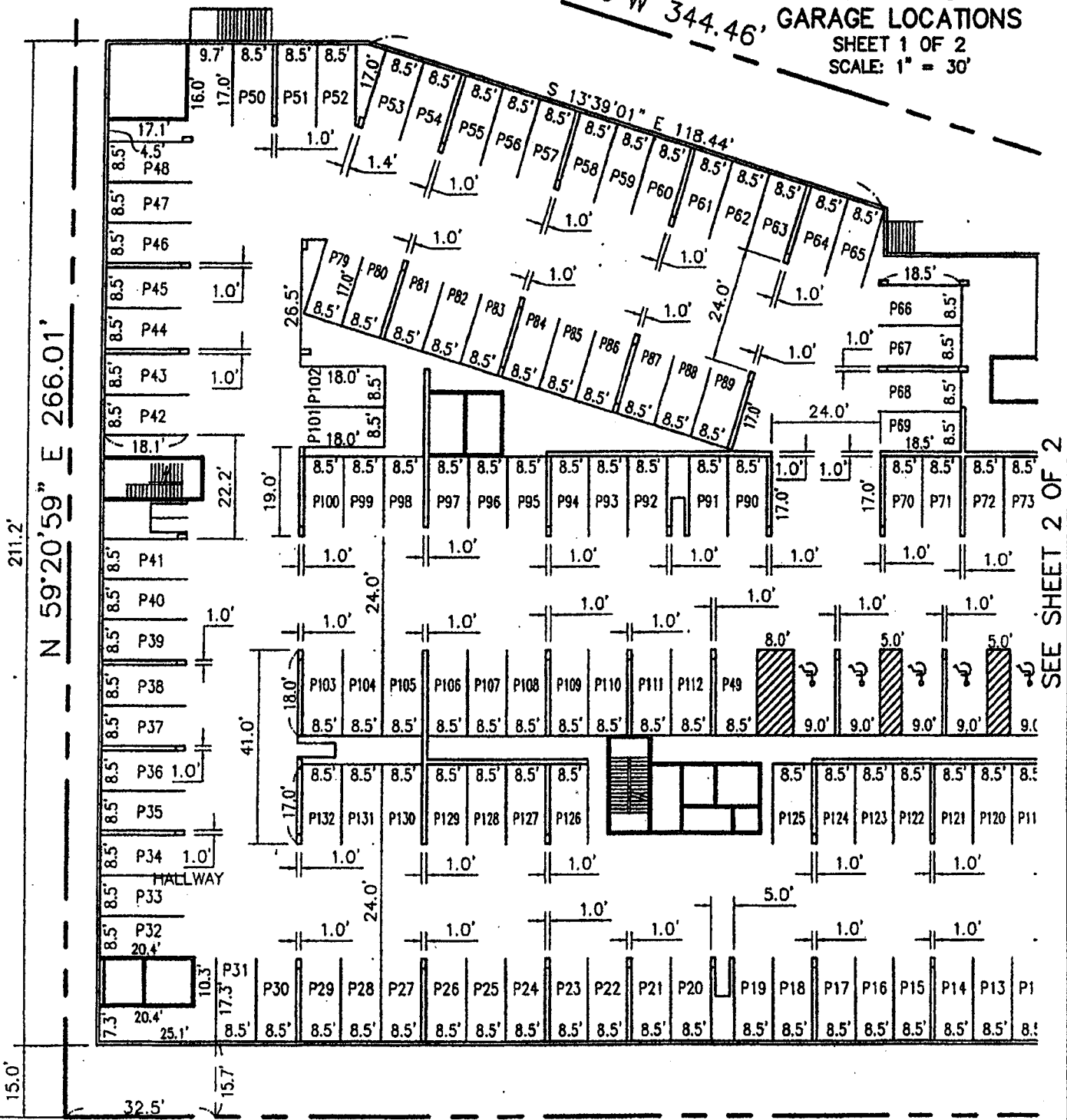
CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
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PHASE 2
GARAGE LOCATIONS
 SHEET 1 OF 2
 SCALE: 1" = 30'

N13°58'36"W 344.46'

S 13°39'01" E 118.44'



SEE SHEET 2 OF 2

N 30°39'01" W 330.02'

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS

SAN JOSE, CALIFORNIA

LOT 1 OF TRACT 9470

BOOK 761 OF MAPS, PAGES 38 -39

CONSISTING OF 25 SHEETS

AUGUST, 2004

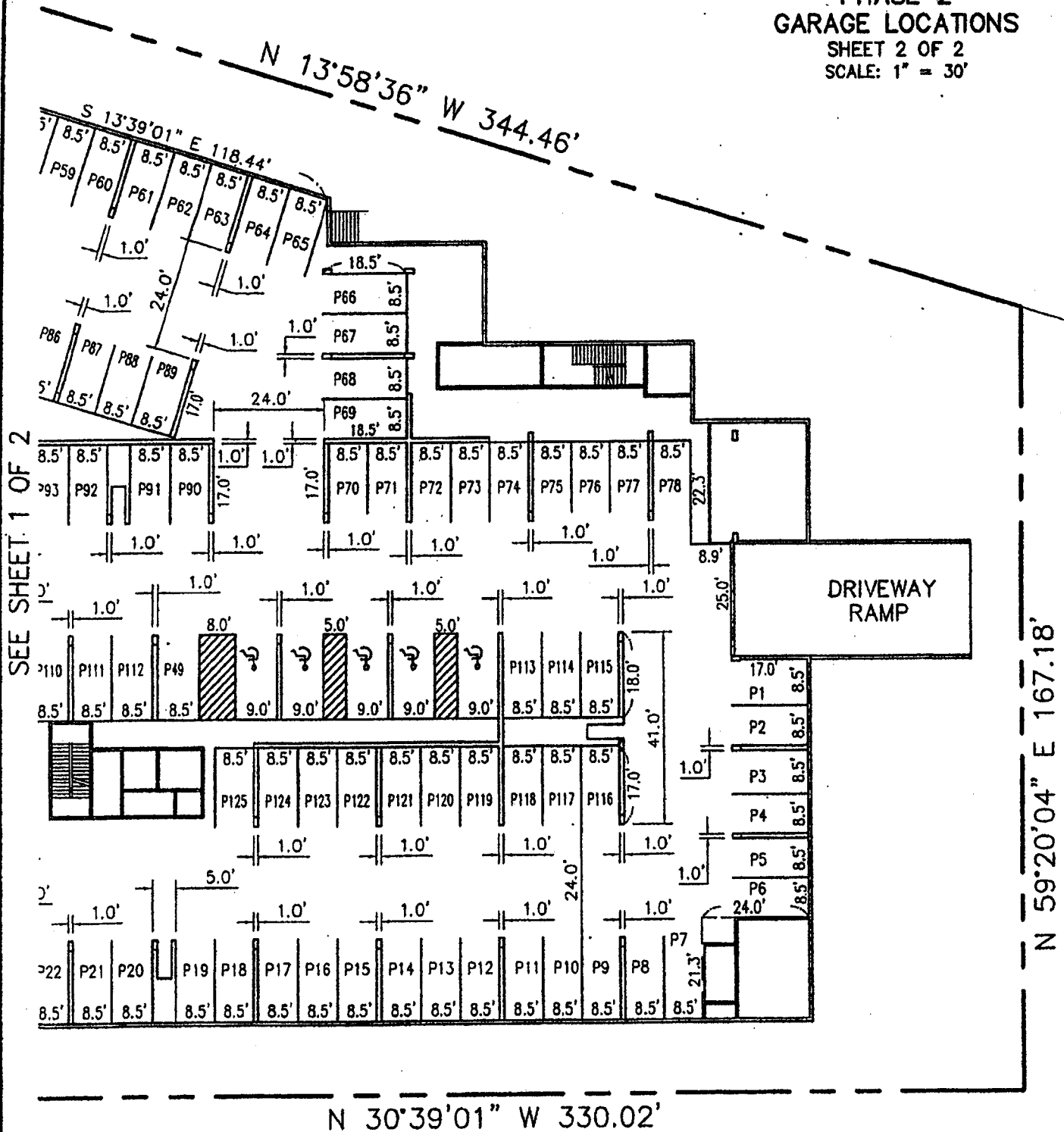


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PHASE 2 GARAGE LOCATIONS

SHEET 2 OF 2

SCALE: 1" = 30'



CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS

SAN JOSE, CALIFORNIA

LOT 1 OF TRACT 9470
BOOK 761 OF MAPS, PAGES 38 -39

CONSISTING OF 25 SHEETS

AUGUST, 2004

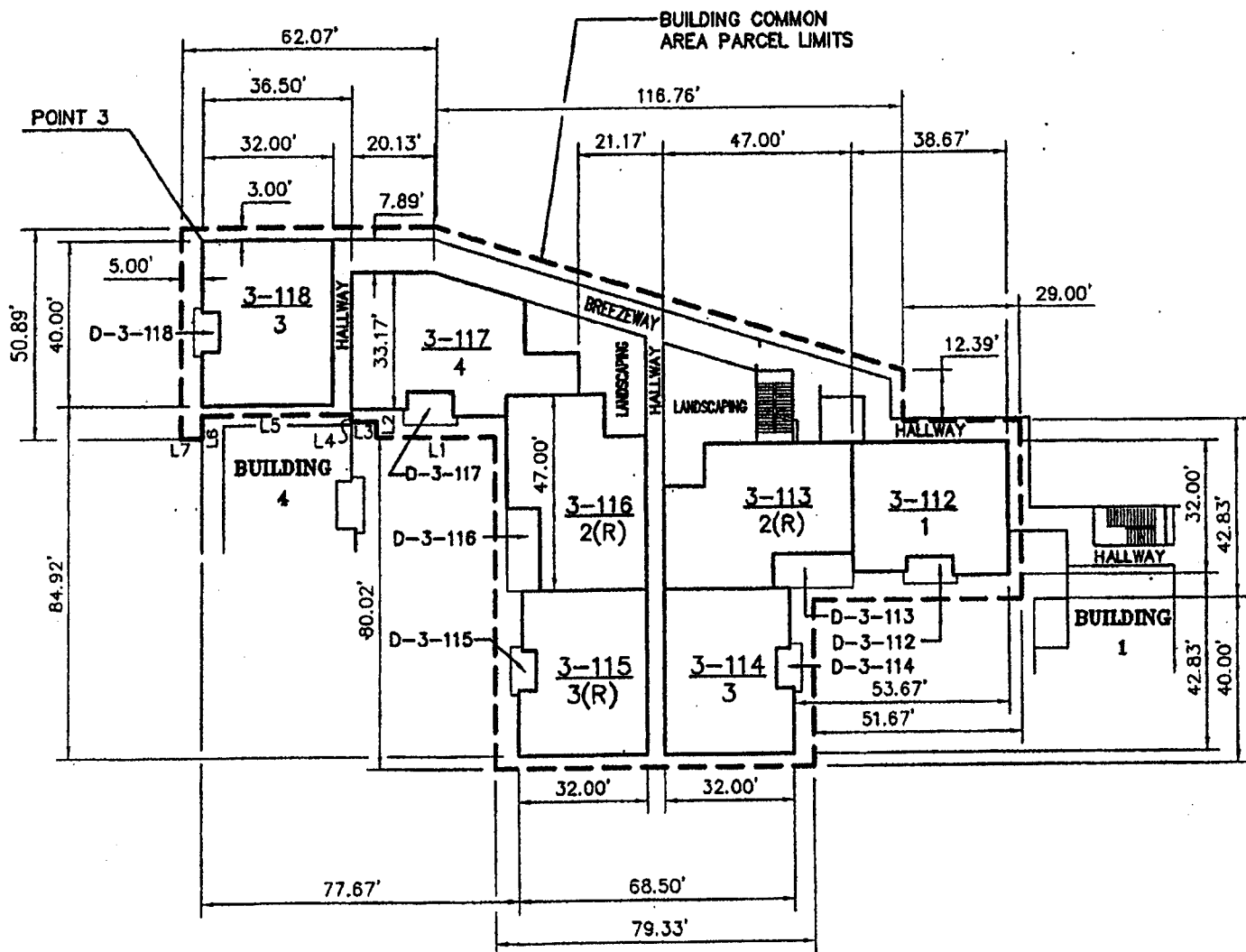


PHASE 2 BUILDING 3 PLAN

SHEET 1 OF 4

SCALE: 1" = 40'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N30°39'01"W	29.33'
L2	N59°20'59"E	3.83'
L3	N30°39.01"W	6.00'
L4	N59°20'59"E	1.64'
L5	N°3039'01"W	36.50'
L6	S59°20'59"W	5.48'
L7	N30°39'01"W	5.00'



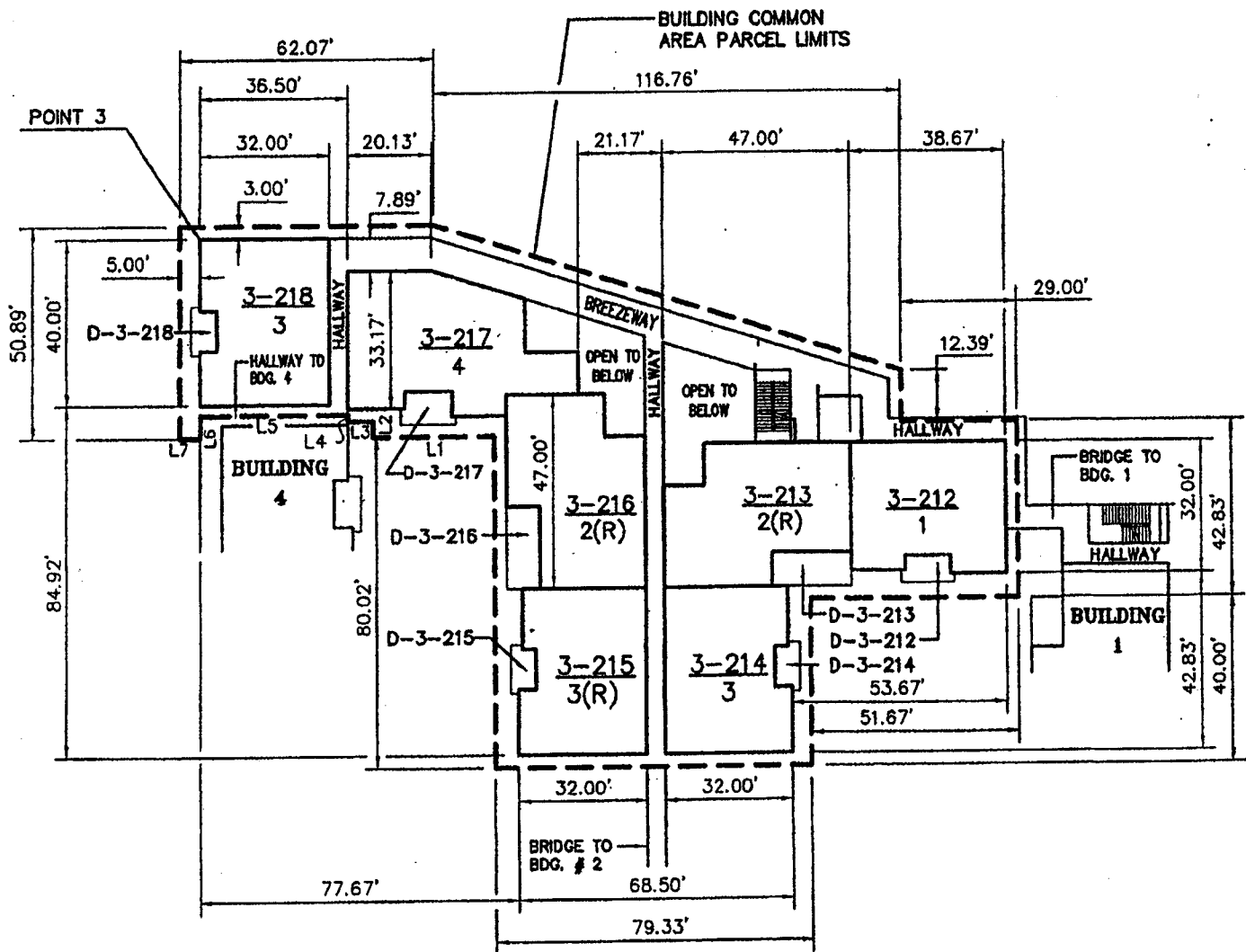
FIRST FLOOR

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
 AUGUST, 2004

LINE TABLE		
LINE	BEARING	LENGTH
L1	N30°39'01"W	29.33'
L2	N59°20'59"E	3.83'
L3	N30°39'01"W	6.00'
L4	N59°20'59"E	1.64'
L5	N°30'39'01"W	36.50'
L6	S59°20'59"W	5.48'
L7	N30°39'01"W	5.00'



PHASE 2
BUILDING 3 PLAN
 SHEET 2 OF 4
 SCALE: 1" = 40'



SECOND FLOOR

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS

SAN JOSE, CALIFORNIA

LOT 1 OF TRACT 9470
BOOK 761 OF MAPS, PAGES 38 -39

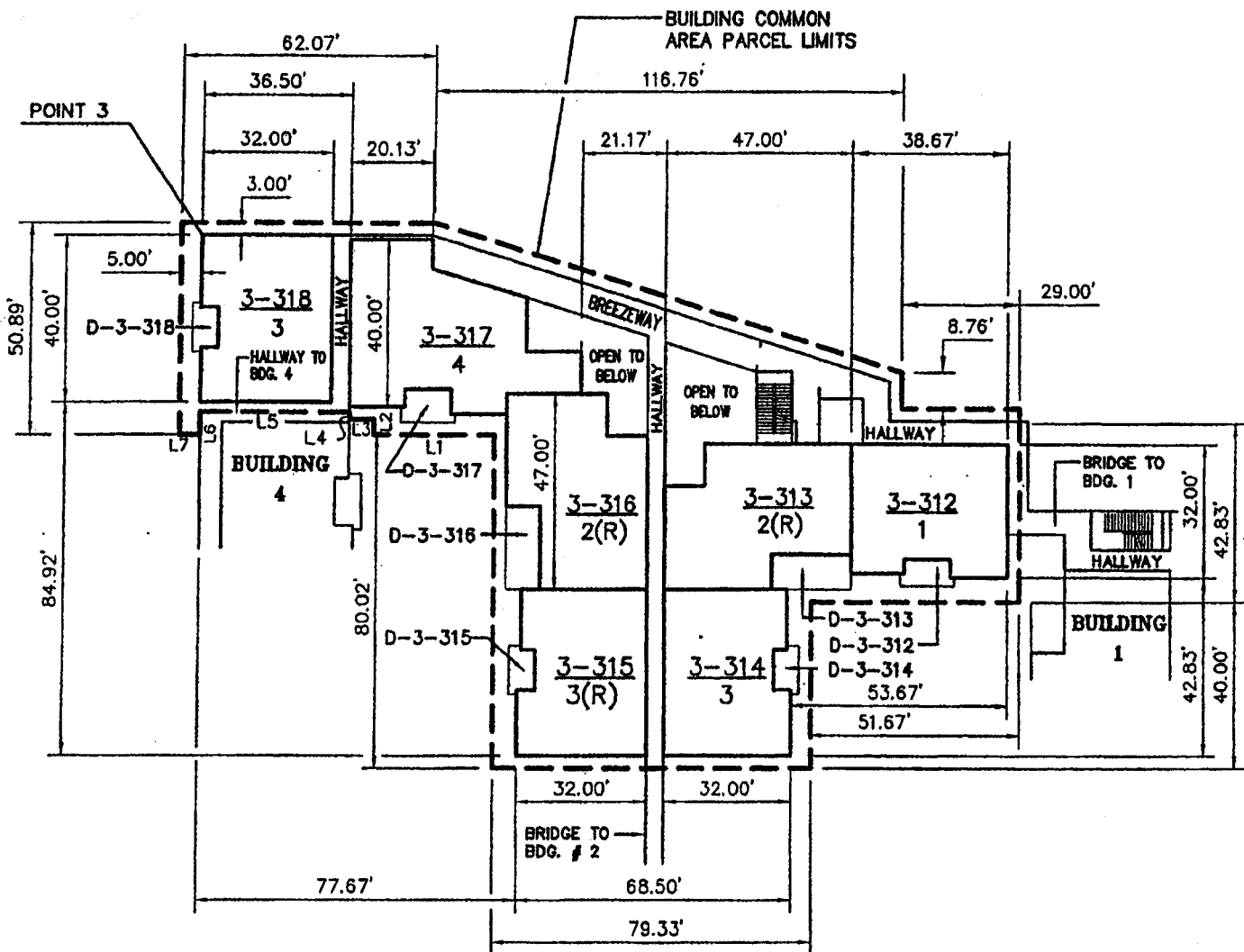
CONSISTING OF 25 SHEETS
AUGUST, 2004



LINE TABLE		
LINE	BEARING	LENGTH
L1	N30°39'01"W	29.33'
L2	N59°20'59"E	3.83'
L3	N30°39.01"W	6.00'
L4	N59°20'59"E	1.84'
L5	N°30'39'01"W	36.50'
L6	S59°20'59"W	5.48'
L7	N30°39'01"W	5.00'

PHASE 2 BUILDING 3 PLAN

SHEET 3 OF 4
SCALE: 1" = 40'



THIRD FLOOR

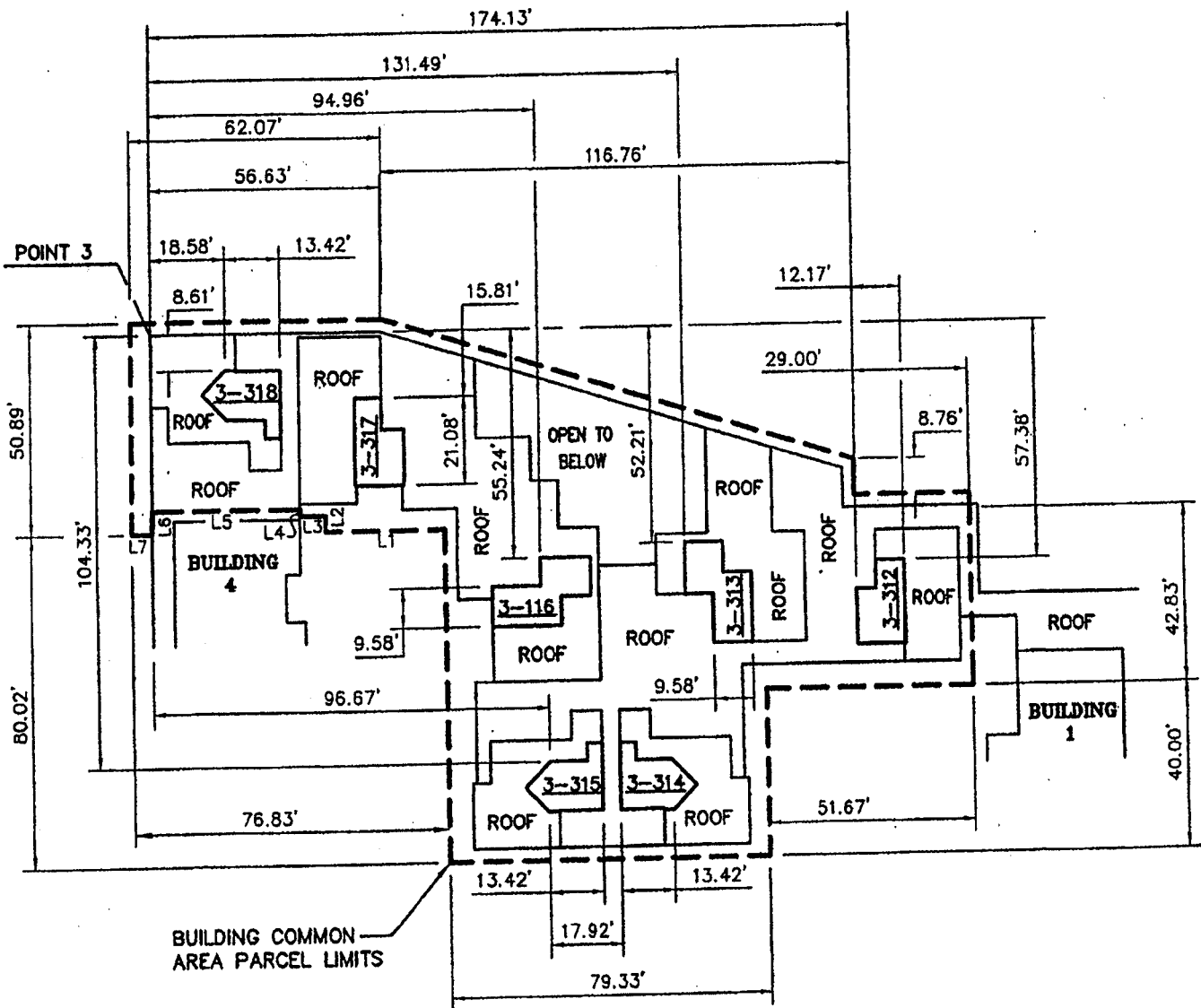
CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
 AUGUST, 2004

LINE TABLE		
LINE	BEARING	LENGTH
L1	N30°39'01"W	29.33'
L2	N59°20'59"E	3.83'
L3	N30°39.01"W	6.00'
L4	N59°20'59"E	1.64'
L5	N°30'39"01"W	38.50'
L6	S59°20'59"W	5.48'
L7	N30°39'01"W	5.00'

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PHASE 2
BUILDING 3 PLAN

SHEET 4 OF 4
 SCALE: 1" = 40'



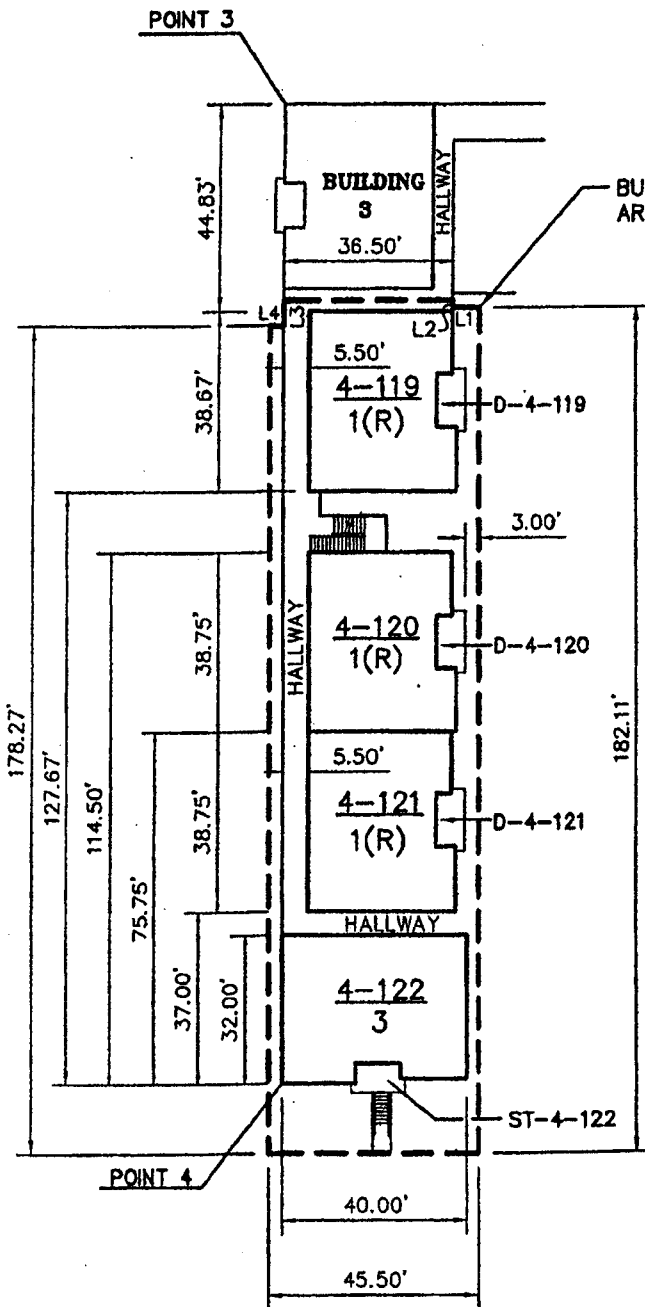
MEZZANINE LEVEL

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
 AUGUST, 2004

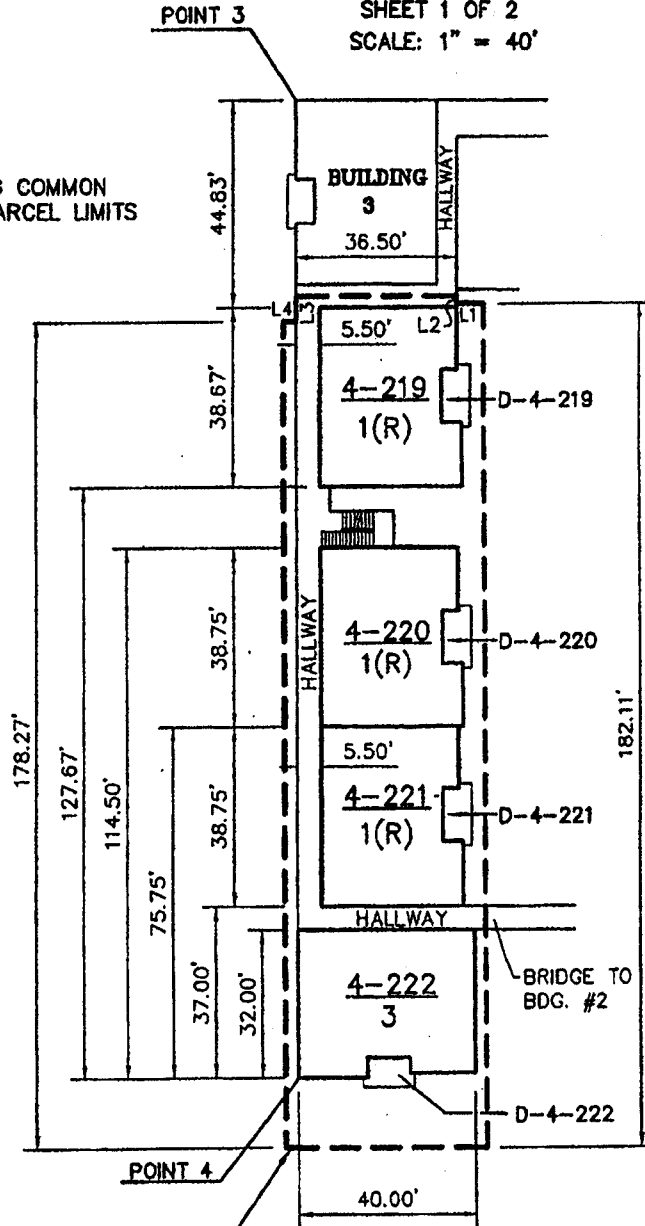
LINE TABLE		
LINE	BEARING	LENGTH
L1	S30°39'01"E	6.00'
L2	S59°20'59"W	1.84'
L3	S59°20'59"W	5.48'
L4	N30°39'01"W	3.00'

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PHASE 2
BUILDING 4 PLAN
 SHEET 1 OF 2
 SCALE: 1" = 40'



FIRST FLOOR



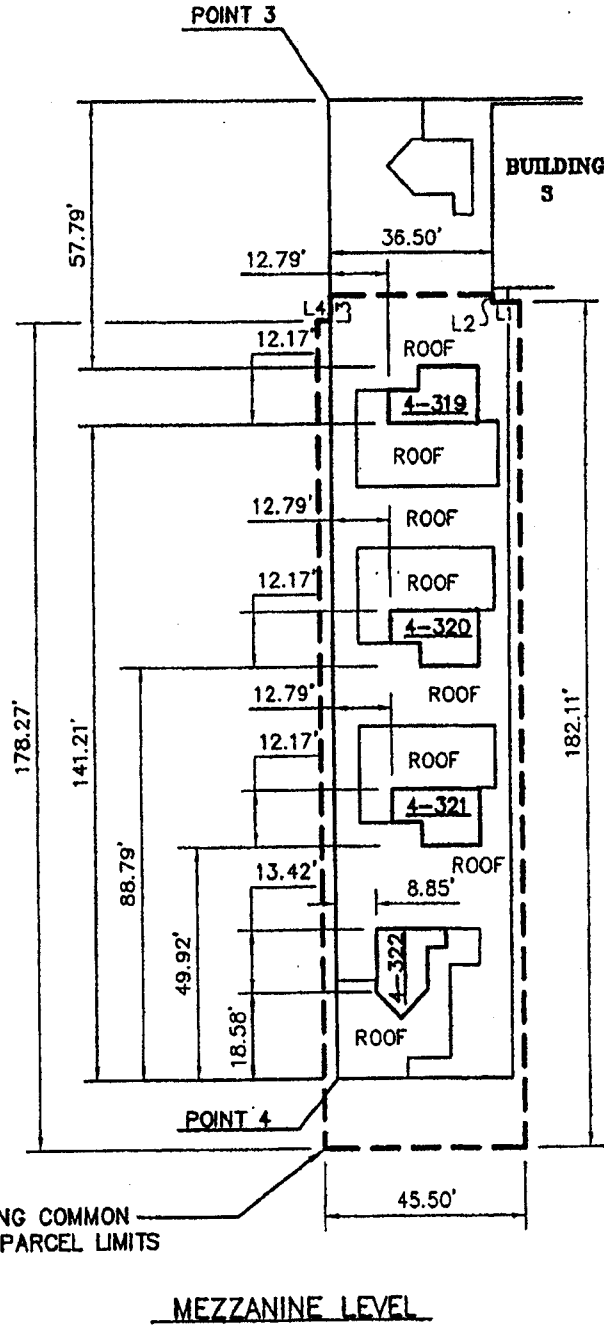
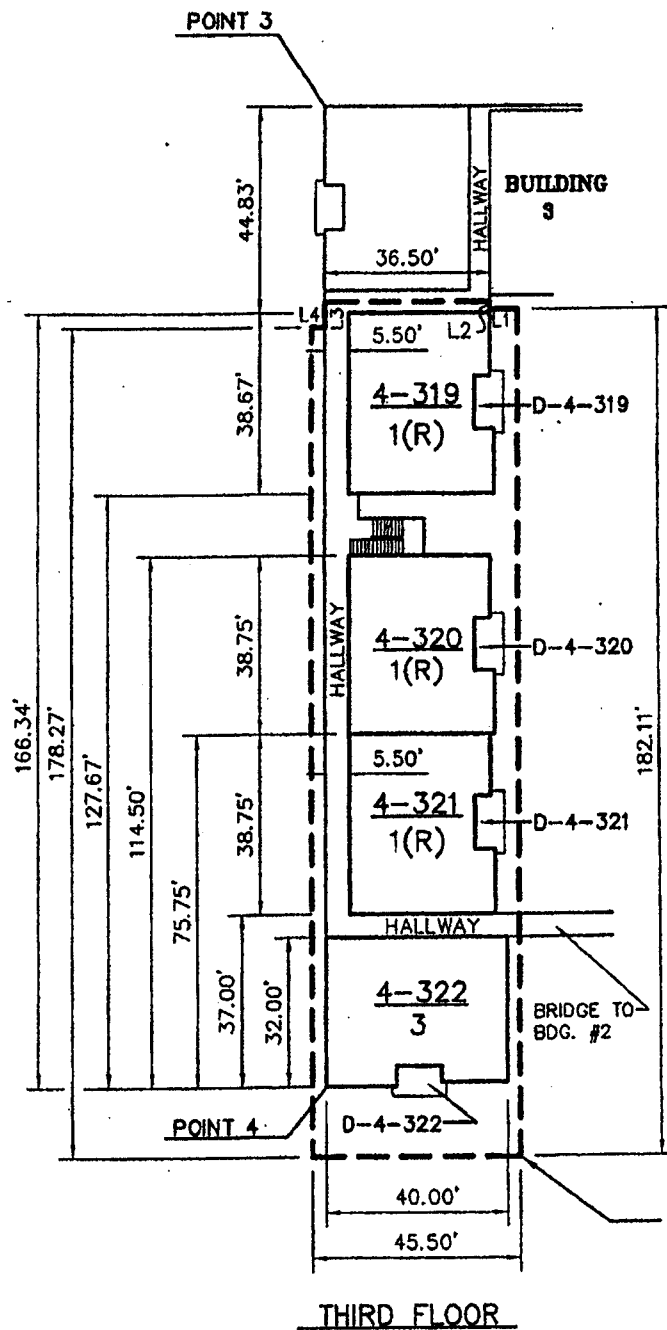
SECOND FLOOR

CONDOMINIUM PLAN
 800 NORTH EIGHTH STREET CONDOMINIUMS
 SAN JOSE, CALIFORNIA
 LOT 1 OF TRACT 9470
 BOOK 761 OF MAPS, PAGES 38 -39
 CONSISTING OF 25 SHEETS
 AUGUST, 2004



PHASE 2
BUILDING 4 PLAN
 SHEET 2 OF 2
 SCALE: 1" = 40'

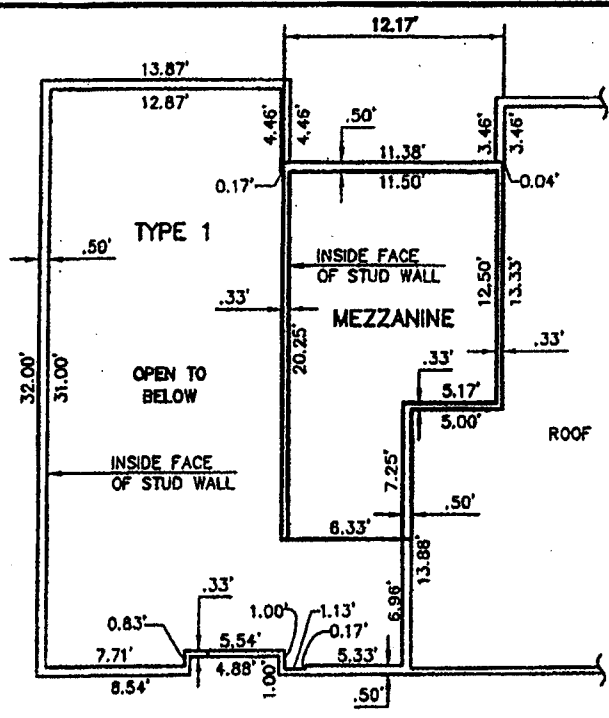
LINE TABLE		
LINE	BEARING	LENGTH
L1	S30°39'01"E	6.00'
L2	S59°20'59"W	1.64'
L3	S59°20'59"W	5.48'
L4	N30°39'01"W	3.00'



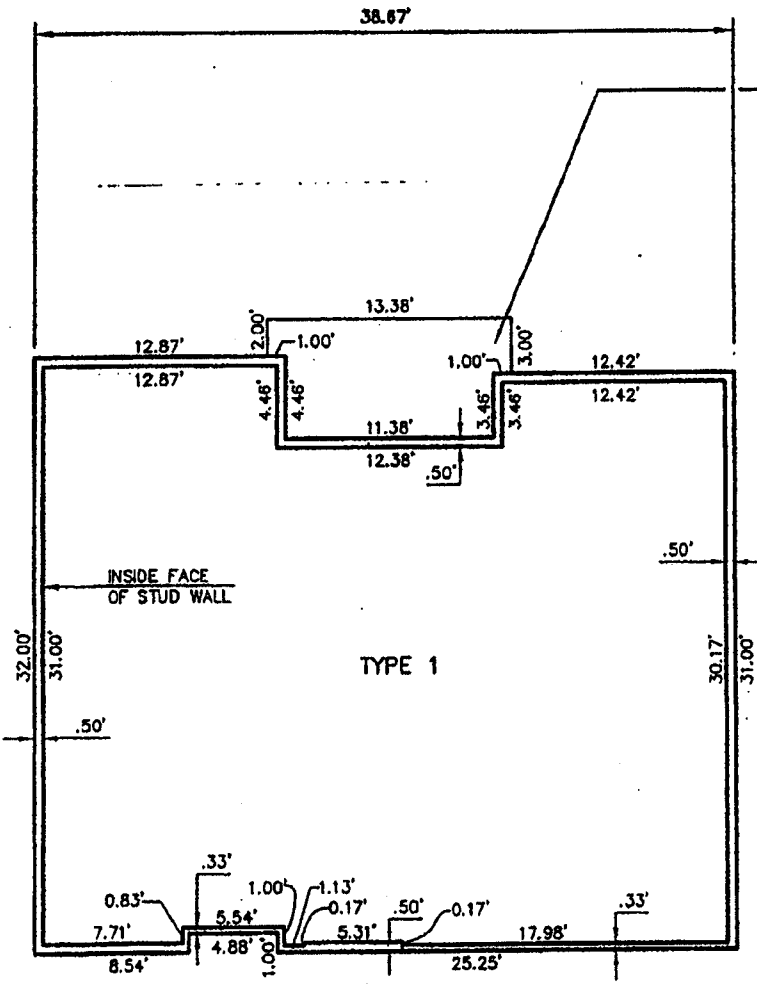
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 SAN JOSE, CALIFORNIA
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HMH San Jose (408) 487-2200
 Pleasanton (925) 980-7335
 Gilroy (408) 846-0707
ENGINEERS www.hmh-engineers.com

PHASE 2
UNIT PLANS
 TYPE 1
 SCALE 1" = 10'



UNIT: 312



DECKS ON FIRST FLOOR
 UNIT 3-112
 DECKS ON SECOND FLOOR
 UNIT 3-212
 DECKS ON THIRD FLOOR
 UNIT 3-312

UNITS: 112, 212, 312

CONDOMINIUM PLAN

800 NORTH EIGHTH STREET CONDOMINIUMS

SAN JOSE, CALIFORNIA

LOT 1 OF TRACT 9470

BOOK 761 OF MAPS, PAGES 38 -39

CONSISTING OF 25 SHEETS

AUGUST, 2004

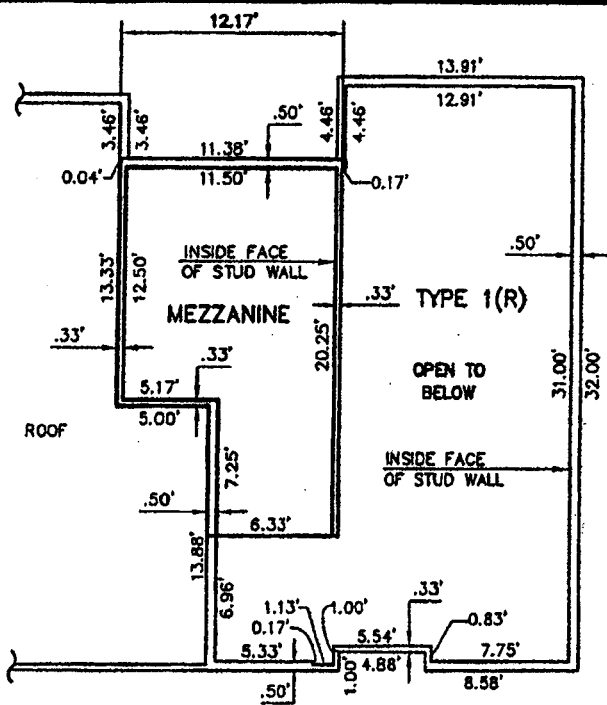


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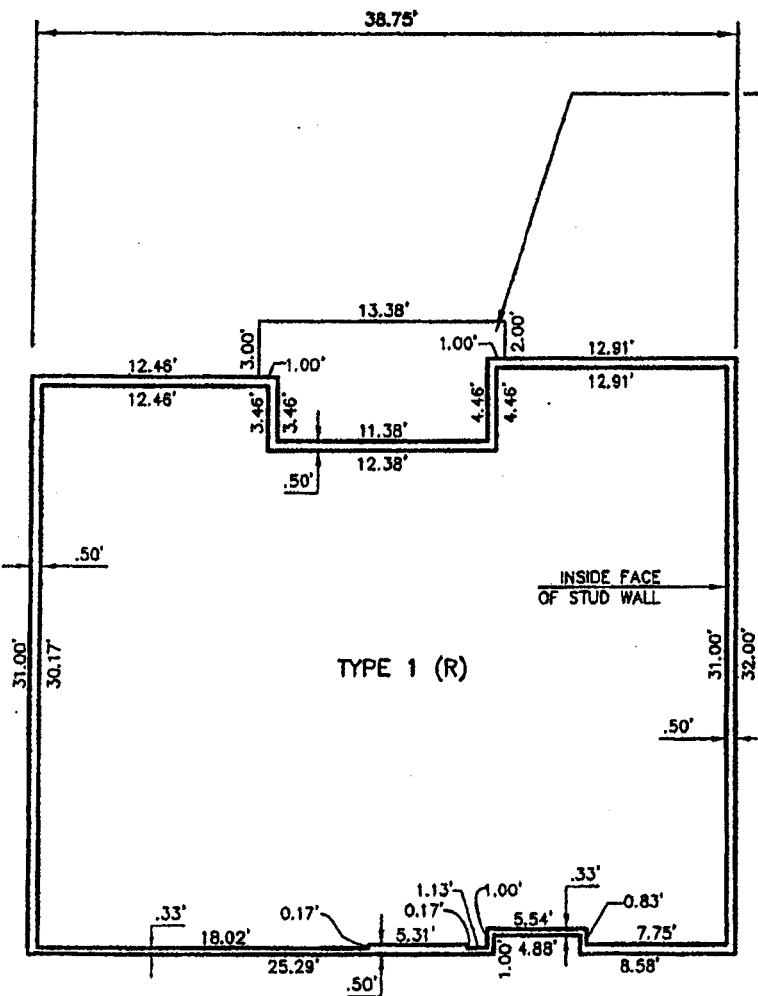
PHASE 2 UNIT PLANS

TYPE 1(R)

SCALE 1" = 10'



UNITS 320, 321



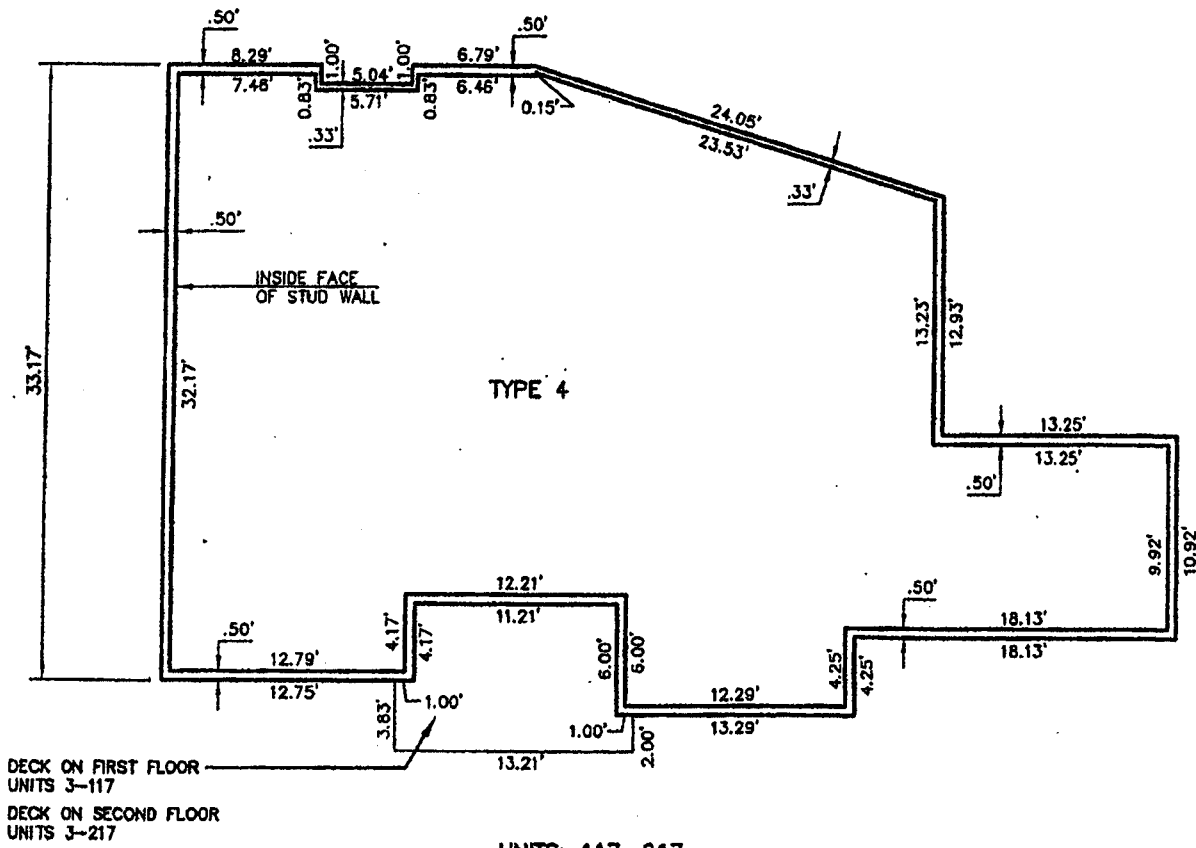
DECKS ON FIRST FLOOR
UNITS 4-120, 4-121
DECKS ON SECOND FLOOR
UNIT 4-220, 4-221
DECKS ON THIRD FLOOR
UNITS 4-320, 4-321

UNITS: 120, 220, 320, 121, 221, 321

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PHASE 2
UNIT PLANS
 TYPE 4
 SHEET 1 OF 2
 SCALE 1" = 10'



800 North 8th Street Condominiums

Exhibit "B"

Owner's Percentage Undivided Interest in Building Common Area

<u>Building #</u>	<u>Unit #</u>	<u>Address #</u>	<u>Percentage Undivided Interest In Building Common Area</u>
3	112	116	4.08%
	113	118	4.76%
	114	120	4.25%
	115	122	4.25%
	116	124	4.76%
	117	126	5.09%
	118	127	4.25%
	212	216	4.08%
	213	218	4.76%
	214	220	4.25%
	215	222	4.25%
	216	224	4.76%
	217	226	5.09%
	218	227	4.25%
	312	316	4.86%
	313	318	5.68%
	314	320	5.01%
	315	322	5.01%
316	324	5.68%	
317	326	5.87%	
318	327	5.01%	
		Total	100.00%

<u>Building #</u>	<u>Unit #</u>	<u>Address #</u>	<u>Percentage Undivided Interest In Building Common Area</u>
4	119	129	7.75%
	120	131	7.75%
	121	133	7.75%
	122	135	8.09%
	219	229	7.75%
	220	231	7.75%
	221	233	7.75%
	222	235	8.09%
	319	329	9.26%
	320	331	9.26%
	321	333	9.26%
	322	335	9.54%
		Total	100.00%

800 North 8th Street Condominiums

Exhibit "C"

Assignment of Exclusive Use Common Area Garages

Building #	Unit #	Address #	Garage Space #
3	112	116	60 & 61
3	113	118	84 & 85
3	114	120	103 & 132
3	115	122	96 & 97
3	116	124	54 & 55
3	117	126	80 & 81
3	118	127	46 & 47
3	212	216	62 & 63
3	213	218	86 & 87
3	214	220	130 & 131
3	215	222	98 & 99
3	216	224	56 & 57
3	217	226	53 & 79
3	218	227	48 & 50
3	312	316	64 & 65
3	313	318	88 & 89
3	314	320	128 & 129
3	315	322	104 & 105
3	316	324	58 & 59
3	317	326	82 & 83
3	318	327	51 & 52

Building #	Unit #	Address #	Garage Space #
4	119	129	42 & 43
4	120	131	39 & 40
4	121	133	33 & 34
4	122	135	106 & 107
4	219	229	44 & 45
4	220	231	41 & 100
4	221	233	31 & 32
4	222	235	27 & 28
4	319	329	101 & 102
4	320	331	37 & 38
4	321	333	35 & 36
4	322	335	29 & 30

CONSENT AND SUBORDINATION

To undersigned, beneficiary under that certain Deed of Trust dated July 11, 2003 and recorded on July 14, 2003, as Document No. 17181941, Official Records, Santa Clara County, California, executed by 800 NORTH 8th STREET LLC, a Delaware limited liability company, does hereby consent to the execution and recordation, and does hereby subordinate said Deed of Trust to the DECLARATION OF ANNEXATION 800 NORTH 8TH STREET PHASE II and the Condominium Plan attached thereto as an exhibit, with the same force and effect as if said Declaration and Condominium Plan had been executed and recorded prior to the execution and recordation of said Deed of Trust.

COMERICA BANK

By: Candice Eggleston
CANDICE EGGLESTON

State of California)
)ss.
County of Santa Clara)

On August 17th, 2004 before me, the undersigned, personally appeared Candice Eggleston personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~hi/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument of the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Thai (seal)

